IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3402 of 2018

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Nripendra Kumar, S/o Late Achutanand Sinha, resident of C/o Ram Lakhan Sinha, Opposite Shankar Bhawan, Kachhi Talab, Saristabad Road, Gardanibagh, Patna - 800001.

... ... Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Secondary Education, Govt. of Bihar, Patna.
2. The Director, Secondary Education, Government of Bihar, Patna.
3. The District Education Officer At + P.S. Collectorate, Patna, District - Patna.
4. The Accountant General, Bihar, AG Building, Birchand Patel Path, Patna.
5. The Director, General Provident Fund, Pant Bhawan, Bailey Road, Patna.
6. The District General Provident Fund Officer, Vikas Bhawan, Collectorate, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gyanendra Kumar Singh, Advocate
For the State	:	Mr. A. K. Pandey, AAG-15
For the Accountant General	:	Mr. Kumar Priya Ranjan, Advocate Mr. Pallav, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 06-12-2019

Heard learned counsel for the petitioner; learned AC to AAG-15 for the State and learned counsel for the Accountant General.

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

> *"That the petitioner craves indulgence of this Hon'ble Court for issuance of appropriate writ(s) / order(s)/ Direction(s) to the respondents, by quashing the letter dated 30.03.2017 passed by the District Provident Fund Officer, Patna, contrary to the circulars dated 29.11.1985 and 09.08.1988 passed the*

> *order impugned in consonance of the circular dated 23.10.95 and 23.11.96 which is not applicable for the calculation of the interest upon the deductions made by the father of the petitioner to his GPF account till January, 1993 one year prior to his retirement i.e. 31.01.1994 commanding them to pay the arrears of the GPF amount of the father of the petitioner by calculating the interest at the rate of 12½ % since 1989-90 to till retirement i.e. 31.01.1994 and then 12½ % interest on the outstanding amount of GPF paid short to the father of the petitioner since 1996 to till the date of the payment of the final outstanding amount of GPF in the light of above circulars dated 29.11.85 and 09.08.1988, for which the petitioner is entitled to."*

3. The grievance of the petitioner is that the GPF amount paid to his late father for the period 1989-1994 was with 10.5% interest, whereas, it should have been @ 12.5% interest and, thus, an amount of about Rs.36,000/- has been withheld.

4. Learned counsel for the petitioner submitted that the petitioner had earlier also moved the Court and pursuant to that the matter was remanded to the competent authority to pass order and the claim has been rejected on the ground that the government circulars dated 27.10.1995 and 23.11.1996 made the claimant entitled to only 10.5 % interest. It was submitted that the same is erroneous in view of the fact that the circulars, which came after the father of the petitioner had superannuated, could not be applied giving retrospectivity to the same and the

case has to be governed by the circular of the state government dated 29.11.1985. It was submitted that as per the said circular, an employee, who contributed 12.5% of his share in the fund had to be given interest @ 12.5% and the petitioner's father also having contributed 12.5% of his salary on a yearly basis for the aforesaid period, denial of 12.5% interest to him is illegal. Learned counsel submitted that the Courts have held that any circular of the state government cannot be given retrospective effect unless certain conditions were fulfilled, but in the present case, there was no circumstance to deny such payment on the admitted position whereas the authorities are considering the case of the petitioner's father in terms of circulars of the years 1995 and 1996 i.e., after his father had superannuated and the rights having crystalized in the year 1994 itself.

5. Learned counsel for the State submitted that the contention of learned counsel for the petitioner is erroneous. It was submitted that reliance on the circulars dated 27.10.1995 and 23.11.1996 has not changed the basic nature of the case or stand of the authority, which was inherent right from the beginning and even on the day the father of the petitioner superannuated. It was submitted that even as per the circular of the year 1985, only those persons, who had made contribution

of 12.5% of their monthly salary were entitled to 12.5% interest on such deposit, but in the case of the petitioner, the monthly contributions have not been consistent @ 12.5% and in many months, contribution was only 10.5%. It was submitted that in such view of the matter, as the requirement is of monthly contribution @ 12.5% for being eligible to grant of 12.5% interest on the deposit, the father of the petitioner not having fulfilled the criteria, obviously and rightly, he has been given 10.5% interest, which had also been paid to him.

6. Learned counsel for the petitioner, by way of reply, submitted that the contribution has to be considered on a yearly basis and every year, if the average is taken, the contribution of the father of the petitioner has been 12.5%. It was submitted that the requirement is not of deposit of 12.5% in the account on monthly basis.

7. 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 present application.

8. As has rightly been stated by learned counsel for the State, the policy which was in existence in the year 1985 has not been changed as far as the case of the petitioner is concerned. In the year 1985 also as per the policy, 12.5% on

deposit was applicable only in the case of an employee, who had deposited 12.5% of his salary in the fund.

9. Here comes the confusion. As per learned counsel for the petitioner, such contribution has to be taken on a yearly basis and not monthly. The Court would deal with the issue right away. If the proposition of learned counsel for the petitioner is tested, it would lead to absurdity inasmuch as, if technically a person, who contributes 12.5% in the fund on a yearly basis, on the very last date of the financial year makes his deposit in contribution, then, if contention of learned counsel for the petitioner is upheld, he would be entitled to 12.5% interest. Thus, for the deposit of less than one day if 12.5% is interest is held payable, it would be absolutely unjust and in fact, absurd. 12.5% interest to be paid, as per the circular of the year 1985, as far as the case of the petitioner is concerned, such deposit had to be made on a monthly basis, for ultimately if such contribution is not available in the fund from which interest has to be paid, such deposits become meaningless for all practical purposes. This would also lead to an inequitable position where at the cost of persons, who deposit their contribution on monthly basis, persons who take advantage and deposit the amount on the very last day of the financial year, become entitled to payment of

12.5% interest on their deposit. In such view of the matter, the circulars dated 27.10.1995 and 23.11.1996 do not change the provision adversely as far as the father of the petitioner is concerned. They only clarify/explain the position as discussed above.

10. Thus, in such background, the Court finds that there is no issue of any retrospectivity involved in the present transaction.

11. Accordingly, both on law as well as on facts, the Court does not find any infirmity in the stand taken by the authorities and the payment made to the late father of the petitioner as far as GPF amount is concerned.

12. For the reasons aforesaid, the application stands dismissed.

(Ahsanuddin Amanullah, J)

J. Alam/-

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