IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7268 of 2015

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1. Shailendra Kumar, S/O Late Dr. Mahabir Das, R/O East Boring Canal Road, Kamta Path, Rai Jee Gali, P.O.-G.P.O., P.S.- Buddha Colony, Patna-800001.

2. Dr. Naveen Kumar, S/O Nand Kishore Prasad, R/O 21/163, Rajendra Nagar, P.O.- Rajendra Nagar, P.S.- Kadamkuan, Patna 800016.

3. Indu Shekhar Singh, S/O Dr. Maulichand Prasad, R/O 27 Guru Sahay Lal Nagar, P.O.- Ashiana Nagar, P.S.- Rajeev Nagar, Patna 800025.

4. Arvind Kumar, S/O Late Keshav Prasad Verma, R/O New Yarpur, behind Jhunjhun Mahal, P.O.- G.P.O., P.S.-Gardanibagh, Patna 800001.

5. Yamuna Prasad S/O Sri Ganga Ram, R/O Malti Niwas, Vishunpuri, Ambedkar, Nahar par, Chitkohra, P.O.- Anishabad, P.S.-Gardanibagh, Patna 800001.

.... Petitioner/s

Versus

1. Union of India through the Secretary, Labour and Employment Department, Government of India, New Delhi.

2. Secretary, Labour and Employment Department, Government of India, New Delhi.

3. Regional Provident Fund Commissioner, Bhavishyanidhi Bhawan, R-Block, Road No. 06, Patna.

4. Assistant Provident Fund Commissioner, Bhavishyanidhi Bhawan, R-Block, Road No. 06, Patna.

5. State of Bihar through Secretary, Environment and Forest Department, Government of Bihar, Sichai Bhawan, Patna.

6. Secretary, Environment and Forest Department, Government of Bihar, Sichai Bhawan, Patna.

7. Bihar State Pollution Control Board through its Chairman, Beltron Bhawan, Shastri Nagar, Patna.

8. Chairman, Bihar State Pollution Control Board, Beltron Bhawan, Shastri Nagar, Patna.

9. Member Secretary, Bihar State Pollution Control Board, Beltron Bhawan, Shastri Nagar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Chitranjan Sinha, Senior Advocate
Mr. Siddharth Prasad, Advocate

For the Respondent-EPFO : Mr. Prashant Sinha, Advocate

For the Respondent-State : Mrs. Archana Meenakshi, GP-6

For the Respondent-Board : Mrs. Binita Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

CAV JUDGMENT

Date: 20-06-2017

This writ application has been filed by the petitioners for issuance of directions to hold and declare that the Bihar State Pollution Control Board (for short 'the Board') will not come within the purview of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for short 'the EPF and MP Act, 1952') and further directions to the respondents especially 'the Board' to make payment of G.P.F. and pension to its retired or likely to retire employees at par with the employees of the State Government.

2. Mr. Chitranjan Sinha, learned Senior Advocate appearing on behalf of the petitioners submitted that the petitioners have filed the present writ application in representative capacity espousing the cause of all the employees, working as well as retired, of 'the Board', as the officers and employees of 'the Board' have

authorized them to file the writ application on their behalf. He would submit that 'the Board' was constituted under Section 4 of the Water (Prevention and Control of Pollution) Act, 1974 (a Central Act) (for short 'the Act') and was provided with the status of a body corporate with power subject to the provisions of 'the Act' to acquire, hold and dispose of property and to contract. He would submit that besides the objectives, which the Board had to achieve under 'the Act', Section 12(3A) of 'the Act' provides the method of recruitment and the terms and conditions of service of officers and employees of 'the Board' by which they would be governed shall be, such as may be determined by 'the Board' regulations provided the same is approved by the State Government.

3. He would submit that 'the Board' having been conceived and constituted for the first time on 07.11.1974 is not having any of such regulation till date. However, on 08.08.1978, in its 2nd meeting, 'the Board', in absence of any such rules/regulations made by 'the Board', by its resolution decided to adopt the methods of recruitment applicable to the State Government officers and employees.

4. He would submit that 'the Board' in its 16th meeting held on 06.08.1983 decided for opening of G.P.F. account for all its officers and employees in the State Bank of India, Main

Branch, Patna and the Members Secretary of 'the Board' was authorized to operate the said account. It was decided to transfer the amount deducted for the purpose of G.P.F. by 'the Board' to the bank account in individual names for the purpose of provident fund. It was further resolved in the said meeting that pending framing of rules by 'the Board' in connection with provident fund, the withdrawal of the accounts will be made by the Member Secretary in accordance with rules relating to General Provident Fund.

