

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 20398 of 2010

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1. The Union Of India Through The Chairman Central Board Of Trustees, Employees Provident Fund Organisation, Shram Shakti Bhawan, New Delhi
 2. The Central Provident Fund Commissioner Employees Provident Fund Organisation, Bhavishya Nidhi Bhawan, 14, Bhikhaji Cama Place, New Delhi

.... Petitioner/s

Versus

B.P. Shrivastava S/O Late Tapeswar Lal R/O Chandra Villa, Just East Of M.I.G. Sector-Vi, Bahadurpur Housing Colony, Patna, Bihar

.... Respondent/s

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Appearance :

For the Petitioner/s : M/s Shailendra Kr Sinha & Prashant Sinha, Advocates

For the Respondent/s : M/s Alok Kr Sinha & Manish Kr, Advocates

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CORAM: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE MR JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 11-05-2015

The applicant before the Central Administrative Tribunal (for brevity, *the Tribunal*), Patna Bench, Patna, who is the sole respondent in this writ petition, was Assistant Provident Fund Commissioner. He was to superannuate on 31.07.2006 but on 26.07.2006, a departmental proceeding was initiated against him and a Memo of Charge was issued to him. He responded to the same after his superannuation clearly objecting to the jurisdiction of the authorities to continue with the proceedings and/or withhold any part of his retiral dues on basis of the said proceedings. There being no response, he moved the Tribunal for restraining the provident fund

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authorities including the Commissioner of Provident Fund from proceeding with the departmental proceedings after his superannuation. The ground was singular. There was no law as applicable to the Provident Fund Department which is separate from and independent of the Government and controlled by the independent statutory Board of Trustees under the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (for brevity, *the Act*) which authorizes the authorities to continue with a departmental proceeding after a person superannuates. The Central Government has Rules for its staff. The State Government has Rules for its staff. They all provide for such a contingency but there is no such provision so far as employees of the provident fund are concerned. It is a statutory body independent of the Government. This issue found favour with the Tribunal and, accordingly, the Tribunal set aside the continuance of departmental proceedings and directed full payment of pensionary benefits alongwith interest for the delayed payment. The Chairman, Central Board of Trustees and the Central Provident Fund Commissioner have filed this writ petition being aggrieved by the order of the Tribunal dated 02nd September, 2010 passed in OA No 260 of 2009.

2 Pursuant to notice issued, the sole contesting respondent, who was the applicant before the Tribunal, has appeared. We have heard the parties and with their consent, this writ petition is

being disposed of at this stage itself.

3 Shri Prashant Sinha, learned counsel appearing for the Provident Fund authorities, who are the writ petitioners, first submits that in terms of Section 5-D (7)(a) of the Act, there is ample provision to show that in relation to service conditions, the rules and orders applicable to officers and employees of the Central Government would apply. We are unable to accept the same inasmuch as the said provision itself specifies that the Central Board shall specify such Rules as may be applicable and while adopting those Rules, if there is any change to be made, it would be with the prior approval of the Central Government. Nothing is shown that any such Rule was adopted by the Central Board of Trustees at the time when the proceedings were initiated or when the sole respondent superannuated. To the contrary, Shri Alok Kumar Sinha, learned counsel appearing for the sole contesting respondent brings to the notice of this Court Gazette of India dated 25th of October, 2008 being notification dated 25th of September, 2008 whereby in exercise of powers conferred to the Board of Trustees under Section 5-D (7)(a) of the Act aforesaid, for the first time, regulations known as Employees Provident Fund (Officers and Employees') Conditions of Service Regulations, 2008 were framed and adopted. In this, Regulation 18 deals with applicability of Rules relating to appointments, pay, leave, pension, gratuity, general provident funds, etc to employees of the

organization and now for the first time it adopts the Central Civil Services (Pension) Rules, 1972 (for brevity, *the CCS Rules*). On behalf of the contesting respondent, it is rightly submitted that this clearly shows that prior to 25th of September, 2008, CCS Rules could not be resorted to for justifying continuance of departmental proceedings and/or depriving a person of his gratuity or pension for any dereliction after he has superannuated. It is then submitted on behalf of the Central Board of Trustees that there is an accounting manual prepared by the organization and this accounting manual had been adopted by the Central Board of Trustees in its 147th meeting held on 02.12.1997 and reference has been made to Clause 11.2.1 thereof and 11.2.10 as also Clause 28 which talks of application of instructions relating to payment of pension to Central Government employees by public sector banks. We are afraid that this accounting manual is not law nor has it a force of law. It is only an accounting manner for internal consumption of the Board. It is for internal usage of the Board and it also does not specifically adopt CCS (Pension) Rules in relation to all its matters. If the power was to be exercised in relation to Section 5-D (7)(a) of the Act and then as a delegate, the CCS (Pension) Rules had to be adopted, it had to be so done consciously and by publication in the gazette for information to the public at large. Only then would it become a law. This is essential in view of Article 300A of the Constitution inasmuch as continuance of



departmental proceedings and the orders passed therein after superannuation adversely affecting pension would be to deprivation of property and in terms of Article 300A of the Constitution, it cannot be so done except by procedure established by law. Therefore, the procedure of continuing proceedings after superannuation has to be sanctified by law. Such accounting manual prepared by the Department itself for its internal guidance cannot take the place of law. It is rightly pointed out that even the Department knows the same and understands the same in the same manner. Therefore, the formal adoption was done on 25th of September, 2008 and later gazetted on 25th of October, 2008.

4 Then learned counsel for the Board of Trustees referred to the Employees Provident Fund (Staff and Conditions of Service) Regulations, 1962 and, in particular, Regulation 9 (2) and the Schedule – IV to submit that so far as pension and superannuation benefits are concerned, they would be governed by CCS Rules. We are unable to accept the same inasmuch as Schedule – IV itself says that pension and other superannuation benefits would be in accordance with a **scheme to be prepared** on the lines of pension cum gratuity scheme as applicable to Central Government employees from time to time. It is a scheme for payment and not a scheme for departmental proceedings. It may be pertinent to note that there is not such scheme framed even as today. Then reference is made to

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Regulation 29 of these 1962 Regulations. This also has no application inasmuch as Regulation 29 deals with matters relating to appointments to the post reserved for candidates belonging to the scheduled castes/scheduled tribes, ex-servicemen and other special category persons. It does not talk of employees of the Board in general.

5 Thus, on considering the entire matter afresh, we are of the view that the Tribunal did not commit any error of law in allowing the application. Further, it did not commit any error of law in directing the Board of Trustees to immediately pay the entire retiral dues of the application before it who is the sole contesting respondent before us with delayed interest.

6 We find no merit in this writ petition. It is, accordingly, dismissed.

7 The order of the Tribunal, if not complied, should be complied within one month from today.

(Navaniti Prasad Singh, J)

(Rajendra Kumar Mishra, J)

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