

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 6138(W) of 2009
with
CAN 1 of 2011 (Old No.123 of 2011)
Caledonian Jute & Industries Ltd. & Anr.
-Vs.-
Union of India & Ors.

With
WPA 28543(W) of 2015
With
CAN 1 of 2016 (Old No.690 of 2016)
Murlidhar Ratanlal Exports Ltd & Anr.
-Vs.-
Ministry of Labour & Employment & Ors.

With
WPA 13484(W) of 2008
with
CAN 1 of 2010 (Old No.10122 of 2010)
With
CAN 2 of 2025
With
RDB Textiles Ltd. & Anr.
-Vs.-
The Regional P.F. Commissioner-I & Ors.

With
WPA 15352(W) of 2008
With
CAN 1 of 2010 (Old No.10786 of 2010)

The Angus Company Ltd. & Anr.

-Vs.-

The R.P.F. Commissioner & Ors.

With

WPA 15755(W) of 2011

With

CAN 1 of 2012 (Old No.283 of 2012)

With

CAN 2 of 2022

Shree Gouri Shankar Jute Mills Ltd. & Anr.

-Vs.-

Union of India & Ors.

With

WPA 16240(W) of 2007

with

CAN 1 of 2022

Sri Annapurna Cotton Mills & Industries Ltd.

-Vs.-

Employees Provident Fund Organization & Ors.

With

WPA 16749(W) of 2008

With

CAN 1 of 2022

with

CAN 2 of 2023

with

CAN 3 of 2023

Kanknarrah Co. Ltd. & Anr.

-Vs.-

Union of India & Ors.

With

WPA 210(W) of 2015

With

**CAN 1 of 2015 (Old No.5128 of 2015)
Murlidhar Ratanlal Exports Ltd. & Anr.**

v.

Ministry of Labour & Employment, Govt. of India & Ors.

With

WPA 21252(W) of 2007

with

CAN 1 of 2009 (Old No.9972 of 2009)

With

CAN 2 of 2025

Murlidhar Ratanlal Exports Ltd. & Anr.

-Vs.-

The Regional Provident Fund Commissioner & Anr.

With

WPA 26777(W) of 2023

Tepcon International (I) Ltd. & Anr.

-Vs.-

Union of India & Ors.

With

WPA 2812 of 2010

With

CAN 1 of 2010 (Old No.9581 of 2010)

with

CAN 2 of 2025

with

CAN 3 of 2025

With

M/s. Bally Jute Co. Ltd.

-Vs.-

Regional P.F. Commissioner, Sub Regional Office, Howrah & Ors.

With

WPA 2974 of 2010
with
CAN 1 of 2010 (Old No.9583 of 2010)
with
CAN 2 of 2025
with
CAN 3 of 2025
Howrah Mills Company Ltd.& Anr.
-Vs.-
Regional Provident Fund Commissioner & Ors.

With
WPA 31569 of 2008
with
CAN 1 of 2010 (Old No.10784 of 2010)
M/s.Delta Ltd. & Anr.
-Vs.-
Union of India & Ors.

With
WPA 3819(W) of 2008
with
CAN 2 of 2011 (Old No.122 of 2011)
with
CAN 3 of 2023
The Hooghly Mills Company Ltd. & Anr.
-Vs.-
The Regional Provident Fund Commissioner-I & Ors.

With
WPA 4790(W) of 2015
with
CAN 1 of 2024
The Hooghly Mills Company Ltd. & Anr.
-Vs.-
The Central Provident Fund Commissioners & Ors.

With

WPA 4932(W) of 2009
with
CAN 1 of 2010 (Old No.9582 of 2010)
The Hooghly Mills Com. Ltd. & Anr.
-Vs.-
Union of India & Ors.

With
WPA 5548(W) of 2009
Kelvin Jute Company Ltd. & Anr.
-Vs.-
The Regional P.F Commissioner-1 & Ors.

With
WPA 7526(W) of 2012
With
CAN 1 of 2010 (Old No.9584 of 2010)
M/s. Northbrook Jute Co. Ltd. & Anr.
-Vs.-
Union of India & Ors.

With
WPA 8290(W) of 2011
with
CAN 1 of 2012 (Old No.287 of 2012)
Naffar Chandra Jute Mills Limited & Anr.
-Vs.-
Union of India & Ors.

With
WPA 8918(W) of 2011
Anil Kumar Bhansali and Anr.
-vs-
Regional Provident Fund Commissioner-II/OIC, Sub-Regional Office,
Barrackpore & Ors.

For the Petitioner

(WPA 28543 of 2015)

**: Mr. Abhrajit Mitra, Sr.Adv.
Mr. Soumya Mazumdar, Sr.Adv.
Mr. Swarajit Dey,
Ms. Ruchika Mall,
Mr. Saptarshi Kar,
Mr. Samriddha Sen.**

For the Petitioner

(In WPA 13484 of 2008)

**:Mr. Soumya Mazumdar, Sr.Adv.
Mr. Pranav Sharma.**

For the Petitioner

(In WPA 2974 of 2010)

: Mr. Devdas Saha.

For the Petitioner

(In WPA 28543 of 2015)

: Mr. Deepak Jain (V/C).

