

(2019) 09 CAL CK 0023

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 15262 (W) Of 2018

Arani Mukhopadhyay

APPELLANT

Vs

Employees Provident Fund Organization & Ors

RESPONDENT

Date of Decision : 06-09-2019

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2)(b)
Employees' Provident Funds Scheme, 1952 — Section 1(3)(b)(xxvi)
Constitution Of India, 1950 — Article 21, 226

Citation : (2019) 09 CAL CK 0023

Hon'ble Judges : Shekhar B. Saraf, J

Bench : Single Bench

Advocate : Arani Mukhopadhyay, Shiv Chandra Prasad, Supriya Ranjan Saha, S.K. Mukherjee, Subhrangsu Maiti

Final Decision : Allowed

Judgement

Shekhar B. Saraf, J

1. This is an application under Article 226 of the Constitution of India wherein the writ petitioner has been aggrieved by the non-payment of his provident fund, provident fund linked insurance and the incorrect date of resignation in the Pension Payment Order (PPO) book maintained by the respondent company in respect of the provident fund linked pension.

2. The chronological facts leading to the instant writ petition are as follows:

a. On 5th December, 1996, a show cause notice [hereinafter referred to as the 'said show cause notice'] was issued by the Financial Controller of The Statesman Ltd. [hereinafter referred to as the 'respondent company'] upon the writ petitioner alleging misconduct on the part of writ petitioner along with one Mr. Santosh Kumar Das.

b. The writ petitioner replied to the said show cause notice and the respondent company being dissatisfied with the said reply an enquiry was commenced. The

Enquiry Officer submitted its report on 25th February, 1999, and in the said report the writ petitioner was held guilty against the charges levelled against him in the said show cause notice. The writ petitioner also replied to the said report of the Enquiry Officer through a letter dated 29th March, 1999.

c. On 16th April, 1999, the writ petitioner received a letter issued by respondent company dismissing the writ petitioner from the service with immediate effect.

d. Thereafter, the respondent company moved an application before the Ld. First Industrial Tribunal [hereinafter referred to as the 'said tribunal'] under section 33(2)(b) of the Industrial Disputes Act, 1947, seeking approval of the decision taken by the respondent company with respect to the dismissal of employment of the writ petitioner and the same was rejected by the said tribunal by an order dated 19th May, 1999.

e. The respondent company being aggrieved by the order dated 19th May, 1999, passed by the Ld. First Industrial Tribunal filed a writ petition bearing W.P. No. 1372 of 1999 praying before the court to quash the order passed by the said tribunal. By the judgment dated 25th April, 2003, this court was pleased to uphold the order passed by the said tribunal and the writ petition was dismissed.

f. Being aggrieved by the judgment dated 25th April, 2003, the respondent company preferred an appeal before the Division Bench of this Court bearing APO No. 291 of 2003. With respect to the appeal an order was passed by the Division Bench dated 21st September, 2006, wherein it was held that the writ petitioner is willing to resign from service from 15th October, 2006, and the respondent company being the employer of the writ petitioner would pay a sum of Rs. 5,50,000/- [Rupees Five Lacs Fifty Thousand Only] in terms of full and final settlement of the writ petitioner's claim. The relevant portion of the order is delineated below:

"It now appears that the concerned employee is willing to resign from service with effect from October 15, 2006. The appellant/employer is ready and willing to pay a sum of Rs. 5 lacks in full and final settlement of his retrenchment compensation. The respondent/employer however, insists that he should be paid a sum of Rs. 6 lacks. Since the parties have already agreed to shaver employer - employee relationship we feel interest of justice would sub-serve if we direct the appellant to pay a sum of Rs. 5.5 lacks in full and final settlement of the claim of the employee.

Mr. Saha appearing for the appellant submits that a sum of Rs. 1 lack would be paid by 15th October 2006. He also assures this Court that the unpaid salary for the month of August, September and part of October 2006 would be paid to the employee concerned by 28th September 2006. Mr. Saha submits that a cheque for the amount payable for the month of August 2006 has already been sent by Registered post.

Mr. Kar appearing for the employee on instruction submits and undertakes to

return the said cheque as and when received by him.

The unpaid salary so directed to be paid by September 28, 2006 must be paid through Mr. Kar's Advocate on record within the stipulated date.

With regard to compensation, Rs, 1 lack must be paid by 15 October 2006 as submitted by Mr. Saha. The balance Rs. 4.5 lacks be paid in 12 equal monthly instalment commencing from 15 November 2006 and thereafter 15th day of every succeeding month.

