

08.04.2025
sayandeep
Sl. No. 1128
ML
Ct. No. 05

WPA 19358 of 2024

Bijan Kr. Deb
Vs.
The State of West Bengal & ors.

Mr. Apurba Ghosh
Mr. Anindya ghosh
Mr. Pronojit Roy
Mr. Debobrata Mazumdar
.... for the petitioner

Mr. Pradip Kr. Mondal
Mr. Debanjan Chatterjee
... for the State

Mr. Ankit Surekha
Mr. Biplab Das
Mr. Partha Sarathi Pal
.....for the respondent Nos. 2 & 3
Mr. Arnab Ray
..... for the respondent No. 5

1. The present writ petition has been filed, inter alia, praying for a direction upon the respondents to withdraw the termination notice dated 22nd June, 2004 consequent upon the petitioner being acquitted by the Judicial Magistrate, 2nd Court, Balurghat, Dakshin Dinajpur in GR Case No. 4662 of 2014 vide judgment dated 3rd November, 2022.
2. Records would reveal that the petitioner was employed with Tapan Co-operative Agricultural marketing Society Limited. In course of his employment, a complaint was lodged on 23rd November, 2001 in connection with defalcation of money amounting to Rs. 500933.53/-. The said complaint was registered as an FIR being P.S. case No. 105 of 2001. Following the above a charge-sheet was issued on the petitioner on 22nd March, 2002. In the interregnum on the basis of an enquiry conducted against the petitioner in respect of the charges leveled against him, by order dated 22nd

June, 2004, the petitioner was not only dismissed from service but it was decided that all money receivable by the petitioner on account of provident fund and leave salary shall stand forfeited .

3. Mr. Ghosh, learned advocate representing the petitioner would however submit that the petitioner would only like to confine his challenge to the withholding of the provident fund amount.
4. Mr. Roy, learned advocate appears on behalf of the respondent No. 5. He would submit that independent of the order of dismissal, an arbitral proceedings was initiated against the petitioner which was registered as dispute case No. 2D/2022/23 and the same culminated in an arbitral award passed by the Assistant Registrar of Co-operative Society, Dakshin Dinajpur. According to him, the arbitral award has become final as there is no challenge to the same. He however, would be candid enough to submit that the provident fund amount could not form the subject matter of forfeiture while passing the order of dismissal.
5. Mr. Surekha, learned advocate representing the respondent Nos. 2 and 3 enters appearance.
6. Having heard the learned advocates for respective parties, I find that although the petitioner would submit that on the basis of the order of acquittal, the petitioner is required to be exonerated of the charges, however, it must be borne in mind that the standard of proof in a criminal proceedings is different from the standard of proof in a domestic enquiry. While in a criminal trial, the charges are to be proved beyond reasonable doubt, while in the case of a domestic enquiry, the proof of charges is on the basis of preponderance of probabilities. In this case, independent of the criminal proceedings, a domestic enquiry was conducted and in such domestic enquiry, the petitioner was not only found guilty but

a punishment in the form of dismissal from service, apart from the forfeiture of his leave salary and the entire amount of provident fund payable was inflicted on him.

7. However, having regard to the provisions contained in Section 10 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "said Act"), I am of the view that the aforesaid order of dismissal dated 22nd June, 2004 to the extent the same directs forfeiture of the petitioner's provident fund, the same is bad and is contrary to the provision contained in the said Act. To appreciate the scope of Section 10 of the said Act, the aforesaid provision is extracted herein below:

"10. Protection against attachment.—

(1)The amount standing to the credit of any member in the Fund or of any exempted employee in a provident fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any court in respect of any debt or liability incurred by the member or the exempted employee, and neither the official assignee appointed under the Presidency-towns Insolvency Act, 1909 (3 of 1909), nor any receiver appointed under the Provincial Insolvency Act, 1920 (5 of 1920), shall be entitled to, or have any claim on, any such amount.

(2)Any amount standing to the credit of a member in the Fund or of an exempted employee in a provident fund at the time of his death and payable to his nominee under the Scheme or the rules of the provident fund shall, subject to any deduction authorised by the said Scheme or rules, vest in the nominee and shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member of the exempted employee and shall also not be liable to attachment under any decree or order of any court.(3)The provisions of sub-section (1) and sub-section (2) shall, so far as may be, apply in relation to the pension or any other amount payable under the Pension Scheme and also in relation to any

amount payable under the Insurance Scheme as they apply in relation to any amount payable out of the Fund.”

8. In view of the above and having regard to the protection afforded in Section 10 of the said Act, I am of the view that the order dated 22nd June, 2004 to the extent the same directs forfeiture of the petitioner’s provident fund is void and cannot be acted upon. The aforesaid direction shall however not interfere with other portions of the order especially insofar as to dismissal of the petitioner and the forfeiture of his leave salary is concern. Having regard thereto, I direct the concerned respondent being respondent No. 5 to disburse the provident fund dues of the petitioner, as expeditiously as possible preferably within a period of four weeks from the date of communication of this order along with simple interest at the rate of 8% per annum on account of delayed payment, to be calculated from the date when the same became due till such time the actual payment is made.
9. With the above observations, the writ petition is disposed of without any order as to costs.

(Raja Basu Chowdhury, J.)