Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 1191 of 2023

Somnath Chatterjee
-vs-
Regional Provident Fund Commissioner & Ors.

For the petitioner	:	Mr. Ramji Munsi Mr. Nishant Choudhury Ms. C Pal
For respondent no. 1	:	Mr. S C Prasad
For respondent nos. 2 & 3	:	Ms. Amrita Pandey Ms. Sneha Singh
Heard on	:	*26.06.2023*
Judgment on	:	*26.06.2023*

Raja Basu Chowdhury, J:

1. The present writ application has been filed, inter alia, praying for a direction upon the respondent nos. 1 and 2 to ensure release of provident fund accumulation of the petitioner.
2. The petitioner was appointed as a managerial staff, vide letter of appointment dated 23.7.2008 issued by the respondent no. 3, on the terms and conditions set forth therein. It is the

petitioner's case that by letter dated 27.7.2009 the petitioner's service was confirmed with effect from 24.7.2009. Subsequently, on 1.8.2018 by a communication in writing the petitioner was informed by the respondent no. 3 that the petitioner shall be entitled to the revised emoluments as per particulars provided therein.

3. The petitioner claims to have tendered his resignation vide letter dated 4.5.2022. It is the petitioner's further case that the respondent no. 3 vide communication in writing dated 5.5.2022 had accepted the petitioner's resignation and had released him from the service of the respondent no. 3 with effect from the close of work of 4.5.2022.

4. The petitioner contends that the respondent on. 3 is an exempted establishment and in ordinary course the respondent no. 2 ought to have disbursed the provident fund accumulations of the petitioner immediately upon cessation of relationship between the petitioner and respondent no. 3.

5. Unfortunately, since the retiral benefits including the provident fund dues of the petitioner had not been disbursed, the present writ application has been filed.

6. At the time of admission of the aforesaid application by order dated 20.3.2023, this Court by taking into consideration the submissions made by the petitioner, directed the respondent on. 2 to disclose by way of an affidavit, up-to-date provident

fund accumulation of the petitioner and to place before this Court a cheque drawn in the name of the petitioner, the admitted amount of provident fund accumulations as may be found due and payable to the petitioner on the returnable date.

7. Despite direction, no affidavit has been filed. On 4.4.2023 when the aforesaid matter had come up for consideration, the learned advocate representing the respondent nos. 2 and 3 had placed before this Court a letter dated 7.9.2022 addressed to the respondent no. 1 seeking permission to withdraw from the Special Deposit Account no. 1, for making payment to 169 numbers of ex-employees of the respondent no. 3. The petitioner's name also features in the list enclosed to the said letter.

8. Having regard to the aforesaid, the matter was adjourned to enable the learned advocate representing respondent no. 1 to take appropriate instructions in the matter.

9. Today Mr. Prasad, learned advocate representing the respondent no. 1 submits on instructions that the respondent no. 2 is holding approximately more than Rs. 5 crores and as such, there is no necessity for the said respondent to withdraw from the Special Deposit Account no. 1.

10. In the present case, I find on the basis of disclosure made by the respondent no. 2, a sum of Rs. 1,98,628.32 is due and

payable to the petitioner on account of provident fund accumulations. Ordinarily, respondent no. 2 was obliged to make payment of provident fund accumulations immediately upon acceptance of the resignation of the petitioner by the respondent no. 3. The same has not been done. There is no explanation for the delay. The petitioner has a legal right to claim not only the provident fund accumulation, but also to claim interest thereon. The right to receive interest for the delayed payment of retiral benefits is a recognized right.

11. In the present case it was the bounden duty of the respondent no. 2 to disburse the provident fund, pension and other retiral dues of the petitioner immediately upon the same having become due. If the respondent no. 2 has failed to do so and had held back the said amount, it is obliged to pay compensatory interest along with the retiral benefits. It has also been held in a judgment delivered by the Hon'ble Supreme Court in the case of ***S K Dua vs. State of Haryana & Anr.,*** reported in ***(2008) 3 SCC 44*** that an employee has a right under Article 14, 19 and 21 of the Constitution of India to claim interest on delayed payment of retiral benefits. The Employees' Provident Funds and Miscellaneous Provisions Act,1952 also attracts interest on account of delayed payment of contributions.

12. Having regard to the aforesaid, I direct respondent no. 2 to forthwith disburse the provident fund accumulations of the petitioner along with retiral benefits if any, within a period of four weeks from the date of communication of this order along with interest to be calculated @ 10% p.a from the date when the petitioner's resignation was accepted till such time the money is actually disbursed in favour of the petitioner.

13. With the aforesaid directions WPA 1191 of 2023 is disposed of.

14. There shall be no order as to costs.

15. Urgent Photostat copy of this order if applied for, be made available to the parties as expeditiously as possible upon compliance of all formalities.

(Raja Basu Chowdhury, J.)

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