IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6784 of 2023

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M/s The Longia Bidi Company, Barahdari, Biharsharif, Nalanda, through its Partner-Mohammad Ashirullah, aged about 39 years, Gender-Male, son of Md. Serajuddin.

... ... Petitioner/s

Versus

1. The Union of India.
2. The Board of Trustees (Central Board) Employees Provident Fund Organization (Ministry of Labour and Employment), Government of India, 14-Bhikaji Cama Place, New Delhi-110066.
3. The Regional Provident Fund Commissioner-II, Employees Provident Fund Organization (Ministry of Labour and Employment), Regional Office, Patna, Bhavishyanidhi Bhawan, R Block, Road No. 6, Patna-800001.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Alok Kumar, Sinha, Adv.
		Mr. Manish Kumar, Adv.
For the Respondent/s	:	Mr. Additional Solicitor General
For the EPFO	:	Mr. Ravi Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY

ORAL ORDER

11 11-07-2024 Heard learned counsel for the parties.

2. The present Writ Petition has been filed for the following reliefs:-

> *"(i) For setting aside the communication contained in Letter No. BR/PAT/EP/Part File/2846/2021/4571 dated 22.02.2023/23.02.2023 issued by the Regional Provident Fund Commissioner-II, Employees Provident Fund Organization (Ministry of Labour & Employment), Regional Office, Patna (Respondent No. 3) by which the Respondent No. 3 has placed frivolous*

and unreasonable conditions for refunding the excess amount Rs. 1012692/- paid by the petitioner, which the Provident Fund Department is under obligation of law to refund to the petitioner, and

(ii) For commanding the Respondent No. 3 to immediately refund the amount of Rs. 1012692/- to the petitioner with up-to-date interest."

3. The admitted facts are that the petitioner has been assessed under the provisions of the Provident Fund Act by the Regional Provident Fund Commissioner vide order dated 31.08.2007 and he was directed to pay an assessed sum of Rs. 20,25,382/- for the period of March, 1999 to March 2004. The petitioner, thereafter, preferred an appeal before the Employees' Provident Funds, Appellate Tribunal, New Delhi. The Appellate Tribunal vide order dated 25.02.2009 had directed the petitioner to deposit 50% of the assessed amount in terms of Section 7-O of the Provident Fund Act. As the petitioner could not comply with the above said condition, the appeal filed by the petitioner was dismissed vide order dated 28.05.2009. The petitioner aggrieved by the dismissal of the appeal by the appellate tribunal has preferred CWJC 12366 of 2009 before this Hon'ble Court. This Hon'ble Court vide order dated 15.09.2009 while setting aside the order of dismissal dated 28.05.2009 passed by

the appellate tribunal has directed the petitioner to deposit 50% of the assessed amount and after the deposit of the said amount the appellate authority was directed to hear the appeal on merits and pass orders. Pursuant to the order dated 15.09.2009 passed by this Hon'ble Court in CWJC No. 12366 of 2009, the petitioner deposited 50% of the assessed amount i.e. Rs. 10,12,692/- between the period from 01.10.2009 to 13.10.2009 by way of four different *challans*. That the appellate authority has passed the final order on 02.06.2011 setting aside the order of assessment dated 31.08.2007 whereby the petitioner was assessed for a sum of Rs. 20,25,382 and remanded the matter back to the Provident Fund Authority for determining the liability of the petitioner afresh. After remand, the petitioner was assessed an amount of Rs. 49,453/- for the period from April, 1999 to March, 2004 vide order dated 29.09.2022. The authority while passing the fresh assessment order had directed the petitioner to deposit the assessment amount of Rs. 49,453/-. Thereafter, the petitioner filed a review application seeking for adjustment of the Rs. 49,453/- against the amount of Rs. 10,12,692/- deposited at the time of filing the appeal. The authority vide order dated 30.11.2022 rejected the review application stating that the refund of the amount may be taken as a separate issue with the department. The petitioner, thereafter, complied with the order dated 29.09.2022 and deposited the fresh assessment of Rs. 49,453/- and made a request for refund of the amount of Rs. 10,12,692/- along with interest. The assessing authority vide letter dated 22.02.2023/23.02.2023 has sought to impose penal damage and interest on the fresh assessment amount of Rs. 49,453/- and after adjusting the same the balance amount from the Rs. 10,12,692/- would be refunded. Aggrieved thereof, the petitioner has approached this Hon'ble Court by way of the present writ petition.

4. Learned counsel appearing on behalf of the petitioner has stated that once the appellate authority had set aside the initial order of assessment passed by the assessing authority, the official respondents were obligated to refund the amount of Rs. 10,12,692/- which was deposited in compliance of Section 7-O of the Provident Fund Act. That the authority took more than ten years for deciding the matter after the remand order of the appellate authority. That for the period of ten years the amount deposited by the petitioner was lying with the official respondents and having utilized the amount, they are obligated to pay the interest on the same. It is further stated that the authorities cannot enrich themselves by keeping the amount

with them for a period of more than ten years and refuse to refund the amount with interest which has been deposited by the petitioner.