5. He would contend that in terms of the decision taken in 16th Board meeting dated 06.08.1983, after deducting provident fund amount from salary of each officer and employee of 'the Board', the same were deposited in their respective provident fund accounts maintained at S.B.I., Main Branch, Patna.

6. He would submit that 'the Board' in its 26th meeting held on 25.07.1986 decided that in absence of service rules for its employees, the service rules applicable for the employees of the Bihar State Government will be applicable to the employees of 'the Board' also, but on 29.11.1994, 'the Board', in its 52nd meeting, all of a sudden decided to adopt 'the EPF and MP Act, 1952' for its officers and employees. He would contend that the subsequent decision of 'the Board' to adopt 'the EPF and MP Act, 1952' was a departure from its earlier decisions, especially the

Board's decision taken on 25.07.1986, in the 26th meeting and the same was issued by 'the Board' in violation of the principles of natural justice and without serving any notice to its employees and without taking most of them into confidence.

7. He would contend that the officers and employees of 'the Board' are entitled to get pension at par with the employees working in the State Government in the light of the Board's resolution dated 25.07.1986 and 'the Board' is duty bound to pay G.P.F. and pension to its retired or likely to retire officers/employees in the light of previous decision of 'the Board'.

8. 'The Board' and the respondent nos.3 and 4 have filed their respective counter affidavits in the matter.

9. Mrs. Binita Singh, learned advocate appearing on behalf of 'the Board' submitted that the decision with regard to making available the benefits under 'the EPF and MP Act, 1952' was taken by 'the Board' with a pious intention in order to ensure the proper management of the provident fund of the Board's employees. She would submit that there was no denial of statutory retiral benefits to the employees. The same has also been accepted by the officers and employees of 'the Board'. She would submit that 'the Board' always tried to keep parity with the benefits given by the State Government to its employees. She would submit that

'the Board', which is an autonomous body, has neither adopted the Bihar Pension Rules, 1950 nor it has taken any decision to pay to its employees pension under the said rules and, therefore, the petitioners cannot claim that on completing qualifying service of ten years they are entitled for pension as in case of the Government employees. She would contend that 'the EPF and MP, Act, 1952', can be made is applicable to any establishment where the employees along with employer choose to become part of the management under 'the EPF and MP Act, 1952'. In the present case also, the employees along with employer chose to become part of the management under 'the EPF and MP Act, 1952'. The employees, who missed in giving their consent for joining the arrangement did not subsequently file any objection or any reservation in joining into the arrangement under 'the EPF and MP Act, 1952'. She would contend that since 'the Board' has adopted 'the EPF and MP Act, 1952' for its officers and employees, it has never resolved to implement the pension rules of the State Government officers and employees. She would contend that the decision taken by 'the Board', in its 26th meeting held on 25th July, 1986, is not with respect to making the Bihar Pension Rules applicable to its employees.

10. Mr. Prashant Sinha, learned advocate appearing

for the respondent nos.3 and 4 would submit that this writ application filed in the representative capacity is not maintainable particularly when the petitioners are not even a registered trade union. He would submit that since the petitioner nos.2, 3 and 5 have already retired, they are being paid their pension under the Employees Pension Scheme, 1995. Similarly, there are several other retired employees, who are also getting pension under the Employees Pension Scheme, 1995. He would submit that if 'the Board' excludes all such employees from the purview of 'the EPF and MP Act, 1952', all such employees will be adversely affected. He would submit that 'the Board' never adopted the G.P.F. scheme of the State Government, rather it decided to open the P.P.F. account of the individual employees with the State Bank of India. According to him, the operation of the P.P.F. account cannot be made in accordance with the G.P.F. Rules of the State Government and, hence, the contention of the petitioners is totally misconceived.

11. In reply, Mr. Chitranjan Sinha, learned Senior Advocate for the petitioners would submit that 'the Board' does not come within the purview of 'the EPF and MP Act, 1952' because as per Section 16(1)(c) of the said Act, if any establishment, constituted under any Central/State legislation, has its own rules with regard to Contributory Provident Fund or old age pension then