For the Petitioner

**(In WPA 4790 of 2015
WPA 4932 of 2009)**

**: Mr. Meghajit Mukherjee,
Ms. Sonia Das.**

For the Petitioner

**(In WPA 16749 of 2008
WPA 26777 of 2023)**

**: Mr. Kumar Gupta,
Mr. Deepak Kumar Jain.**

For the Petitioner

(In WPA 31569 of 2008)

**: Ms. Amrita Pandey,
Mr. Ghanshyam Pandey,
Mr. Dinesh Bachar.**

For the Petitioner

**(In WPA 2812 of 2010
WPA 6138 of 2009
WPA 8290 of 2011)**

: Mr. S.K. Singh,

**Mr. S.K. Sharma,
Mr. R.K. Dubey.**

**For the Petitioner
(In WPA 210 of 2015)**

**: Mr. Swarajit Dey,
Ms. Ruchika Mall,
Mr. Saptarshi Kar,
Ms. Samridha Sen.**

**For the Respondent/
P.F Authorities
(In WPA 15352 of 2008,
WPA 31569 of 2008)**

: Ms. Aparna Banerjee.

**For the Petitioners
(In WPA 2812 of 2010,
WPA 6138 of 2009 &
WPA 8290 of 2011)**

**: Mr. S.K. Singh,
Mr. Ravi Kumar Dubey.**

**For the Petitioner
(In WPA 8918 of 2011)**

**: Mr. Soumya Mazumdar, Sr.Adv.
Mr. Tamoghna Saha.**

**For the UOI
(In WPA 5548 of 2009)**

: Ms. Sabita Roy.

**For the Petitioner
(In WPA 15352 of 2008)**

**: Mr. Shyamal Sarkar, Sr. adv.
Mr. Kumar Gupta,
Mr. S.K. Poddar,
Mr. Viraj Gupta.**

**For the Petitioner
(In WPA 3819 of 2008)**

**: Mr. Shyamal Sarkar, Sr. adv.
Mr. Kumar Gupta,
Mr. Meghajit Mukherjee,
Ms. Sonia Das.**

For the Petitioner
(In WPA 5548 of 2009) : **Mr. Shamal Sarkar,**
Mr. Kumar Gupta,
Mr. Deepak Kumar Jain.

For the State
(In WPA 5548 of 2009) : **Ms. Mousumi Biswas.**

For the U.O.I.
(In WPA 5548 of 2009) : **Mr. S.N. Dutta.**

For the U.O.I.
(In WPA 26777 of 2023) : **Mr. Shiv Chandra Prasad,**
Mr. Tirtha Chandra Prasad.

For the P.F. Authorities : **Mr. Shiv Chandra Prasad.**
(In WPA 15352 of 2008
WPA 15755 of 2011
WPA 16240 of 2007
WPA 16749 of 2008
WPA 210 of 2015
WPA 21252 of 2007
WPA 26777 of 2023
WPA 2812 of 2010
WPA 2974 OF 2010
WPA 3819 of 2008
WPA 4790 of 2015
WPA 4932 of 2009
WPA 5548 of 2009
WPA 6138 of 2009
WPA 7526 of 2012
WPA 8290 of 2011
WPA 2974 of 2010
WPA 8918 of 2011)

Judgment reserved on : **18.03.2026**

Judgment delivered on : **20.04.2026**

SHAMPA DUTT (PAUL), J. :

- 1) Twenty (20) writ applications** heard together have been taken up for delivering judgment vide this one order, the issue being same in all the writ applications.

1. In: WPA 6138(W) of 2009

- 2)** The writ application has been preferred, praying for declaration that paragraph 27AA read with Appendix A(7)&(9) of the Employees Provident Fund Scheme, 1952 is contradictory to the provisions of Section 17 and sub-sections thereto and as such is ultra vires Section 17 of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 and therefore, ultra vires the Act itself.
- 3)** The petitioner has also challenged the notice dated 07.05.2007, 10.05.2009, order dated 08.05.2008 and the impugned order No.R-Ex/WB/28/7A/7B/CA/CC-VI/959, dated 02.01.2009, issued by the respondent nos.2 and 3, therein.
- 4)** A Co-ordinate Bench, on hearing the said writ application decided the issue in the writ application, vide an order dated 14.11.2011.
- 5) The Co-ordinate Bench vide the said judgment dated 14.11.2011 and order held as follows:-**

*“14. Section 17 of the Act empowers the appropriate government to exempt an establishment from the provisions of the scheme **subject to the conditions specified in the notification through which such exemption is granted.** So far as the provisions of the Act is concerned, the extent of its application to exempted establishments has been specified in Section 17(1A) of the statute. This issue was examined by an Honb'le Single Judge of this Court in the case of Hooghly Mills (supra) and the opinion of the Court was :-*

"43. That apart, the issue which is involved in this writ petition is different altogether. Here in the instant case it is nobody's case that section 14B has no application at all. Even Mr. Sengupta also submitted that damages can be recovered under section 14B even from the exempted establishment for delay of payment of that part of the contribution which is required to be remitted to the Pension Fund and/or Insurance Fund.

