30.07.2024
Court No.13
Item No.14-15
pk

MAT 2130 of 2023

Paschim Banga Samagra Shiksha Mission and another
Vs.
Rajya Parshwa Shikshak Samanway Samity and others

With

MAT 1481 of 2024
The State of West Bengal and another
Vs.
Rajya Parshwa Shikshak Samanway Samity and others

Mr. L. K. Gupta, Sr. Advocate,
Mr. Arjun Ray Mukherjee,
Ms. Debapriya Mitra
... for the appellants in MAT 2130 of 2023 and the respondent nos. 16 and 17.

Mr. Indranath Mitra
... for the respondents/writ petitioners.

Mr. Anirban Ray, Ld. Govt. Pleader,
Ms. Shrivalli Kajaria,
Mr. Debjyoti Das
... for the State of West Bengal.

Ms. Sumita Sarkar
... for the Union of India in MAT 2130 of 2023.

Mr. Anil Kumar Gupta
... for the EPFO in both matters.

Mr. Sutirtha Das,
Mr. Sudipto Dasgupta
... for the added respondent.

1. This Court has heard the learned advocates for the parties at length.

2. Having regard to the detailed arguments made today and the applications filed containing all pleadings and papers relevant, the appeal itself is taken up for final hearing.

FACTS OF THE CASE:-

3. The Central Government in collaboration with the State started a scheme called "the Paschim Banga Samagra Siksha Mission" for the purpose of imparting education to those who missed out on elementary education. The Mission has been implemented in the State of West Bengal since the year 1999. Both the Central and the State Governments share the funds for the said project/Mission. No funds are earmarked for payment of provident fund.

4. The Samagra Siksha Mission (SSM) Authorities, which is society registered under the West Bengal Societies Registration Act, 1961 relying upon several notifications of the Central Government dated 4th July, 2003, 7th June, 2005 and 14th May, 2010 found themselves exempted under Section 16(2) of the Employees Provident Fund and Miscellaneous Provisions Act of 1952, and thus did not deposit PF in

respect of their employees, from 1st April, 1999 till 31st March, 2015.

5. The employees of the SSM moved WPA No. 11281 of 2017 that was disposed of by order dated 17th September, 2019 directing the RPFC to take steps against the appellants, under the Act of 1952 for non-deposit of provident fund dues. An application seeking review of the said order failed.

6. The order was carried in appeal that was disposed of by a Division Bench of this Court by order dated 08.03.2022 in MAT 1962 of 2019. The order of Single Bench dated 17th September, 2019 was not interfered with. However, the appellants were granted liberty to approach the Central Government for a formal order of exemption under Section 16(2). An SLP carried from the said order of the Division Bench was also dismissed.

7. The appellants applied on 25.08.2022 before the Central Government, Ministry of Labour and Employment for issuance of formal order of exemption under Section 16(2). It was clarified by the Central Government, Ministry of Labour by order dated 14th August, 2023, that the appellant was already enjoying Exemption from paying PF for the period of 1st April, 1999 to 31st March, 2015

8. Prior to the said order, certain mandatory orders were passed by Single Bench and the Division Benches of this Court directing the Central Government to dispose of the representation of the appellants dated 25.08.2022.

9. In another writ petition being WPA 1571 of 2017 a Single Bench of this Court by order dated 11th September, 2017 had also directed the P F Authorities to proceed against the appellants under Section 7A of the Act of 1952. Admittedly, by that time the State had already applied in 2016 for grant of exemption to the WBSSM, which was pending consideration before the Central Government.

10. The order dated 11th September, 2017 was carried in appeal both by the appellants as well as the State of West Bengal in FMA 669 of 2019 and FMA 799 of 2019.

11. A Division Bench of this Court vide order dated 30.08.2023 referred to the aforesaid clarification order of the dated 14th August, 2023 granting exemption to the appellants herein under Section 16(2) for the period between 01.04.1999 to 31.03.2015 and set aside the order of the Single Bench.

12. In the meantime, the Authorities had already proceeded under Section 7A and passed orders against the appellants.

13. In the said order dated 14.08.2023 the Central Government reiterated the exemption already granted to the appellants based on the notifications dated 4th July, 2003, 7th June, 2005 and 14th May, 2010 under Section 16(2) of the EPF and Special Provisions Act 1952. It also quashed and set aside and declared, void ab initio the orders passed by the EPFO under Section 7A of the Act of 1952 and all steps taken thereafter.

