IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10357 of 2016

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Md. Wasim Uddin son of late Md. Salimudding, present address is Mohalla-Rahama Khan, P.O. Lalbagh, P.S. Laheriasarai, District Darbhanga, State Bihar.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Finance Department, Govt. of Bihar, at Old Secretariat, Patna.
2. Accountant General, Bihar, at Mahalekhakar Bhawan, Panta.
3. Director of Provident Fund, Finance Department at Old Secretariat, Bihar, Patna.
4. District Provident Fund Officer, Muzaffarpur
5. District Provident Fund Officer, Darbhanga
6. District Provident Fund Officer, Patna
7. District Provident Fund Officer, Bhagalpur
8. Principal Secretary cum Commissioner, Industry Department, At Viaks Bhawan, New Secretariat, Patna.
9. Director of Industry, Industry Department at Vikas Bhawan, New Secretariat, Patna.
10. Chairman, Bihar Industrial Area Development Authority, Udhogh Bhawan, 1st Floor, East Gandhi Maidan, Patna.
11. Managing Director, Bihar Industrial Area Development Authority, Udhogh Bhawan, 1st Floor, East Gandhi Maidan, Patna
12. Chief Administrative Officer, Bihar Industrial Area Development Authority, Udhogh Bhawan, 1st Floor, East Gandhi Maidan, Patna
13. Secretary, Bihar Industrial Area Development Authority, Udhogh Bhawan, 1st Floor, East Gandhi Maidan, Patna
14. Executive Director, Bihar Industrial Area Development Authority, Udhogh Bhawan, 1st Floor, East Gandhi Maidan, Patna
15. Executive Director, Bihar Industrial Area Development Authority, Regional Office, At Industrial Estate, Bela, Darbhanga
16. Executive Director, Bihar Industrial Area Development Authority, Regional Office, At Industrial Estate, Bela Muzaffarpur
17. Executive Director, Bihar Industrial Area Development Authority, Regional

Office, At Industrial Estate, Bhagalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mahesh Prasad Singh, Advocate
For the Respondent (BIADA)	:	Mr. Lalit Kishore, Senior Advocate & A.G. with Mr. Kumar Ravish and Mr. Kashyap Kaushal, Advocates
For the State	:	Mr. Sarvesh Kumar Singh, AAG 13 with Mrs. Sunita Kumari, AC to AAG 13
For the A.G., Bihar	:	Mr. Kameshwar Prasad Gupta, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 10-08-2018

Heard learned counsel for the petitioner; State and Bihar Industrial Area Development Authority (hereinafter referred to as the 'BIADA').

2. The petitioner had moved the Court for the following reliefs:

> *"That this is an application on behalf of the petitioner who superannuated on 31.01.2014 from the Bihar Industrial Area Development Authority on the post of Assistant to pay him benefits of Contributory Provident Fund as per the provision of the Bihar Contributory Provident Fund Rules-1948."*

3. The short and simple issue involved is whether the

petitioner shall be entitled to payment of Contributory Provident Fund as per the provisions of the Bihar Contributory Provident Fund Rules, 1948 (hereinafter referred to as the 'Rules') or the Contributory Provident Fund created by the BIADA (Successor of the North Bihar Industrial Area Development Authority and Darbhanga Industrial Area Development Authority).

4. The petitioner was initially appointed on Muster Roll on 27.12.1995 under the then North Bihar Industrial Area Development Authority and later on 27.08.1976, he was appointed temporarily on the post of Typist/Clerk. Thereafter, upon creation of the Darbhanga Industrial Area Development Authority, he was transferred to that Authority on 30.07.1977 from where ultimately he superannuated on 31.01.2014. The petitioner having been granted the benefit of Contributory Provident Fund only from September, 1979, has moved the Court that he should be given the benefit right from 27.08.1976 when he was appointed on the post of Typist/Clerk.

5. Learned counsel for the petitioner submitted that the Industrial Area Development Service Regulations, 1975 (hereinafter referred to as the 'Regulation') provides for benefits to its employees of Contributory Provident Fund as per the Rules, as amended from time to time. It was submitted that in the notification relating to framing of regulation under Section 15 of the Bihar Industrial Areas