44. Besides all these, this Court, cannot forget to record that when exemption from

operation of the Employees' Provident Fund Scheme, 1952 has been granted to the petitioners, then how damages can be recovered from the petitioners by applying Rule 32A of the said Scheme."

15. In the case of **Jiyajeerao**, where the additional rate of interest was sought to be recovered from an exempted establishment by way of administrative action the same was found to be impermissible and **the Supreme Court found the stand of the Provident Fund Commissioner in requiring payment by the establishment the differential rate to be unjustified in law. The Supreme Court opined that unless the appropriate government issued a notification amending exempted scheme and published the same in the Official Gazette, the condition 4 of the impugned notification through which such payment was mandated to be inapplicable. The contention of the respondents before me is that by way of making amendment in the statutory scheme, the defect pointed out in the decision of Jiyajeerao was being cured.**

16. I accept the submission of both learned Additional Solicitor General and Mr. Mallick that exemption granted to the petitioners is not absolute and an exempted establishment does not enjoy immunity from all obligations to pay provident fund dues in respect of its employees under the Act. Mr. Supriyo Basu, learned Additional Government Pleader appeared in these matters on behalf of the State Government and supported the stand of the Central Government and the Provident Fund Authorities. I accept the position that the employees of an exempted establishment are being seriously prejudiced as they are drawing far lesser return in comparison to similarly situated employees of an establishment covered by the statutory scheme. Mr. Sengupta has argued that comparative advantages of the respective employees should not be determined solely on the basis of monetary returns as members of a trust fund were enjoying several other benefits being outside the statutory scheme. One of the advantages he cited was that for obtaining loan or clearance of dues, they were not required to go through the bureaucracy of the provident fund authorities, but these facilities were easily availed of as in most cases the trust funds were administered

from a location close to their workplace. In my opinion however, rate of return is the fundamental benefit of a provident fund scheme, and the ancillary benefits in terms of simpler administrative procedures an employee of an exempted scheme may be enjoying becomes insignificant if the fund fetches him return substantially lesser than that generated through the statutory scheme.

To that extent, in my opinion the scheme run by the trust funds have become less favourable in comparison to the statutory scheme for the employees of the exempted establishments.

On the question of alternative remedy in the form of appeal, I am not inclined to dismiss these petitions on this ground as what has been argued before me has been on pure questions of law and no factual issues are involved for adjudication in these proceedings. The other point argued on behalf of the petitioners was that a direction to pay rate of interest higher than that yielded by the investments made by the trust funds would be violative of the provisions of Section 418 (2) of the Companies Act 1956. The said provision prohibits payment of interest at a rate higher than the rate yielded by such investment in respect of a provident fund by a company for its

employees. The said restriction, however, in my view operates in respect of rules of the trust fund or independent contracts between the company and its employees. The trust fund under the aforesaid provision cannot provide for payment of interest at a rate higher than that yielded by their investment. Nor can a company enter into any agreement with its employees to that effect. **But such restriction cannot extend to statutory provisions, if made in a valid manner, providing for a minimum rate of interest.**

17. The question that arises in these proceedings however is not as to whether the provisions or effects of the schemes run by the trust funds are less favorable than the statutory scheme but **whether by amending the statutory scheme the exempted establishments can be directed to bring the rate of return offered to their employees at par with the statutory scheme.**

The ratio of the decision of the Supreme Court in the case of **N. K. Jain** does not apply in the facts of these cases as that decision dealt with the applicability of certain provisions of the Act itself on exempted establishments. In these proceedings, **the issue is applicability of certain provisions of the statutory scheme on such**

establishments. It is not in dispute that the provisions of the Act apply to the exempted establishments also. Both learned Additional Solicitor General and Mr. Mallick placed reliance on the observation of the Supreme Court in the case of **Jiyajeerao**. It was held in this judgment:-

"As regards the exempted establishments, it was rightly pointed out by the Regional Provident Fund Commissioner that **unless the appropriate Government issued a notification amending the exempted scheme and published the same in the Official Gazette, Condition 4 did not apply to them. Admittedly, no such notification amending the exempted scheme framed by the appellant and Respondent 10 was issued by the State Government.**"

18. Contention of the respondents is that the amendment, which in the opinion of the Supreme Court would have justified recovery of the differential rate from an exempted establishment has already been effected by **introduction of paragraph 27AA to the statutory scheme** and the consequential actions against the establishments were in tune with the observation of the

Supreme Court. I am unable to accept this submission. What has been observed by the Supreme Court in **Jiyajeerao** is that the **exempted scheme** is **required to be amended** to impose obligation on the exempted establishments to ensure return in terms of paragraph 60 of the statutory scheme. In the statute, there is no specific reference to any **exempted scheme** but it appears that what was referred to as such **scheme was the scheme of the trust fund of an exempted establishment as an alternative to the statutory scheme**. This would be clear from the following observation of the Supreme Court in the said decision contained in paragraph 8 of the Report:-

"The revised terms and conditions did not and could not have become applicable automatically, and in order to make them applicable, they were required to be incorporated by the appropriate Governments in the notification granting exemption under Section 17(1)(a)."

