IN THE HIGH COURT AT CALCUTTA
(CIVIL APPELLATE JURISDICTION)
(APPELLATE SIDE)

PRESENT:

THE HON'BLE JUSTICE RAI CHATTOPADHYAY

WPA 10753 of 2020

Yogesh Kumar Garg
Vs
Union of India & Ors.

For the petitioner : Mr. Rishad Medora
Ms. Sonali Panda
Mr. Dipendranath Chunder
Mr. Sagnik Mukherjee

For the P.F.Authority : **Mr. Mihir Kundu**

For the UOI : **Mr. Shiv Chandra Prasad**

For the respondent no.5 : **Mr. Soumik Ghosh**

Heard on : **01.04.2024**

Judgement on : **01.04.2024**

Rai Chattopadhyay,J.

1) The petitioner has preferred the instant case to seek redress of his grievance due to non-payment of interest amount on the provident fund accumulation standing to his credit. The reason being due to delayed payment of the said provident fund amount to him, upon his retirement.

2) The writ petitioner has been a Director of respondent no. 5, i.e. the National Jute Manufactures Corporation Limited. He worked there from the

period 3.6.2013 till 17.1.2015. He maintained a provident fund with the respondent authorities, being numbered P.F. A/C No. WB/48-A/157.

3) Upon his retirement, the provident fund accumulation was released to him on 5.2.2020, amounting to Rs. 6, 75,356/-.

4) The petitioner's case is that as per the provisions of the statute he would be entitled to the provident fund amount immediately and promptly to be paid to him, upon his retirement. Also that, he would be entitled to the interest amount on such accumulated fund, in case he has not been paid promptly, after retirement and there is a delay in remitting him the credited amount in the fund.

5) Mr. Medora, learned advocate representing the writ petitioner, has put forth grievance of his client, that the respondent authorities have acted in violation of mandatory statutory requirements regarding payment of provident fund immediately after retirement of the writ petitioner and also payment of interest along with the provident fund amount, as there has been delay in payment of the same. He urges that necessary order may be passed in this case, pursuant to the prayer made by the writ petitioner and directing the respondent authorities to immediately release the accumulated interest amount, till the date of actual payment of the provident fund to the writ petitioner. The respondents have contested the case by filing their respective written affidavits-in-opposition. Mr. Medora has relied on a judgment of this Court, reported in 2017 SCC Online (Cal. 4) 11080(Kaberi Mukherjee-vs-State of West Bengal & Ors.), in support of his contentions.

6) The version of the respondent nos. 2, 3 and 4 i.e. Provident Fund Authority would be that the provident fund of the present petitioner has never been maintained with the Provident Fund Authority, but with the Trust established by his employer, namely, "Kinnison Jute Mill Staff Provident Fund Institution".

Accordingly, these respondents have shrugged off their responsibilities, to pay any interest to the writ petitioner, for delayed payment of provident fund, on the ground of their bearing no liability for payment to be made to the writ petitioner. Instead, it has submitted that the Trust would be responsible body, to pay provident fund or any interest thereon, to the writ petitioner. So far as the point relating to the statutory right of the writ petitioner to get provident fund upon his retirement or to get interest there upon in case of delayed payment, no serious objection has been raised by the said respondents.

7) Mr. Soumik Ghosh, learned advocate is represented the respondent no. 5, i.e. the National Jute Manufactures Corporation Limited, who happened to be the parents company of the present writ petitioner.

8) However, so far as entitlement of the writ petitioner as to the interest upon the provident fund amount due to delayed payment of the same is concerned, on behalf of respondent no. 5, no specific objection has been raised in this case.

9) Mr. Mihir Kundu, learned advocate is appearing for the Provident Fund Authorities. He submits on the basis of the affidavit sworn by the said respondent that, the respondent company would not be liable for payment of provident fund to the writ petitioner in so far as the provident fund amount of the writ petitioner has been maintained by the Trust as named above. As a matter of fact, he has submitted that the said Trust is presently defunct, being the exemption granted in favour of the company withdrawn in the meantime.

