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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 31.01.2019.

Date of Decision: 06.02.2019.

\+ W.P.(C) 12314/2005 & CM APPL. 26586/2016 (delay in filing affidavit), 29521/2018 (condonation of delay)

RAM BHAWAN UPADHYAY ..... Petitioner

Through In person.

versus

UOI & ORS. ..... Respondent

Through Mr.Akshay Makhija, CGSC.
Ms.Prema Priyadarshini with Mr.Ashish Shaw, Advs for R-2 & 3.
Mr.Neeraj K.Gupta with Mr.Ranjeet Kr.Singh, Adv for BCCL.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J

JUDGMENT

1. The present petition under Article 226 of the Constitution of India has been filed by the petitioner impugning the order dated 16.08.2004 passed by the respondent no.3/Commissioner, Coal Mines Provident Fund, whereby he had been informed that he had qualified to become a member of the Coal Mines Provident Fund (hereinafter referred to as "CMPF") only w.e.f. January 1969. The petitioner also seeks a direction to the respondent no.2/Board of Trustees, CMPF to release the payment towards his provident fund contribution from

20.06.1968 to 15.06.1969.

2. The relevant facts emerging from the record are that the petitioner having been selected for appointment as a second class Assistant Manager in Union Coal Company Limited (hereinafter referred to as "UCCL"), Union Angarpathra Colliery, P.O. Sijua, Distt. Dhanbad, was directed to report for duties vide letter dated 19.06.1968 to the Manager, Union Angarpathra Colliery, P.O.Sijua, Distt.Dhanbad on or before 21.06.1968. The petitioner who appears in person, claims that pursuant to the said offer of appointment, he had joined the services at the above colliery on 20.06.1968 and had continued to work there till 15.06.1969. After he had completed his period of probation in UCCL on 20.12.1968, he was allotted an account bearing no. D/469610 in accordance with the CMPF Act and a deduction from his monthly salary was continuously made by the employer/UCCL but no details thereof were provided to him**.** The petitioner, however, resigned from UCCL on 15.06.1969 and joined the National Council for Safety in Mines, Dhanbad (hereinafter referred to as "NCS") on 16.06.1969.

3. It is the petitioner's case that while he was working with the NCS, respondent no.3/Commissioner, CMPF who was enjoined with the statutory duty to ensure compliance of the provisions of the CMPF Act, on learning that no contributions in respect of the petitioner had been received in his office, vide his letter dated 05.04.1971 directed the Manager of Union Angarpathra Colliery, P.O.Sijua, Distt. Dhanbad to deposit the requisite amounts and also give information regarding the date of the petitioner's appointment and termination

alongwith reasons for termination.

4. After three years, the petitioner also resigned from NCS on 13.08.1972 and joined Bharat Coking Coal Limited (hereinafter referred to as BCCL) on 14.08.1972, whereafter he joined another coal mine, namely Maharali Coalfields Limited, in 1997 from where he ultimately retired on 31.12.2002 upon attaining the age of superannuation. It may be noted that UCCL now stands merged in BCCL.

5. Upon his superannuation in December, 2002, the petitioner was released his provident fund dues for the entire duration of his service, except for the period between 20.06.1968 to 15.06.1969. The petitioner, therefore, submitted various representations, pursuant whereto the order dated 16.08.2004 was passed by the respondent no.3, rejecting his request for release of provident fund contributions from 20.06.1968 to 15.06.1969 and informing him that he had qualified to become a member of CMPF only from January, 1969.