19. **The appropriate government in these cases however has not varied the conditions of exemption but on the other hand the statutory scheme itself has been amended, from following which the**

concerned establishments have been exempted. It is the admitted position that in none of these cases the conditions of exemption contain any clause to the effect that the petitioners would be required to follow the rate of interest in accordance with paragraph 60 of the statutory scheme. Since the establishments of the petitioners have been exempted from operation of the scheme itself by the appropriate government, **I do not think it would be permissible under the Act to saddle the petitioners with additional obligation to meet the differential rate by amending the statutory scheme itself.** As I have discussed earlier, **once an exemption is granted, the same does not terminate automatically if the benefits under the establishments' own scheme become less favorable vis-à-vis the statutory scheme as held by a Division Bench of this Court in the case of Electric Lamp Manufactures (supra).**

20. The decision of the Full Bench of the Patna High Court in the case of Tata Iron and Steel Company does not assist the respondents' case.

This was a decision on the question as to whether protection against attachment in a decree applies to such a scheme or not. Under the provisions of Section 10 of the

*Act any sum standing to the credit of an employee in the fund is immuned from attachment. Such protection was held to cover employees of an exempted establishment as well, in respect of provident fund managed by the trust fund. **This judgment cannot be held to be the ratio for the proposition that provisions of the statutory scheme can be made applicable by making an amendment in the statutory scheme itself to establishments exempted from operation of the statutory scheme.***

21. The decision of the **Karnataka High Court** in the case of **Binny Mills** however is directly on this point and in this judgment, the Division Bench of the Karnataka High Court has specifically come to a finding that the provisions mandating payment of differential by an exempted establishment is valid. **In this judgment it has been observed that exemption under Section 17 is granted subject to the condition granted that the employees of the exempted establishments are not given benefit less favourable than the other establishments which are covered under the Act and the Scheme and it is on this condition such exemption was granted. It was held:-**

Having regard to the entire object of the Act, Scheme and the provisions regarding the conditions to be imposed for exemption can only be to add to the advantage of the employees and not to their detriment. If the Provident Fund Authorities have called upon the appellant-establishment to maintain the minimum benefits available under the Act and the Scheme, they are well within their powers and in fact acting under a duty to ensure effective implementation of the Act and the Scheme.

*22. The judgment of the Karnataka High Court is based on two basic reasoning. One is that the scheme is for better benefit for the employees and the second is that even in respect of an exempted scheme **the appropriate government does not lose its hold** and there are built-in safeguards in Section 17 itself to protect the interests of the employees and Section 17 (4) is one such safeguard. **While I accept that exemption under the aforesaid provision is granted for better benefit of the employees and if the rate of interest given by the trust fund is lower than the rate fixed under paragraph 60 of the Scheme would render the scheme of the exempted establishments less***

*favourable vis-a-vis the statutory scheme, in my opinion this drawback cannot be remedied by amending the statutory scheme itself. The proper course in such a situation would be to cancel the exemption already granted, or imposition of an additional condition in the exemption notification by the appropriate government for maintaining the statutory rate. I agree with the view of the Karnataka High Court that in-built safeguards are there under the provisions of Section 17(4) of the Act itself, but the provisions of the said subsection has not been invoked here. **What has been done is amendment of the statutory scheme itself.** Mr. Mallick at the initial stage had argued that amendment of the scheme also has the force of a statute, **But I do not think amendment of the scheme would bring the same at par with statutory provisions, and can be treated as amendment to the Act itself.**”*

- 6) The Learned Co-ordinate Bench,** on considering the judgment passed in **WPA 12477(W) of 2007 (Loomtex Engineering Pvt. Ltd. & Ors. Vs. Chief Provident Fund Commissioner & Ors.), held:-**

23. The other authority cited on behalf of the respondents is an unreported judgment of this Court in W.P. No. 12477(W) of 2007, **(Loomtex Engineering Pvt. Ltd. & Ors. Vs. Chief Provident Fund Commissioner & Ors.)**. In this case legality of certain summons issued against the petitioners under Section 7A of the Act was under challenge.

The demand was in respect of similar dues. As it has been recorded in the said judgment, it was argued by the petitioners therein that provisions of Appendix A did not cast any obligation on them to make good the deficiency in payment of interest. I have quoted in the earlier part of this judgment the observation of the Hon'ble Single Judge as regards the applicability of the said Appendix to the scheme and paragraph 7, 9 and 28 thereof. **This judgment deals directly with the point raised in this writ petition in which obligation of an establishment to pay the differential rate of interest has been upheld.** I have expressed my own views on the subject, considering the relevant provisions of the law but in the light of this judgment, I do not think it would be

*appropriate for me to grant relief to the petitioners taking **a wholly different view.***”

- 7) The learned Co-ordinate Bench then referred the matter to be decided before a larger bench, as the Co-ordinate Bench differed with the view of the Single Judge, in **(Loomtex Engineering Pvt. Ltd. & Ors. Vs. Chief Provident Fund Commissioner & Ors.) (Supra).**

- 8) **The issue in reference was as follows:-**

“The question on which I am respectfully differing with the judgment of an Hon'ble Single Judge of this Court in W.P. No. 12477(W) 2002 is:-