10) He has emphatically submitted that the respondent no. 5 would not be liable for payment of any Provident Fund or interest due of the writ petitioner, in view of the fact that the Trust had deducted shares from the employee as well as the said employer and maintained the provident fund balance. He indicates that

it would have been a bounden duty for the said Trust to remit the finalized account of provident fund, to an employee, upon his retirement.

11) Mr. Kundu further submits that not only the respondent no. 5 but also the Board of Trustee would have been made party in the instant case and in absence of the same, according to him, this writ petition is suffering from defect of parties.

12) From the respective submissions of the parties, and on perusal of the records, the following emerges:-

13) The writ petitioner retired on 17.1.2015. He was granted Provident Fund on 5.2.2020. He was also granted interest thereon, with effect from September 2019 to 4.2.2020.

14) The writ petitioner, by filing the present case has claimed interest for the period for which interest is still to be paid to him. That is from 18.1.2015 to August 2019.

15) Though not disputed, it will be beneficial for discussion in this case, regarding provision under Section 7Q of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952, which provides for mandatory responsibility of the employer to pay interest at a particular rate as provided therein, due to delayed payment of actual amount of gratuity to the employer. The provision is as follows:-

Section 7Q of Employees' Provident Funds & Miscellaneous Provisions Act, 1952.

"7Q. Interest payable by the emplopyer-The employer shall be liable to pay simple interest at the rate of twelve per cent per annum or at such higher rate as may be specified in the Scheme or any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment.

Provided that higher rate of interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank".

16) Thus, the statute provides, that the employer shall be liable to pay simple interest at a particular rate, as provided in the same, from the date on which the amount has become due, till the date of its actual payment. No doubt, and it is not disputed in this case, that the Provident Fund has become due to the petitioner, immediately upon his retirement from service.

17) It would also be beneficial, to mention the finding of the Court in Kaberi Mukherjee's judgment (supra), as relied on by Mr. Medora, on behalf of the writ petitioner. The petitioner there had moved the Court to seek direction for payment of interest to her, due to delay in payment of Provident Fund to her, for the period of such delay. She could not succeed before the Hon'ble Single Bench. However, the Appeal Court, while allowing her prayer held that Provident Fund dues cannot be interpreted as excluding a claim for interest. More so, it is for the provision under Section 7Q, of the Act of 1952. The Court found that according to the statutory provision, simple interest at the rate of 12% per annum or more, shall be payable, to the claimant for delay in payment of Provident Fund amount, to him. The appeal Court had ultimately granted relief to the petitioner, in the said case.

18) The ratio, in the case as above, squarely applies to the instant case too. It is the statutory liability of the respondent authority as well as corresponding statutory right of the petitioner, to achieve additional sum of money as interest, over and above the Provident Fund amount, in case there is delay in payment of Provident Fund to him, after his retirement. In the present case, for the writ petitioner, such statutory right of him has been infringed by the default

committed by the respondent authority in allowing him the interest for the period from the date of his retirement in 2015, i.e. 17.1.2015, till August 2019.

19) On the findings as above, this court is inclined to allow the present writ petition. WPA No. 10753 of 2020 is allowed.

20) The writ petitioner shall be entitled to simple interest @ 12% per annum, with effect from the date subsequent to his retirement, till the date of actual payment of Provident Fund to him, excepting the period for which interest has already been remitted to him (i.e.from September 2019 to 4.2.2020). The period would be effectively from 18.1.2015 to August 2019.

21) The respondent authority is directed to pay such amount of interest, as mentioned above, to the writ petitioner.

22) The exercise as above shall be concluded by the concerned respondent no. 5, within a period of eight weeks from the date of service of copy of this order.

23) Affidavit-in-reply submitted on behalf of the writ petitioner as against the affidavit-in-opposition filed by the respondent nos. 2 to 4 in the form of a report, has been taken on record, at the time of hearing.

24) Since no affidavit-in-reply as filed by the writ petitioner as to the affidavit-in-opposition submitted on behalf of the respondent no. 5 as above, all the allegations made therein are deemed to have been disputed and denied by the writ petitioner, excepting those which are on record.

25) The writ petition along with the connected pending applications are disposed of.

26) Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Rai Chattopadhyay, J.)