6. Aggrieved by the order dated 16.08.2004 passed by the respondent no.3, the petitioner approached this Court by way of filing the present petition. This Court had, vide its order dated 14.05.2008, after coming to a conclusion that the order dated 16.08.2004 showed complete non-application of mind, directed the respondents to pass a fresh reasoned order after granting full opportunity to the petitioner to place his case before them. In compliance of the said order, the respondents passed a fresh order dated 24.06.2009 once again rejecting the petitioner’s claim. At this stage, the petitioner filed a contempt petition being Cont.Case(C) No.687/2008 contending that

the fresh order dated 24.06.2009 passed by the respondents was not in consonance with the directions passed by this Court. Upon finding merit in the petitioner's contentions, this Court vide its order dated 29.07.2009, once again directed the respondents to pass a fresh order after granting an opportunity of hearing to the petitioner. Pursuant thereto, the respondents have passed the impugned order dated 24.11.2009, once again rejecting the petitioner's claim.

7. The petitioner states that since he apprehended that UCCL had not made the requisite compliances for the period from 20.06.1998 to 15.06.1969, despite specific directions by the respondent no.3, he continued to make representations to the respondent no.3 for information regarding his provident fund accumulated in his account and the relevant details thereof. However, he was only informed that the matter was being taken up with his erstwhile employers and, therefore, he remained under a bona fide belief that his rightful dues would be paid to him after his superannuation. It is only after his superannuation in December, 2012 that he learnt that he had not received the provident fund dues for the period from 20.06.1998 to 15.06.1969 either because his first employer, i.e., UCCL (now merged with the BCCL), had not made the requisite statutory deposits or had not provided the necessary records to the respondent nos.2 & 3.

8. In the light of the aforesaid facts, the petitioner by placing reliance on paragraph 55 of the CMPF Scheme, submits that once it was the statutory duty of the respondent nos.2 & 3 to ensure that his employer duly deposits the provident fund contributions with the Provident Fund Commissioner in a timely manner, which duty it

failed to discharge by not taking any action against UCCL or BCCL except for sending reminders to them, the respondent no.2 is enjoined to pay him the due amount from its reserve account maintained as per paragraph 55 of the said Scheme, even if there was a default on the part of his employer to make the statutory deposits. The petitioner, thus, contends that merely because his employer was unable to provide him with the relevant documents and records and had perhaps not remitted the provident fund contributions to the respondent nos.2 & 3, he cannot be deprived of his rightful entitlement, especially when deductions at the statutory rate of 8% from his salary of Rs.600/- were made for the said purpose in accordance with CMPF Act and Scheme during the aforesaid period from 20.06.1968 to 15.06.1969.

9. On the other hand, Ms.Prema Priyadarshini, learned counsel for the respondent nos.2 & 3 vehemently opposes the present petition on the ground of delay and *laches* by contending that the petitioner is trying to rake up an issue relating to payments in his provident fund account relating to the years 1968 and 1969, in respect whereof the respondents have not been able to trace out records despite their repeated efforts and, therefore, urges that the petition be dismissed on this ground alone.

10. Without prejudice to her aforesaid contention, Ms. Priyadarshini submits that the petitioner having joined the services of UCCL on 01.08.1968, he was on probation for a period of six months and could have become a member of the provident fund only after another 120 days of his employment with UCCL, in accordance with rule 25 (a) of the CMPF Act and Scheme. He was, therefore, never

enrolled as a member of the provident fund while serving UCCL and the respondents, consequently never received any contributions from the said employer for the period of his appointment therein. Thus, the respondent no.2 & 3 cannot be faulted for not releasing any amount to the petitioner for the aforesaid period.

11. At this stage, it is relevant to note that in the light of the respondent's plea that they had not received any contributions from the petitioner's employer for 1968 & 1969, this Court vide its order dated 23.11.2017, while issuing notice to the General Manager of the BCCL, had directed him to produce the records for the said period w.e.f. 20.06.1968 to 15.06.1969 to show whether any deduction on account of the provident fund was made from the petitioner's salary or not. Pursuant to the said orders, BCCL has filed an affidavit dated 05.04.2018 stating that even after vigorous efforts, the provident fund deduction records in respect of the petitioner's account for the period from 20.06.1968 to 15.06.1969 were not traceable. It has also been stated therein that even otherwise, the period in question is prior to the nationalisation of the coal mines and the coal industry, which took place in the year 1972 and, therefore, the BCCL cannot be faulted for not having the said records. By placing reliance on the said affidavit, Mr.Neeraj K.Gupta, learned counsel for the BCCL states that since there is no record regarding the petitioner's employment or deduction of his provident fund contribution for the period from 20.06.1968 to 15.06.1969, the present petition is liable to be rejected.