*Whether the provisions of paragraph 27AA of the Employees Provident Fund Scheme read with clauses 7 and 9 of Appendix A of the said scheme can be imposed on **establishments exempted under the provisions of Section 17 of the Act from following the said scheme?***”

- 9) **The larger bench on deciding the issue in reference vide an order dated 05.02.2018, directed as follows:-**

“It is not in dispute that all the establishments have been enjoying such exemption till date. Therefore, the issue before the learned Single Judge in this bunch of

writ petitions was **the obligation of the employers to pay the differential rate of interest under the said Scheme, in case of failure of the respective Board of Trustees, to make it good.**

After careful scrutiny of the subject matter of challenge of the writ application of Loomtex Engineering Pvt.Ltd. & Ors., which is produced before us by the department on requisition as also after considering the judgment dated September 14, 2007 delivered by the learned Single Judge in the above writ application, we find that admittedly the exemption of the above establishment from the provisions of the said Scheme, was cancelled as far back as in the month of September, application 2003. The above writ application was filed challenging the summons issued to them on subsequent date, i.e. on May 9, 2007. Taking into the aforesaid facts and circumstances of the case, the learned Single Judge framed the two issues as recorded hereinabove for decision **taking into consideration the admitted fact of enjoying exemption by the establishment till 2003** as also the fact that no restraining order was in force on the date of delivery of the judgment.

Therefore, the judgment delivered in case of an establishment, which was not of an exempted category, was considered by the learned Single Judge with further observation that exemption from applying the provisions of Appendix A of the said Scheme did not arise merely because of pendency of the writ petition challenging the order of cancellation of exemption.

We find that the status of Loomtex Engineering Pvt. Ltd.& Ors. and those of the petitioners in this bunch of writ petitions, were not similar so far as the question of exempted category and/or unexempted category was concerned. Therefore, the Loomtex Engineering Pvt. Ltd. & Ors. (supra) was neither the decision on the issue involved in this bunch of writ petitions nor there was any scope to arrive at a conclusion with regard to the issues involved in this a bunch of writ petitions, as discussed hereinabove.

*It will not be out of context to observe that a decision is not an authority for a proposition, which has not fallen for its consideration. Reliance may be made to the decision in the case of **Punjab National Bank -Vs- R.***

L. Vaid, reported in **AIR 2004 SC 4269** and the relevant portion of the above decision is quoted below:-

"We find that the High Court has merely referred to the decision in *R.K. Jain's case* (supra) without even indicating as to applicability of the said decision and as to how it has any relevance to the facts of the case. It would have been proper for the High Court to indicate the reasons and also to spell out clearly as to the applicability of the decision of the facts of the case. There is always peril in treating the words of a judgement as though they are words in a Legislative enactment and it is to be remembered that judicial utterances are made in the setting of the facts of a particular of the case. Circumstantial flexibility, one additional or different fact may make a difference between conclusion in two cases. **Disposal of cases by merely placing reliance on a decision is not proper.** Precedent should be followed only so far as it marks the path of justice, but you must cut out the deadwood and trim off the side branches else you will find yourself lost I thickets and branches, said Lord Denning, while speaking in the matter of applying precedents. The impugned order is certainly vague."

*The above proposition of law was reiterated and relied upon the by the Apex Court time and again and one of such decisions, was that of **State of Gujarat Vs- Akhil Gujarat Pravasi V.S. Mahamandal**, reported in **(2004) 5 SCC 155** and the relevant portion of the above decision is quoted below:-*

"It is trite that any observation made during the course of reasoning in a judgment should not be read divorced from the context in which it was used."

Therefore, we are of the considered view, that the unreported decision of Loomtex Engineering Pvt. Ltd. & Ors. (supra), is not a conflicting judgment so far as the present writ petitions are concerned.

Accordingly, it is not required for us to give reply to the terms of reference as indicated hereinabove and the learned Single Judge is free to grant relief to the petitioners on the basis of his independent findings with regard to the applicability of the provisions of clauses 7, 9 and 28 of Appendix A read with paragraph 27AA of Employees Provident Fund Scheme in respect of

the establishments of the petitioners, which have been enjoying exemptions under the provisions of Section 17 of the Employees Provident Fund and Miscellaneous Provisions Act, 1952.

This bunch of writ petitions are remitted back to the learned Single Judge for his consideration in accordance with law without being influenced by the order passed by this Court in Loomtex Engineering Pvt.Ltd. & Ors. (supra).”

- 10) Now the matter is before this Court to pass the final orders in WPA 6138(W) of 2009, *Caledonian Jute & Industries Ltd. & Anr. vs Union of India & Ors.* as per the direction of the larger bench, along with 19 other writ applications on similar issue in the said bunch of writ applications. In course of hearing, three (3) more writ applications on similar issue have been added and are taken together for disposal, in all 20 (twenty).

In: WPA 28543(W) of 2015

- 11) The writ application has been preferred praying for direction upon the respondent to recall, rescind and/or cancel the letter dated 20 November, 2015.