14. The respondents/writ petitioners/employees challenged the said order dated 14.08.2023 passed by the Central Government before the Single Bench in WPA 23310 of 2023.

15. By the impugned judgment dated 12.10.2023 the Single Bench quashed and set aside the order dated 14.08.2023 passed by the Secretary Ministry of Labour and directed the respondents to continue proceedings under Section 7A and take them to their logical conclusion. Hence the instant appeal. The State of West Bengal has also filed MAT 1481 of 2024 against the said judgment and order.

SUBMISSIONS OF THE PARTIES:-

16. Mr. L.K. Gupta, learned Senior Advocate for the appellants places strong reliance on the notifications of the Central Government dated 4th July, 2003, 7th June, 2005 and 14th May, 2010 and submits that his clients always understood they were exempted

organizations under Section 16(2). While it is true that no formal gazette notification was published or specific order passed by the Central Government in respect of the appellants, the parent notification dated 14th May 2010, based on the notifications dated 4th July, 2003, 7th June, 2005 exempting them under Section 16(2) of the Act of 1952, was published in the gazette.

17. It is argued that the order impugned in the writ petition dated 14.08.2023 clarifies the exemption to the appellants under Section 16(2) of the Act of 1952 for the period from 01.04.1999 to 31.03.2015. Such Notification need not be published in the Gazette again. The question of any proceeding by the EPFO at Calcutta does not and cannot arise. Such proceedings in view of the order dated 14.08.2023 and the earlier general notifications dated 4th July, 2003, 7th June, 2005 and 14th May, 2010 would even otherwise be rendered void ab initio.

18. Admittedly, the appellants are depositing PF in respect of their employees, inter alia, the writ petitioner/respondents since 1st April, 2015. The Authorities say that any sums already recovered from the respondents, contrary to the order dated 14.08.2023 shall be adjusted to future dues. The appellants have no objection to the same. The EPFO is permitted to do so.

19. Mr. Indranath Mitra, learned advocate for the respondents/writ petitioner has vehemently opposed the arguments of Mr. L. K. Gupta and Mr. Anirban Ray. It is submitted that the Authorities under Section 7A of the EPFO Act of 1952 were quasi-judicial authorities having the power of civil court. The orders passed under Section 7A and the consequential orders thereof being quasi-judicial orders cannot be quashed by an executive order.

20. It is submitted by Mitra that his clients cannot deprived of PF benefits since the beginning of their service for any omissions of the Central Government and the failure on the part of the State to publish the impugned order dated 14^{th} August 2023, in the official gazette. The proceedings under Section 7A were lawful in respect of the period from 1^{st} April, 1999 till 31^{st} March, 2015 valid and should not have been interfered with by the Labour Ministry.

21. The order dated 14.08.2023 could not negate or nullify or a quasi-judicial proceeding with retrospective effect. Reliance in this regard is placed on a decision of the Supreme Court in the case of S**. L. Sachdev and another Vs. Union of India and others** reported in **(1980) 4 SCC 562** particularly paragraph 13 thereof.

ANALYSIS AND FINDINGS OF THIS COURT

22. It appears from the facts of **L. Sachdev (supra)** that the Supreme Court was considering a cadre and promotion therefor under the Director General of Post and Telegraph, New Delhi. The question that arose for consideration before the Supreme Court was whether the Director General of Post and Telegraph could issue any directive contrary to the recruitment Rules. The facts of the said case are wholly distinguishable in the facts of the instant case.

23. In the instant case the Central Government has only clarified the exemption under Section 16(2) of the Provident Fund Act, 1952 from year 1999 to 2015 by the order dated August 14, 2023. The appellant is has started to deposit its proportionate contribution to the Provident Fund from 2015 itself. Therefore, the applicability of the Act of 1952 to the Appellants is not an issue.

24. While it is true that the order dated 14th August 2023, appears to be a stand-alone order granting exemption one needs to look at the order as a whole to understand its true scope and purport.