12. I have heard the petitioner as also the learned counsel for the respondents at length and with their assistance perused the record. In

the light of the submissions made at the Bar, I find that basically two issues arise for my consideration, the first being as to whether the petition is liable to be dismissed on the ground of delay and *laches*. The second issue is as to whether despite the stand of the respondents that no records for the period in question are available, is the petitioner still entitled to relief?

13. Coming to the first issue, even though at first blush the plea of the learned counsel for the respondent nos.2 & 3 as also of the counsel for the BCCL, that the petition is liable to be rejected on the ground of delay and *laches*, appears to be attractive, upon a careful consideration of the correspondence exchanged between the parties especially the letters dated 05.04.1971, 13.03.1984, 19.04.1984, 30.04.1984 and 09.05.1984 written by the respondent no.3 itself to UCCL and the various orders passed by this Court from time to time directing the respondents to reconsider the matter, I am unable to persuade myself to throw out the petition at this stage on the ground of delay and *laches*. Another factor which is relevant is that the petitioner has in no manner been negligent and has on the other hand been actively pursuing his claim and in any event the cause of action to claim his dues relating to his provident fund claim arose only after his superannuation in 2002, till which date he was never made aware that the amount for the period in question had not been deposited by UCCL or BCCL. What needs to be appreciated is that this Court is dealing with a case involving an important piece of social welfare legislation whereunder a senior citizen is beseeching this Court for release of amounts which he claims were deducted from his salary

way back in 1968 & 1969.

14. Now coming to the merits of the petitioner's claim, what emerges from the record is that the respondents have rejected his claim primarily on the ground that there were no records available with them to show that any deposits qua the period in question were made with them by the petitioner's employer UCCL. A perusal of the rejection order passed on 24.11.2009 shows that the same is also based on the statement made by Mr.Ratnakar Malik, Deputy Personnel Manager, UCCL, to the effect that the petitioner's name did not find mention in the statement for the relevant period. Thereafter, the respondent no.3 directed the petitioner to produce his pay-slips for the period in question, which for obvious reasons the petitioner could not produce at this belated stage. The respondents, therefore, rejected the petitioner's claim holding that there was nothing to show that he was employed with UCCL during that period, without even considering the other documents produced by the petitioner which could have thrown light on the moot question as to whether the petitioner was employed with UCCL from 20.06.1968 to 15.06.1969.

15. The petitioner has heavily relied on not only on the various letters written by the respondent no.3 itself to his erstwhile employer but also on the experience certificate issued by the Directorate General of Mines Safety on 03.11.1972. I have carefully perused the aforesaid certificate, which clearly states that the petitioner was employed with UCCL w.e.f. 20.06.1968 to 15.06.1969 and I find that the respondents have simply ignored the said certificate. It is inexplicable as to why the respondents have ignored not only the

certificate issued by a statutory authority, i.e., Directorate General of Mines Safety, but have also ignored its own letters, including the letter dated 05.04.1971 whereby the UCCL had been directed to deposit the contributions for the above period *qua* the petitioner.

16. In my view the aforesaid certificate and the letters written by the respondent no.3 itself, leave no room for doubt that the petitioner was employed with UCCL from 20.06.1968 to 15.06.1969 and, therefore, even if as contended by the respondent nos.2 & 3, the petitioner's then employer, i.e., UCCL, subsequently merged with BCCL and failed to comply with the statutory provisions for deposit of provident fund and make timely contributions with the respondent nos.2 & 3 for the said period, the petitioner cannot be made to suffer.

