IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12639 of 2018

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Sri Bhagwan Singh Son of Late Bhagwat Prasad Singh, Resident of Co-operative Colony, Godhna Road, P.S.- Nawada, District- Bhojpur.

... ... Petitioner/s

Versus

1. The Union Of India through the Secretary, Ministry of Labour and Employment, Govt. of India, New Delhi.
2. The State of Bihar through the Principal Secretary, Department of Co-operation, Govt. of Bihar, Vikas Bhawan, Patna
3. The Employees Provident Fund Organisation Ministry of Labour and Employment, through its Managing Director, New Delhi
4. The Employees Provident Fund Organisation (Ministry of Labour and Employment), Regional Office, Patna Bhavishya Nidhi, R. Block, Road No. 6, Patna through CPIO, Bihar, Patna.
5. The Bihar State Co-operative Federation Ltd., through its Executive Officer, Budh Marg, Patna.
6. The Central Co-operative Bank Ltd., Ara, P.O.- Ara, District- Bhojpur through its Managing Director

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 12814 of 2018

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Rajiv Ranjan, Son of Late Sukhdeo Lal Srivastava resident of Mohalla Anaith, Ara, P.S. Nawada, District - Bhojpur.

... ... Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of Cooperation, Bihar, Vikas Bhawan, New Secretariat, Patna.
2. The Union of India through the Secretary, Ministry of Labour and Employment, Govt. of India, New Delhi
3. The Employees Provident Fund Organisation (Ministry of Labour and Employment) through its Managing Director, New Delhi.
4. The Employees Provident Fund Organisation (Ministry of Labour and Employment), Regional Office, Patnn Bhavishya Nidhi, R. Block, Road No. 6, Patna through CPIO, Bihar, Patna.
5. The Bihar State Co-operative Federation Ltd through its Executive Officer, Budh Marg, Budh Marg, Patna.
6. The Central Co-operative Bank Ltd., Ara, P.O. Ara, District Bhojpur through its Managing Director.

... ... Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 12639 of 2018)

For the Petitioner/s	:	Mr. Ram Krishna Singh, Advocate Mr. Raghunath Singh, Advocate
For the Respondent/s	:	Mr. Syed Iqbal Ahmad- Sc20
For the Bank	:	Mr. Vindhyachal Rai, Advocate
For the E.P.F.O.	:	Mr. Rajesh Prasad Choudhary, Advocate

(In Civil Writ Jurisdiction Case No. 12814 of 2018)

For the Petitioner/s	:	Mr. Anirudh Kumar Singh, Advocate
For the Respondent/s	:	Mr. Chittranjan Sinha -Paag2
For the Bank	:	Mr. Vindhyachal Rai, Advocate
For the E.P.F.O.	:	Mr. Rajesh Prasad Choudhary, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

CAV JUDGMENT

Date : 19-01-2024

This Court has heard Mr. Ram Krishna Singh, learned counsel duly assisted by Mr. Raghunath Singh on behalf of the petitioner in CWJC No. 12639 of 2018 and Mr. Anirudh Kumar Singh, learned counsel for the petitioner in C.W.J.C. No. 12184 of 2018, Mr. Rajesh Prasad Choudhary, learned counsel for the Employees Provident Fund Organization, Mr. Vindhyachal Rai, learned counsel for the Co-Operative Bank.

2. Considering the identical issue, involved in both the writ petitions, with the consent of the parties, the matters have been heard together and disposed off by the present common order.

3. Undisputedly, the petitioners had joined the services of the Central Co-operative Bank Limited, Ara on 27.09.1979 and subsequently were promoted to the post of Assistant Accountant and after serving unblemished service, the petitioner, Sri Bhagwan Singh, superannuated on 31.08.2013

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whereas the petitioner, Rajiv Ranjan superannuated on 13.06.2013 respectively. The petitioners having been superannuated got a sanction letter vide memo no. 415, Ara dated 17.10.2013, and memo no. 264, Ara dated 05.08.2013 respectively for payment of retirement benefit, computing leave encashment and gratuity.

