

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.288 of 2016

Bijay Kumar Moharana & Others

.... ***Petitioners***

Mr. Biraja Prasanna Satapathy, Advocate

-versus-

State of Orissa & Others

.... ***Opp. Parties***

Mr. L. Samantaray,

Additional Government Advocate

CORAM:

JUSTICE M.S. RAMAN

ORDER (Oral)

17.10.2022

Order No.

- 05.** 1. The Original Application No.288(C) of 2018 was filed before the State Administrative Tribunal, Cuttack. After its abolition, the same has been transferred to this Court which is renumbered as WPC(OAC) No.288 of 2018.
2. Assailing the order dated 15.12.2015 of the Executive Engineer, Balasore Irrigation Division, Balasore issued pursuant to Letter No.ME-EPF-10/09-5088 (WE) dtd. 02.05.2013 of Engineer in Chief, Water Resources, Odisha, Bhubaneswar seeking to recover the share of contribution towards Employee Provident Fund (for short, “EPF”) discharged by the Government for the period from November, 1980 to February, 2007 on instalment basis from the petitioners-employees, the petitioners have approached the learned Administrative Tribunal, Cuttack by way of an Original Application bearing no.288(C) of 2016 under Section 19 of the Administrative Tribunals Act, 1985, praying therein for grant of following reliefs:

“7. It is therefore, prayed that this Hon’ble Court/Tribunal may graciously be pleased to admit the Original Application and after hearing the parties pass the following reliefs:

- (i) *Let the impugned Office order dated 15.12.2015 issued by the respondent No.3 directing recovery of the amount from the applicants towards their share of the EPF dues vide Annexure-1 in the facts and circumstances of the case be declared as illegal and as such liable to be set aside; and*
- (ii) *Let , any other relief/reliefs be passed to which the applicant entitled to;”*

3. Relevant it is to quote Paragraph 6.11 of the petition wherein the petitioners have agreed to deposit their share of EPF dues from November, 1980 to February, 2007:

“That the applicants beg to state that they have no objection to deposit their share of the EPF dues for the period 11/80 to 2/2007, if the respondents will provide individual EPF A/c number to the applicants for the said period and make further deposit for the period 3/2007 till the applicants were brought over to the work charged establishment. Though the deposit for the period 11/80 to 2/2007 has been made in respect of 87 numbers of NMRs, but in the meantime a number of similarly situated employees have retired from their service. The direction to recover the employee’s share from the applicants and similarly situated NMRs has been found contrary to the provision of Para-32 of the EPF scheme 1952. The aforesaid fact as reflected in the communication dated 08.01.2014 of the Regional Provident Fund commissioner is annexed herewith as Annexure-3.”

4. On the basis of identical concession made and reliefs sought by the petitioner in the case of *Ganeswar Jena Vs. State of Odisha and Others in WPC(OAC) No.1643 of 2013*, this Court disposed of Writ Petition vide order dated 08.08.2022 with the following directions:

“6. Though Sri Swapnil Roy, learned counsel for the petitioner as also Sri Sishir Sundar Mohanty, learned Advocate for the

opposite party No.4-Regional Provident Fund Commissioner argued refuting the contention of the State that the Government, having deposited contributions towards EPF in respect of both employer and employee, is competent to recover the share of the employee's contribution towards discharge of liability on account of EPF for the past periods stemming on the provisions contained in Paragraph 32 of the Employees' Provident Funds Scheme, 1952, in view of clear admission on the part of the petitioner at paragraph 6.11 of the Writ Petition/Original Application (extracted supra) and that the opposite parties have received/recovered the amount as determined under Section 7A of the EPF Act, without entering into any controversy, interest of justice would be best served by vacating the interim order dated 05.05.2016 passed by the Odisha Administrative Tribunal, Cuttack Bench, Cuttack.

6.1. Without expressing any view on the question whether the Government is entitled to recover the share of the employee discharged towards EPF as determined under Section 7A of the EPF Act for the past periods, it is open to the petitioner to pay the amount as mentioned in the Office Order dated 14.08.2015 issued by the opposite party No.3 vide Annexure-2 in view of concession made at Paragraph 6.11 of the Writ Petition/Original Application.

6.2. The petitioner may, if so advised, approach the competent authority for ventilating its grievance with regard to contributions towards EPF in respect of the periods beyond July, 2004 till he was brought to the work charged establishment in the year 2009. The said competent authority may take immediate step in this regard keeping in view the decision rendered by this Court in the case of Executive Engineer, Right Canal Division No.-II, Rengali Irrigation Project Vrs. Regional Provident Fund Commissioner and Others, 2016 (II) ILR-CUT 422, and take a decision at the earliest preferably within a period of three months from the date of receipt of certified copy of this order. For this purpose, the petitioner shall submit a representation before the competent authority along with the certified copy of this order within a period of four weeks.

5. The present Writ Petition is, therefore, disposed of in the same terms as contained in the order dated 08.08.2022 in the case of *Ganeswar Jena (supra)*.

(M.S. Raman)
Judge