

Neutral Citation No. - 2024:AHC-LKO:47264-DB

Court No. - 2

Case :- SPECIAL APPEAL DEFECTIVE No. - 71 of 2018

Appellant :- Jagdish Chandra Nigam

Respondent :- M/S Scooters India Ltd.Lko.Throu Chairman-Cum-M.D.And Ors.

Counsel for Appellant :- Amit Bose

Counsel for Respondent :- R.C.Tewari

Hon'ble Rajan Roy,J.

Hon'ble Om Prakash Shukla,J.

C.M.A. No.1 of 2024 (Application for Condonation of Delay)

1. Heard the petitioner-in-person and Shri R.C. Tiwari, learned Counsel for the respondents.
2. Learned Counsel for the respondents does not have any objection to the application for condonation of delay in filing the appeal. Even otherwise, after going through the affidavit in support of the instant application, we find that reasons given therein are satisfactory.
3. In view of the above, the application for condonation of delay is allowed and delay in filing the instant appeal is hereby condoned.

Order on Appeal

4. This is an appeal filed by the appellant challenging the judgment and order dated 02.07.2012 passed in Writ Petition No.5011 (S/S) of 2008 : *Jagidsh Chandra Nigam Vs. M/S Scooters India Limited Thru. Chairman & 3 Ors.* A review application was filed which had already been dismissed on 12.01.2018. While dismissing the writ petition, the Writ Court has referred to Section 7-Q of The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (*hereinafter referred to*

as the 'Act 1952') and para 72(6) of the Employees' Provident Fund Scheme, 1952 (*hereinafter referred to as 'Scheme 1952'*).

5. The Writ Court was persuaded by the said provisions to hold that in case there is an amount due to the employer, the same shall have to be claimed by the employee. In case there is no claim by the employee the employer shall transmit the amount to 'Unclaimed Deposits Account'. The appellant-petitioner himself has stated in Annexure 6 at page 15 of the writ petition that he made his claim on 28.05.2007 and the amount of Rs.169020.30/- was given to him on 27.06.2007 within a period of one month, therefore, the Writ Court dismissed the writ petition. However, we have examined the relief prayed for which is for payment of interest on the due amount w.e.f. 01.04.2002 to 27.06.2007, that is the date when the actual payment of provident fund was made. But before that we would like to narrate certain facts. The Voluntary Retirement Scheme was floated by the respondent, i.e. Scooters India Ltd. in 1993. The appellant-petitioner opted for voluntary retirement under the said scheme albeit from a particular date instead he was treated as voluntary retired from a prior date and that is 30.11.1993. According to Shri Tewari, appearing for the respondents, all dues under the Voluntary Retirement Scheme were paid. The appellant-petitioner filed a writ petition before this Court bearing Writ Petition No.1165 (S/S) of 1994 on the ground that the Voluntary Retirement Scheme had been accepted from a date prior to what had been opted for by the appellant-petitioner. The said petition came to be dismissed on 09.01.1997. This led to the filing of a special appeal by the appellant-petitioner bearing Special Appeal No.48 (S/B) of 1997. This special appeal was allowed on 18.12.2000. In compliance thereof, it is said that the appellant-petitioner deposited the amount received by him towards voluntary retirement. The respondent being aggrieved by the judgment

dated 18.12.2000 filed a special leave petition wherein initially a stay order was passed on 13.07.2001 and ultimately the special leave petition was allowed vide order dated 12.02.2004 and the judgment of the Division Bench dated 18.12.2000 was set aside. All these litigations were in respect of Voluntary Retirement Scheme. Even with regard to Voluntary Retirement Scheme, it was not the case of the appellant-petitioner that he should not be voluntary retired rather he was saying that the acceptance was from a prior date.