4. It is the case of the petitioners that since the date of their joining i.e. 27.09.1979, prior to commencement of Employees Pension Scheme, 1995, they had regularly deposited their respective share of Provident Fund amount from their salary to the respondent “Bank” and after addition of rest of the ½ share, the bank had also deposited contributory Provident Fund amount to respondent Bihar State Co-operative Federation, Patna under Miscellaneous Provision Act, 1952. After the constitution of the Employees Provident Fund Organization, the contribution of the petitioners along with employer’s ½ share, the total amount has been deposited by the bank in the Employees Provident Fund Organization and accordingly the respective Employees Provident Fund account(s) have been allotted to the petitioners, in which contributory provident amount has been deposited till the date of their respective retirement.

5. In the aforesaid premises, the respondent bank

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sent the list of its 32 employees by incorporating their account numbers with the statement of contribution for the period 2009-2010, including the name of the petitioners. The respondent bank also submitted the contribution report stating the deposit of contributory provident fund amount of the petitioners, which was duly received in the Employees Provident Fund Scheme.

6. Despite the fact, that the petitioners on being superannuated from their post of Assistant Accountant, the petitioners did not get pension under the Employees Pension Scheme, 1995. The petitioners on being aggrieved, filed an application under the Right to Information Act, 2005 seeking information regarding non-payment of their pension. In response thereto, it has been informed vide letter no. 3301 and letter no. 3303, both dated 06.12.2017 issued under the signature of CPIO, Bihar, Employees Provident Fund Organization that since the contribution entry of the petitioners in the EPFO institution is on 11.09.2005 and the petitioners have attained the age of 58 years in the year 2011 thus, they have had only 6 years of service period, though under the Employees Pension Scheme, 1995, 10 years of service period is essentially required for monthly pension, thus, the petitioners are not entitled to get the same.

7. Aggrieved, the petitioners by invoking the

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extraordinary jurisdiction of this Court under Article 226 of the Constitution of India sought quashing of the letter nos. 3301 and 3303, both dated 06.12.2017 issued by the respondent no. 4 negating the claim of the petitioners for their monthly pension. The petitioners also sought a direction commanding upon the respondents to ensure monthly pension and other relief/reliefs as deem fit and proper, in the facts of the present case.

8. It is submitted on behalf of the petitioners that they have served the respondent bank for about 34 years and the regular deductions from their salary have been made under the head of Contributory Provident Fund and, as such, under the Employees Pension Scheme, 1995 the petitioners are entitled to get monthly pension. Heavy reliance has been made on a judgment rendered by the Hon'ble Supreme Court in SLP (s) 10013-10014 of 2016 (***R.C. Gupta and Ors. vs. Regional Provident Fund Commissioner, Employees Provident Fund Organization and Ors.***). Referring to the afore-noted judgment, it is submitted that the case of the petitioners are identical to the case of R.C. Gupta, (supra) wherein the Apex Court has in uncertain terms observed that the pension scheme is beneficial scheme and it ought not to be allowed to be defeated by reference to a cut-off date, particularly in a situation where the employer had deposited 12% of the actual salary and not 12% of

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the ceiling limit of Rs. 5,000/- or Rs. 6,500/- per month, as the case may be.

9. Per contra learned counsel for the respondent no. 1 as well as respondent no. 6 by filing their separate response in the writ petition have refuted the contention of the petitioners. It is submitted on behalf of the respondent no. 1 that admittedly the petitioners have deposited their share of the provident fund and the Ara Central Co-operative Bank after adding its share, deposited the same to the Bihar State Co-operative Federation, which was running a provident fund committee in terms of Miscellaneous Provident Fund Act, 1952. Subsequently, on receipt of a letter bearing memo no. 110 dated 04.03.2005 issued under the signature of the Secretary, Provident Fund Committee, requesting inter-alia to withdraw the fund deposited in the Provident Fund Committee, the Managing Director of the Central Co-operative Bank, Ara withdrew the entire amount, to the tune of Rs. 3,89,36,514/-, the contribution of 145 employees including the share/fund of both the petitioners, and sent the same to the Employees Provident Fund Organization. Thereafter the respondent bank begin to deposit the provident fund contribution of employees as well as the bank's share to the Employees Provident Fund Organization.

