IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.10071 of 2014(O&M)
Date of Decision: 14.09.2015

Jagdish Kumar … Petitioner

Versus

Employees' Provident Fund Commissioner ... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Jatinder Nagpal, Advocate, for the petitioner.

Mr. Sandeep Goyal, Advocate, for the respondent.

1. To be referred to the Reporters or not? Yes.
2. Whether the judgment should be reported in the Digest? Yes.

RAJIV NARAIN RAINA, J.(Oral)

C.M. No.12721 of 2014

Application is allowed. Circular dated 11.3.2011(Annexure P-5) is taken on record.

CWP No.10071 of 2014

1. Heard at sufficient length in motion hearing. In defence of the petition against grant of interest to the petitioner on the amount lying in his name in the Inoperative Account of the Fund, Mr. Goyal appearing for the Regional Provident Fund Commissioner refers to sub-para 6 of Paragraph 72 of the Employees' Provident Funds Scheme, 1952 (for short 'the Scheme') to contend that any amount becoming due to the member of the Fund as a result of any of the two situations enumerated in the sub-para 6 the amount lying with the Trust Fund in which no application for withdrawal of money under Paragraphs 69 or 70 of the Scheme or transfer of money have been filed within a period of 36 months from the

date it becomes payable shall be transferred to an account to be called an "Inoperative Account". The purpose of the sub-para 6 of Paragraph 72 of the scheme inserted by GSR 1415 dated 24.9.1964 to the mind of this Court was to create a suspense account in days of yore in nascent India bedeviled by lack of infrastructure and telecommunications making things impossible of cure but was not meant to impose or act as a rigid bar of limitation for recovery of amounts or interest accruing on the principal amounts lying in the name of the workmen in the Fund maintained under the scheme. It would profit to notice Paragraph 72 of the Scheme which reads as under:-

> *"72. **Payment of Provident Fund- (1)** 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 this Scheme. In case there is no nominee in accordance with this Scheme [or there is no person entitled to receive such amount under sub-paragraph (ii) of paragraph 70, the Commissioner may, if the amount to the credit of the Fund does not exceed [Rs.10,000] and if satisfied after enquiry about the title of the claimant, pay such amount to the claimant.*
>
> *(2) If any portion of the amount, which has become payable, is in dispute or doubt, the Commissioner shall make prompt payment of that portion of the amount in regard to which there is no dispute or doubt, the balance being adjusted as soon as may be possible.*
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> *(3) If the person to whom any amount is to be paid under this Scheme is a minor for whose estate a guardian under the Guardians and Wards Act, 1890 (8 of 1890) has been appointed, the payment shall be made to such guardian. Where no guardian under the Guardians and Wards Act, 1890 (8 of 1890) has been appointed, the payment shall be made to the guardian, if any, appointed under the sub-paragraph (4A) of paragraph 61. Where no guardian under the Guardians and Wards Act, 1890 (8 of 1890) or under sub-paragraph 61 has been appointed, the payment shall be made to the natural*

guardian and in the absence of a natural guardian, to such person as the Commissioner [where the amount does not exceed [Rs.20,000] or the Chairman of the Central Board, if the amount exceeds [Rs.20,000], considers to be the proper person representing the minor and the receipt of such person for the amount paid shall be a sufficient discharge thereof.

(3A) If the person to whom any amount is to be paid under this Scheme is a lunatic for whose estate a manager under the Indian Lunacy Act, 1912 (4 of 1912), has been appointed, the payment shall be made to such manager. If no such manager has been appointed, the payment shall be made to the natural guardian of the lunatic and in the absence of any such natural guardian, to such person as the Commissioner [where the amount does not exceed [Rs.20,000] or the Chairman of the Central Board, if the amount exceeds [Rs.20,000], considers to be the proper person representing the lunatic and the receipt of such person for the amount paid shall be a sufficient discharge thereof .

(4) If it is brought to the notice of the Commissioner that a posthumous child is to be born to the deceased member he shall retain the amount which will be due to the child in the event of its being born alive, and distribute the balance. If subsequently no child is born or the child is still born, the amount retained shall be distributed in accordance with the provisions of the paragraph 70.

