

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18863 of 2019

1. M/s Gee Pee Furniture (New) R.K. Avenue, Nala Road, P.S.-Kadam Kuan, District-Patna through its Proprietor Gopal Prasad Singh Male Age 70 Years
2. Smt. Sumitra Devi, Wife of Sri Gopal Prasad Singh Owner Gee Pee Furniture, Nala Road, Patna,.

... .. Petitioner/s

Versus

1. The Central Board of Trustees through The Assistant Provident Fund Commissioner, Regional Officer, Employees Provident Fund Organization Having its Office at Bhavishya, Nidhi Bhawan, R. Block, P.S.-Sachiwalaya, District-Patna.
2. The Assistant Provident Fund Commission, EPFO, R. Block, P.S.-Sachiwalaya, District-Patna.
3. The Regional Provident Fund Commissioner, Bihar, R Block, Road No.6, Serpentine Road, Patna.
4. The Recovery Officer, Office of Regional Provident Fund Commissioner, R Block, Road No. 6, Serpentine Road, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ajay Kumar Sinha, Advocate
For the Respondent/s : Mr. Jay Prakash Verma, Advocate

CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

6 06-01-2020 Heard learned counsel for the petitioners and learned counsel for the respondents- EPFO.

2. The present case is one of gross arbitrariness where the authorities have illegally withdrawn the FDRs and retained the money of the establishment which did not fall within the ambit of the Employees' Provident Funds.



3. The matter is being contested since the year 2006 and the petitioners succeeded before the Tribunal vide order dated 26.04.2011. The respondents, however, chose to file CWJC No. 15963 of 2011 which too was dismissed vide order dated 06.08.2018 by this Court. The writ-petitioners again approached the authorities for release of the amounts which had been illegally withheld by them and having failed to succeed in their demands, the writ-petitioners were constrained to move this Court for refund of the amounts withheld by the respondents along with the interest as the same was not entitled to have been either deducted by them and, therefore, the refund thereof was subject to payment of interest which had accrued on the amounts which have been so withheld illegally.

4. Learned counsel for the petitioners submits that it is well settled by the Apex Court as has been decided in the case of **Clariant International Ltd. & Another Vs. Securities & Exchange Board of India reported in (2004) 8 SCC, 524** wherein at paragraph nos. 30 & 31, it has been decided that in case of amounts illegally withheld, it is open to the Courts to consider the payment of interests in the following terms :-

30. Interest can be awarded in terms of an agreement or statutory provisions. It can also be awarded by



reason of usage or trade having the force of law or on equitable considerations. Interest cannot be awarded by way of damages except in cases where money due is wrongfully withheld and there are equitable grounds therefor, for which a written demand is mandatory.

31. In absence of any agreement or statutory provision or a mercantile usage, interest payable can be only at the market rate. Such interest is payable upon establishment of totality of circumstances justifying exercise of such equitable jurisdiction. (see *Municipal Corpn. of Delhi v. Sushila Dev*, SCC para 16.)”

5. In the aforementioned judgement at paragraph –
36 it has been further held as follows :-

36. The Courts of law can take judicial notice both inflation as also fall in bank rate of interest. The bank rate of interest both for commercial purposes and other purposes has been the subject-matter of statutory provisions as also the judge-made laws. Even in cases of victims of motor vehicle accidents, the courts have upon taking note of the fall in the rate of interest held 9% interest to be reasonable. (*See Kaushnuma*



Begu, H.S. Ahammed Hussain and Patricia Jean Mahajan.)”

6. Learned counsel appearing on behalf of the EPFO, however, submits that there is no provision for payment of interest under the EPF Scheme. This Court fails to understand as to how the aforementioned submissions can be accepted especially in view of the fact that it has been held by the writ Court that the authorities have failed to establish that the organization came into purview of the EPF Scheme. The said would hold good in his case.

7. Learned counsel for the EPFO further submits that since the writ had remained pending before this Court, they may not be required to pay interest over the amounts which have been withheld by them.

8. However, it has been noted by this Court that during the pendency of the writ, there was no stay of the order of the Tribunal nor was any prayer made by the authorities for not refunding the amounts or retaining the same and, therefore, in view of the fact that the writ-petitioners had made a specific prayer in the year, 2011 itself for refund of the amounts with interest payable thereon, the EPFO authorities ought to have refund the same at the said point of time. Having not done so without any order of stay makes them liable for payment of



interest on the amounts due to the petitioners which have been arbitrarily impounded by them by taking into possession of the fixed deposit receipts and other deposits standing in the name of the petitioners in the Punjab National Bank, R.K. Avenue, Patna and State Bank of India, Kadamkuan Branch, Patna respectively.

9. Learned counsel for the EPFO has produced a demand draft of the principle amount which have been impounded by them but the petitioners have not shown any willingness to accept the same in the absence of the payment of interest which has accrued on the said amounts which appears to be quite justifiable in the present facts and circumstances of the case.

10. It is, accordingly, directed that the authorities must come back with a fresh draft with amounts duly calculated by way of interest at the respective market rates which would have accrued on the amounts of FDR and other deposits as were prevalent in each of the respective years. The aforementioned calculation of interest shall be from the date of the said amount was so impounded by the authorities and payments thereof should be made positively to the petitioners within a period of four weeks from today.

11. With the aforementioned observations and



directions, the writ application stands disposed of.

(Anjana Mishra, J)

Jagdish/-

U			
---	--	--	--

