

IN THE HIGH COURT OF ORISSA, CUTTACK

W.P.(C) No.11777 of 2018

In the matter of an application under Articles 226 and 227 of
the Constitution of India.

All Odisha State Road Transport
Corporation Employees Association,
Khurda Petitioner

-Versus-

State of Odisha & others Opp. Parties

For Petitioner : Mr. S.D. Das, Sr. Advocate

For Opp. Party No.1 : Mr. G. Rout, A.S.C.

For Opp. Party Nos.2 & 3 : Mr. B.K. Sahoo, Advocate

For Opp. Party No.4 : Mr. A. Mohanty, Advocate

CORAM: JUSTICE SANJAY KUMAR MISHRA

JUDGMENT
16.12.2022

S.K. MISHRA,J.

1. The Petitioner, which is a registered Trade Union under the Indian Trade Union Act, 1926, has filed the Writ Petition to direct the Opposite Parties to forward the 3A/R and

6A/R returns of engagement and wages by the Opposite Party No.3 to Opposite Party No.4 (The Regional Provident Fund Commissioner) for disbursement of the Provident Fund dues in respect of the employees, who are the members of the Petitioner's Association, more particularly, in respect of the employees as detailed in the gradation list of Casual Drivers and Conductors, appended to the Writ Petition as Annexure-3 Series.

2. The brief background facts of the present lis is that though the amended provision of Para-26(2) of the Employees' Provident Fund Scheme, 1952, shortly "EPF Scheme" provides fund benefit to be extended to an employee, who has even rendered one day service in the establishment of the employer, because of the inaction of the Opposite Party Nos.2 & 3 to bring the 571 Casual employees, who have been working since 1974, under the coverage of Employees' Provident Funds and Miscellaneous Provisions Act, 1952, shortly "EPF & MP Act, 1952", approached the Opposite Parties-Management, so also Opposite Party No.4. Based on the representation of the petitioner's Association, the Opposite Party No.4 wrote to the Divisional Manager, Odisha State Road Transport Corporation, shortly, "OSRTC" on 20.02.1996 requesting to enroll and extend the provident fund benefit to all the casual employees from the

date of their eligibility at the earliest by depositing dues along with statutory returns. It is further case of the petitioner's Association that the Opposite Party-Corporation challenged the action of the Regional Provident Fund Commissioner before this Court in W.P.(C) No.10581 of 2006, disposed of on 02.04.2007, followed by Civil Review Application No.78 of 2007, which was also dismissed on 20.03.2008. Ultimately, the Opposite Party- Corporation approached the appellate forum and having failed therein, again filed W.P.(C) No.29449 of 2013 before this Court which was also dismissed on 12.08.2015. It is further case of the petitioner's Association that having failed in all their attempts, the Opposite Party-Employer ultimately deposited the provident fund contribution/dues in respect of the employees concerned to the extent of Rs.1,99,37,541/- which is lying with the E.P.F. Commissioner and the Opposite Party-Corporation, instead of cooperating with the Provident Fund Authority, is trying to get refund of the said amount deposited with the Provident Fund Authority with untenable plea and because of the non-cooperation of the Opposite Party-Corporation many of the concerned employees have expired in the meantime due to severe poverty, even though the amount admissible to them has already been deposited with the Provident Fund Authority and even the legal heirs of deceased employees are deprived to get the benefit in

terms of the EPF & MP Scheme, 1952. It has further been averred in the Writ Petition that the Petitioner Association wrote to the Regional Provident Fund Commissioner, Odisha, shortly "RPFC, Odisha" vide letter dated 20.01.1996 along with a list of Casual employees vide Annexure-3 series and in response to the said letter of the petitioner's Association, vide letter dated 20.02.1996, the RPFC directed the Divisional Manager, Berhampur, OSRTC, to extend the provident fund benefit to 571 casual employees from the date of their eligibility at the earliest by depositing the dues along with statutory returns. As a result of which the Chairman-Cum-Managing Director of the Opposite Party-Corporation wrote to all the District Transport Managers In-Charge of Zones and Drawing Disbursing Officer of the OSRTC, instructing them for non-engagement of the casual/substitute/ contingent paid workers indicating therein that their appointment will create further liability for the Corporation and the appropriate authority shall be personally responsible for the lapses, if committed by him.

