

A.F.R.

Court No. - 18

Case :- WRIT - A No. - 5019 of 2024

Petitioner :- Ram Kumar And Another

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Agriculture
Marketing/Foreign Trade Lko. And 3 Others

Counsel for Petitioner :- Jitendra Singh, Abhinav Singh

Counsel for Respondent :- C.S.C., Naresh Chandra Mehrotra

Hon'ble Manish Mathur, J.

1. Heard learned counsel for petitioners, learned State Counsel for opposite party no.1 and Mr. N. C. Mehrotra, learned counsel for opposite parties 2 to 4.

2. Petition has been filed challenging orders dated 14.09.2021 and 18.12.2021 whereby payment of interest due upon petitioners' contribution to Provident Fund has been restricted to a period of one year only from the date of superannuation.

3. Learned counsel for petitioners has submitted that petitioners superannuated from service on 31.12.2015 and 30.09.2016 respectively whereafter in terms of Section 4 of Provident Funds Act, 1925 (hereinafter referred to as the Act of 1925), it was incumbent upon the authorities concerned to have made payment along with due interest on the contribution under Provident Fund Scheme. It is submitted that impugned orders have placed reliance on Regulation 6(4) of U.P. Rajya Krishi Utpadan Mandi Parishad Contributory Provident Fund Regulations, 1978 (hereinafter referred to as the Regulations of 1978) to restrict payment of interest on the aforesaid Scheme only for a period of one year. Learned counsel for petitioners has thereafter adverted to the fact that Regulation 6(4) of the Regulations of 1978 itself places reliance on Regulation 17 of the

Regulations of 1978, which in turn places reliance on Section 4 of the Act of 1925.

4. He has also placed reliance on judgment and order dated 01.10.2021 rendered by a coordinate Bench of this Court in Writ Petition no.14528(S/S) of 2021, Raghuvir Sharma v. State of U.P. and others to submit that aforesaid judgment clearly indicates that it is unjustified and inequitable to keep the earned interest on the deposits by the Mandi Parishad. It is submitted that the aforesaid judgment was challenged in Special Appeal No. 359 of 2022 which was dismissed vide judgment and order dated 16.12.2023, which has attained finality. It is therefore submitted that restriction of payment of interest to only one year is contrary to Section 4 of the Act of 1925 read with Regulation 17 of the Regulations of 1978.

5. Learned counsel appearing for opposite parties 2 to 4 has refuted the submissions advanced by learned counsel for petitioners with the submission that in terms of the specific provisions of Regulation 6(4) of the Regulations of 1978, opposite parties were entitled to restrict payment of interest for a period of one year from the date of petitioners' retirement as delay in payment occasioned on their account since they made applications for payment of Provident Fund only on 06.04.2017 and 15.01.2019 respectively although they had superannuated on 31.12.2015 and 28.09.2016 respectively. It is therefore submitted that it is in view of specific provisions in the Regulations of 1978 that the impugned order has been passed.

6. Upon consideration of submissions advanced by learned counsel for the parties and perusal of material on record particularly the impugned order, it is evident that payment of interest to petitioners has been restricted for the period of one year only from the date of superannuation placing reliance on Regulation 6(4) of the Regulations of 1978 while holding that delay in payment was only on account of the petitioners.

7. It is quite evident that Regulation 6(4) of the Regulations of 1978 is subject to Regulation 17 of the said Regulations, which in turn is subject to Section 4 of the Act of 1925. It is therefore the statutory provisions of the Act of 1925 which would prevail in such circumstances.

8. The provisions of Section 4 of the Act of 1925 pertains to repayments and mandates that when the sum standing to the credit of any subscriber or depositor, or balance thereof after making authorised deduction, has become payable, the officer whose duty it is to make the payment shall pay the sum or balance to the subscriber or depositor.

9. Relevant provisions of Section 4 of the Act of 1925 reads as follows:-

" 4. Provisions regarding repayments. - (1) When under the rules of any Government or Railway Provident Fund the sum standing to the credit of any subscriber or depositor; or the balance thereof after the making of any deduction authorised by this Act, has become payable, the officer whose duty it is to make the payment shall pay the sum or balance, as the case may be, to the subscriber; or depositor; or, if he is dead, shall-

(a)

(b)

(c)

(2)"

10. Regulations 6(4) and 17 respectively of Regulations of 1978 reads as follows:-

"6 — (1) — — — — —

(2) — — — — —

(3) — — — — —

(4) किसी व्यक्ति को, जिसे विनियम 17 के अधीन देय धनराशि का भुगतान किया जाता है, उस धनराशि पर भुगतान प्राधिकृत किये जाने वाले माह के पूर्ववर्ती माह के अन्त तक ब्याज भी दिया जायेगा:

प्रतिबन्ध यह है कि यदि विनियम 17 के अधीन अपेक्षित सब प्रकार से पूर्ण आवेदन पत्र अभ्यर्थित धनराशि के देय होने के दिनांक