12) Vide the impugned order dated 20.04.2015, the respondent no.3 issued a notice upon the petitioner therein by stating as follows:

“It is pertinent to mention for your record, that as the establishment had been granted exemption under section 17(1)(a) of the EPF & MP Act, 1952, by the Appropriate Authority, vide Notification No.473-LW/LW/1A-70/59 dated 25/01/1960 so the said exemption shall be subject to the terms and conditions as given in Appendix-A under Para 27AA of the EPF Scheme, 1952. Further, in consequence of such exemption the PF Trust Board has been established and continuing operation in terms of the provision under u/s 17(1A)(a) to (d) of Act.”

13) The authority then proceeded to direct the petitioner to pay the loss/deficient as determined by authority, hence the writ application.

In: WPA 13484(W) of 2008

14) The writ application has been preferred praying for declaration that provisions of Para 27AA of the Employees' Provident Fund Scheme, 1952 in particular clauses 7 and 9 of Appendix “A” thereto transgress

and/or are ultra virus the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, illegal, null and void.

- 15)** The petitioner has further prayed for direction upon the respondents to cancel the impugned show cause notices dated March 15, 2007 and May 9, 2007 and quash the proceeding allegedly under Section 7A and/or 7B initiated on the basis thereof of the EPF Act, against the petitioner No.1 and also from taking any steps or further steps or proceeding with or continuing with the impugned proceedings under Section 7A or 7B of the 1952 Act, for differential interest under Para 27AA of the 1952 Scheme, in any manner whatsoever.

In: WPA 15352(W) of 2008

- 16)** The writ application has been preferred praying for declaration that clauses 7 and 9 of Appendix 'A' of Paragraph 27AA of the Provident Fund Scheme, 1952 are ultra vires the Employees' Provident Fund and Miscellaneous Provisions Act, 1952; Companies Act, 1956 and inconsistent with Income Tax Rules and are null and void; and further declaration that Clause 7 and Clause 9 of Appendix 'A' of Paragraph-27AA of the Employees' Provident Fund Scheme, 1952 are beyond

the scope of Schedule II referred to in Clause 5 of Employees' Provident Fund and Miscellaneous Provisions Act, 1952 and as such are illegal, null and void; declaration that the rate declared by the Central Government for the years 2001-02 to 2005-06 are in violation of the provisions of Employees' Provident Fund Scheme, 1952 and as such are illegal, null and void and ultra vires the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 and Employees' Provident Fund Scheme, 1952; declaration that Provisions of Paragraph-27AA of the Employees' Provident Fund Scheme, 1952 are not applicable to the Petitioner No. 1 being an exempted establishment, declaration that the order dated 28th November, 2007/4th December, 2007 passed by the Respondent No. 1 is illegal, null and void and is to be set aside and not binding on the Petitioner No. 1, declaration that proceeding under Section 7C of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 initiated by the Regional Provident Fund Commissioner-I, West Bengal are illegal, null and void.

In: WPA 15755(W) of 2011

17) The writ application has been preferred praying for declaration that paragraph 27AA of the Employees Provident Fund Scheme, 1952 and/or Appendix “A” thereto, transgress the said Act, the Companies Act and the Income Tax Rules and is ultra-vires the Constitution of India and null and void and commanding the respondents and each of them, in particular the respondent nos.1 and 2 to forthwith withdraw, rescind and/or cancel the impugned orders dated August 12, 2011 and September 1, 2011.

In: WPA 16240(W) of 2007

18) The writ application has been preferred praying for a declaration that Clauses 7 and 28 of Appendix “A” of para 27 AA of the Employees’ Provident Funds Scheme, 1952 is ultravires the Section 17(1-B) of the Employees’ Provident Fund & Miscellaneous Provision Act, 1952. A writ in the nature of prohibition commanding the respondents as well as the Court below not to proceed the Case No.C 209/07 pending before the Court of the Judicial Magistrate, 1st Court, Barrackpur.

In: WPA 16749(W) of 2008

19) The writ application has been preferred praying for declaration that provisions of paragraph-27AA of the Employees' Provident Fund Scheme, 1952 transgress and/or are ultra virus the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, Companies Act, Income Tax Rules and are illegal, null and void and directing the respondents and their servants and agents to withdraw, rescind and/or cancel the impugned summons dated April 17, 2007 and/or the proceedings under Section 7A of the Provident Fund Act against the petitioner no.1, for differential interest under paragraph 27AA of the 1952 Scheme.

In: WPA 210(W) of 2015

20) The writ application has been preferred praying for direction upon the respondent to recall and/or cancel the letter dated 12th December, 2014.

In: WPA 21252(W) of 2007

21) The writ application has been preferred praying for direction upon the respondent to recall and cancel the impugned notice dated September 11, 2007.

In: WPA 26777(W) of 2023

22) The writ application has been preferred praying for declaration that provisions of paragraph-27AA of the

Employees' Provident Fund Scheme, 1952 and the Appendix thereto transgress and/or are ultra vires, inter alia, the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, unconstitutional and are illegal, null and void and for a direction upon the respondent no.1 to withdraw and/or cancel the impugned notice dated April 27, 2023 and the show-cause notice and memo both dated August 16, 2023 and/or the proceedings initiated thereunder against the petitioner No.1.

