IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 6426 of 2011
Date of decision: 06.02.2015

Guru Nanak College, Jalandhar Road, Batala, District Gurdaspur (Punjab)

...Petitioner

Vs.

Presiding Officer, EPF Appellate Tribunal and another

...Respondents

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

Present: Mr. Kanwaljit Singh, Sr. Advocate with
Mr. A.K. Chandok, Advocate for the petitioner.

Mr. Rajesh Hooda, Advocate for respondent No. 2.

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

RAJIV NARAIN RAINA, J. (Oral).

Having heard the learned senior counsel and the learned counsel for the respective parties and having perused the basic order passed under Section 7A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for short 'the Act') and the review order dismissing the application on the ground of limitation and both those orders upheld in appeal by the Employees' Provident Fund Appellate Tribunal, New Delhi (for short "the

EPFAT"), it appears from record that the accumulation of contributions in the private scheme of the college maintained prior to 21st June, 1982 has been partially transferred to the respondent-organization and thenceforth the petitioner was covered by the provisions Act from 21st June, 1982 onwards, the dispute is presently limited only with respect to levy and chargeability of interest on accumulations transferred to the funds under Section 15(2) of the Act. This Court finds that the manner, in which the case has been dealt with on facts by the authorities below, is far from satisfactory. Several relevant considerations have not been taken into account. For instance, there was a stay order operating against the notification dated 21st June, 1982 which covered educational institutions for the first time which continued to operate till 1988 thereby shutting compliances of the statutory scheme under the Act till then. The Supreme Court, while disposing of the Special Leave Petition (Civil Appeal), specifically ordered that no damages or interest would run insofar as the past accumulations were concerned and the deposit of the principal sums would be within such time as may be allowed by the Regional Provident Fund Commissioner (for short "the RPFC") and in case compliance is made, then no damage or interest would run. A *priori* contribution had to be deposited only within the time allowed by the Regional Provident Fund Commissioner and not by the EPFAT after the stay order ceased to operate. No document has been produced on the file of this case by which it can be said with certainty that the RPFC informed the petitioner in the aftermath of the decision of the Supreme Court that it would have to deposit those contributions within the time fixed by it. In the absence of time stipulated by the RPFC for performance, time to deposit was not fixed in absence of prior information notified for making compliances under the Act. Still further, the time limit designed under Section 15(2) of the Act appears to have been relaxed by the Central Provident Fund Commissioner, New Delhi in his circular letter dated 8th November 1989 (Annexure P-6). Thereby, he will be deemed to have been conscious of the mechanism set by the Supreme Court in its order that an organization, which is spread across the length and breadth of India with thousands of educational institutions within its purview. If that is so then the RPFC of each State/unit of administration would have to inform the educational institution within its jurisdiction to make compliance in trems of the judgment of the Supreme Court. It could also be that many educational institutions may not have been parties before the Supreme Court and would not know the time-lines set and the method devised for compliance. Therefore, it became even more imperative to broadcast the directions of the Supreme Court either generally through public notifications in the media or individually for compliance and discharge of liabilities to deposit accumulations in the mode and manner by fair warning and a reasonable opportunity to act so as not to incur liability of interest on previous accumulations.

There is yet another argument raised before this Court which is that the petitioner-institution prior to coverage under the Act on 21st June, 1982 had given advances to some of its employees who were members of the pre-existing scheme and consequently the liquid funds in the hands of the petitioner college had depleted, in view of the pending recoveries. These issues are purely questions of fact which need to have been addressed in proceedings under Section 7A of the Act and for lack of it, the impugned orders suffer from material irregularity inasmuch as relevant considerations have not been noticed or dealt with and irrelevant considerations have crept into the decision making the process of which appears ex facie faulty and detrimental to the interest of the petitioner college.

In this state of affairs, both the parties are ad idem that the matter needs to be remanded to the competent authority exercising jurisdiction under Section 7A of the Act for it to enter upon a fresh determination but not on the question of interest on prior deposits before the date of applicability of the Act which stands foreclosed and only on the question of advances/loans to employees of the petitioner-educational institution who appear to have been no more than 19 in number once upon a time. To this end, the Assessing Authority-cum-Assistant Provident Fund Commissioner, Amritsar will call upon both the parties to present their respective cases and evidence, pro and contra, with respect to the quantum of contributions lying in the private provident fund of the institution prior to 31st June, 1982.

It appears difficult to believe that a retrospective burden of interest can be imposed on the petitioner neither when there was a demand made by the office of the RPFC in terms of the Supreme Court judgment nor were there any employees complaining. If advances were given against future salaries to employees with or without interest, it would be unfair to saddle the institution with interest on advances for which no interest has been received from the loanees and any direction by the Court may be onerous and amount to a double jeopardy. It is well settled that a person cannot be surprised in the past and be made accountable today for lawful actions taken in the past within the law by creating private schemes of provident fund. Therefore, it would no longer be open to the organization to enter upon the question of interest and the remand determination would centre on the accumulations prior to 31st July, 1982 in the context of loans given and to deal with evidence in support of the claim made by the petitioner before this Court to the extent of interest. There is no dispute that the Act applies and future contributions were not deposited in terms of the Scheme under the Act.

For the foregoing reasons, the petition is partly allowed and the impugned orders (Annexures P-1 and P-2) are quashed to the extent of interest. The matter is remanded for fresh adjudication in terms of this order.

Parties to appear before the Assessing Authority on 02.03.2015.

(RAJIV NARAIN RAINA)
JUDGE

6.2.2015
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