5. Per contra, the learned counsel for the respondents has vehemently opposed the very maintainability of the present writ petition. Learned counsel has stated that there is no provision under the Provident Fund Act for giving any interest to the petitioner on the money deposited. Learned counsel has stated that after the order of remand passed by the appellate authority, the petitioner had approached the assessing authority for refund of the amount deposited by him in compliance of Section 7-O of the EPF & MP Act, for the first time only on 27.01.2023. Therefore, the present writ petition was filed in the month of April, 2023. Learned counsel has stated that the amount of Rs. 10,12,692/- paid by the petitioner was already refunded in two tranches on 16.10.2023 and 17.10.2023, therefore the question of paying any interest on the said amount does not arise. Learned counsel has stated that in the absence of any provision under the Provident Fund Act, the question of paying any interest on the amount deposited by the petitioner does not arise. That the Provident Fund Act is a beneficial legislation which is enacted for the benefit of the employees and

the amounts which are deposited in the fund are utilized only for the benefit of the employees. Learned counsel has stated that the present writ petition is misconceived and prayed for dismissing the writ petition.

6. The only issue in the present writ petition is as to whether the petitioner is entitled to any interest on the amount which has been deposited by the petitioner in compliance of the Section 7-O of the Provident Fund Act and kept with the authority for nearly ten years pursuant to the order of this Hon'ble Court in CWJC No. 12366 of 2009 dated 15.09.2009. Admittedly, in the present case after the remand by the appellate tribunal the assessing authority has passed the final assessment order after lapse of more than ten years. The initial assessment order of Rs. 20,25,382/- was set aside and the fresh order of assessment was arrived at fixing the liability at only Rs. 49,453/- based on the report submitted by the Area Enforcement Officer dated 08.05.2012. It is also an admitted fact that though the petitioner has sought for a refund of the amount deposited by him under Section 7-O of the Provident Fund Act the same was not done by the authority and the petitioner had to approach this Court. This Court vide order dated 13.10.2023 had directed the counsel for the respondents to get necessary instructions as to by

what date the amount deposited by the petitioner would be refunded to him. Thereafter, only the amounts was refunded to the account of the petitioner on 16.10.2023 and 17.10.2023. When the main case was taken up for final hearing, this Court had directed the respondents vide order dated 21.03.2024 to clarify as to how the deposited amount of Rs. 10,12,692/- was utilized by the Corporation, whether it was deposited in a Bank and in case, it was deposited in the Bank how much interest was received by the fund on the amount of Rs. 10,12,692/-. Pursuant to the said order a supplementary counter affidavit has been filed by the respondent. In the supplementary counter affidavit, the respondent-authority have only reiterated the contents of the counter affidavit earlier filed by them and stated that the petitioner is not entitled to receive any interest on the deposited amount and did not answer the query raised by this Court. Further, in the supplementary counter affidavit, they have stated that the order passed in review application filed by the petitioner had become final. That the petitioner for the first time had approached the respondent authorities only in the month of 27.01.2023. The supplementary counter affidavit is silent with regard to the queries raised by this Court vide order dated 21.03.2024. In this particular case, admittedly, the appeal filed by the petitioner was allowed on 02.06.2011 and the matter was remanded back to the authority for passing orders afresh. The authority for reasons best known to them has taken ten years to pass the final assessment order. Though the authority was obligated to refund the amount without the petitioner asking for the same, they have not done so and kept the amount with them for the ten years. The fact that the amount deposited by the petitioner has been utilized by the respondent-authority or that the said amount was deposited in a Bank has not been denied by the respondent authority. The authorities having kept the money with them for a period of more than ten years cannot enrich themselves at the cost of the petitioner. Even though sufficient opportunity was given to the respondent-authorities to clarify as to how the deposited amount was utilized, they have failed to answer the query raised in their supplementary counter-affidavit and, therefore, an adverse inference has to be drawn against them and it has to be contended that they have deposited the amount in a Bank and earned interest on the same.

7. The Hon'ble Supreme Court in the case of ***Sahakari Khand Udyog Mandal Ltd. Vs. Commissioner of Central Excise & Customs*** reported in ***(2005) 3 SCC 738*** has held as follows:-

> *"31. Simply stated, "unjust enrichment" means retention of a benefit by a person that is unjust or inequitable. "Unjust enrichment" occurs when a person retains money or benefits which in justice, equity and good conscience, belong to someone else.*
>
> *32. The doctrine of "unjust enrichment' postulates that no person can be allowed to enrich inequitably at the expense of another. A right of recovery under the doctrine of "unjust enrichment" arises where retention of a benefit is considered contrary to justice or against equity.*
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> *33. The juristic basis of the obligation is not founded upon any contract or tort but upon a third category of law, namely, quasi-contract or the doctrine of restitution."*

8. The Hon'ble Supreme Court in the case of ***Mahabir Kishore Vs. State of M.P.*** reported in ***(1989) 4 SCC 1*** has also held as under:-

> *"11. The principle of unjust enrichment requires; first, that the defendants has been "enriched" by the receipt of a "benefit"; secondly, that this enrichment is "at the expense of the plaintiffs"; and thirdly, that the retention of the enrichment be unjust. This justifies restitution. Enrichment may take the form of direct advantage to the recipient wealth such as by the receipt of money or indirect one for instance where inevitable expenses has been saved."*

9. Having regard to the above mentioned facts and

circumstances, this court is of the opinion that the ends of justice would be met if the respondent authority are directed to calculate simple interest at the rate of 6% per annum on the amount of Rs. 10,12,692/- from the date of passing of the order by the appellate authority i.e. 02.06.2011 till date of actual payment to the petitioner i.e. 16.10.2023 and pay the same to the petitioner. The interest shall be calculated and paid as expeditiously as possible preferably within a period of four weeks from the date of receipt of this order.

10. With the above observation, the present writ petition stands allowed to the extent indicated.

(A. Abhishek Reddy , J)

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