3. Though being noticed, the Opposite Party-Corporation has filed the Counter Affidavit resisting the prayer made in the Writ Petition, on various grounds, as is revealed from the pleading made in the Writ Petition the said issue as to coverage of 571 Casual Employees under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 has

attained finality in view of several rounds of litigation at the instance of the Petitioner's Association so also the Opposite Party-Corporation, which were dismissed by this Court, so also the admitted fact as to deposit of contribution amount by the Opposite Party-Corporation in terms of the Order passed by the Authority under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, which was also confirmed by the Employees Provident Fund Appellate Tribunal and reaffirmed by this Court in the earlier proceedings.

Since the Opposite Party-Corporation preferred W.P.(C) No.29449 of 2013 challenging the confirming order passed by the Appellate Tribunal in ATA No.417(10)2008, on being mentioned, the said matter got listed before this Court along with the present Writ Petition and Order was passed on 14.11.2022 in W.P.(C) No.29449 of 2013 to have a joint discussion in order to resolve the said issue as to supplying details of employees concerned/beneficiaries to the EPFO by the Opposite Party No.3-Corporation.

4. Heard Mr. S.D. Das, learned Sr. Advocate for the Petitioner-Association, Mr. G. Rout, learned Additional Standing Counsel for State-Opposite Party No.1, so also Mr. B.K. Sahoo, learned counsel for Opposite Party Nos.2 & 3 and Mr. A. Mohanty, learned Counsel for Opposite Party No.4.

5. Mr. S. Das, learned Sr. Advocate for the Petitioner submits that pursuant to the Order of this Court dated 14.11.2022, passed in W.P.(C) No.29449 of 2013, a joint discussion was held on 28.11.2022 chaired by the Regional Provident Fund Commissioner, Regional Office, Berhampur. Paragraphs-3 & 4 of the said Order dated 14.11.2022 are extracted below for ready reference.

“3. Mr. Mohanty, learned Counsel for EPFO, submits that though the Order dated 4th August, 2011, in ATA No.417(10)2008, passed by the Employees’ Provident Fund Appellate Tribunal, New Delhi, is under challenge in this Writ Petition, there being no interim Order of stay as to the operation of the Order passed by the Tribunal, the same has been complied with by the Petitioner-Corporation and the determined amount in the 7A proceeding has already been deposited with EPF Authority. However, because of non filing of return giving details of the employees concerned/ beneficiaries, the EPFO is undone to do the needful and credit the contributed amount to the beneficiaries respective accounts enabling them to avail various facilities in terms of the said Act, 1952.

4. In view of such submission made by learned Counsel for EPFO, which is not disputed by the learned Counsel for the Petitioner-Corporation, the learned Counsel for the Parties, so also, learned

Counsel for the Petitioner-Union in W.P.(C) No.11777 of 2018 and newly added Opposite Party No. 5-Union in the said Writ Petition, are directed to have joint discussion in the said regard in Order to resolve the said issue as to supplying details of employees concerned/beneficiaries to the EPFO on 28th November, 2022, in the Office of the Regional EPF Commissioner, Berhampur, at 11:00 AM, positively with all the documents and records available with them enabling the EPFO Authority to do the needful in the said regard.”

6. Mr. Das has filed the Minutes of Joint Discussion held on 28.11.2022 along with a memo, which is on record. The said Minutes drawn on 28.11.2022 well demonstrates that Pursuant to Order of this Court, the Divisional Manager (Transport) I/C, OSRTC, Berhampur, learned Advocate for the OSRTC Ltd., Working President of All Odisha State Road Transport Corporation Employees Union, Jatni, Advocate for All Odisha State Road Transport Corporation Employees Union, Jatni, Advocate for Rajya Paribahan Nigama Casual Karmachari Sangha, Banki, Enforcement Officer, EPFO, RO, Berhampur and the SSA, EPFO, RO, Berhampur attended the said joint discussion and unanimously, in the said meeting it was resolved as follows:

“Minutes of Joint Discussion

A joint discussion was held in the chamber of Regional P.F. Commissioner-II & OIC on 28.11.2022 at