10. It is next submitted that in compliance of the

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order of the Hon'ble Court dated 11.05.2023 passed in the present case, the Registrar, Co-operative has been directed to examine the cases of both the petitioners after giving a proper opportunity to all the stakeholders, including the Managing Director of the bank. The respondent, Registrar, Co-operative having considered the materials on record, has passed the order contained in memo no. 3203 dated 18.05.2023 negativing their claim taking note of the provision incorporated in the Employees Provident Fund Organization that the eligibility criteria for payment of monthly pension is by calculating the services of the petitioners from the coverage area that is 11.09.2005, thus the petitioners do not qualify the eligibility criteria on the date of attaining the age of 58 years as they have not rendered even required tenure of minimum 10 years of service in order to get monthly pension.

11. A separate counter affidavit has been filed on behalf of the respondent, Employees Provident Fund Organization, it is categorically submitted that the establishment in question M/s Central Co-operative Bank Limited, Ara was brought under coverage of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 with effect from 11.03.2005. As per para 12(1) of the Employees Pension Scheme, 1995, a member shall be entitled to a superannuation

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pension, if he has rendered eligible service of 10 years or more and retires on attaining the the age of 58 years. Thus, for the grant of pension under the E.P.S. 1995, 10 years of service period is sine-qua-non. As the petitioners services from the date of coverage of the establishment that is 11.03.2005 till June/August, 2011 (attaining the age of 58 years as per the office record) only arrives at 6 years and in that view of the matter they are not entitled for the grant of pension.

12. It is further submitted that the working of the petitioner for 34 years in the establishment is not relevant, while determining the eligibility for the pension as per the provision of Employees Provident Fund and Miscellaneous Provision Act Act, 1952 and Employees Pension Scheme, 1995.

13. Further submission has been made that the reliance made on behalf of the petitioners in the case of ***R.C. Gupta and Ors. (Supra)*** is not applicable in the present case as it relates to the pensioners, who were availing pension after fulfilling the eligibility criteria of pension entitlement as per the provisions of Employees Provident Fund and Miscellaneous Provision Act, 1952 and Employees Pension Scheme, 1995.

14. The respondents lastly submitted that the employees never made a complaint to the Employee Provident Fund Organization that from 1979 onwards they have been

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wrongly included under the Contributory Provident Fund Scheme of the bank. Had there been any complaint from the employees, the establishment would have certainly inspected and the compliance would have been ensured taking the recourse under the law as available under the act. From the record it appears that the petitioners were happy with the Contributory Provident Fund Scheme and thus, they have never raised the grievance during their service period and first time they approached this Court after 7 years of availing the withdrawal benefit and after 5 years of their retirement.

15. It is also the submission of the respondents that till date there is no challenge to the date of coverage of the establishment and if any such challenge is made it can be decided in a quasi-judicial proceeding provided under Section 7 A of the Employees Provident Fund and Miscellaneous Provision Act, 1952. All the more there is difficulty in shifting back the date of coverage even in a proceeding under Section 7A as many employees would have already retired or even died and there would be difficulty in collecting evidence with regard to the eligibility of each and every employee with effect from a particular date and then making payment.

16. On the afore-noted reasons the respondents vehemently submitted that the writ petitions are devoid of any

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merit.

17. This Court has anxiously heard the learned counsel for the respective parties and also perused the materials available on record. This Court first of all takes note of the admitted fact that both the petitioners were appointed in the respondent bank way back in the year 1979 and the employees and employers contributions have regularly been deposited to the Bihar State Cooperative Federation, which was running a Provident Funds Committee, in terms of Miscellaneous Provisions Act, 1952, till 11.09.2005, the date on which entire provident fund has been transferred to the EPFO.

