52
10.10.2023
sb
Ct 550

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 23171 of 2023

Bhadreswar Sana
Vs.
The Union of India & Ors.

Mr. Tauhid Khan
... For the petitioner.

Ms. Aparna Banerjee
... For the provident fund authorities

Ms. Amrita Pandey
Ms. B. Jaiswal
... For the respondent nos. 5 & 6

1. The petitioner undertakes to file affidavit of service in course of the day.

2. The present writ petition has been filed, inter alia, praying for a direction upon the respondents to disburse the retiral benefits, *inter alia*, including provident fund accumulations of the petitioner.

3. Ms. Banerjee, learned advocate representing the provident fund authorities submits that though an exemption was granted to the Delta Limited (hereinafter referred to as the said "company") under Section 17(1) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred as the "said Act"), the same was cancelled by an order issued by the appropriate Government on 14th December, 2014. According to Ms. Banerjee, although it was obligatory

for the Trustees, Delta Jute & Industries Limited, Workers P.F., an exempted trust fund, (hereinafter to as the "trustees") and the said company to forthwith act in compliance with the provisions of Section 17(5) of the said Act and to transfer the provident fund accumulations of the respective employees as per paragraph 28 of the Employees Provident Fund Scheme, 1952 (hereinafter referred to as the Scheme of 1952), the same was not done.

4. On the contrary, the said company had filed a writ petition, challenging the said order of cancellation, which was registered as WPA 2953 of 2015. By placing reliance on an order dated 16th February, 2015, she submits that in the light of the interim order of stay granted by a Coordinate Bench of this Court in connection with WPA 2953 of 2015, no further steps could be taken by the provident fund authority to enforce the provisions of Section 17(5) and paragraph 28 of the Scheme of 1952. The same, however, did not absolve the said company and the trustees to file returns with the provident fund authority. Ms. Banerjee submits that although, the provident fund authority had taken steps to have the aforesaid order vacated and had filed an application for vacating, the provident fund authority could not succeed.

5. By relying on the order dated 7th June, 2023, it is

submitted that the aforesaid writ application being WPA 2953 of 2015, had since been dismissed. Immediately upon dismissal of the said writ application, the provident fund authority had called upon the said company to comply with paragraph 28 of the Scheme of 1952. Having not received any response from the said company or from the trustees, the provident fund authority by a communication in writing dated 18th August, 2023, had called upon both the Trustees and the said company to submit proof of compliance, as an unexempted establishment, and to transfer the past accumulations along with the statement, in view of the cancellation of the exemption under Section 17(4) of the said Act.

6. Notwithstanding the aforesaid communications, neither the Trustees nor the company had taken any steps, or have they responded to the same. It is under such circumstances that the provident fund authority had, by a letter dated 18th August, 2023, appointed M/s Vinod Singhal & Co. LLP to carry out a third-party audit of the trust fund. Although, the said auditor had approached the trust and the company to carry out the audit, neither the company nor the trustees are cooperating with the auditor. According to Ms. Banerjee, there are several employees including the petitioner, who are yet to receive their provident fund

accumulations. Having regard to the conduct of the said company and the trustees, unless specific directions are issued by this Court, it would be very extremely difficult for the provident fund authority to ensure compliance of the statutory provisions, insofar as the trustees and the company are concerned, without which disbursal of the provident fund accumulations to the ex employees of the company would be impossible.

7. It is still further submitted that till date, the trustees and the said company have not furnished any document to the Enforcement Officer of the provident fund authority.

8. By placing before this Court the order dated 22nd September, 2023 passed in WPA 18746 of 2023 she submits that this Court taking into consideration the aforesaid facts in an identical case was, *inter alia*, pleased to dispose of the said application in terms of the aforesaid order. Having regard to the aforesaid it is submitted that the present writ application can also be disposed of on the basis and in terms of the direction contained in the order dated 22nd September, 2023.

9. Heard the learned advocates for the parties and considered the materials on record. Having regard to the aforesaid and taking into consideration the direction contained in the order dated 22nd September,

2023, I find that this Court by the aforesaid order in WPA 18746 of 2023 was, *inter alia,* pleased to dispose of the said application by observing as follows:-

> *"Although, the company having resisted the implementation of the order of cancellation is equally responsible with the trustees to implement the provisions of the said Act, insofar as transfer of accumulated provident fund contributions to the Provident Fund Authority, however, having regard to the stand taken by the company and the trustees as aforesaid and taking note of the order dated 17th December 2014 which has now reached finality, by reasons of dismissal of the writ application by order dated 7th June 2023, I am of the view that no fruitful purpose would be served by granting an extension to the company or the trustee to file the report, as I propose to dispose of the writ petition by the following order.*
>
> *I direct the Trustees and the Company to forthwith comply with the provisions of Section 17(5) of the said Act and transfer the entire amount lying with the trustees to the Regional Provident Fund Commissioner, Howrah Regional Office, along with the returns and the investment statement. The trustees and the company are directed to extend full cooperation to the enforcement officers of the provident fund authority and assist the auditors appointed by the provident fund authority in carrying out the third party audit as proposed by the provident fund authority. The aforesaid process of transfer of the trust*

fund to provident fund authority should be completed within a period of four (4) weeks from the date of communication of this order. The provident fund authority is directed to accept the same without prejudice to its claim. The Company, trustees and the provident fund authority should also ensure compliance of the aforesaid direction within the time specified herein.

Insofar as the petitioner's claim is concerned, since, the trustees and the company have already admitted the claim of the petitioner, I am of the view that the provident fund authority, which is otherwise obliged, should be directed to process the petitioner's claim and disburse the provident fund accumulations payable to the petitioner, as ex-employees of the said company, subject to verification by the Regional Provident Fund Commissioner, Howrah. In the process of verification of the petitioner's claim, if any document/application is required or needs to be executed by the petitioner, the same shall be communicated in writing to the petitioner, for him to comply with, and in such process the provident fund authority shall render full and complete assistance to the petitioner for complying with formalities, as and when required. The aforesaid process of disbursal of provident fund accumulations along with interest should be completed within a period of eight (8) weeks from the date of communication of this order.

With the above directions and observations, the writ petition being WPA 18746 of 2023 is accordingly ***disposed of**.”*

10. Since, by the aforesaid order the trustees have already been directed to transfer the entire trust fund unto and in favour of the Regional Provident Fund Commissioner, Howrah, along with the returns and since, consequentially the provident fund authority had been directed to act in accordance with the direction passed in the said order and to process the claim of the petitioner therein, I am of the view that the present writ petition can also be and is accordingly disposed of by directing the provident fund authority to process the petitioner's claim upon due verification thereof, in the same mode and manner as directed by order dated 22nd September, 2023 passed in WPA 18746 of 2023.

11. With the aforesaid observations/directions the writ application stands disposed of.

12. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)