In default of payment of any instalment the entire amount then due and payable would become payable along with interest at the rate of 6% per annum and the concerned employee would be entitled to take appropriate steps for recovery of the said sum in accordance with law.

The appellant would take necessary steps for release of the monthly provident Fund link pension payable to the employee. The employee would also assist the employer/appellant in this regard for early release of the pension.

It is made clear that this order would also resolve all controversy between the employer /appellant and the employee being the respondent No. 2 in all pending civil and criminal proceedings."

g. On 20th December, 2006, the order of the Division Bench dated 21st September, 2006, was modified to the extent that the lump sum amount payable to the writ petitioner should be treated as retiral benefit. The relevant portion of the order dated 20th December, 2006, is presented below:

"Our judgment and order dated September 21, 2006 is modified to the extent that the lump sum amount payable to the respondent employee should be treated as retiral benefit.

The judgment and order dated September 21, 2006 is modified accordingly. Let the same be incorporated in the original judgment and the order dated September 21, 2006."

h. The writ petitioner by way of a letter dated 23rd March, 2007, wrote to the General Manager Finance of the respondent company asking to take necessary steps with the P.F. Commissioner's office for expeditious settlement of his P.F. linked pension account.

i. On 29th March, 2007, the Assistant P.F. Commissioner wrote to the respondent company that the claim of the writ petitioner could not be processed and further instructed to submit the necessary documents with respect to the claim. Again, on 13th August, 2010, the Assistant P.F. Commissioner by a letter informed the respondent company to submit all the documents with respect to the claims made by the writ petitioner for early settlement of the claim.

j. Thereafter, on 7th February, 2014, the Assistant P.F. Commissioner wrote to the Director of the respondent company with respect to the redressal of

grievance made by the writ petitioner in the form of a complaint. The relevant extract of the letter is delineated below:

"A complaint has been received from the above named individual on the issue that P.F. Contribution deducted from his salary for the period from 1998-99 to 15/10/2006 has not been deposited in P.F. Account and owing to that effect he has been deprived from the actual benefit of Pension provided under the Scheme.

Photocopy of the complaint letter date 05/2/2014 received at this end are enclosed herewith for necessary action in the matter.

You are therefore directed to take immediate steps to resolve the grievance of the aforesaid member and forward the action taken report within 7 days on receipt of this communication. Moreover, B. Mukhopadhyay, EO will be visiting your office and therefore it is requested to share with all relevant records for his verification."

k. On 22nd July, 2014, Assistant P.F. Commissioner wrote to the Manager of the respondent company stating that the claim of the writ petitioner could not be settled because of two reasons. For a clear understanding the relevant portion of the letter is produced below:

"With reference to the above, it is stated that the claim of your employee cannot be settled at this stage due to the following reasons:

1) Date of leaving of the member is 15/10/06, instead of 02/4/99 as per judgment of Hon'ble High Court, Calcutta and reason of leaving service retirement instead of dismissed.

2) Return in F/7PS & F/8PS from 4/99 to 12/2004 may be sought for from the estt as per Judgment of Hon'ble High Court, Calcutta Dt. 21.9.06 & 20.12.06 instead of 15/10/06 as the member attained the age of 58 yrs as on 1/1/05.

Hence, the claim in F/10D is enclosed herewith for resubmission along with correction of reason of leaving service and date and summary of 4PS, 5PS, 7PS & 8PS with 07(seven) days from the date of receive of this communication."

l. Thereafter, on 16th February, 2015, the writ petitioner made a representation before the Regional Provident Fund Commissioner-I reiterating the entire facts of the case and also stated his rights so that necessary action could be taken with respect to the non-receipt of Provident Fund from the respondent company.

m. On 3rd February, 2016, Assistant P.F. Commissioner wrote to the Senior Vice President & The Chairman of the respondent company by way of a letter that relevant reply is yet to be received from the respondent company with respect to the claim made by the writ petitioner. Thereafter, the same was also informed to the writ petitioner by the Assistant P.F. Commissioner through a letter dated 12th May, 2016.

n. The writ petitioner on 7th December, 2017, again made a representation

before the Regional Provident Fund Commissioner-I having issue with respect to non-payment of Provident Fund and less payment of Provident Fund linked monthly pension from due date and also made reference to an earlier letter dated 16th February, 2015.

o. Finally, on 1st January, 2018, the Regional Provident Fund Commissioner by a letter informed the writ petitioner that the respondent company has been approached number of times by his office but no concrete reply has been submitted, and it is due to the non-cooperation of the respondent company that his office was unable to serve the ends of justice with respect to the claims made by the writ petitioner.

p. Hence, the writ.

