IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7286 of 2004

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Mr.Kartik Charan Jha son of Late Mukti Charan Jha, resident of 103, Himgiri Apartment, West Boring Canal Road, P.S.Budha Colony, Patna-800001

.... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Provident Fund, Secretariat, Patna, Bihar
2. The Joint Secretary, Provident Fund, 5th Floor, Pant Bhawan, Bailey Road, Patna
3. District Provident Fund Officer, Begusarai, Court Campus, Begusarai
4. District Provident Fund Officer, Madhepura, Court Campus, Madhepura
5. The Secretary Finance, Old Secretariat, Patna
6. The Joint Commissioner of Commercial Taxes (Administrative), Bhagalpur Division, Bhagalpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar Nirala, Advocate
Mr. Prakash Sahay, Advocate

For the Respondent/s : Mr. AC to A.G
Mr. Avinash Kumar, SC 30

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

CAV JUDGMENT

Date: 23 -06-2015

Heard the parties.

2. The matter at issue is the rate of interest payable on the provident fund amount to the petitioner.

3. The petitioner has filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of order/communication dated 19th April, 2000 (Annexure-4) issued under the signature of the respondent District Provident Fund Officer, Madhepura, which has been addressed to the petitioner, whereby he was informed that in view of his failure to contribute/pay 15 % of his basic salary/emoluments towards provident fund, he was not a member of new provident fund scheme and was thus entitled for only 10.5% interest over his provident fund amount under the old scheme, which has already been paid in his account. By the aforesaid order/communication, the claim of the petitioner for payment of 12.5% interest over his provident fund amount has been rejected.

4. Learned counsel appearing on behalf of the petitioner submits that the petitioner was a Gazetted Government Officer and has now superannuated from service from the post of Deputy Commissioner, Commercial Taxes, Bihar. He submits that originally the petitioner was being paid 10.5% interest over his provident fund amount, but in view of letter dated 27.10.1995 (Annexure-2) issued by the Commissioner and Secretary, Department of Finance, Government of Bihar, Patna, he paid deficit amount of subscription of provident fund to the tune of Rs.1,875/- through Treasury challan dated 11.12.1995, therefore, the petitioner is entitled to receive 12.5% interest over his provident fund amount. According to him, the action of the respondents in not paying the petitioner 12.5% interest over his provident fund amount and paying him only 10.5% interest over his provident fund amount is not sustainable in law. Therefore, it is pleaded that the respondents may be directed to recalculate the provident fund amount of the petitioner after paying him 12.5% interest over it.

5. The matter has been contested by the respondents by filing separate sets of counter affidavit on behalf of the respondent no. 3 and respondent no.4 as also by filing supplementary counter affidavit on behalf of the respondent nos. 2 and 4 in compliance of the order/direction issued by this Court. It is the specific case of the respondents that the petitioner did not deposit/contribute the required amount of 15% of his basic salary/emoluments in his provident fund account within the time prescribed, and despite opportunity given by the State Government he did not opt for New Provident Fund Scheme commencing on 1st July, 1985. Therefore, according to the respondents, the petitioner is not entitled to receive 12.5% interest over his outstanding provident fund amount and his account has rightly been calculated after paying him 10.5% interest. It is pleaded that on the basis of subsequent deposit of Rs.1,875/- by the petitioner through Treasury Challan dated 11.12.1995 to compensate the deficit amount towards his contribution in the provident fund account will not entitle him to the benefits of new provident fund scheme commencing on 1st July, 1985.