से 6 माह के बाद प्रस्तुत की जाती है तो ब्याज भुगतान प्राधिकृत किये जाने वाले माह के पूर्ववर्ती माह के अन्त का, अथवा धनराशि देय होने के माह के अनुवर्ती माह से 12 माह तक का, जो भी अवधि कम हो, दिया जायेगा सिवाय ऐसे मामलों के जिनमें निदेशक का समाधान कर दिया जाय कि उक्त आवेदन पत्र प्रस्तुत करने में विलम्ब उन परिस्थितियों में हुआ जिन पर आवेदनकर्ता का कोई नियंत्रण नहीं था तो ऐसे मामलों में इस प्रतिबन्धात्मक खण्ड के प्राविधान लागू नहीं होंगे।”

“17 – **भुगतान** – (1) जब अभिदाता के नाम निधि में जमा धनराशि अथवा विनियम 16 के अधीन किसी कटौती के पश्चात्, उसका अवशेष देय हो जाय तो लेखा अधिकारी का यह कर्तव्य होगा कि, अपना समाधान कर लेने पर कि उक्त विनियम के अधीन कोई कटौती करने के निर्देश नहीं दिये गये हैं, प्राविडेण्ट फण्डस् एक्ट, 1925 की धारा 4 के प्राविधानों के अनुसार भुगतान करें।

(2) यदि कोई व्यक्ति जिसे इन विनियमों के अधीन कोई धनराशि देय है, पागल हो जिसकी सम्पत्ति के लिए इण्डियन लूनेसी एक्ट, 1912 के अन्तर्गत प्रबन्धक नियुक्त किया गया हो, तो भुगतान ऐसे प्रबन्धक को किया जायेगा, न कि पागल को।

(3) कोई व्यक्ति जो इस विनियम के अन्तर्गत भुगतान के लिए दावा करना चाहे, निदेशक को इस हेतु लिखित आवेदन पत्र देगा। भुगतान केवल भारत में किया जायेगा। जिन व्यक्तियों को धनराशि देय हो, भारत में भुगतान प्राप्त करने लिये अपना स्वयं प्रबन्ध करेंगे।

टिप्पणी – 1 – निधि में अभिदाता के नाम जमा धनराशि विनियम 15 के अन्तर्गत देय हो जाने पर लेखा अधिकारी अभिदाता के नाम निधि में जमा उस धनराशि का शीघ्र भुगतान प्राधिकृत करेगा जिसके

सम्बन्ध में कोई विवाद या सन्देह न हो तथा शेष धनराशि का समायोजन भी यथाशक्य शीघ्र करेगा।

(2) धनराशि के भुगतान के लिये उपयुक्त निर्धारित प्रपत्र 2 में आवेदन पत्र दिया जायेगा।

(3) धनराशि के देय हो जाने की तिथि से ब्याज के सम्बन्ध में कुछ प्रतिबन्ध लागू होते हैं जिनके सम्बन्ध में विनियम 6 अवलोकनीय है।”

11. A conjoint reading of Section 4 of the Act of 1925 and Regulation 17 of the Regulations of 1978 makes it evident that there is no duty cast upon the subscriber or depositor of the Scheme to make an application for payment of the credit to him whereafter only such payment is required to be made. On the contrary, Section 4 of the Act of 1925 imposes a mandatory duty upon the officer concerned to make payment of the sum standing to the credit of the subscriber when it has become payable.

12. Regulation 17 also makes a specific provision while casting a duty upon the officer concerned to make payment of the deposit of a subscriber as soon as it has become due.

13. It therefore appears that Regulation 6(4) of the Regulations of 1978 is contrary not only to Regulation 17 of the Regulations of 1978 but also appears to be ultra vires to Section 4 of the Act of 1925. It is quite evident that no such restriction can be made for payment of interest only up to a period of one year from the date of superannuation to a depositor with regard to payment of interest on the amount due to be paid to the subscriber/depositor.

14. The prohibition for grant of interest on subscriptions by an employee beyond the period of one year from the date of superannuation also amounts to unjust enrichment since the opposite parties have definitely earned interest on such subscriptions ever since it was made and continued to earn such interest on that deposit

till the date of actual payment. Therefore it is unreasonable on part of opposite parties to restrict payment of such interest to depositors.

15. The aforesaid reasoning has also been indicated by a coordinate Bench of this Court in Raghuvir Sharma(supra), which has been upheld in Special Appeal.

16. In view thereof, the impugned orders dated 14.09.2021 and 18.12.2021 being against the mandatory conditions of Section 4 of the Act of 1925 read with Regulation 17 of the Regulations of 1978, are hereby quashed by issuance of a writ in the nature of Certiorari. A further writ in the nature of Mandamus is issued commanding opposite party no.2, i.e. Director, Rajya Krishi Utpadan Mandi Parishad, Kisan Bhawan, Vibhuti Khand, Gomti Nagar, Lucknow to ensure payment of interest to petitioners on subscriptions to the contributory Provident Fund at the admissible rates from the date of superannuation till the date the sum standing to the credit of the petitioners was actually paid to them.

17. Aforesaid payment shall be ensured to petitioners within a period of six weeks from the date a certified copy of this order is served upon opposite party no.2.

18. Resultantly, the petition succeeds and is **allowed** at the admission stage itself. The parties to bear their own costs.

Order Date :- 8.7.2024

kvg/-