3. The writ petitioner has now filed this writ petition praying before this court to direct the respondents to correct the date of resignation of the writ petitioner and re-calculate the actual amount of dues with respect to provident fund and pension payable to him by the respondents along with the interest. It is pertinent to mention that in the present writ with the leave of the court the writ petitioner is appearing in person.

4. The writ petitioner states that he has been denied of his statutory dues under the Employees Provident Funds and Miscellaneous Provisions Act, 1952, by the respondent company and there is inaction on the part of the respondent no. 1 in discharging such statutory obligation. He submits that it is an admitted fact that as on 31st March, 1997, a sum of Rs. 40,279.57/- [Rupees Forty Thousand Two Hundred Seventy Nine and Fifty Seven Paise only] was deposited with the respondent company which he is entitled to receive. He further submits that the amount of Rs. 5,50,000/- [Rupees Five Lakh Fifty Thousand only] paid to him was towards his back wages (Rupees 1 Lac) and compensation (Rupees 4.5 Lacs) and does not include the provident fund amount due to him.

5. The writ petitioner submits that the date of retirement was recorded as 16th April, 1999, whereas according to the order of this court dated 21st September, 2006, the actual date of retirement is 15th October, 2006 and due to such discrepancy in the date of retirement the writ petitioner is receiving less amount of pension than what he is actually entitled to. The writ petitioner contends that due to the inaction on the respondent authorities by not correcting the date of resignation of the writ petitioner it is the writ petitioner who is suffering and is denied of his statutory rights granted to him under the statute.

6. The writ petitioner submits that from 2006 till 2019 he has been writing to the respondent authorities as well as the respondent company but there has been non-action on the part of the respondents and because of which he has been denied of his statutory claims. He also refers to Supreme Court judgment in the matter of Olga Tellis and Others -v- Bombay Municipal Corporation and Others reported in (1985) 3 SCC 545 wherein the court held that there can be no estoppel against enforcement of fundamental rights. He submits that the right to

get his provident fund dues is a part of his right to life under Article 21 of the Constitution of India and it is a well settled law that the person cannot barter away his fundamental rights. The writ petitioner also refers to the case of Arcot Textile Mills Limited -v-Regional Provident Fund and Others reported in (2013) 16 SCC 1 wherein the court reiterated the nature and object of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 is a beneficial social legislation to ensure health and other benefits of the employees and the employer under the Act is under a statutory obligation to make the deposit that is due from him on a timely basis.

7. In this writ petition, only the respondent company filed an Affidavit-in-Opposition. The respondent company has appeared before the court and submitted that according to the court's order dated 21st September, 2006 and 20th December, 2006 the amount paid to the writ petitioner was inclusive of all the benefits arising out of the service rendered by the writ petitioner including the provident fund. It is also contended that the order passed by this court has attained finality and it cannot be reopened at this stage after a lapse of 12 years.

8. I have heard learned counsel for both the parties and perused the materials on record.

9. After going through all the documents presented and arguments made before me it is now important to first point out the questions which I think are necessary to answer in order to adjudicate on this writ petition.

a. Whether the term 'retiral benefit' includes provident fund?

b. Whether the order dated 21st September, 2006 has attained finality?

10. At the very outset, it is very important to know the scope of the term retiral benefits. Considering what actually constitutes retiral benefits one can refer to the judgment of Bakshish Singh -v- M/s Darshan Engineering Works and Others reported in (1994) 1 SCC 9 wherein the Apex Court discussed that gratuity along with provident fund and pension comes within the ambit of retiral benefits. The relevant paragraph of the judgment is delineated below:

"16. The aforesaid survey of the relevant authorities shows that in labour jurisprudence the concept of "gratuity" has undergone a metamorphosis over the years. The dictionary meaning may suggest that gratuity is a gratuitous payment, a gift or a boon made by the employer to the employee as per his sweet will. It necessarily means that it is in the discretion of the employer whether to make the payment or not and also to choose the payee as well as the quantum of payment. However, in the industrial adjudication it was considered as a reward for a long and meritorious service and its payment, therefore, depended upon the duration and the quality of the service rendered by the employee. At a later stage, it came to be recognised as a retiral benefit in consideration of the service rendered and the employees could raise an industrial dispute for introducing it as a condition of service. The industrial adjudicators

