IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2192 of 2018

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Ram Naresh Das, Son of Late Muneshwar Das, Resident of Village- Rahsa West, P.O. and P.S.- Bhagwanpur, District- Vaishali.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Finance Department, Government of Bihar, Patna.
2. The Principal Secretary, Finance Department, Government of Bihar, Patna.
3. The Director, Provident Fund Directorate, Patna.
4. The District Provident Fund Officer, Muzaffarpur.
5. The District Education Officer, Muzaffarpur.
6. The Principal, Government Zila School, Muzaffarpur.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mrityunjay Kumar, Adv.
For the Respondent/s : AC to PAAG-2

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
C.A.V. JUDGMENT

Date : 13-07-2020

Heard learned counsel for the petitioner as well as learned A.C. to P.A.A.G.-II.

2. The petitioner has asked for the following reliefs:

(a) For grant of an appropriate writ for quashing the reasoned order dated 15.09.2015 passed by the Director, Provident Fund Directorate, Patna issued under Memo No.8166 dated 16.09.2015 (Annexure-6) rejecting the claim of the petitioner for payment of 12.5% interest on the provident fund deductions of the petitioner for the period 1985-86 to year 1998-99.

(b) For grant of an appropriate writ for a direction to the respondents to pay to the petitioner interest at the rate of 12.5% on his provident fund deductions for the period 1985-86 to 1998-99.

(c) For grant of an appropriate writ for a direction to the respondents to pay interest on the left over interest part of General Provident Fund illegally withheld by the respondents.

3. After hearing both sides as well as going through the respective pleadings coupled with the order impugned dated 15.09.2015 passed by the Director, Provident Fund Directorate communicated vide Memo No.8166 dated 16.09.2015, it is evident that the status of the petitioner is not under controversy. That means to say, the appointment of the petitioner as a Clerk initially at Sarvoday High School, Bangra, Saran as on 02.09.1975 and then transferred to Zila School, Muzaffarpur, wherefrom he retired is properly acknowledged. It is further evident that there was deduction of general provident fund from his salary. It is further evident that in the year 1985, the Bihar Government in order to make deposit under the provident fund more lucrative made certain amendments under Rule 11 under the guise of Article 309 of the Constitution of India and, by such amendment introduced new provision. So far non-gazetted employees are concerned, that in case of deposit of 12.5% of pay, the same will carry interest @ 12.5%. However, an option was left open to the employees either to proceed as per old prevailing deduction carrying 10.5% interest. A circular was also issued to the effect that the employee has to deduct and deposit 12.5% of pay from July, 1985 to December, 1985 as the new scheme was made operative since July, 1985.

4. It is further evident that later on the Government came across some sort of difficulty at the end of the employees in proper understanding of the new scheme, whereupon, allowed preference/ privilege to the employees by different circulars side by side in order to

facilitate an opportunity to opt new scheme mandating deposit of 12.5% of pay whereupon carrying 12.5% interest and, those letters have been circulated vide Memo No.4184 dated 13.07.1985 as well as Memo No.M-1:10/85/7530 dated 29.11.1985. At first instance it was directed that even if an employee has not opted at an earlier occasion but, if he deposits the amount with interest from 1^{st} of July, 1985 to December, 1985 then, in that circumstance, the employee will be allowed to avail the new scheme.

5. Again the Government had found that the circulars were not adequate to deal with the issue, as, the benevolent approach of the government was not being catered, as well as during the course of calculation of interest there was no uniformity and, so again issued a circular communicated vide Memo No.1606 dated 20.10.1995 specifying closely that for the month whereunder deposit has been made less than 12.5%, the rate of interest would be 10.5 % otherwise the rate of interest incurred upon the deposit would be 12.5%.

The aforesaid letter circulated vide Memo No.1606 dated 20.10.1995 has also been relied upon by the respondents being part of counter affidavit as Annexure ‘B’.