'[(5)(a) 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 paragaph 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.

(b) 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 Clause (e) of sub-paragraph(1), and in sub-paragraph (2) of paragraph 69, duly filled in and attested, and to give the said application to the member, for submission, on completion of the period specified in sub-paragraph (2) of paragraph 69, [provided the member continues to remain unemployed in a

factory or other establishment to which the Act applies], either through post or in person with proper identification, to the Commissioner or any other officer authorised by him in this behalf.

(c) Every employer shall, on the death of the member and on receipt of an application for receiving the amount standing to the credit of such member, forward forthwith, [but not later than five days of its receipt] the said application to the Commissioner or any other officer behalf. authorised by him in this behalf.

(d) If the applicant is unable to send the claim application through the employer or duly attested by him, for any reason whatsoever, he may forward it to the Commissioner or any other officer authorised by him in this behalf and wherever necessary, the Commissioner or any other officer authorised by him in this behalf, may forward such application to the employer and the employer shall be required to return it within five days of its receipt.

(e) The payment may be made, in the option of the person to whom payment is to be made, (i) by postal money order, or (ii) by deposit in the payee's bank account in any Scheduled Bank or any Co-operative Bank including the Urban Co-operative Banks or any post office, or (iii) by deposit in the payee's name the whole or part of the amount in the form of annuity term deposits scheme in any Nationalised Bank, or (iv) through the employer:]

[Provided that the Provident Fund amount payable by postal money order shall be to the extent of maximum Rs.2000. Any payment of benefit above Rs.2000 under the scheme shall be remitted through cheque only. Where the amount payable by postal money order exceeds Rs.500 it shall be remitted at the cost of the payee.]

***(6)** Any amount becoming due to a member as a result of (i) supplementary contribution from the employer in respect of leave wages, arrears of pay, installment of arrear contribution received in respect of a member whose claim has been settled on account but which could not be remitted for want of latest address, or (ii) accumulation in respect of any member who has either ceased to be employed or died, <u>[but no application for withdrawal under paragraphs 69 or 70 or transfer, as the</u>*

> *case may be has been preferred] within a period of [thirty-six months] from the date it becomes payable, or if any amount remitted to a person is received back undilevered, and it is not claimed again within a period of [thirty-six months] from the date it becomes payable shall be transferred to an account to be called the [Inoperative Account]:*
>
> *Provided that in the case of a claim for the payment of the said balance, the amount shall be paid by debiting the [Inoperative Account].*
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> *[(7) The claims, complete in all respects submitted along with the requisite documents shall be settled and benefit amount paid to the beneficiaries within 30 days from the date of its receipt by the Commissioner. If there is any deficiency in the claim, the same shall be recorded in writing and communicated to the applicant within 30 days from the date of receipt of such application. In case the Commissioner fails without sufficient cause to settle a claim complete in all respects within 30 days, the Commissioner shall be liable for the delay beyond the said period and penal interest at the rate of 12% per annum may be charged an the benefit amount and the same may be deducted from the salary of the Commissioner.]*

2. When the scheme-making authority conceived sub-para 6 of Paragraph 72, it did not mean that the money from the Inoperative Account will become irretrievable by the true owner of the money. The right to receive money on proof of identity would remain in hand of the employee in sub-para 6 of paragraph 72 of the Scheme. Otherwise, the provision may suffer notoriety as one opposed to public policy and if the provision is not read down it may render itself ultra vires the Act and the Constitution of India. All workers' who are members of the Fund have a constitutional right to property preserved under Article 300-A of the Constitution of India. The amounts lying dormant in the names of the subscribing members of Fund must be returned to them irrespective of any delay in applying for withdrawal under Paragraphs 69 or 70 as it is

their hard earned money and those amounts of subscription deserve to be credited to a bank account maintained by the subscriber/member of the Fund on request unrestricted by lapse of time. The request for release or transfer of money to new found employment by migration of labour is not in the nature of a recovery suit for money restricted by period of limitation prescribed in the law of limitation. Therefore, I am not prepared to accept the contention of Mr. Goyal that the interest on money in the Inoperative Account is lost in wilderness forever to the owner.