17. Now coming to the question as to how the petitioner can be compensated in the light of the respondent's stand that the records for the period in question are not available. The petitioner relies on paragraph 55 of the CMPF Scheme to contend that in cases where the employer defaults to make the requisite deposit towards provident fund dues, the employee cannot be made to suffer and the employee is still entitled to receive his dues from the reserve account maintained by the respondent no.2. He states that paragraph 55 of the CMPF Scheme has been introduced only to cater to such contingencies where there is a default on the part of the employer to make the requisite deposits and, therefore, prays that the respondent no.2 be directed to pay his provident dues for the period from 20.06.1968 to 15.06.1969 from its reserve account.

18. Before dealing with the petitioner's aforesaid contention, it may

be appropriate to refer to the relevant portions of paragraphs 55 & 63 of the Coal Mines Provident Fund Scheme, which reads as under:-

> "***55. Disposal of the Coal Mines Provide Fund***:-
> *(1) xx*
>
> *(2) Amount credit to the Reserve Account under sub-paragraph(4) of paragraph 63, may in accordance with such instructions as the Central Government may issue from time to time, the expended for any or all of the following purposes:-*
> *(i) xx*
> *(ii) xx*
> *(iii) for making payments to outgoing members and to the nominees of heirs or legal representative of deceased members where provident fund contributions,, or Family Pension Fund contributions, or both in respect of such members have either in whole or in part, not been deposited into the fund by their employers.*
> *(iv) xx*
> *(v) xx*
> *(vi) xx*
>
> ***63. Circumstances in which accumulations in the Fund are payable to a member:-***
>
> *(1) xx*
> *(2) xx*
> *(3) xx*
> *(4) All sums forfeited to the Fund under sub-paragraphs (1) & (2) shall be credited to the "Reserve Account" of the fund."*

19. A bare perusal of the aforesaid provisions shows that the same are meant to cater to such situations where the employer has defaulted in depositing the requisite contributions. Therefore, even if the contention of the learned counsel for the respondent nos.2 & 3 is taken as correct that the petitioner's employer did not make the

requisite contributions at the relevant time, the fact that he was in employment with UCCL from 20.06.1968 to 15.06.1969 cannot be disputed and in the light of provisions of paragraph 55 of the CMPF Scheme as noted hereinabove, there is no reason as to why the petitioner should be deprived of his rightful dues and the respondent nos.2 & 3, who are enjoined with the statutory duty to ensure compliance of the provisions of the CMPF Scheme by all employers and take action against the employer in the event of its failure to make timely deposits, should not be directed to pay the petitioner's provident fund dues from its reserve account. The petitioner, who has been agitating his claim for the amount deducted from his salary alongwith the employer's share, for the last many years, cannot be denied relief in the evening of his life merely because the respondent nos.2 & 3 claim to have not received the requisite deposit from the petitioner's employer.

20. The petitioner has claimed that 8% of his salary of Rs.600/- was being deducted by his employer from 20.06.1968 to 15.06.1969 in accordance with the provisions of the CMPF Scheme, which amount he is now entitled to receive alongwith the employer's share and statutory interest. While the petitioner claims that the due amount would be a sum of Rs.74,000/-, as per the respondents the same would be about Rs.50,000/- and, therefore, I am of the opinion that in the absence of any record to justify the petitioner's claim for a sum of Rs.74,000/-, it would be appropriate to direct the respondent nos.2 & 3 to pay to the petitioner a sum of Rs.50,000/- as per their own calculations.

21. The writ petition is allowed with directions to the respondent nos.2 & 3 to pay a sum of Rs.50,000/- to the petitioner within four weeks towards his claim for his provident fund dues qua the period from 20.06.1968 to 15.06.1969. It is, however, made clear that it will be open for the respondent nos.2 & 3 to take action in accordance with law to recover the same from the petitioner's employer, if they so deem fit.

22. The petition alongwith pending applications is disposed of in the aforesaid terms.

REKHA PALLI
(JUDGE)

FEBRUARY 06, 2019/sr