25. For purpose of the above, Section 16 of the Act of 1952 is required to be considered in its true scope and purport:-

> *16. Act not to apply to certain establishments.—4 [(1) This Act shall not apply—*
>
> *(a) to any establishment registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State relating to co-operative societies, employing less than fifty persons and working without the aid of power; or*
>
> *(b) to any other establishment belonging to or under the control of the Central Government or a State Government and* ***whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits; or***
>
> ***(2) If the Central Government is of opinion that having regard to the financial position of any class of establishments or other circumstances of the case, it is necessary or expedient so to do, it may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt whether prospectively or retrospectively that class of establishments from the operation of this Act for such period as may be specified in the notification.]***

26. A plain reading of Section 16 would indicate that it applies to the establishments fulfilling the criteria under the Act unless generally or specially exempted. Section 16(2) envisages a specific order of the Central Government for exempting any class of

establishments from the Act of 1952. General exemption is covered under Section 16(a) or (b).

27. Section 17 also needs to be considered to appreciate the deemed exemption under Section 16(a)/(b). Section 17 is set out hereunder:-

> *17. Power to exempt.—(1) The appropriate Government may, by notification in the Official Gazette and* ***subject to such conditions as may be specified in the notification, [exempt, whether prospectively or retrospectively,*** *from the operation] of all or any of the provisions of any Scheme—*
>
> *(a) any establishment] <u>to which this Act applies</u> if, in the opinion of the appropriate Government, the rules of its provident fund* ***<u>with respect to the rates of contribution are not less favourable than those specified in section 6 and the employees are also in enjoyment of other provident fund benefits which on the whole are not less favourable to the employees than the benefits provided under this Act</u>*** *or any Scheme in relation to the employees in any other [establishment] of a similar character; or*
>
> *(b) and [establishment] if the employees of such [establishment] are in enjoyment of benefits in the nature of provident fund, pension or gratuity and the appropriate Government is of opinion that such benefits, separately or jointly, are on the whole not less favourable to such employees than the benefits provided under this Act or any Scheme in relation to employees in any other establishment of a similar character:*

28. It is clear from the above that unlike Section 16, Section 17 envisages an overt and specific order of the appropriate authority, provided that the Act '*applies'* to the establishment. Therefore, if the Act of 1952 does not apply to the employees/respondents, Section 17 cannot be applied or invoked.

29. The Impugned order dated 14th August 2023 only clarifies that appellants are eligible for exemption under Section 16(2) by placing reliance on the notification dated 14th May , 2010. The relevant portions of the order are set out hereunder:-

> *Whereas, the authority deciding the applicability dispute was required to keep this provision in mind and deal with it but the order dated 20.5.2014 is completely silent on this aspect. Section 16 deals with exclusion meaning thereby that the Act would not apply to certain establishment to which it would otherwise apply in terms of provisions of section 1(3).* ***Section 16(2) under which the PBSSM seeks exemption reads as under:***
>
> *"If the Central Government is of opinion that having regard to the financial position of any class of establishments or other circumstances of the case, it is necessary or expedient so to do, it may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt whether prospectively or* ***retrospectively*** *that class of establishments from the operation of this Act* ***for such period*** *as may be specified in the notification."*
>
> *Whereas, the Government of India has issued notification under section 16(2) of the Act from time to time exempting certain classes of establishments from the purview of the Act. The operating portion of SO 1431 dated* ***14.5.2010 is reproduced as under:***
>
> *"In exercise of the powers conferred by sub-section (2) of section 16 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), the Central Government, being of opinion that having regard to the circumstances of certain establishments registered under the Societies Registration Act, 1860 (21 of 1860), or under any other corresponding law for the time being in force it is necessary and expedient so to do, hereby exempts the following class of establishments from the operation of the said Act for a period upto the 31st March, 2015 with effect from the 1st April, 2010.*
>
> *(a) those being wholly financed by the grants-in aid received from the Central Government, or any State Government or State*

Governments, or partly by the Central Government and partly by one or more State Governments subject to the condition that grants-in-aid does not include any amount for the purpose of meeting the liability of the employer towards the employers' contribution to the provident fund; or

(b) those being run by public, religious or charitable trusts or endowments (including maths, temples, gurudwaras, wakfs, churches, synagogues, agiaries or other places of public religious worship) or societies and Trusts for religious or charitable or other public purposes and notified as such by the Central Government under the Income Tax Act, 1961 (43 of 1961).

2. Provided that if such class of establishments run any university, any college, any school, any scientific institution, any institution in which research education, imparting knowledge or training is carried on against charges or fees from the students, or run any hospital, nursing home or clinic in which any medical treatment or procedure is carried on against charges or fees from the patients, such activity shall not be exempted from the operation of the first mentioned Act.

