

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

WPA 7030 of 2008

M/s Calcutta Club Limited

Versus

Union of India and Others

For the Petitioner : Mr. Ranjay De, Ld. Sr. Adv.
Mr. B. Banerjee, Adv.
Mr. A. A. Bose, Adv.

For the P.F. Authority : Mr. Shiv Chandra Prasad, Adv.

Heard on : 20.08.2025

Judgment on : 22.08.2025

Ajay Kumar Gupta, J:

1. M/s. Calcutta Club Limited being the petitioner herein approaches before this Court challenging the impugned order dated 18.09.2007 passed by the Regional Provident Fund Commissioner – (II) thereby determined a sum of Rs. 34,884/- for payment of provident fund and allied dues in favour of employee, Sri Debabrata Ghosh and, amount has been debited from the petitioner's Bank account.

2. M/s. Calcutta Club Limited is an establishment duly registered under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the said Act) being Code No. WB/9408.

3. Petitioner had engaged four employees. One Mr. Debabrata Ghosh engaged as consultants with a monthly remuneration of Rs. 7,850/- including consultancy fees and incidental allowances for the period from 01.12.2001 to 01.10.2006. The remuneration exceeded the then statutory

wages ceiling of Rs. 6,500/- prescribed for compulsory provident fund coverage under the Act. Consequently, Mr. Ghosh qualifies as 'excluded employees' as defined under Paragraph 2(f) of the said Employees' Provident Funds Scheme, 1952 (hereinafter referred to as 'the said Scheme').

4. Furthermore, the other three employees had previously withdrawn their accumulations in the provident fund account upon retirement or resignation prior to joining the petitioner. Thus, there was no obligation to enrol them as members of the provident fund, since they fell within the category of 'excluded employees' within the meaning of paragraph 2(f)(1) of the said Scheme.

5. Suddenly, petitioner received summon from the respondent no. 2 under Section 7A of the Act alleging therein evasion of membership and initiated enquiry under Section 7A of the said Act against the petitioner.

6. In course of enquiry, the petitioner submitted a detailed representation dated 8th September, 2007 and clarified along with all relevant documents including salary slips that Mr. Debabrata Ghosh including others were excluded employees under the said Scheme. However, by order dated 08.09.2007 respondent no. 2 only considered the representation except Mr. Ghosh as excluded employees. Though, the provision is very clear. Mr. Ghosh also falls under the excluded employee. So, there is no question of any liability of the petitioner to contribute the employees or employer's shares, hence, this writ petition.

7. Mr. De, learned senior counsel appearing on behalf of the petitioner submitted that within the meaning of Paragraph 2(f) (1) of the said Scheme, Mr. Ghosh squarely falls within the definition of 'excluded employee'. However, without considering the representation as well as payslip of Mr. Ghosh, petitioner's case was being rejected and mechanically passed the order directing the payment of Rs.

34,884/- as provident fund and allied dues in favour of Mr. Ghosh. The petitioner herein seeks the impugned order under challenged is liable to be set aside and the money credited in favour of the Regional Provident Fund Commissioner should be refunded to the petitioner along with interest.

8. Learned senior counsel further submitted that the petitioner had filed a review application under Section 7B of the said Act before the Regional Provident Fund Commissioner – (II), respondent no. 3 herein. However, the said review application was also not accepted on the ground that the applicant did not produce anything new materials during the proceeding under Section 7A of the said Act though there was apparently error in the order impugned.

9. Learned counsel appearing on behalf of the P.F. Authority submitted that the authority has rightly passed the order because Mr. Ghosh was working in different

establishment and, subsequently, joined to M/s. Calcutta Club Limited and earlier he was under the provision of provident fund. He is not an excluded employee as per the provisions of the Act, hence, his case has not been accepted by the authority within the purview of excluded employee. Therefore, he was eligible for employees' provident fund and he is not exempted from its provision. Therefore, the writ petition should liable to be dismissed. He also referred the order passed by the authority under Section 7A of the Act indicating order is correct. Subsequently, the review application has been filed without any supporting documents. Hence, the same was rejected.