said establishment is excluded from purview of ‘the EPF and MP Act, 1952’. He would submit that ‘the Board’ till date has not formulated any rules and has adopted all the rules and regulations governing the State Government to its employees including the rules and regulations governing the post retiral benefits. He would contend that ‘the EPF and MP Act, 1952’ is basically for industrial and factory workers/labourers and not for employees like the employees of ‘the Board’, who are getting salary and all the pay revisions admissible to the State Government employees. For such employees, the ceiling of contribution prescribed under ‘the EPF and MP Act, 1952’ is very miniscule and inadequate to maintain the standard of living, which they are used to their pre-retirement. He would contend that the contention of respondent nos.3 and 4 that many retired employees of ‘the Board’ will be adversely affected since they are getting pension from their corpus built under the contributory provident fund under ‘the EPF and MP Act, 1952’ is false and misleading. He would submit that if this Court would hold that employees of ‘the Board’ do not come within the purview of ‘the EPF and MP Act, 1952’ because of the bar under Section 16(1)(c) all the retired employees of ‘the Board’ will become entitled for G.P.F. and old age pension, as applicable to the retired employees of the State Government and the benefits under the

G.P.F. and old age pension, as applicable to the retired employees of the State Government, is much higher and lucrative, as compared to what the said employees are now getting. He would contend that the objections raised by the respondents are without any merit and are fit to be rejected.

12. I have carefully considered the rival contentions advanced on behalf of the parties and perused the materials available on record.

13. It is an admitted position that 'the Board' has been constituted under Section 4 of 'the Act, which is a Central legislation. Thus, the question raised by the petitioners regarding the applicability or non-applicability of 'the EPF and MP Act, 1952' with regard to 'the Board' is to be seen in the light of Section 16(1)(c) of the said Act, which reads as under:-

> **"16(1)(c): This Act shall not apply … (c) to any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of Contributory Provident Fund or Old Age pension in accordance with any scheme or rule framed under the Act governing such benefit."**

14. Thus, it would be manifest that for being excluded from the purview of 'the EPF and MP Act, 1952' any

establishment constituted under the Central/State Act, there must be any scheme or rule framed under that Act governing the benefits of Contributory Provident Fund or Old Age Pension. It is an admitted position on behalf of the parties that no scheme or rule has been framed under 'the Act' governing the benefits of Contributory Provident Fund or Old Age Pension so far. Thus, 'the Board' cannot be excluded from the purview of 'the EPF and MP Act, 1952'.

15. Moreover, 'the Board' conducts and participates in research and development relating to water pollution. Such an activity has been included under the schedule of employment of 'the EPF and MP Act, 1952' vide Government of India Notification bearing S.O. No. 986 dated 19th February, 1982 under the head **"any institution in which research in respect of any matter is carried on".**

16. Furthermore, the reliance placed by the petitioners on resolution of 'the Board' as contained in Board's Office Order dated 11.08.1986 for its exclusion from the purview of 'the EPF and MP Act, 1952' is devoid of any merit because the said resolution only talks about adoption of service regulation applicable upon the employees of the State Government. It does not talk about framing of any scheme or rule governing the benefit of Contributory Provident Fund and Old Age Pension.

17. Besides this, the minutes of the 3rd meeting of 'the Board' held on 15.09.1979, as contained in Annexure-2 to the writ application, clearly lays down that 'the Board' intended to open Public Provident Fund Account in the name of its officers and employees. 'The Board' has affirmed the said decision in its resolution dated 06.08.1983 wherein it has been stated that the Public Provident Fund Account is to be opened in the name of the employees with the State Bank of India a pending framing of rules by 'the Board' in connection with the provident fund, the Member Secretary was authorized to withdraw the amount.

18. I am also of the opinion that such type of writ application in representative capacity by some of the employees of the 'the Board' cannot be entertained. Admittedly, out of the five petitioners in the present case, four have already retired and they are getting pension under the Employees Pension Scheme, 1995. There are several other employees, who may also be getting pension under the Employees Pension Scheme, 1995. They have not joined the writ application. The prayer made on behalf of the petitioners cannot be allowed without hearing those persons, who are getting pension under the Employees Pension Scheme, 1995 or, who are members of the Employees Pension Scheme, 1995.

19. In the present case, since the employees and their

employer have chosen to become part of the management under 'the EPF and MP Act, 1952', if 'the Board' is excluded from the purview of 'the EPF and MP Act, 1952', all such employees would be adversely affected, as membership of the Employees Provident Fund Scheme is *sine qua none* for getting pension under the Employees Pension Scheme, 1995.

20. I am also of the opinion that since 'the Board' has never issued resolution to implement the pension rules of the State Government, i.e. the Bihar Pension Rules, 1950 for its officers and employees, it would be highly improper for this Court to issue any mandamus in this regard.

21. Accordingly, the writ application, being devoid of any merit, is dismissed.

22. There shall be no order as to costs.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	19.04.2017
Uploading Date	24.06.2017
Transmission Date	NA