6. In any case whatever may have been the controversy, Shri Tewari very fairly submitted that so far as the payment of provident fund is concerned, the same had nothing to do with the Voluntary Retirement Scheme. The case at hand is that the provident fund was released to the appellant-petitioner only on 27.06.2007. On being asked as to why it was so, Shri Tewari submitted that this was done only when the appellant-petitioner raised a claim for payment. According to Shri Tewari, once a claim is raised by the appellant-petitioner then the Scooter India paid it to him within one month. The application was submitted by the appellant-petitioner on 30.05.2007 for payment of provident fund. Accordingly, the same was paid on 27.06.2007 with interest up to 31.03.2002. As regards interest, he says that as the appellant-petitioner did not claim the said amount, therefore, after 31.03.2002 the provident fund due amount was transferred to an inoperative account. We asked him as to under which provision of law such amount which is to be kept under the provident fund could have been transferred to an inoperative account, Shri Tewari referred to para 72(6) of the Scheme 1952, i.e. the very provision which was referred by the learned Single Judge.
7. Now the question before us is as to whether the appellant-petitioner is entitled to interest on the provident fund amount paid to him on 27.06.2007, i.e. whether he is entitled to interest

for the period 01.04.2002 to 27.06.2007. We may refer to Section 7-Q of the Act, 1952 which reads as under :-

"7-Q. Interest payable by the employer:- The employer shall be liable to pay simple interest at the rate of twelve per cent per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment:

Provided that higher rate of interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank."

According to this provision the employer, i.e. the respondent herein, shall be liable to pay simple interest at the rate of 12% per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment.

8. Now we have to see as to what is meant by the words "*on any amount due from him (employer) under this Act*" and the words "*from the date on which the amount has become so due*". In this regard, we may refer to para 72 of Scheme, 1952 which is applicable and its applicability has not been disputed by Shri Tewari. As per sub-para (1) of para 72 when the amount standing to the credit of a member becomes payable, it shall be the duty of the Commissioner to make prompt payment as provided in the said Scheme. Sub-para(5) of para 72 provides that every employer shall, at the time when a member of the Fund leaves the service, be required to get the claim application, for payment of provident fund in cases specified in clauses (a) to (dd) of sub-paragraph (1) of paragraph 69, duly filled in and attested and to forward the said application [within five days of its receipt] to the Commissioner or any other

officer authorised by him in this behalf. Now para 69(1)(dd) refers to termination of service under the voluntary scheme of retirement framed by the employer as is the case here. Therefore, sub-para (5)(a) of para 72 would apply in the case of the appellant-petitioner. There are other provisions contained in clause (b), (c), (d), (e) and (f) of sub-para (5) of para 72 of Scheme, 1952. On a bare reading of sub-para (5)(a) of para 72, it is evident that the employer who at the time when a member of the Fund leaves the service, which in this case was 30.11.1993, was required to get the claim application referred therein for payment of provident fund duly filled in and attested and to forward the said application within five days of its receipt to the Commissioner or any other officer authorised by him in this behalf. We specifically asked Shri Tewari as to when this exercise was done by his client, but no such pleading could be pointed out in the counter affidavit filed before the Writ Court. The primary obligation under sub-para (5) of para 72 was upon the employer to get the said exercise done. Had it been initiated and it was the case of the respondent herein that the appellant-petitioner did not cooperate and did not fill up the form then things may have been different, but there is no such foundation in the pleadings much less evidence in this regard.

9. In this view of the matter, specially as the litigation pertaining to Voluntary Retirement Scheme has nothing to do with the payment of provident fund and also as we do not find any provision under which the said amount could have been shifted by the employer to some inoperative fund and, as regards reliance placed upon sub-para (6) of para 72 of Scheme, 1952, the same would come into the picture only after the employer had initiated the process of sub-para (5) of para 72 and thereafter if the member did not move any application for withdrawal of the amount to his credit then of-course the things would have been different. Here the very process envisaged

under sub-para(5) of para 72 was not initiated by the employer. Purely in the facts of this case, we are of the opinion that the appellant-petitioner is entitled to get interest as per Section 7-Q of the Act, 1952 on the amount of provident fund which was due for payment in the year 1993. The interest up to 31.03.2002 has already been paid, therefore, the respondents are under obligation to pay interest as per Section 7-Q of the Act, 1952 for the aforesaid due amount, i.e. Rs.169020.30/- from the period 01.04.2002 to 27.06.2007 when the said amount was actually paid.

10. For the reasons aforesaid, as the relevant provisions have not been taken into consideration by the Writ Court, we find that the judgment impugned is not sustainable. We set it aside and order as above. Compliance shall be made within four months.
11. Our order shall not have any bearing on any criminal proceedings which may have already been concluded or may be concluded hereafter.
12. The appeal stands **allowed**.

(Om Prakash Shukla, J.) (Rajan Roy, J.)

Order Date :- 11.07.2024

Anand Sri./-