10. Heard the learned counsels appearing on behalf of the parties and upon perusal of materials on the record, this Court would like, at the very outset, to notice the provision of Paragraph 2(f) of the said Scheme and Section 7A of the Said Act before going into the merits of the case and set out herein below for convenience: -

Paragraph 2(f) of the EPF Scheme, 1952 reads as under: -

“2. Definitions. -

(f) "excluded employee" means—

(i) an employee who, having been a member of the Fund, withdrew the full amount of his accumulations in the Fund under clause (a) or (c) of sub-paragraph (1) of paragraph 69;

(ii) an employee whose pay at the time he is otherwise entitled to become a member of the Fund, exceeds [fifteen thousand rupees] per month;

Explanation: --'Pay' includes basic wages with dearness allowance [retaining allowance (if any) and cash value of food concessions admissible thereon;]

(iii) [omitted];

(iv) an apprentice;

Explanation: -- An apprentice means a person who, according to the certified standing orders applicable to the factory or establishment, is an apprentice, or who is declared to be an apprentice by the authority specified in this behalf by the appropriate Government.”

Section 7A of EPF and MP Act, 1952 reads as under: -

“7A. Determination of moneys due from employers. — [(1)

The Central Provident Fund Commissioner, any Additional

Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner may, by order, —

(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and

(b) determine the amount due from any employer under any provision of this Act, the Scheme or the [Pension] Scheme or the Insurance Scheme, as the case may be, and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary];

(2) The officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), for trying a suit in respect of the following matters, namely: —

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses;

and any such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code

*(3) No order *** shall be made under sub-section (1), unless [the employer concerned] is given a reasonable opportunity of*

representing his case. [(3A) Where the employer, employee or any other person required to attend the inquiry under sub-section (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.]

[(4) Where an order under sub-section (1) is passed against an employer ex parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry:

Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer.

Explanation. —Where an appeal has been preferred under this Act against an order passed ex parte and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this sub-section for setting aside the ex parte order.

(5) No order passed under this section shall be set aside on any application under sub-section (4) unless notice thereof has been served on the opposite party.]”

11. The respondent has failed to file affidavit-in-opposition despite being a direction to that effect long back.

12. In the present case, pay slips of Mr. Ghosh are annexed with writ petition indicating that his basic pay was Rs. 7,850/- per month during relevant time. It was above the statutory wages ceiling limit of Rs. 6,500/- when he joined and is excluded and there is no question of contribution of provident fund as Mr. Ghosh comes within the purview of ‘excluded employee’ within the meaning of Paragraph 2(f) (1) of the said Scheme. Excluded employee means individual who is not eligible for the Employees’ Provident Fund Scheme or who is exempted from its provisions. The submission made by the learned senior counsel appearing on behalf of the petitioner is found to be correct in the question of fact and law as provided.

13. In this case, despite the petitioner producing salary slips and detailed representation establishes Mr. Ghosh's case is excluded. However, the authority failed to give due consideration of the representation and documents while passing the order under Section 7A of the said Act. The impugned order is appearing mechanical and arbitrary as well as against the provisions. Moreover, the rejection of review petition under Section 7B of the said Act without examining the legal position or document submitted is also not tenable and acceptable. Impugned order dated 18.09.2007 is bereft of any reasoning.

14. In view of statutory provisions and salary slips placed on record, it is clear that Mr. Ghosh was receiving Rs. 7,850/- under the head of Basic Pay per month. It was exceeding the statutory wage of Rs. 6,500/- applicable at the relevant time, clearly falls within the ambit of 'excluded employee' under Paragraph 2(f) (ii) of the said Scheme. Therefore, there is no statutory liability of the petitioner to

contribute towards provident fund arises in respect of Mr. Ghosh.

15. It is, however, made clear that prior to 2008 excluded employee comes within the Act, when amount of pay exceeds Rs. 6,500/- per month and, now it was substituted Rs. 15,000/- in place of six thousand five hundred rupees by way of amendment by G.S.R 608 (E), dt. 22.08.2014 and given with effect from 01.09.2014. Therefore, this is a fit case to allow the prayer as sought for by the petitioner.

16. Consequently, **WPA 7030 of 2008** stands **allowed** without order as to costs.

17. Connected applications, if any, are also, thus, disposed of.

18. Consequently, respondent no. 2- Regional Provident Fund Commissioner is hereby directed to refund the sum of Rs. 34,884/- along with interest @ Rs. 7% simple interest within 15 days from this day positively and, in default,

interest shall be charged @ 10% till the final payment on the aforesaid amount.

19. Interim order, if any, stands vacated.

20. Parties shall act on the server copies of this Judgment downloaded from the official website of the High Court at Calcutta.

21. Urgent Photostat certified copies of this Judgment, if applied for, be supplied to the parties upon compliance of all the necessary and legal formalities.

(Ajay Kumar Gupta, J)

P.A.