18. Now it would be important to note the relevant provisions of the Employees Pension Scheme, 1995 which has been framed in exercise of the powers conferred under Section 6A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952. Clause 2(ix) of the scheme defines member; means an employee who becomes, a member of the Employee's pension fund in accordance with the provisions of this scheme. Clause 2(xv) defines 'pensionable service', means the service rendered by the member for which contributions have been received or are receivable. Further clause 6 of the scheme speaks about membership of the employee pension scheme which reads as follows:

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6. Membership of the Employees' Pension Scheme. - Subject to sub-paragraph (3) of paragraph 1, the Scheme shall apply to every employee –

(a) who on or after the 16th November, 1995, becomes a member of the Employees' Provident Fund Scheme, 1952, or of the Provident Funds of the factories and other establishments exempted by the appropriate Government under section 17 of the Act, or in whose case exemption has been granted under paragraph 27 or 27-A of the Employees' Provident Fund Scheme, 1952 and whose pay on such date is less than or equal to fifteen thousand rupees, from the date of such membership ;

(b) who has been a member of the ceased Employees' Family Pension Scheme, 1971 before the commencement of this Scheme from 16th November, 1995 ;

(c) who ceased to be a member of the Employees' Family Pension Scheme, 1971 between 1st April, 1993 and 15th November, 1995 and opts to exercise his option under Paragraph 7 ;

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(d) who has been a member of the Employees' Provident Fund or of Provident Funds of factories and other establishments exempted by the appropriate Government under section 17 of the Act or in whose case exemption has been granted under Paragraph 27 or 27 A of the Employees' Provident Fund Scheme, 1952, on 15th November, 1995 but not being a member of the ceased Employees' Family Pension Scheme, 1971 opts to exercise his option under paragraph 7. ***Explanation.****- An employee shall cease to be the member of Pension Fund from the date of attaining 58 years of age or from the date of vesting admissible benefits under the Scheme, whichever is earlier."*

19. Further clause 12(1)a clearly says that a member shall be entitled to superannuation pension if he has rendered eligible service of 10 years or more and retires on attaining the age of 58 years.

20. From the conjoint reading of the afore-noted provisions it is manifest that for becoming a member of the Employees Pension Scheme, 1995 the basic requirement to be a member of the Employees Provident Fund Scheme, 1952 or

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being an employee of exempted establishment or a member of the seized Employees Family Pension Scheme, 1971. From the materials available on record in the present case undoubtedly the petitioners were neither the member of the Provident Fund Scheme, 1952 nor they were a member of Provident Fund Trust of an exempted establishment and not even they were the members of the seized Employees Family Pension Scheme, 1971.

21. From the record it is also evident that the provident fund contribution of the petitioners, as well as other employees of the bank, were used to be deposited with Provident Fund Committee, Bihar Cooperative Federation Building.

22. It is for the first time on 04.03.2005, the Secretary of the said Provident Fund Committee wrote a letter to the Managing Director of the Bank and other Cooperative Societies, with a request to withdraw the amount of provident fund of their employees and not to deposit provident fund contribution of their employees with the Committee.

23. In the aforesaid premise, the Provident Fund Committee, of which the petitioners were the members, took a decision to transfer the entire amount of provident fund deposited with the Provident Fund Committee to Employees

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Provident Fund Organization on 11.03.2005. Thus, from 11.03.2005, the Bank employees including the petitioners came under the coverage of Employees Provident Fund and Miscellaneous Provision Act, 1952.

24. It is also the fact that the petitioners after having attained the age of 58 years, have also availed the withdrawal benefit and have withdrawn their pension contribution, all the more the petitioners never made any complaint regarding bringing them or their establishment under the EPS, 1995, belatedly.

