Item No.2 & 3.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 09.01.2023

DELIVERED ON: 09.01.2023

CORAM:

THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

M.A.T. No.385 of 2019
with
I.A. No.CAN 1 of 2019 (Old CAN 5268 of 2019)
with
I.A. No.CAN 2 of 2019 (Old CAN 5269 of 2019)

The Regional Provident Fund Commissioner & Anr.
Vs.
Sri Soumen Ghosh & Ors.

With

F.M.A. No.464 of 2019

Sri Soumen Ghosh
Vs.
The Regional Provident Fund Commissioner & Ors.

Appearance:-
Mr. Ananta Kr. Shaw,
Mrs. Tanusri Santra ... for the appellant.
(F.M.A. No.464 of 2019)

Mr. Shiv Chandra Prasad ... for the P.F. Authorities.

JUDGMENT

(Judgment of the Court was delivered by* T.S. SIVAGNANAM, *J.)

Re: I.A. No.CAN 1 of 2019 (Old CAN 5268 of 2019)

1. This is an application to condone the delay of 180 days in filing MAT 385 of 2019.

2. We have heard Mr. S. C. Prasad, learned Standing counsel appearing for the P.F. organisation and Mr. Ananta Kumar Shaw, learned Advocate appearing appellant / employee.

3. We are satisfied with the reasons assigned in the affidavit filed in support of the application. Accordingly, the delay in filing MAT 385 of 2019 is condoned.

4. The application for condonation of delay being I.A. No.CAN 1 of 2019 (Old CAN 5268 of 2019) is allowed.

5. There shall be no order as to costs.

Re: MAT 385 of 2019 and FMA 464 of 2019

6. These intra-Court appeals have been filed by the Regional Provident Fund Commissioner as well as the Sri Soumen Ghosh, the employee. Both being dissatisfied and aggrieved by the order passed by the learned Single Bench dated 14th August, 2018 in W.P. No.18643(W) of 2015 are before this Court.

7. We have heard Mr. S. C. Prasad, learned Standing counsel appearing for the P.F. organisation and Mr. Ananta Kumar Shaw, learned Advocate appearing appellant / employee.

8. The short issue, which falls for consideration in these appeals is as regards the quantum of interest payable to the employee on the total amount of provident fund dues payable / paid to the employee. The learned Single Bench had held that the employee is entitled for interest to a total sum of Rs.3,05,291/- as against the claim of the employee at Rs.5,66,256/- as of June, 2013. The learned Single Bench further directed that the P.F. organisation to pay interest at the rate of 6% per annum for the period from 2011 to 2013. Thus, the employee being aggrieved by denial of the total

interest payable and the organisation being aggrieved by the direction to pay interest at the rate of 6% per annum from 2011 to 2013 have preferred these appeals.

9. The explanation, which is sought to be given before this Court is by placing reliance on an affidavit filed by the Regional P.F. Commissioner before the learned Writ Court. The contents of the said affidavit were in fact adopted as the submissions by Mr. Prasad. It is stated that the employee was initially employed with M/s. Birds Jute and Exports Limited, which was an exempted establishment enjoying relaxation under para 79 of the Employees Provident Fund Scheme, 1952. The said exemption was cancelled / withdrawn with effect from 1st January, 2007 by order dated 12th December, 2006. It goes without saying that upon the exemption being cancelled, the Board of Trustees have to hand over the entire provident fund accumulation of its members to the provident fund authorities.

10. The moot question would be if the Board of Trustees of the establishment whose exemption was cancelled, failed to hand over the entire provident fund accumulations to the P.F. authorities, what is required to be done and who is required to take action.

The provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for brevity, "the Act") makes the position clear and it is the duty of the P.F. authorities to ensure that the entire accumulation of the members are remitted by the erstwhile Board of Trustees to the organisation. The Act provides for sufficient safeguard in the event the said establishment whose exemption was cancelled, fails to transfer the entire accumulations. Therefore, the employee cannot be blamed for the inaction on the part of the organisation in not taking adequate steps to recover the entire accumulation to its credit. The employee left the services of M/s. Bird Jute and Exports Limited on 1st September, 2004 and joined another establishment, which was also an exempted establishment. Therefore, so far as the employee is concerned, it is deemed that all the provident fund accumulations to his account should automatically stand transferred to the P.F. account in the new establishment, which in the case on hand, was also an exempted establishment. The employee retired from service of the new establishment on 1st February, 2008. Thereafter, several representations have been made by him to settle the P.F. dues not only to the management of the establishment but also to the Assistant Provident Fund Commissioner (Exempted), Regional

Provident Fund office, Kolkata. The employee also submitted form 19 on 4th October, 2010. However, the account was settled much later, i.e. in June, 2013 by paying the provident fund dues without interest.

11. From such date, the employee has been approaching the authorities for payment of interest and since there were no results for any of his representations, he has moved the learned Writ Court for necessary relief.

12. By representation dated 20th July, 2013, the employee claimed interest of Rs.5,66,256/- payable upto 21st June, 2013. Out of the said amount, the P.F. authorities have paid a sum of Rs.3,05,291/-. The learned Single Bench has not recorded any finding as to why the differential amount need not or cannot be paid to the employee. When the writ petition was heard, an affidavit was filed by the P.F. authorities, which appears to have been the basis for the direction issued by the learned Single Bench. The P.F. authorities would contend that interest would be payable only from 9th July, 2011 and not from the earlier period because the entire accumulations were not received by the organisation from the employer and they were received in instalments and they also rely upon an amendment to paragraph 60 of the Employees Provident Fund Scheme, 1952 by

which sub-para 6 was added in paragraph 60, which states that interest shall not be credited to the account of member from the date on which it has become inoperative account under the provision of sub-para 6 of paragraph 72.

13. Firstly, the employee cannot be blamed for inaction on the part of the P.F. authorities in not ensuring that the entire accumulations under the erstwhile employer was not remitted to the P.F. authorities within time. The affidavit filed by the Regional Provident Fund Commissioner does not state about the steps taken by the organisation against the first employer, that too in spite of several representations made by the employee. Therefore, the delay in receiving the accumulations or receiving the accumulations in instalments can have no impact on the employee's entitlement for payment of statutory interest in terms of para 60 of 1952 Scheme. Therefore, the organisation is bound to pay interest for the entire period.

14. So far as the direction issued by the learned Single Bench to pay interest at the rate of 6% per annum for the period from 2011 to 2013 is concerned, the interest being statutory cannot be altered nor there can be any waiver or reduction. Therefore, the interest shall be payable at the appropriate rate fixed by the Central Government from time to time.

15. In other words, interest shall be payable to the employee on the P.F. amount at the rate fixed by the Central Government during the relevant time. Therefore, we are of the view that the claim for interest as made by the employee has to be settled by the respondent /organisation. The learned Advocate appearing for the employee had furnished a calculation sheet stating that the interest payable upto November, 2022 after giving credit to a sum of Rs.3,05,291/- is Rs.7,85,282/-. However, this calculation has been handed over to us in court and has not been furnished to the department at any earlier point of time. In any event, having held that the employee is entitled for payment of interest with effect from 20th June, 2013, the amount of interest has to be calculated by the P.F. authorities by applying the rate of interest fixed by the Central Government from time to time and the amount should be settled to the employee.

16. In the result, the appeal filed by the employee in FMA 464 of 2019 is allowed and the appeal filed by the Provident Fund organisation being MAT 385 of 2019 is dismissed.

17. There will be a direction to the P.F. organisation to calculate the interest in terms of the above direction and settle the same to the employee within a period of four weeks

from the date of receipt of the server copy of this judgment and order.

18. Mr. Prasad would contend that the organisation should be granted liberty to proceed against the employers of the employee concerned for recovery of the appropriate sums, which they have to pay to the employee. Needless to state that if the statute empowers the organisation to proceed against those employers, it will be well open to the organisation to proceed against them in accordance with law.

19. There shall be no order as to costs.

20. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM, J)

I agree,

(HIRANMAY BHATTACHARYYA, J.)

NAREN/PALLAB(AR.C)