



Aatma Capital  
Nurturing Relationships

# Code on Social Security, 2020

## Part IV

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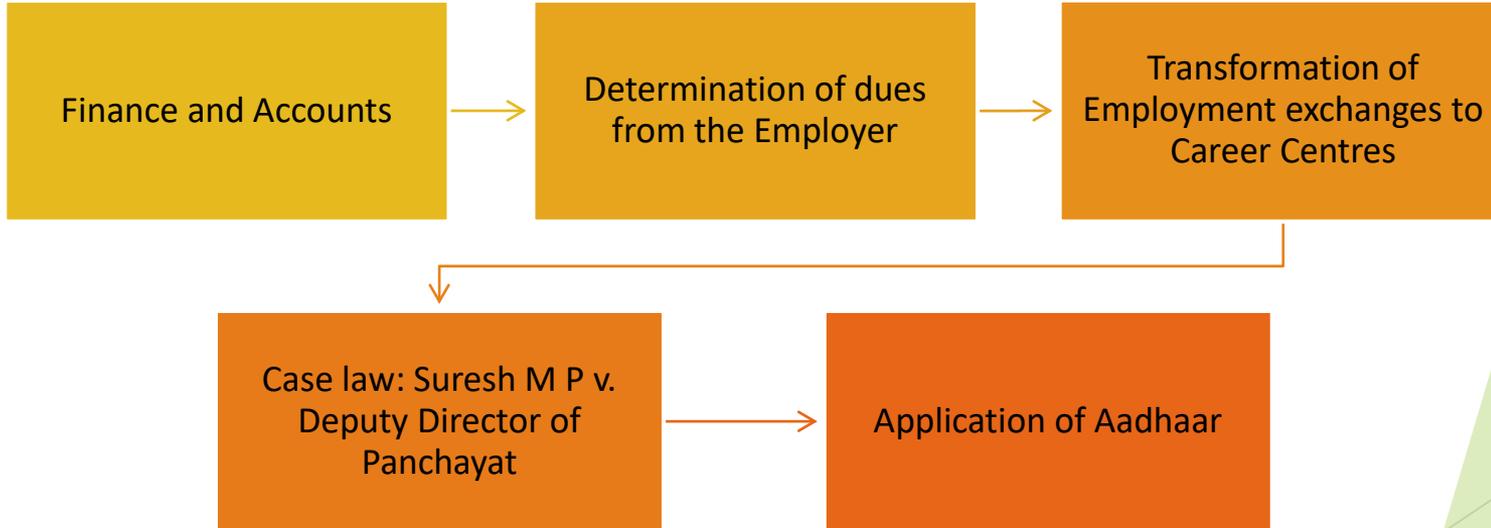
## Credits and Acknowledgments

Iswariya BS

**Legends used in the Presentation**

Code	Code on Social Security
CAG	Comptroller and Auditor General
CG	Central Government
Govt.	Government
IBC	Insolvency and Bankruptcy Code
HC	High Court
SSO	Social Security Organisation

# Presentation Schema



# Finance & Accounts

Each of the Social Security Organisations shall maintain **proper accounts** of its income and expenditure

Its accounts shall be annually **audited** by the Comptroller and Auditor-General of India (CAG)

It shall frame a **budget** each year showing the probable receipts and the expenditure which it proposes to incur during the following year

Each fund maintained by a SSO / by an establishment under this Code shall be valued by a valuer / actuary in relation to the assets and liabilities at such intervals **as specified in the Code** / by appropriate Govt.

SSO (except Corporation) **may acquire** and hold both movable & immovable property, sell / otherwise transfer such property, invest any moneys which are not immediately required, raise loans and constitute **benefit funds** either with the prior approval / as per the conditions laid down by the appropriate Govt.

The appropriate Govt. shall cause a copy of the annual report, budget and audited accounts along with CAG report to be **laid before House of Parliament** / State Legislature

# Determination of dues from Employer

### Appointment of Authorised officer

- CG may by notification **authorise** such officers as Authorised officer for
- deciding the **dispute** under Chapter III / IV,
- determining the **dues** from the employer and
- to conduct **inquiry**

### Powers of Civil Court to Authorised officer

- enforcing the attendance of any person or examining him on oath
- requiring the discovery and production of documents
- receiving evidence on affidavit and
- issuing commissions for the examination of witnesses

