205 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

****

CWP-12381-2000 (O&M)
Date of Decision: 16.04.2026

The Punjab State Co-operative Supply and Marketing Federation Limited

...Petitioner

Versus

State of Punjab and Others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Ms. Sanchi Bindra, Advocate for
Mr. Amar Vivek, Advocate for the petitioner.

Mr. Vikas Arora, DAG, Punjab.

Mr. Rajesh Hooda, Advocate for respondent No.2.

****

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 28.01.2000 and 12.06.2000 whereby respondent No.2 has rejected its application seeking exemption under Sections 17(1)(b) and 17(1)(C) of Employees Provident Funds and Miscellaneous Provisions Act, 1952 (for short '1952 Act').

2. The petitioner is a public sector undertaking. It is engaged in the manufacturing and marketing of multiple agriculture products. It applied to respondents seeking exemption from applicability of provisions of 1952 Act. The application was filed under Section 17(1)(b) of 1952 Act. It filed ***CWP No.8864 of 1999*** which was disposed of with a direction to respondents to pass a speaking order within three months. The respondent by impugned order has rejected its application seeking exemption. The operative portion of impugned order dated 27.01.2000

reads as:

> *"11. I have examined the entire material on record and given a thoughtful consideration to the arguments advanced before me/It is clear from record that the application dated 6.4 1992 given by the Markfed relates to getting exemption under Section 17(1) (b) and 17(1) (A) of the Act for Code No. PN/1735. This application does not cover a request under Para 27 A of the Scheme for grant of exemption for a class of employees only. This application also does not cover the issue of getting exemption from the Employees Family Pension Scheme, 1971, for which they were required to move an application to the Central Provident Fund Commissioner under Section 17 (1) (c) of the Act. At the time of hearing, however, the Markfed has taken the stand that letters were sent to Regional Provident Fund Commissioner seeking due exemption under Para 27 A of the Scheme as well as under Section 17 (1) (c) of the Act, from the Central Provident Fund Commissioner.*
>
> *12. An argument can be taken that the applications filed by the Markfed seeking exemption under Para 27 A of the Scheme and under Section 17(1) (c) of the Act from the Central Provident Fund Commissioner should be taken a part of the application dated 6.4.1992. However, even then, a clear picture does not emerge and it is not possible to settle the issue finally. The competent authority to grant exemption from the Employees Provident Fund Scheme is the State Government while the competent authority to grant exemption from the Employees Family Pension Scheme, 1971 is the Central Provident Fund Commissioner. If it is presumed that Markfed has duly applied for seeking exemption from the Employees Provident Fund Scheme under Section 17(1) (b) of the Act read with under Para 27 A of the Scheme, the issue cannot be decided finally because exemption cannot be granted by the State Government from the provisions of Employees Family Pension Scheme, 1971 for which the appropriate authority is the Central Provident Fund Commissioner as*

stated already. As stated during discussions, a portion of the contributions made under the Provident Fund Scheme both by the employer and employees goes to the Employees Family Pension Fund. The quantum of this Fund is 1.16% from employer's share and 1.16% from employee's share, making a total of 2.32%. Even if the exemption is granted from the Employees Provident Fund Scheme, a sum equivalent to 2.32% of the share shall remain with the Provident Fund Organization in the absence of exemption under Section 17(1) (c) of the Act, by the Central Provident Fund Commissioner and shall not be available to Markfed for utilizing the same for giving pension to their employees. Employees Family Pension Scheme, 1971 has since been replaced by Employees Pension Scheme w.e.f. 16.11.1995 and under Section 17(1) (c) has also been amended accordingly. Under the amended under Section 17(1) (c), the competent authority is the appropriate Government and exemption can be given to the whole establishment only and not to a class of employees. As told by the officers during discussion, with effect from 16.11.1995, a contribution of 8.33% out of the total contributions received are to be put in into Employees Pension Fund. The net implication is that after 16.11.1995, 8.33% of the share of the contributions from a total of 24% shall go to Pension Fund and in the absence of exemption under Section 17(1) (c), shall remain with the Provident Fund Organization. It is clear, therefore that a substantial part of the fund which is almost 1/3 of the contributions, shall not be available to Markfed for utilizing the same for giving pension to the employees. The Scheme of Markfed shall, therefore, become totally unviable. This fact has also been confirmed by the representatives of the Markfed who came for discussions on 24.1.2000 and 25.1.2000. They stated clearly that if 8.33% share is retained by Employees Provident Fund Organization we.f. 16.11.1995 and 2.32% of the share is retained by that Organization upto 15.11.1995. the Scheme of Markfed shall become unviable.

13. In the light of the above discussions, it is quite obvious that Markfed should seek exemption simultaneously from the provisions of Employees Pension Scheme, 1995 and also from the Employees Family Pension Scheme, 1971 from the Central Provident Fund Commissioner in case they want to institute a Pension Scheme for their employees with effect from 1.1.1990. Any exemption given from the provisions of Employees Provident Fund Scheme, 1952 for the regular employees only shall not help Markfed in achieving the desired objective. As stated also, exemption from the Employees Pension Scheme, 1995 has to be sought for the whole establishment as per the requirements of law.

14. In the light of the fore-going discussions, I have no alternative but to reject the application dated 6.4.1992 filed by the Markfed seeking exemption under Section 17(1) (b) and 17(1) (A) of the Act for their employees covered under registered Code No. PN/1735 and I order accordingly.

Given under my hand and seal of office on this 27th day of January, 2000.

Sd/-

Dated Chandigarh *(B.C. Gupta) IAS*
The 27th January, 2000 *Secretary Labor & Employment*
27.1.2000"

3. Learned counsel representing the petitioner submits that petitioner is quite competent to discharge its duties with respect to pension, gratuity and provident fund. It can provide better facilities to its employees then provided under 1952 Act.

4. *Per contra*, learned counsel for the respondents submit that a period of more than three decades from the date of application filed by petitioner has passed away. During preceding three decades, most of the employees who were working at that point of time have already retired. They have already received provident fund as well as are regularly getting pension from Employees Provident Fund Organization. The

petitioner if still is interested to pursue the matter may file fresh application which would be considered in accordance with law. The petitioner did not file application under Section 17(1C) of 1952 Act. Further exemption from Employees' Family Pension Scheme, 1971 can be granted by Regional Provident Fund Commissioner.

5. Heard the arguments and perused the record.

6. From the perusal of record, it is evident that respondent rejected petitioner’s application on the ground that State Government is not competent to grant exemption from Employees' Family Pension Scheme, 1971. It is Regional Provident Fund Commissioner who can grant exemption. The petitioner has not filed application before competent authority. It was further noticed that exemption can be granted to an Establishment and not to any particular class of employees. A period of more than three decades has passed away. Lot of changes in the financial market has taken place. At this stage, it may or may not be advisable for the petitioner to carry out its own pension, provident fund and gratuity scheme.

7. In the backdrop, the petition stands ***disposed of*** with liberty to the petitioner to move an appropriate fresh application before Authorities if still finds that it should seek exemption from applicability of provisions of 1952 Act.

8. Pending application(s), if any, shall also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

16.04.2026
Prince Chawla

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No