IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.23210 of 2013

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Ramanuj Singh son of Late Mishri Lal, resident of village- Goharpur, P.O- Kothia, Police Station- Didarganj, District- Patna

.... Petitioner/s

Versus

1. The Regional Provident Fund Commissioner, Employees' Provident Fund Organization, Regional Office, Bhavishyanidhi, Bhawan, R- Block, Road No. 6, Patna- 800001.
2. The Regional Provident Fund Commissioner- II, Employees' Provident Fund Organization, Regional Officer, Bhavishyanidhi Bhawan, R- Block, Road No. 6, Patna- 800001.
3. The Assistant Provident Fund Commissioner (Accounts), Employees' Provident Fund Organization, Regional Office, Bhavishyanidhi Bhawan, R- Block, Road No. 6, Patna- 800001

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Suresh Kumar, Advocate

For the Respondent/s : Mr. Prashant Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 18-04-2017

Heard Mr. Suresh Kumar, learned counsel for the petitioner and Mr. Prashant Sinha, learned counsel for the Employees' Provident Fund Organization.

2. In the instant writ application the petitioner has challenged the order contained in letter no.5558 dated 23.08.2013 passed by the Regional Provident Fund Commissioner-II, Regional Office, Bihar, Patna whereby the claim of the petitioner for payment of the assurance amount under the Employees Deposit Linked Insurance Scheme ('EDLI' in short) has been rejected.

3. The facts of the case are not in dispute. One Mishri Lal, father of the petitioner was an employee in M/S Pradip Lamp Works, Patna City since 1965 and continued to serve for twenty five years till 1993 when he was retrenched from service by his employer establishment. The establishment was covered under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ('EPF and MP Act,1952' in short) and as such the contribution was deducted from the salary of the employee and deposited in the Employees' Provident Fund Account till he was in service.

4. After termination, he challenged the order of termination before the Labour Court which was ultimately compromised inasmuch as against the claim raised by him for an amount of Rs.25,386/-, the employer M/s Pradip Lamp Works, Patna City became ready to pay Rs.4,957.35, which was accepted by him.

5. Subsequently, said Mishra Lal died on 28.01.2008. The petitioner Ramanuj Singh is his son. He claimed that the provident fund amount and pension amount was credited in his account after the death of his father, but the claim of the petitioner for assurance benefit was rejected on 15.09.2008 by the Assistant Provident Fund Commissioner (Accounts), Patna. The petitioner challenged the order passed by the Assistant Provident Fund Commissioner before this Court vide C.W.J.C. No.9271 of 2009. After hearing the parties, vide order dated 12.09.2011, this Court remanded the matter before the

Provident Fund authorities for reconsideration of the claim raised by the petitioner. After the order of remand, the Regional Provident Fund Commissioner-II, Patna again rejected the claim raised by the petitioner, vide order dated 23.08.2013. The said order dated 23.08.2013 is under challenge in the present writ application.

6. Learned counsel for the petitioner submitted that the respondent Regional Provident Fund Commissioner-II, Patna failed to appreciate the relevant rules while passing the impugned order whereby he has rejected the claim of the petitioner. He submitted that paragraph 26A of the Employees' Provident Funds Scheme, 1952 ('EPFS, 1952' in short) deals with retention of membership. He submitted that in terms of paragraph 26A(1) of EPFS, 1952 the father of the petitioner shall be deemed to be a member until withdrawal of the full amount standing to his credit in the fund. He submitted that though the father of the petitioner left the service in the year 1993, but he did not withdraw the amount of provident fund till his death. Hence, he was a member till his death and thus entitled to the benefit under the EDLI.