3. There is yet another defence of the organization pressed into service and that is sub-para 6 of the Paragraph 60 of the Scheme deals with interest. Sub-para 6 was inserted by GSR 25 dated 15.1.2011 w.e.f. 1.4.2011 and that the interest should not be credited to the account of a member from the date which it has become Inoperative Account under the provisions of sub-para 6 of paragraph 72 of the Scheme. Paragraph 60 of the Scheme reads as follows:-

> *"60.* ***Interest-*** *(1) The commissioner shall credit to the account of each member interest at such rate as may be determined by the Central Government in consultation with the Central Board.*
>
> *(2) (a) Interest shall be credited to the member's account on monthly running balance basis with effect from the last day in each year in the following manner:-*
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> > *(i) on the amount at the credit of a member on the last day of the preceding year, less any sums withdrawn during the current year-interest for twelve months;*
> >
> > *(ii) on sums withdrawn during the current year-interest from the beginning of the current year upto the last day of the month preceding the month of withdrawal;*
> >
> > *(iii) on all the sums credited to the member's account after the last day of the preceding year- interest from the first day of the month succeeding the month credit to the end of the current year;*

(iv) the total amount of interest shall be rounded to the nearest whole rupee (fifty paise counting as the next higher rupee).

(b) In the case of a claim for the refund under paragraph 69 or 70, interest shall be payable up to the end of the month preceding the date on which the final payment is authorized irrespective of the date of receipt of the claim from the claimant concerned:

[Provided that interest up to and for the current month shall be payable on the claims which are authorized on or after the 25th day of a particular month along with actual payment after the end of the current month:

Provided further that the rate of interest to be allowed on claims for refund for the broken currency period shall be the rate fixed for the financial year in which the refund is authorized.]

[Provided also that the rate of interest to be allowed on claims for refund for the broken currency period shall be the last declared rate on Employees' Provident Fund and if the rate declared for any current year happens to be less than the previous year's declared rate, then it would accrue as bonus to the outgoing members and it shall be incorporated into calculation for deriving the current year's rate of interest at the end of the year and the claims settled under this proviso shall be final.]

[Explanation-If an establishment is covered for the first time under the Act/Scheme during the course of the currency period the interest shall be allowed on the sums credited to the member's account on and from the first day of the month succeeding the month of credit to the end of the current year.]

(3) The aggregate amount of interest credited to the accounts of the members shall be debited to "Interest Suspense Account".

(4) In determining the rate of interest, the Central Government shall satisfy itself that there is no overdrawal on the Interest Suspense Account as a result of the debit thereto of the interest credited to the accounts of members.

(5) Interest shall not be credited to the account of a member if he informs the Commissioner in writing that he does not wish to receive it. If, however, the member subsequently asks for

> *interest, it shall be credited to his account with effect from the first day of the period of currency in which he makes a request therefor.]*
> *[(6) Interest shall not be credited to the account of a member from the date on which it has become Inoperative Account, under the provisions of sub-paragraph (6) of paragraph 72.]*

4. Because of the policy underlying sub-para 6 of Paragraph 72 and sub-para 6 of Paragraph 60 these provisions cannot be read narrowly in a manner that interest on the amounts shall not be credited to the account of the member from the date it becomes a Inoperative Account under the provisions of sub-para 6 of Paragraph 72 of the Scheme. The prohibition is really addressed to the EPF organization for maintenance of its books of accounts that interest shall not be credited to the account of the member. But that does not mean that interest would not accrue when not credited to the Inoperative Account and stands only deactivated for the time being and can never be brought to life. This is the only just and equitable interpretation that can be placed on the social welfare beneficial legislation as the Act and the scheme are built sincerely for the purposes they are meant to serve inasmuch as members should not lose their right to their own money earning interest accruing silently on such amounts as sit in the Fund while earning interest for the organization. In appears trite that an Inoperative Account should mean an account which has died with respect to interest by lapse of thirty six months from the date it becomes payable. Inoperative Account means only a deactivated account which has been frozen by notification for the time being as an accounting method in transaction of PF business but it does not mean that right to interest stands extinguished since the principal amount is not money lying in the Fund in hard cash locked in trunks but in the economics of the flow

of money in circulation. The RPFC does not say that the amounts lying in the Fund are not invested to earn interest under the scheme or not are collateral for debts, assets and liabilities or to run the show.