In: WPA 2812(W) of 2010

23) The writ application has been preferred praying for declaration that para 27AA of the EPF Scheme, 1952 is not applicable to the exempted establishment of the petitioner, declaration that para 27AA of the EPF Scheme, 1952 is ultra vires Section 17(1A)(d) of the EPF & MP Act, 1952, and praying for direction upon the respondents to recall the order dated 08.02.2008 passed under Section 7A of the said Act and the order dated 07.01.2010 passed under Section 7B of the said Act and also notice dated 03.02.2010.

In: WPA 2974(W) of 2010

24) The writ application has been preferred praying for a declaration that paragraph 27AA read with Appendix A(7) & (9) of the Employees Provident Fund Scheme, 1952 is contradictory to the provisions of Section 17 and sub-sections thereto and as such is ultra vires the Section 17 of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 and therefore, ultra vires the Act itself and declaration that the impugned order passed on 11th March, 2008 and 10th January, 2010 under Sections 7A and 7B of the said Act and Memo being No. WB/HWR/WB/76, 85 & 86/R-Recovery/1600 dated 03.02.2010 issued by the Assistant Provident Fund Commissioner, EPFO, SRO, Howrah are bad and liable to be quashed and/or set aside and also the Memo WB/HWR/WB/76,85 & 86/R-Recovery/1600 dated 03.02.2010 issued by the Assistant Provident Fund Commissioner, EPFO, SRO, Howrah.

In: WPA 31569(W) of 2008

25) The writ application has been preferred, praying for declaration that provisions of paragraph 27AA of the Employees Provident Fund Scheme, 1952 transgress and/or are ultra vires the Employees' Provident Fund

and Miscellaneous Provisions Act, 1952, Companies Act, Income Tax Rules and are illegal, null and void and praying for direction upon the respondent provident fund authorities to cancel the impugned orders September 26, 2008 and November 27, 2008 and all other proceedings under paragraph 27 AA of the 1972 Scheme.

In: WPA 3819(W) of 2008

26) The writ application has been preferred praying for quashing of the order dated January 28, 2008 and order dated November 8, 2005 and declaration that paragraph 27AA of the Employees' Provident Fund Scheme, 1952 is ultra vires the Constitution of India.

In: WPA 4790(W) of 2015

27) The writ application has been preferred praying for declaration that the provisions of paragraph 27AA of the 1952 Scheme And Appendix "A" thereto transgress and/or are ultra vires the EPF Act and Companies Act, 1956 and are illegal and null and void and/or has no application to exempted establishment and also praying for direction upon the respondents to recall and or withdraw impugned memo dated April 30, 2014,

October 30, 2014, November 11, 2014, November 13, 2014, January 29, 2015.

In: WPA 4932(W) of 2009

28) The writ application has been preferred praying for declaration that provisions of paragraph 27AA of the Employees' Provident Fund Scheme, 1952 transgress and/or are ultra virus the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, Companies Act, Income Tax Rules and are illegal, null and void and direction upon the respondents to withdraw and/or cancel the impugned order dated February 16, 2009.

In: WPA 5548(W) of 2009

29) The writ application has been preferred praying for declaration that provisions of paragraph 27AA of the Employees Provident Fund Scheme, 1952 transgress and/or are ultra vires the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, Companies Act, Income Tax Rules and are illegal, null and void and not enforceable and direction upon the respondents to withdraw and cancel the impugned order dated February 27, 2009 and all other proceedings under paragraph 27AA of 1952 Scheme.

In: WPA 7526(W) of 2012

30) The writ application has been preferred praying for declaration that provisions of paragraph 27AA of the Employees Provident Fund Scheme, 1952 transgress and/or are ultra vires the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, Companies Act, Income Tax Rules and are illegal, null and void and praying for direction upon the respondents to withdraw and or cancel the impugned orders dated July 31, 2008 and September 30, 2008 and all order of attachment issued there under including the order dated November 4, 2008, and all other proceedings under paragraph 27AA of the EPF Scheme.

In: WPA 8290(W) of 2011

31) The writ application has been preferred praying for a declaration that paragraph 27AA of the Employees Provident Fund Scheme, 1952 is contradictory to the provisions of Section 17 and sub-sections thereto and as such is ultra vires the Section 17 of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 and therefore, ultra vires the Act itself and praying for direction upon the respondents to withdraw and or cancel and/or withdraw the impugned proceeding

under paragraph 26B of the Employees Provident Fund Scheme, 1952 and also orders dated 04.03.2011, 31.03.2011 and 13.04.2011 passed by the Regional Provident Fund Commissioner-II/OIC, Sub-Regional Office, Barrackpore.

In: WPA 8918(W) of 2011

32) The writ application has been preferred praying for a declaration that para 27AA of the Employees' Provident Fund Schemes, 1952 is ultra vires Section 17(1A)(d) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 to the extent it purports to impose liability on the employer to make good the loss of interest to a member, for following the investment pattern by the Board of Trustees in accordance with the provisions of Section 17(1A)(d) of the EPF & MP Act, 1952 and also for following the conditions of notification granting exemption and direction upon the respondents to cancel and withdraw the order dated 1st March, 2011 passed by the respondent No.1, and the recovery certificate dated 11th April, 2011 issued by the respondent No.2.

