

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.5024 of 2016 (O&M)
Date of Decision:4.12.2018

Anurag Vashishtha

... Petitioner

Versus

Employees' Provident Fund Appellate Tribunal & Ors ... Respondents

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

Present: Mr.P.K.Mutneja, Advocate &
Mr.V.S.Mahal, Advocate for the petitioner

Mr.Sumeet Goel, Advocate &
Mr.Samir Rathaur, Advocate for respondent no.2

Mr.Shailendra Sharma, Advocate for respondent no.3

RAJIV NARAIN RAINA, J. (Oral)

1. I have heard learned counsel for the parties and perused the paper-book.

2. The entire aspect of the case has been changed with the recent order dated 23.10.2018 passed by the Division Bench of this Court in LPA No.907 of 2017 arising out of CWP No.5314 of 2007 in the case of the petitioner assailing an order of dismissal from service. The dismissal order has been set aside and the appellant, petitioner herein, has been "held entitled to all the service benefits that he would have gained, otherwise had the impugned orders of dismissal not intervened" with a direction that "all the benefits be released to the appellant within a period of four months from today".

3. This petition has been filed against an order (Annex. P-8)

(for short “the Tribunal”) in appeal filed by the Haryana Financial Corporation against the order dated 10.8.2010 (Annex. P-3) passed by the Assistant Provident Fund Commissioner (for short “Assistant Commissioner”). The Assistant Commissioner had allowed the request of the petitioner for release of employer’s share of contribution in his provident fund account, but the order was reversed by the Tribunal relying on Regulation 14 of the Haryana Financial Corporation Employees’ Provident Fund Regulations, 1968 which revealed that the Executive Committee of the Board is empowered to direct the deduction of sum standing to the credit of a subscriber, in case the subscriber is dismissed from his employment on account of misconduct or gross negligence. Regulation 14 reads as follows:-

“(a)Any amount due under a liability incurred by the subscriber to the Corporation upto the total amount contributed by the Corporation to his account, including the interest of credited in respect thereof; or

(b)Where the subscriber has been dismissed from his employment on account of misconduct or gross negligence or where the subscriber has resigned his employment under the Corporation within 5 years of the commencement of his permanent service or such lesser period as the Managing Director may consider appropriate, the whole or any part of the amount of such contribution as the corporation may have made together with interest credited in respect thereof. Provided that clause (b) shall not apply to the Managing Director if he has chosen to become a subscriber.”

4. The present petitioner as respondent in the appeal had argued on jurisdiction that it is not the Executive Committee of the Haryana Financial Corporation, but a Sub Committee that had passed the order,

withdrawing sum of employer's share of the contributions with interest. Without returning a finding on the argument, the Tribunal has accepted the appeal of the Corporation by reversing the order of the Assistant Commissioner. It is against this order that the petitioner had approached this Court by filing this petition in the year 2016, inter alia, claiming release of employer's share of provident fund in his account.

5. As the dismissal order has been set aside, the entire superstructure built on denial of the employer's share of provident fund contribution falls to the ground. The directions of the Division Bench for release of all benefits within four months from 23.10.2018 would encompass all benefits including the claim in this petition for release of employer's share of provident fund accumulation, and therefore, no orders are required to be passed in this case except to declare the impugned order of the Tribunal being rendered non est in view of the acceptance of the intra court appeal by the Division Bench of this Court, that is, in case the appellate order of the Division Bench attains finality. Even on the merits the order is erroneous since EPF money in both employer and employee share cannot be withheld on account of dismissal from service as it represents money earned and part of the estate of the petitioner. Accordingly, the order dated 10.8.2010 (Annex. P-3) passed by the Assistant Provident Fund Commissioner is restored which will bring relief to the petitioner in tune with the order of the Division Bench.

6. The prayer of the learned counsel for the Corporation for grant of time to take stock of the order of the Division Bench will only delay proceedings without justification when this Court has to act in aid of the directions of the Division Bench. The request is declined.

7. As an upshot of the above discussion, the writ petition is allowed. The impugned order of the Tribunal is quashed. The petition is disposed of in terms of the relief granted as part and parcel of the order of the Division Bench. The respondent-Corporation is already under direction to release all the consequential benefits as though the dismissal order was never passed and for the payments a deadline has been set to be obeyed. The unpaid employer's share of provident fund contributions are ordered to be released in favour of the petitioner within one month from the date of release of this order and placed before the respondents. Interest on the amount in default will also be paid at the rate prescribed by the Employees' Provident Fund Organization which they charge from defaulters. Misc applications, if any, stand disposed of.

(RAJIV NARAIN RAINA)
JUDGE

4.12.2018
MFK

Whether speaking/reasoned

Yes

Whether Reportable

No