### Consequence on failure to attend the inquiry / produce the documents

- Inquiry officer may decide the applicability of the relevant provisions of this Code / determine the amount due from any employer, on the basis of the evidence adduced during such inquiry and other documents available on record

# Contd.

**Appeal against the order:** If the Employer is not satisfied by the order, he may prefer an appeal to the Appellate authority within 60 days from the date of such order after **depositing 25%** of the contribution so ordered

**Interest on amount due till payment:** Employer has to pay simple interest at the rate notified by CG, from the date it became due till its actual repayment

**Power to recover damages:** If the Employer makes default in payment of contribution which he is liable to pay under the Code, such officer appointed by the appropriate Govt. may levy and recover from the employer by way of damages, an amount not exceeding the amount of arrears

**Reduction / waiver of damages:** To an establishment for which a resolution plan / repayment plan recommending such waiver has been approved by the adjudicating authority established under the IBC, 2016

Before passing any order / levy / recovery, the Employer must be given an opportunity of being heard

# Contd.

**Modes of Recovery of damages:** The authorised officer shall issue a certificate to the Recovery officer for recovering the amount due in the following modes-

attachment and sale of the movable / immovable property of the establishment / employer\*

\*Establishment property shall be first effected for recovery before moving such proceeding against Employer's property

arrest of the employer and his detention in prison

appointing a receiver for the management of the movable / immovable properties of the defaulter

**Granting of time to Employer:** Notwithstanding that a certificate has been issued to the Recovery Officer for the recovery of any amount, the Authorised Officer may grant time to the employer for payment of the amount recoverable under the certificate and ask the Recovery Officer to stay the proceedings until the expiry of the time so granted

- **Right of Central Provident Fund Commissioner / Director General of the Corporation / any other authorised officer of SSO to recover the amount due:**
- If any amount is due from any person to any employer who is in arrears
- the above authorities may, require such person to deduct from the said amount the arrears so due and
- such person shall comply with any such requisition and
- shall pay the sum so deducted to the credit of the above authorities, as authorised in this behalf

# Transformation of employment exchanges to career centres

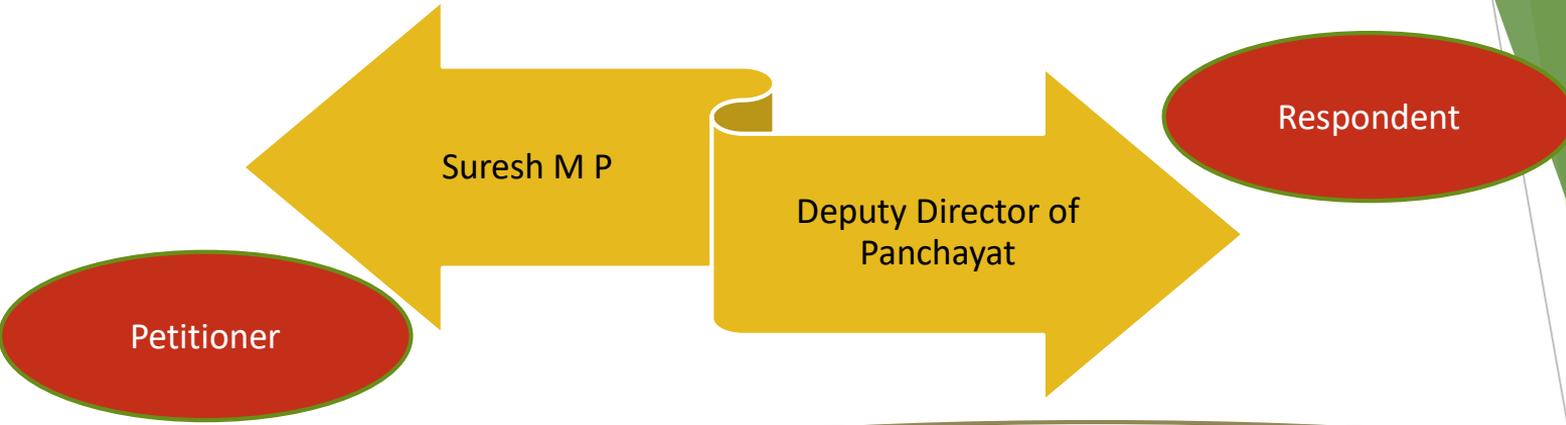
# Comparison

Particulars	The Employment Exchanges (Compulsory notification of vacancies) Act, 1959 (“the Act”)	Code on Social Security, 2020 (“the Code”)
Purpose	Compulsory notification of vacancies to <b>Employment exchanges</b>	Compulsory notification of vacancies to <b>Career centres</b>
No Compulsion to recruit	No compulsion imposed upon any employer to recruit any person through the employment exchange to fill any vacancy merely because such vacancy has been notified under the Act	No compulsion imposed upon any employer to recruit any person through the career centre to fill any vacancy merely because such vacancy has been reported

