

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.94 of 2013

IN

Civil Writ Jurisdiction Case No. 7856 of 2005

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The Regional Provident Fund Commissioner, R. Block, Patna.

.....Respondent/ Appellant

Versus

Pranav Chatterjee Mahavidyalay, Buxar, through its Secretary
Mahashweta Chatterjee W/o Late Pranav Chatterjee, R/O Museum
Road, P.S.-Kotwali, District- Patna

.... Petitioner/Respondent

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Appearance :

For the Appellant : Mr. Jai Prakash Verma, Advocate
For the Respondent : Mr. B.P. Pandey, Sr. Advocate
Mr. Pravin Kumar Sinha, Advocate
Mr. Nirbhay Prashant, Advocate

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 24-06-2016

The Regional Provident Fund Commissioner is in

this Intra-Court Appeal challenging the judgment and order of

the learned Single Judge dated 09.07.2012 passed in C.W.J.C.

No. 7856 of 2005. The learned Single Judge had allowed the

writ petition and set aside the order passed by the Regional

Provident Fund Commissioner in terms of Section 14B of the

Employees Provident Fund and Miscellaneous Provisions Act,

1952 (hereinafter referred to as the “Act”). The order was for

imposing penalty for delayed in deposit of provident fund of

the employees of Pranav Chatterjee Mahavidyalay, Buxar, a private College.

The facts are not in dispute. The question of coverage under the Act was contested, ultimately, proceedings under section 7A of the Act was taken up and various liabilities of various employees was created. There were various litigations in respect thereto. The learned Single Judge did not go into the validity of those orders. They were not under challenge. We would, accordingly, proceed on the basis that the coverage of the initiation of the proceedings was valid. We are here concerned with the second stage i.e., stage of section 14B, where penalties are to be imposed on delayed payment of provident fund dues. These are akin to compensatory imposition. The provident fund dues once deposited from the due date of deposit, the employee are to get interest on the said deposit. Consequently, if there is a delayed deposit by the employer, the interest accrual in favour of the employee stands reduced as well.

In the present case, it seems that for considerable period i.e. from the year 1981 to 1988, there were serious disputes about coverage when ultimately the liability was fastened on the institution and certain payments were made. But again, there was default in deposit of contributions from



1988 to 1991. The present case does not relate to the payment of the principal amount due, but is a demand in respect of section 14B, interest for delayed payment. It appears this matter had come once before to this Court and this Court, vide judgment and order dated 06.09.2002, passed in C.W.J.C. No. 11249 of 1998, after hearing the Regional Provident Fund Commissioner, noted that if the employees were ready to forgo the interest, then the Department may not charge or demand interest because the payments were for the benefit of the employees. Interest was also for the benefit of the employees, and if, that be so, it could be waived by the employees in the larger interest of the Institution, under which they were. The order imposing penalties was thus, set aside and the matter was remanded for consideration. It appears, once again the demand were raised and contested and set aside by this Court. Ultimately, the impugned order dated 06.09.2004 has been passed by the Regional Provident Fund Commissioner. In the order, it is clearly stated that the employer had filed affidavits in respect of all working employees claiming right to claim interest, but still interest for delayed payment under section 14B of the Act, has to be demanded, inasmuch as, in the meantime, the trustees of the Provident Fund had already credited to the account of the employees, the deemed accrued



interest. Some of the employees might have retired, some might have withdrawn their contribution with interest and as such the Commissioner was merely seeking a re-imbursement of the interest credited to the employees' account. In our view, the fact situation has changed. The interest having been credited to the account of the employees by the Regional Provident Fund Commissioner, it is now, the Commissioner, who has to be compensated. The demand is only for compensation, for what has already been credited to the account of the employees. In our view, once the principal liability is not disputed, once the default is not disputed, once it is not disputed that there would be any other mitigating circumstances, and lastly once it is not disputed that the employees have got the benefit of interest from the Commissioner, in our view, the College i.e. the employer is now bound to pay the damages under section 14B being interest for delayed payment of contributions and there can be no escape.

Sri B.P. Pandey, learned Senior counsel, appearing on behalf of the employer, submits that sight cannot be lost of the plight of private Colleges in the State. Even the essential assessment under section 7A was, in fact, a best judgment assessment without identifying the employees for

whose benefit the collections were being sought and that itself in view of the judgment of the Apex Court in the case of *Food Corporation of India Vs. Provident Fund Commissioner & Ors* since reported in *1990 (1) SCC 68*; would by itself be bad. But that stage has gone by. Thus, amount, as assessed under section 7A, having been paid without going further in controversy, he submits that if adequate time is given and installments are fixed, then the College may be in a position to raise sufficient funds to liquidate this liability of about Rs.3.75 lacs.

Having considered the matter, in view of the facts noted above, interest of justice would be served, if the College in question would pay a sum of Rs. 1,00,000/- (Rupees One Lakh) every two months till the demand of Rs. 3,75,434/- is paid up. No further demand on this count or in relation thereto would be raised.

With this observation, this Letters Patent Appeal stands disposed of.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

R.K.Sinha/A.F.R.

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