3. Provided that the Government reserves the right to revoke and/or modify the exemption as and when it is deemed fit."

Whereas, admitted position is that PBSSM is a Society registered under the West Bengal Societies Registration Act, 1961. It is also the admitted position that PBSSM is wholly financed by the grants-in-aid received from the Central Government and the State Government. The Secretary, Department of School Education, Government of West Bengal vide his letter no.137-SSE/18 dated 25th July, 2018 addressed to Ministry of Labour and Employment has confirmed that PBSSM is financed by grants-in-aid from Central and State Government in 60:40 ratio. Finally, it is also confirmed by the establishment that grants-in-aid received by PBSSM do not include any amount for the purpose of meeting the liability of the employer towards the employer's contribution to provident fund.

30. Section 16(2) mandates a specific order of the Central Government to declare a class of establishments to which the Act of 1952 would be inapplicable. The notification dated May 14, 2010 must therefore be understood as such order of general exemption to a specific class of establishments.

31. The need for such exemption is premised on the fact that the employers/ Societies registered under the Societies Registration Act who do not collect any fees from the students as provided by clause 2 of the said notification. The government also does not provide them any funds for contributing to Provident Fund. The appellants do not charge any fees from their students.

32. The learned Single-Judge has misapplied the requirement for a gazette notification of the order dated 14th August 2023. Such view is contrary to record as the impugned order specifically refers to the exemption in the Notification No. SO 1431 dt 14th May 2010 until 31st March 2015, already published in a Gazette.

33. The impugned order dated 14th August, 2023 is therefore a reiteration of the notification dated May 14, 2010, under Section 16(2)) that has exempted the appellants from the Act of 1952. The said

notification/exemption has extinguished the basis/foundation of the entire proceedings against the appellants under Section 7A of the Act of 1952. Such proceedings would automatically rendered void ab initio. All consequential steps taken by the Authorities pursuant to the first order under Section 7A, would also be vitiated.

34. Hence, this Court is of the view that the learned Single Judge has committed error in law in interfering with the order dated 14.08.2023 and permitting the proceedings under Section 7A and the consequential actions by the EPFO to be continued.

35. Admittedly, Section 7A proceedings were in respect of the aforesaid period from 01.04.1999 to 31.03.2015. When exemption was already granted by the Central Government to the appellant, the EPF Authorities are barred from taking out any penal measures, against the appellants. The impugned order dated 14th August, 2023 reiterating the exemption dated 14th May, 2010 removed the sub stratum and/or foundation of the proceedings under Section 7A of the Act of 1952.

36. The Secretary Ministry of Labour should have stopped after reiterating the exemption in the impugned order dated 14th August 2023. He has acted in excess of authority in declaring the proceedings of the EPFO

void ab initio. It is for a Court or Judicial and or Quasi-Judicial authority, to make any such declaration.

37. The EPFO Kolkata appears to be equally over-enthusiastic in trying to implicate the appellants under Section 7A, ignoring the exemption already granted. An inter departmental ego issue cannot be ruled out in the facts of the case.

38. Mr. Indranath Mitra's argument that the appellants could have raised the issue of exemption before the 1st Authority itself or preferred an appeal before the Appellate Authority or could have availed other remedies under the Act of 1952, is in the nature of an alternative remedy, objection. Such existence of alternative remedy is not a bar under Article 226 of the Constitution when the proceedings are vitiated for want of jurisdiction therefore nullity and/or void.

39. The nullity of an order inter alia for want of jurisdiction or basis, can be raised in a writ petition. Such a plea of nullity can even be raised in any proceedings or even in any subsequent or collateral proceedings.

40. For the reasons stated hereinabove, the impugned judgment and order dated 12.10.2023 cannot be sustained in law and shall stand set aside. All Proceedings under Section 7A against the appellants,

and all consequential orders passed thereafter by the EPFO shall stand quashed and set aside.

41. MAT 2130 of 2023 and MAT 1481 of 2024 are allowed and disposed of.

42. In view of the disposal of the main appeals, connected pending applications, if any, shall also stand disposed of.

43. Mr. Mitra, learned counsel for the respondents/writ petitioners prays for stay of the operation of the order. Such prayer is considered and refused.

44. Let the name of Mr. Anil Kumar Gupta stand recorded as having represented the EPFO authorities on 19th July, 2024.

(Rajasekhar Mantha, J.)

(Apurba Sinha Ray, J.)