6. It is further admitted that save and except July, 1985, the petitioner had deposited 12.5% of his pay in the general provident fund and so, was expecting calculation of interest @ 12.5% which the respondents have denied on the sole ground that due to non-deposit of 12.5% of pay for the month of July, 1985 petitioner was not at all

entitled to avail new scheme hence, filed CWJC No.19575 of 2012 (Annexure-5) which was disposed of vide order dated 11.11.2013 in the following manner:

> "Let the petitioner file an application with regard to the kind of interest or the rate of interest which he is entitled to before the Director, Provident Fund, who will get the claim of the petitioner verified on the basis of the relevant circular as well as notification with regard to the rate of interest payable at the relevant time. Matter will be examined and the outcome communicated to the petitioner within three months of filing such an application with a copy of this order.
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> Writ application is disposed of."

7. In pursuance thereof, petition was filed before the Director, Provident Fund and after considering the same, the Director, Provident Fund rejected the contention of the petitioner to the effect that he was entitled to 12.5% of interest against the deposit of 12.5 % of his pay and, 10.5% relating to deposit of less than 12.5%, directing that the petitioner is entitled for 10.5% interest only.

8. After going through the order impugned, it is evident that the Director, Provident Fund either on account of ignorance or may be on account of extraneous consideration did not opt to see Annexure 'B", the subsequent circular issued by the Government clarifying each and every aspect guiding mode of calculation of interest as against the deposit in consonance with pay.

9. Even then, the screech persisted, whereupon the matter has been brought up before the High Court in the case of Shailendra

Kumar Singh vs. State of Bihar, reported in **2010 (3) PLJR 215**. The learned Single Judge after going through the relevant circulars so referred hereinabove found and held that in case the deposit is less than 12.5% of pay, the calculation of rate of interest would be 10.5% for that month only, while for the remaining calculation of rate of interest will be 12.5% in case deposit corresponds 12.5% of pay, which was challenged by the Government under L.P.A. No.1352 of 2010 (The State of Bihar through the Commissioner cum Secretary, Department of Revenue and Land Reforms and others vs. Shaialendra Kumar Singh & Anr.), reported in **2017 (4) PLJR 629**, wherein the benevolent scheme of the government in consonance with different circulars guiding the issue including that of Annexure 'B" and subsequent thereto have been again subject to close scrutiny and then it has been observed in paragraph 11 as follows:

> "Thus, in fairness to learned counsel for the State, we have taken note of Circular No.6991 dated 7.7.1997, which in our view, does not change the position. As we have indicated above, the net result would be that, for the months in which there was short deductions from the salary of the writ petitioner/respondent, he would be entitled to interest only at 10.5%, but the moment, the deductions are restored to 12.5%, he would be entitled to higher rate of interest at 12.5%, which is the default rate. It would, now, be for the Authorities to work out the correct interest which could be done within three months from today."

10. That being so, no lis remained to survive. In the aforesaid background, the Director would have scrutinized and proceeded in right direction properly by observing that the petitioner was entitled to an

interest @ 10.5% over the deposit less than for the month of July, 1985 and, subsequent deposit being that of 12.5% would carry the interest of 12.5%, wherein he failed.

11. Consequent thereupon, the order dated 15.09.2015 passed by the Director, Provident Fund Directorate communicated vide Memo No.8166 dated 16.09.2015 is hereby quashed in terms as indicated hereinabove.

12. Petition is allowed.

13. It is made clear that in the background of the fact that the petitioner has been forced to litigate repeatedly, irrespective of the fact that the matter being settled at rest would have properly been appreciated by the Director, compels the Court to direct that payment should be made within four weeks, failing which the balance amount will carry interest of 8% to be calculated till the date of full and final payment and the aforesaid amount will be borne by the Director and will be deducted from his salary.

14. In order to proper compliance of the direction, let a copy of this judgment be furnished upon the learned A.C. to P.A.A.G.-2.

(Aditya Kumar Trivedi, J)

skpathak/-

AFR/NAFR	NAFR
CAV DATE	06.07.2020
Uploading Date	13.07.2020
Transmission Date	NA