25. Now coming to the applicability of the mandate of Apex Court in the case of ***R.C. Gupta and Ors. vs. Regional Provident Fund (supra)*** on which heavy reliance has been made on behalf of the petitioners. This Court before making any observation deems it proper to quote paragraph nos. 10 and 11 thereof, wherein the Apex Court held as follows:-

> *"10. We do not see how exercise of option under paragraph 26 of the Provident Fund Scheme can be construed similar to stop the employees from exercising a similar option under paragraph 11 (3). If both the employer and the employee opt for deposit against the actual salary and not the ceiling amount, exercise of option*

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under paragraph 26 of the Provident Fund Scheme is inevitable. Exercise of the option under paragraph 26(6) is a necessary precursor to the exercise of option, therefore, would not foreclose the exercise of a further option under Clause 11 (3) of the Pension Scheme unless the circumstances warranting such foreclosure are clearly indicated.

11. The above apart in a situation where the deposit of the employer's share at 12% has been on the actual salary and not the ceiling amount, we do not see how the Provident Fund Commissioner could have been aggrieved to file the L.P.A. before the Division Bench of the High Court. All that the Provident Fund Commissioner is required to do in the case is an adjustment of accounts which in turn would have benefited some of the employees. At best what the Provident Commissioner could do and which we permit him to do under the present order is to seek a return of all such amounts that the concerned employees may have taken or withdrawn from their Provident Fund Account

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before granting them the benefit of the proviso to Clause 11 (3) of the Pension Scheme. Once such a return is made in whichever cases such return is due, consequential benefits in terms of this order will be granted to the said employees."

26. From the careful reading of the afore-noted judgment, indubitably, it appears that the issue involved in the said case related to the pensioners, who were availing pension after fulfilling the eligibility criteria of pension entitlement as per the provisions of Employees Provident Fund and Miscellaneous Provision Act, 1952 and Employees Pension Scheme, 1995.

27. In the aforesaid case the facts which were lying before the Apex Court were only in relation to the proviso added to clause 11(3) with effect from 16.03.1996 permitting an option to the employer and an employee for contribution on salary exceeding Rs. 5,000/- or Rs. 6,500/- with effect from 08.10.2001 per month.

28. The Apex Court having considered the submissions held that the benefit under the scheme ought not to be allowed to be defeated by reference to a cut-off date.

29. Admittedly the petitioners had never been the members of Employee Pension Scheme, 1995 and for the first

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time, the establishment was brought within the purview of the Act and the Scheme when the establishment voluntarily transferred its past accumulation on 11.03.2005.

30. Further this Court also finds the substance in the contention of the respondents that upon coverage of the establishment under the scheme by the Employees Provident Fund Organization, no objection was raised by the employees that the Acts/Scheme required to be made applicable upon the establishment with effect from any prior date nor till date there is any challenge to date of coverage of the establishment, rather the employees were satisfied with the Contributory Provident Fund Scheme and they also withdrew their amount, after attaining the age of 58 years without any protest.

31. Well settled it is that a person cannot approbate and reprobate at the same time. The principle of approbate and reprobate, based upon the doctrine of election clearly specify that a person cannot say at one time that a transaction is valid and thereby obtains some advantage to which he could only be entitled on the footing that it is valid and then turn around and say it is void for the purpose of securing some other advantage.

32. In other words, an individual is not allowed to both accept and reject the same instrument according to the benefits of losses arising out of the particular conveyance or

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order.

33. In view of the aforesaid facts, circumstances and the position obtaining in law, especially the fact that the submission of the petitioner with regard to the applicability of law laid down by the ***R.C. Gupta and Ors. (supra)*** is wholly misconceived in the facts of the present case and, as such, this Court does not find any merit in the writ petitions.

34. Accordingly the writ petitions stand dismissed having found no merit.

(Harish Kumar, J)

supratim/-

AFR/NAFR	NAFR
CAV DATE	01.12.2023
Uploading Date	22.01.2024
Transmission Date	NA

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