

17.02.2025.  
Item No. 19.  
Court No. 13  
ap

**F.M.A. No. 893 of 2022**  
**With**  
**I.A. No. CAN 1 of 2022**

**Indian Institute of Technology, Kharagpur**  
**Versus**  
**Employees' Provident Fund Organization (Ministry**  
**of Labour & Employment, Govt. of India) & Ors.**

Mr. R. N. Majumder,  
Mr. S.M. Obaidullah,  
Mr. R. Chowdhuri.

...For the appellant.

Mr. Shiv Chandra Prasad,  
Mr. Rajib Ray,  
Ms. Oishanee Ghosh.

...For the EPFO.

1. The appellant, namely, Indian Institute of Technology, Kharagpur is aggrieved by an order dated 12<sup>th</sup> April, 2022 passed by the learned Single Judge of this Court. By the said order, the learned Single Judge refused to entertain the writ petition which was challenged by an order dated 1<sup>st</sup> March, 2021 passed under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952.

2. Complainants before the EPF Authority were made 2 job assistants under a project of the IIT namely Sanjeev Kumar Singh and Sk. Wahid. Proceedings under Section 7A of the Act of 1952 was taken out against the IIT against the said two complaints received by two persons, namely, Sanjeev Kumar Singh and Sk. Wahid for transfer of the Provident Fund accumulation from Sponsored

Research & Industrial Consultancy (in short 'SRIC') of the IIT, Kharagpur to the EPFO.

3. It appears from the records that Indian Institute of Technology Statutes were introduced effective from 6<sup>th</sup> November, 1962 by the Ministry of Education of the Central Government.

4. Clause 18 of the said Statute, is with regard to Contributory Provident Fund (in short 'CPF'). Clause 18A Sub-Clause 1(iii) at its proviso provides as follows:

**"18A. Contributory Provident Fund-cum-Gratuity Scheme**

*(1) Every employee of the Institute,-*

*(i) who is referred to in clause (2) of Statute 18, or,*

*(ii) who holds an appointment on a temporary basis but is subscribing or is required to subscribe to the Contributory Provident Fund in terms of sub-paragraph (2A) of Schedule C, or,*

*(iii) who may be appointed either for the first time or re-appointed on or after the 1<sup>st</sup> January, 1971, may exercise an option to join the Contributory Provident Fund-cum-Gratuity Scheme sponsored by the Institute for the benefit of its employees.*

*Provided that no such option shall be exercised by an employee who has been appointed by the Institute on a consolidated salary or on special terms which exclude the benefits of the Contributory Provident Fund or who has exercised an option for the General Provident Fund-cum-Pension-cum-Gratuity Scheme referred to in Statute 18B.*

*(2) ..*

*(3) ...."*

5. Admittedly, SRIC Cell is an integral part of the Indian Institute of Technology, Kharagpur. The Dean of the SRIC is the Ex-Officio Chairman thereof. He is responsible for all the activities including the matters relating to employment and other emoluments payable to persons engaged by SRIC.

6. Further admittedly, both the applicants, namely, Sanjeev Kumar Singh and Sk. Wahid have been appointed under a contract which was renewed from time to time. It is specified in the contract that “they would be entitled to consolidate compensation of a fixed amount per month. No D.A., A.D.A. or other allowances are admissible”.

7. In view of the above read with of proviso to Clause 18A(1)(iii), the two complainants/private respondents are not entitled to Provident Fund.

8. Admittedly, IIT, Kharagpur has its own Pension-cum-Contributory Provident Fund Scheme as specified in the IIT, Kharagpur Statute dated 6<sup>th</sup> November, 1962. The same is excluded from the purview of the EPF & MP Act, 1952 by reason of Sub-Clause (b) to Section 16 of the said Act of 1952.

9. In view of the aforesaid, this Court is of the view that the respondents in passing the impugned order dated 20<sup>th</sup> September, 2021 under Section 7A of the Act of 1952 have committed jurisdictional error. The writ petition ought to have been admitted and the impugned order passed by the Provident Fund Authority was liable to be set aside.

10. For the reasons stated hereinabove, the impugned judgment and order dated 12<sup>th</sup> April, 2022 passed by the learned Single Judge of this Court shall stand set aside. The writ petition being W.P.A. No. 16253 of 2021 is hereby allowed and disposed of.

11. All proceedings instituted by the Provident Fund Authority against the IIT, Kharagpur, particularly on the complaint of two respondents, namely, Sanjeev Kumar Singh and Sk. Wahid, shall stand quashed and set aside.

12. The instant appeal is allowed and disposed of.

13. In view of disposal of the appeal itself, the connected application being CAN 1 of 2022 shall also stand disposed of.

14. There will be no order as to costs.

15. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

**(Rajasekhar Mantha, J.)**

**(Ajay Kumar Gupta, J.)**