Development Authority Act, 1974, the regulation relating to North Bihar Industrial Area Development Authority was approved by the State Government under letter No. 1069 dated 19.01.1976. Learned counsel submitted that Regulation 33 of the same provides for benefit of Contributory Provident Fund to the employees of the Authority with the stipulation that the Rules as amended from time to time, shall apply. It was submitted that once the same has come into force, the contributions to the fund were required to be deposited from 27.08.1976 when the petitioner was appointed on the post of Typist/Clerk. Learned counsel submitted that from time to time, the authorities have adopted the rate of interest as was paid under the Rules, and, thus, the same shall have to be implemented in the case of the petitioner also right from the date of his initial appointment, i.e., 22.08.1976. Learned counsel submitted that the benefit of Contributory Provident Fund is being confused by the authorities, inasmuch as, the issue of Employees Provident Fund under which some exemption was sought is being shown as a ground for non-implementation of the Contributory Provident Fund Scheme prior to the period when actually the benefit has been credited into the account of the petitioner. Learned counsel submitted that even with regard to the actual payments made to the petitioner, the authorities have not disclosed any details with regard to what was the amount deposited and what rate of interest they have paid from time to time.

6. Learned counsel for the State took a stand that the matter relates purely to BIADA in which they have no role.

7. Learned counsel for the BIADA submitted that though the Regulation provides for Contributory Provident Fund relating to the employees of the authorities but the same, for the first time, was created in the Darbhanga Industrial Area Development Authority in the year 1979 and even in the North Bihar Industrial Area Development Authority in the year 1979 and for the first time, the deductions were made in September, 1979 in the case of the petitioner. Learned counsel submitted that the concurrence of the State Government is reflected from the communication made to all the different authorities by the State Government with regard to investing the money of the Contributory Provident Fund in the State Bank of India and Post Office. It was submitted that the said is evident from the communication of the Special Secretary, Industries Department in his letter No. 10547 dated 26.06.1981. Learned counsel submitted that in the North Bihar Industrial Area Development Authority, the resolution for creating such a fund was taken only on 11th May, 1977, i.e., after the petitioner had already been transferred to Darbhanga Industrial Area Development Authority. Learned counsel drew the attention of the Court to the representation made by the employees of

the then Darbhanga Industrial Area Development Authority to the Additional Secretary, Industries Department, Government of Bihar, Patna through their Managing Director dated 23.06.1979 in which it is clearly indicated that nothing was being deposited in the Contributory Provident Fund and, thus, request was made that the fund be made active for that Authority. Learned counsel submitted that the contention of learned counsel for the petitioner that payment has to be made under the Rules, is misconceived for the reason that only with regard to rate of contribution, as fixed under the said Rules, the Competent Authority of BIADA and its predecessor-in-interest had been taking recourse to the Rules. It was submitted that the Rules were not adopted and, thus, there cannot be any claim for payment under the Rules. Further, learned counsel drew the attention of the Court to Darbhagna Industrial Area Development Authority Regulations, approved by the State Government on 05.11.1977, which does not speak of any payment of Contributory Provident Fund under the Rules. Learned counsel concluded his arguments by submitting that in the present case the petitioner is also estopped from raising such grievance for the reason that from time to time he has taken advances from the Contributory Fund and upon his initial dismissal/later superannuation, he has also drawn the final amount from the fund, including the maturity value of various fixed deposits made by the authorities from his contribution.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the writ petition. The basic question relating to entitlement of the petitioner for payment under the Rules is negated on two major grounds. Firstly, there cannot be any automatic adoption of the Rules. Secondly, if there are references to applicability of the said Rules, as has been rightly pointed out by learned counsel for the BIADA, the same is restricted only with regard to rate of contribution of employee-employer. Once under a specific regulation of North Bihar Industrial Area Development Authority, which has been approved by the State Government in the year 1976, there being no provision for any Contributory Provident Fund and only later on by a resolution which has also been approved by the State Government with a direction to invest in the State Bank of India and Post Office, the liability of BIADA and its predecessor-in-interest would be limited to such fund. Moreover, the petitioner cannot be allowed to raise the plea that he was not aware of there being no deposit of any Contributory Provident Fund in his account prior to September, 1979 for the reason that he is also a signatory to the representation to the State Government in June, 1979 admitting such fact and further he was also a beneficiary of various advances from his account under the

Contributory Provident Fund Scheme of the Authority right from 1983, as has been pointed out by learned counsel for the BIADA, and then finally encashing fix deposits in his favour and also being paid the amount which was lying in such account in the year 2006. Thus, by moving the Court in the present writ petition, he cannot be allowed to raise the plea that such contribution was required to be made right from 27.08.1976 under the Rules when he was appointed on the post of Typist /Clerk.

9. For the reasons aforesaid, both on facts and law, the Court does not find any ground to interfere, and accordingly, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J)

Anjani/-

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