11.00 AM as per the directions of Hon'ble High Court of Odisha dated 14.11.2022 towards resolving the issue of non submission of statutory returns in Form-3A and 6A by OSRTC Ltd. in respect of total 571 nos of casual employees which includes 323 nos of casual conductors, 156 nos of casual drivers, 73 nos of cleaners, 5 nos of sweepers, 10 nos of watermen, 01 no of watcher, 01 no of welder and 02 nos of tyremen for the period from 1979 to 03/1996. The total dues for that period amounting to Rs.1,19,37,541/- has already been realized from OSRTC Ltd. During the meeting Shri Akshaya Kumar Ray, Working President for the All OSRTC Employees Association filed his submission dated 28.11.2022 wherein he stated that the establishment OSRTC Ltd. had submitted relevant documents mentioning the names of the 312 casual conductors and 140 casual drivers before the Hon'ble High Court of Odisha in OJC No.3598/1991

Further, the establishment failed to submit the Returns in Form 3A(R) and 6A(R) before the Assistant P.F. Commissioner during the 7A hearing despite affording several opportunities. In this regard Shri P.K. Maharana, Enforcement Officer submitted that the establishment has not submitted the details of the casual employees citing non availability of records. Therefore, the employees union had prepared the returns based upon the data available with them and the same was forwarded by his office to OSRTC Ltd. for attestation. At that time the OSRTC Ltd. did not object to the returns submitted by the employees union but refused to submit the returns since the matter was

subjudice. However, the establishment has not submitted the returns 3A(R) and 6A(R) after due attestation so far. In this regard Dr. Subrat Kumar Sahu, Advocate appearing on behalf of OSRTC raised the question that whether the returns submitted by both the unions tallies or not to which Shjri Akshaya Kumar Ray and Shri Karnain Sattar, Advocate submitted that the returns submitted by both the union tallies. Shri Jitendera Samantray, Advocate for Rajya Paribahan Nigama Casual Karmachari Sangha (RPNCKS) also supported the same. Thereafter Dr. Subrat Kumar Sahu submitted that the OSRTC Ltd. has no objection to the returns submitted by the Employees Union and agreed to submit the same after due attestation.

In view of the above, the management of OSRTC Ltd. is advised to forward the returns in Form-3A(R) and 6A(R) submitted by the employees union and forwarded by this office after due attestation immediately for further course of action by this office.”

7. During course of hearing, Mr. S.S. Mohanty, learned Counsel for Opposite Party No.4 submits that if the OSRTC Authority attests the returns in Form 3A and 6A already submitted by the employees union, the Authority concerned would do well to regularize the same enabling the employees concerned (beneficiaries) to avail the benefits in terms of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the Scheme made thereunder.

8. Mr. B.K. Sahoo, learned Counsel for Opposite Party Nos.2 & 3, submits that all the records and reports submitted by the Union are at the Head Office of the Corporation situated at Bhubaneswar and some time may be granted to do the needful and submit the returns to the EPFO in Form-3A(R) so also 6A (R) duly attesting the same in terms of the minutes of the joint discussion held on 28.11.2022.

9. Mr. B.K. Sahoo, learned counsel further submits that he has no instruction as to whether those returns/reports submitted by the Unions are with the Management or not. He/his client may be supplied with photo copies of the said returns/reports already submitted by the Unions to the EPFO Authority enabling the Corporation to do the needful in the said regard at the earliest. Mr. S. D. Das, learned Sr. counsel, submits that photo copy of the returns filed by his client will be supplied to the Opposite Party-Corporation within a week.

10. In view of the submissions made by the learned Counsel for the parties, the Opposite Party Nos.2 & 3 are directed to forward the said returns filed by the Unions to the Opposite Party No.4 after duly attesting the same within a period of four weeks from the date of communication of this Judgment. Needless to mention here that on getting the said revised returns, the Opposite Party No.4 would do well to process the said returns and

do the needful at the earliest enabling the employees concerned/legal heirs of the deceased employees to avail the various benefits in terms of Employees' Provident Funds and Miscellaneous Provisions Act, 1952, so also Scheme made thereunder at the earliest, preferably within a period of two months from the date of receipt of the revised returns submitted by the Corporation.

11. Accordingly, the writ petition stands disposed of. No Order as to costs.

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S.K. MISHRA, J.

Orissa High Court, Cuttack
The 16th December, 2022 /Prasant