6. It has been asserted by the respondents in their counter affidavits/supplementary counter affidavit, which has not been disputed by the petitioner, that the petitioner joined as District Provident Fund Officer, Madhepura in view of the Govt. order dated 01.07.1995 and he was in dual charge of his office as also of District Accounts Officer, Madhepura. He continued as such at Madhepura till 03.06.1998. It is the case of the respondents that while the petitioner was still working on the post of District Provident Fund Officer, Madhepura, he filed an application under his own signature on 06.12.1995 requesting the District Provident Fund Officer, Madhedpura i.e. himself for grant of higher rate of interest of 12.5% on the provident fund amount in view of payment of arrears/deficit amount of contribution by him in the year 1995 and accordingly the petitioner himself passed an order in his own favour showing entitlement of 12.5% interest over his provident fund amount. According to the learned State counsel, the petitioner is liable to be proceeded with for manipulating the records of the District Provident Fund Office, Madhepura and for passing wrong order for his own benefit.

7. After having considered the rival submissions of the learned counsel appearing on behalf of the parties and on going through the materials available on the record, this Court finds that under the old provident fund scheme vide Government Notification No. 4967 dated 18.05.1983 Non-Gazetted employees were required to contribute/pay minimum 10% of their basic salary whereas Gazetted employees were required to pay minimum 12% of their basic salary towards their provident fund account. Under the amended provision of Rule 11 (1) (b) of the Bihar General Provident Fund Rules, 1948, all the Gazetted Government employees were required to deposit minimum 15% of their basic salary/emoluments and Non-Gazetted employees were required to deposit 12% of their basic salary/emoluments for being a member of new provident fund scheme floated by the State Government vide Government Notification No. 4184 dated 13.07.1985 which came into force with effect from 1st July, 1985, whereafter they were entitled to receive 12.5% interest over their provident fund amount provided the option was exercised by them on or before 26.07.1985 for being a member of new scheme. However, since some Gazetted Government employees had failed to contribute 15% of their basic salary/emoluments towards provident fund account, they were granted one more opportunity vide Government Notification No. 7529 dated 29.11.1985, but deposit of arrears of contribution in their provident fund account was to be made in one installment from their salary of December, 1985. The State Government also came with a Notification No. 7530 (2) dated 29.11.1985 clarifying therein that if the contribution by the Gazetted employees or Non-Gazetted employees in their provident fund account is made under the old scheme vide Government Notification No. 4967 dated 18.05.1983, then they would be entitled to receive only 10.5 % interest over their provident fund amount.

8. It is not in dispute that despite the opportunity given to the petitioner by all those government Notifications, he did not deposit arrears of contribution to the extent of 15% of his basic salary/emoluments towards provident fund account till December, 1985. Therefore, the claim of the petitioner for payment of 12.5% interest over his provident fund amount is misconceived and cannot be countenanced. Admittedly, the petitioner was posted as District Provident Fund Officer, Madhepura in July, 1995 and he was in dual charge of his office as also of District Accounts Officer, Madhepura and he remained there as such till 03.06.1998. It appears that while he was posted as District Provident Fund Officer, Madhepura, he filed an application on 06.12.1995 for being included under the new scheme whereafter he himself passed an order in his favour for his own benefit on the ground that he has deposited the arrears of contribution through government Treasury challan dated 11.12.1995 and accordingly passed an order that he was entitled to receive 12.5% interest over his provident fund amount. The illegality/irregularity committed by the petitioner has been corrected by his successor by impugned order/communication dated 19th April, 2000 (Annexure-4) wherein it has been held that the petitioner is entitled for only 10.5 % interest over his provident fund amount. Admittedly, the deposit made by the petitioner on 11.12.1995 to the extent of Rs.1,875/- was for the period from July, 1985 till the date of payment, which was evidently contrary to the Government notifications in vogue and could not have been done by the petitioner for his personal benefit, while posted and working as District Provident Fund Officer, Madhepura. The action of the petitioner for including himself under the new provident fund scheme belatedly after such a long time with a view to get 12.5%

interest over his provident fund amount cannot be legally approved. Therefore, the impugned order/communication dated 19th April, 2000 (Annexure-4) issued by the successor District Provident Fund Officer, Madhepura cannot be legally faulted.

9. For the reasons recorded above, the writ petition has to fail and is, accordingly, dismissed, but without costs.

(Birendra Prasad Verma, J)

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