7. *Per contra*, Mr. Prashant Sinha, learned counsel appearing for the Employees' Provident Fund Organization submitted that interpretation of the petitioner of paragraph 26A(1) of the EPFS, 1952 is totally misconceived. He submitted that paragraph 26A(1) of the EPFS, 1952 cannot be read in separation from paragraph 26 of the EPFS, 1952, which stipulates that every employee employed in or in connection with the work of a factory or other establishment to which this scheme applies, other than an excluded employee, shall be entitled to and required to become a member of the fund from the day this paragraph came into force in such factory or other establishment. He submitted that preliminary requirement of becoming a member of the fund is to become an employee. According to him, a person, who is not an employee cannot become a member or remain a member of the fund. Thus, according to him, since the father of the petitioner left the service in the year, 1993, even though he did not withdraw the amount deposited in provident fund till his death, the petitioner would not be entitled to receive assurance amount under EDLI.

8. I have heard learned counsel for the parties and carefully perused the record. I find substance in the submission of the learned counsel appearing for the Employees' Provident Fund Organization.

9. The petitioner has challenged the order passed by the Regional Provident Fund Commissioner on the ground that his father was a member of the Provident Fund till the time of his death inasmuch as the Provident Fund amount was paid to the petitioner after his death. However, definition of the 'employee' given in Section 22(f) of the EPF & MP Act, 1952 does not support the case of the petitioner. For being an ‘employee’, a person is required to be employed for wages of any kind. Since the father of the petitioner was removed from service in the year 1993 and as such, he was not employed for wages of any kind from his employer. Further, the definition of the term “assurance benefit” given in paragraph 2(b) of EDLI would make it evident that it stipulates for a payment linked to the average balance in the Provident Fund account of an ‘employee’ payable to a person belonging to his family or otherwise entitled to in the event of death of the ‘employee’, while being a member of the fund.

10. Thus, paragraph 2(b) of the EDLI stipulates for two pre-conditions for payment of the assurance benefit. Firstly, the person should be an employee and secondly, he should be a member of the fund. Since the father of the petitioner was not an employee within the meaning of Section 2(f) of the Act, the petitioner cannot be held entitled for the assurance benefit.

11. In order to establish his claim, the petitioner has placed reliance on paragraph-26A of the Employees Provident Fund Scheme, 1952, which deals with retention of membership. However, Paragraph 26A cannot be read in separation from paragraph- 26 of the EPF Scheme. Paragraph-26A(1) provides that a member of fund shall continue to be a member until he withdraws under pargraph-69 the amount standing to his credit in the fund. The petitioner has put forth the interpretation of the said provision in terms that since his father did not withdraw the amount of Provident Fund till his death, he was a member till his death and hence, entitled for the benefit of EDLI. The interpretation given by the petitioner cannot be accepted in view of the fact that pararaph-26(1)(a) clearly stipulates that every employee employed in or in connection with the work of a factory or other establishment to which this scheme applies, other than an excluded employee, shall be entitled to and required to become a member of the fund from the day this Paragraph comes into force in such factory or establishment. Thus, the primary requirement of becoming a member of the fund is to become an 'employee'. A person, who is not an employee cannot become a member or remain a member of the fund.

12. In order to appreciate the contention advanced on behalf of the rival parties, at this stage it would be apposite to refer to paragraph 22(1) and (3) of the EDLI so far as they are relevant, which read as under:-

> **22. Scales of assurance benefits and the minimum average balance to be maintained by an employee**. – **(1)** On the death of an employee, who is a member of the Fund or of a provident fund exempted under section 17 of the Act, as the case may be, the persons entitled to receive the

> provident fund accumulations of the deceased shall, in addition to such accumulations be paid an amount, equal to the average balance in the account of the deceased.… .
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> **(3)** On the death of an employee, who is a member of the Fund or of a provident fund exempted under section 17 of the Act, as the case may be, who was in the employment of the same establishment for a continuous period of twelve months, preceding the month in which he dies, the persons entitled to receive the provident fund accumulations …..”
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> (emphasis mine)

13. Thus, from these provisions it would be evident that the benefit of EDLI is payable only to the dependant of a person, who is an employee and also a member. Since the father of the petitioner was not an employee at the time of his death, the petitioner has rightly been held not to be entitled to receive the assurance benefit under the EDLI.

14. For the reasons stated above, since there is no error in the order passed by the Regional Provident Fund Commissioner, I see no merit in this application. It is dismissed, accordingly.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
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