Particulars	The Employment Exchanges (Compulsory notification of vacancies) Act, 1959 (“the Act”)	Code on Social Security, 2020 (“the Code”)
<p><b>Non- Applicability to the sectors</b></p>	<ul style="list-style-type: none"> <li>• Agriculture (including horticulture) in any establishment in private sector other than employment as agricultural / farm machinery operatives</li> <li>• Employment in domestic services</li> <li>• Where total duration is less than 3 months</li> <li>• Unskilled office work</li> <li>• Connected with the staff of Parliament</li> </ul>	<ul style="list-style-type: none"> <li>• Agriculture (including horticulture) in any establishment in private sector other than employment in plantation</li> <li>• In domestic service</li> <li>• Connected with the staff of Parliament / any State Legislature</li> <li>• Where total duration is less than 90 days</li> <li>• Any class / category of establishments as may be notified by the CG</li> <li>• Establishment (other than Government establishment) with less than <b>20 employees</b></li> </ul>

Particulars	The Employment Exchanges (Compulsory notification of vacancies) Act, 1959 (“the Act”)	Code on Social Security, 2020 (“the Code”)
<p><b>Not applicable till the CG by notification directs</b></p>	<ul style="list-style-type: none"> <li>Vacancies which are proposed to be filled through promotion / by absorption of surplus staff of any branch / department of the same establishment / through independent recruitment agencies such as Union Public Service Commission, Staff Selection Commission / a State Public Service Commission / any other agencies as may be notified by the CG*</li> <li>*There was no such power given to CG under the erstwhile Act</li> </ul>	
	<ul style="list-style-type: none"> <li>Employment which carries a remuneration of less than Rs.60 p.m.</li> </ul>	<ul style="list-style-type: none"> <li>Monthly remuneration as may be notified by the appropriate Govt.</li> </ul>

# Case law



Facts of the case

Citation Code: W.P(C) No. 38937 of 2015-N

The Petitioner, a temporary hand, was working as a Driver in the Panchayat

Due to the new Committee taking charge after the election to the Local Self Govt. Institution, the Petitioner was sought to be terminated

## Filing of writ petition in Kerala HC

- Thus, the Petitioner filed a writ petition in Kerala HC
- The Petitioner was granted an interim stay on condition of no other person joined and he also contended that the earlier Committee had sought for regularisation of the Petitioner's services

- The Panchayat filed a counter affidavit by which the request made by the Petitioner was rejected
- It was stated that the petitioner's services were not satisfactory and being a temporary hand, he could be terminated. The Panchayat had an exclusive authority to appoint any person to the post of the Driver

- **Analysis of the HC**
- In the given case, any appointment shall be made only after inviting sponsorship from the Employment Exchange as provided in the Employment Exchanges (Compulsory Notification of vacancies) Act, 1959 and
- If no sponsorship is received within 2 weeks, then by making public notification and inviting applications from general public within a period of 2 months

# Contd.

- Petitioner prayed that he be continued till a properly selected hand joins
- But, the counter affidavit indicates that the Petitioner was not engaged as driver after 17/12/2015 due to his negligent driving

Order of the Kerala HC as on 25/02/2016

- The Panchayat would be entitled to engage any daily wage driver, subject to the condition of the selection process as specified, even for an appointment on temporary basis within a period of 2 months
- Thus, the writ petition was dismissed

# Application of Aadhaar

An employee / unorganised worker / any other person, shall establish his / his family members / dependents identity through Aadhaar number in the following cases:

- registration as member / beneficiary
- seeking benefit whether in kind, cash / medical sickness benefit / pension, gratuity / maternity benefit / any other benefit / for withdrawal of fund
- availing services of career centre
- receiving any payment / medical attendance as Insured Person himself / for his dependants

Any foreigner employee shall obtain and submit Aadhaar number for establishing his identity, as soon as possible, on becoming resident

**Aadhaar** as per Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 – means an identification number issued to an individual by an Authority after verifying the information



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