Conclusion:-

33) On hearing the learned counsels for the parties and on perusal of the written notes of argument filed by the respective parties and also considering the view of the learned Co-ordinate Bench dated 14.11.2011 in **WPA 6138(W) of 2009**, along with the direction in order dated 05.02.2018 of the larger/Division Bench in reference, the following is evident:-

a) Section 17 of the Employees Provident Funds and Miscellaneous Provision Act, 1952, lays down the power of the appropriate government to exempt.

Section 17 EPF Act:- 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.....”*

b) Para 27AA of the Employees Provident Funds Scheme lays down:-

“27-AA. Terms and conditions of exemption.- All exemptions already granted or to be granted hereafter under Section 17 of the Act or under paragraph 27-A of the scheme shall be subject to the

terms and conditions as given in the appendix A.”

- c) Para 27AA of the EPF scheme has been brought in by way of an amendment (with effect from 06.01.2021) to the scheme and made applicable to the exemption granted under Section 17 of the EPF Act.
- d) **One option** would be to cancel or surrender or withdraw the exemption which has been granted to the establishments under Section 17 of the Act, by the appropriate government, if the terms and conditions of Para 27AA of the scheme are more favourable, **than the conditions specified in the notification granting exemption under 17 of the Act.**
- e) **The other option** would be that, though Para 27AA of the EPF scheme lays down the terms and conditions of exemption and also makes it applicable to all exemptions **already granted or to be granted** under Section 17 of the Act or under Para 27A of the scheme, which shall be subject to the terms and conditions as given in appendix ‘A’, **the same can be made applicable to an exempted establishment**, only by the appropriate government, which granted exemption to an establishment, **by modification of and or amendment** to the **notification granting exemption**

in the **official gazette, on such conditions as may be specified in the notification and while doing so could exempt, whether prospectively or retrospectively from the operation of all or any of the provisions of the scheme.**

f) Thus Section 17 EPF Act gives strength to the argument of the petitioners that when such exempted establishments have been exempted from the provision of the scheme, an amendment to the said scheme (Para 27AA) would also not apply to such establishment. But the mischief here has been caused by the wording in Para 27AA of the scheme. **The said mischief can be undone only by acting as per Section 17 of the EPF Act, which granted the initial exemption.**

g) As such, by way of an **(amended)** exemption notification in the official gazette, by the appropriate government herein, Para 27AA of the EPF scheme can be made applicable to such exempted establishments, granted exemption under Section 17 of the Act.

34) Section 17 of the EPF Act, by itself is very specific and clear to the extent that:-

- i. Such exemption has to be granted by the appropriate government, by notification in the official gazette.
- ii. Such exemption has to be subject to such conditions as may be specified in the notification.

As such without the conditions being specified in the notification, the same cannot be made applicable to an establishment being granted exemption under Section 17 of the Act.

- iii. The said notification granting exemption could be prospective or retrospective, from the operation of all or any of the provisions of any scheme.

As such for such conditions and provisions of any scheme to be made applicable to an exempted establishment, the same would have to be done by the appropriate government by notification in official gazette, as per Section 17 of the EPF act and without compliance of the provision of Section 17 EPF act, the provision of the scheme herein, being

para 27AA, is not applicable to the establishments, who have been granted exemption under Section 17 of the EPF Act.

35) The following observations of the Supreme Court in ***Jiyajeerao Cotton Mills Ltd. vs Dev Kumar Holani & Ors., (1998) AIR (SC) 2480***, are clear on the said issue:-

“9.unless the appropriate Government issued a notification amending the exempted scheme and published the same in the Official Gazette, Condition 4 did not apply to them. Admittedly, no such notification amending the exempted scheme framed by the appellant and Respondent 10 was issued by the State Government.”.....

9."The revised terms and conditions did not and could not have become applicable automatically, and in order to make them applicable, they were required to be incorporated by the appropriate Governments in the notification granting exemption under Section 17(1)(a)."

19. The appropriate government in these cases however has not varied the conditions of exemption but on the other hand the statutory scheme itself has been amended, from following which the concerned

establishments have been exempted.....”

36) Accordingly, the writ application (20) herein are all disposed of on holding that:-

- a) Para 27AA of the employees provident fund scheme, with appendix ‘A’ is **not ultra vires** of the employees provident fund and miscellaneous provisions act, 1952.**
- b) Para 27AA of the employees provident fund scheme, 1952 with appendix ‘A’ is not applicable to the establishments exempted under Section 17 of the EPF Act, unless and until, the conditions of exemption is modified by way of an amendment in a notification published in official gazette making the provision of Para 27AA of the EPF scheme applicable to such exempted establishment.**
- c) Thus, all notices and orders challenged in the writ applications herein, issued stating non compliance/violation of Para 27AA/appendix ‘A’ of the employees provident fund scheme, 1952, are hereby quashed and set aside.**

- 37)** Applications, if any, connected thereto stand disposed of consequently.
- 38)** Interim order, if any, stands vacated.
- 39)** Photostat certified copy of this order, if applied for, be given to the parties on priority basis upon compliance of all formalities.

[Shampa Dutt (Paul). J]