5. Learned counsel for the organization submits that the result of the construction placed aforesaid to the two provisions by reading down cannot be achieved except by way of a specific challenge laid to both the aforesaid provisions, either by way of amending the petition or by leave of the Court to withdraw the same for filing a fresh petition on the same cause of action challenging the offensive paragraphs which deny right to interest after lapse of time.

6. I would not readily buy this argument as a good one on account of the interpretation placed on the aforesaid two provisions in this order nor would this court agree with the objection since it would cause only unnecessary delay in the proceeding and postpone the right to recover interest on the principal sum of money to a future event and that too for no practical purpose.

7. Learned counsel for the petitioner submits that prior intimation was given w.e.f. 1.1.2008 and the services of the employee remain in continuation without break on migration to the new employer which is also covered by the Act. It may be noticed that the last transaction in the petitioner's account was made in the year 2007 when the petitioner left the services of the earlier employer to seek fresh employment elsewhere due to force of circumstances.

8. The petitioner, therefore, has a right to get his money transferred to the PF account of the new employer and claim the element of interest accruing in the interregnum. It is not disputed that in the new

employment the petitioner was given a fresh EPF number in 2013. The application for withdrawal was filed in 2013 and interest has been denied to the petitioner with effect from the date of the notification on account of operation of the offensive provisions of sub-para 6 of Paragraph 60 and sub-para 6 of Paragraph 72 of the Scheme.

9. There is no gainsaying that money belonging to the members remains in trust and custody of the EPF Organization and the object and purpose of the Act is to secure the worker's money lying in the Scheme/Fund in the shape of investment for the rainy day. In this duty, RPFC or the Board of Trustees cannot fail to remain vanguards of the rights of marginalized labour who are the weaker sections of society for whom Parliament enacted the law in the EPF&MP Act, 1952. Denial of interest on principal amount for the period in issue is not found just, fair and equitable and the provisions of the scheme under consideration are held to be addressed to the Organization advising it how to act in the two situations contemplated by sub-para (6) of paragraph 72 but not to the subscriber member so as to take away his valuable rights to interest since the provision is not subscriber centric or backed by the principal Act. It comes as some surprise if not a shock that the blood, sweat and tears of migrant labour across India lie locked in a whopping Rs.27,500 crore of provident fund money lying with the Employees Provident Fund Organization (EPFO) in inoperative accounts, as of March 2014. This is indeed a scam of enormous dimensions that Central Government must address without delay. The notification GSR 1415 dated 24.9.1964 is presently anachronistic in the modern age with means of ready and easy access and tracking true owners of money held in trust by the Board of

Trustees set up under the Act is possible and this dissuades the Court to read the provisions as a defence mechanism against payment of time barred interest and an outright denial of the right to contributions earning interest when it is not asserted that Inoperative Accounts do not yield interest or Inactive accounts will not also earn interest if an inactive account is integrated or merged in active account. If money sits idle in the Fund in inactive or Inoperative Account without earning interest then it is time to wind up the EFP Organization and think of better means to secure the ends of justice for the working class that have contributed to the Fund for their own welfare measured by the pipette of social justice and an insurance against want. The Organization cannot seen to behave like a Shylock or a businessman or a commission agent in the marketplace or a fly-by-night operator.

10. Consequently, for the above recorded reasons, the petition is allowed. A direction is issued to the Organization to make current the "Inoperative Account" qua the petitioner and pay the accrued interest as a vested right as calculated in a sum of Rs.61,587/- for 31 months for the period 1.4.2011 to 31.10.2013. The amount of interest be paid to the petitioner within two months from the date of receipt of a certified copy of this order after observing the due formalities required by the procedure established by law. There will however be no order as to costs in view of rights declared by process of interpretation in this order when none existed in past precedents and at last none of which were brought to the notice of the Court.

(RAJIV NARAIN RAINA)
JUDGE

14.09.2015
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