recognised it as such and granted it either in lieu of or in addition to other retiral benefit(s) such as pension or provident fund depending mainly upon the financial stability and capacity of the employer. The other factors which were taken into consideration while introducing gratuity scheme were the service conditions prevalent in the other units in the industry and the region, the availability or otherwise of the other retiral benefits, the standard of other service conditions etc. The quantum of gratuity was also determined by the said factors. The recognition of gratuity as a retiral benefit brought in its wake further modifications of the concept. It could be paid even if the employee resigned or voluntarily retired from service. The minimum qualifying service for entitlement to it, rate at which it was to be paid and the maximum amount payable was determined likewise on the basis of the said factors. It had also to be acknowledged that it could not be denied to the employee on account of his misconduct. He could be denied gratuity only to the extent of the financial loss caused by his misconduct, and no more. Thus even before the present Act was placed on the statute book, the courts had recognised gratuity as a legitimate retiral benefit earned by the employee on account of the service rendered by him. It became a service condition wherever it was introduced whether in lieu of or in addition to the other retiral benefit(s). The employees could also legitimately demand its introduction as such retiral benefit by raising an industrial dispute in that behalf, if necessary. The industrial adjudicators granted or rejected the demand on the basis of the factors indicated above."

11. In *Otis Elevator Employees' Union S. Reg. -v- Union of India*, reported in (2003) 12 SCC 68 the court further discussed the term "retiral benefits" and its relevance. The relevant paragraph of the judgment is delineated below:

"S. Rajendra Babu, J.- Retiral benefits such as provident fund, gratuity and pension schemes have been common in government establishments. Such schemes were also introduced for the employees by certain enlightened employers. In addition to such benefits, the Industrial Disputes Act also makes statutory provisions of compensation on the termination of the service of an employee by way of retrenchment, on transfer or closure of an undertaking. Such social security measures have introduced an element of stability and protection in the midst of stress and strains of modern industrial life. As observed by the National Commission on Labour-Social Security, the concept of "social security" is based on human dignity and social justice, the underlying idea being that, social security measures would allow a citizen who has contributed or is likely to contribute to his country's welfare should be given protection against certain hazards."

12. One can also trace the presence of the term 'retiral benefits' from The Employees' Provident Funds Scheme, 1952 [hereinafter referred to as the said scheme]. The said scheme under section 1(3)(b)(xxvi) talks about enjoyment of provident fund and pension by the employees which are treated as retiral benefits. The relevant provision from the said scheme is depicted below:

"(xxvi) With respect to the establishments engaged in Railways for construction, maintenance, operation and commercial activities of Railways, excluding Indian Railways exclusively managed by Government of India whose employees are in enjoyment of the Provident Fund, Pension and other retiral benefits under the rules made by the Central Government; specified in notification of the Government of India in the Ministry of Labour and Employment, G.S.R. 401, dated 10. 11.2005 published in Part II of Section 3, sub-section (i) of the Gazette of India dated 19.11.2005 comes into force from the date of publication."

13. Upon considering the above judgment in the matter of Bakshish Singh (Supra) cited and the provision present in the said scheme it can be clearly inferred that the order which was modified by the Division Bench of this court dated 20th December, 2006, to the extent that the lump sum amount payable to the writ petitioner by the respondent company should be treated as retiral benefits includes the provident fund deposit which was lying with the respondents. Also, taking into consideration the order dated 21st September, 2006, it is very clear on its intent that the said lump sum amount which was fixed by the court to be paid to the writ petitioner was with respect to the full and final settlement of the claim. Lastly, it is important to mention here that the said order specifically mentioned that the said order would resolve all the controversy between the writ petitioner and the respondents which means that this order of the court has attained finality with respect to all the claims raised by the writ petitioner.

14. Thereafter, with respect to the second point the order dated 21st September, 2006, is very clear in its approach regarding the dispute. In my considered view the amount paid to the writ petitioner was with respect to the full and final claim which includes everything under the umbrella of which an employee has a right in terms of retirement benefits. I have specifically dealt with the doctrine of finality in the matter of Chanchal Kumar Chatterjee -v- State Of West Bengal & Ors. reported in 2019 (1) CHN (Cal) 256 wherein I have critically analysed the principles of doctrine of finality and its exceptions thereof. The relevant portion of the judgment is delineated below:

"14. Apart from the fact that the state authorities are clearly hit by the Doctrine of Approbate and Reprobate, I am of the view that the State Authorities are also prevented from re-agitating the issue relating to the manner in which recalculation has to be carried out, as the issue has been settled and reached a finality. The Supreme Court in Indian Council for Enviro-Legal Action Vs. Union of India and Ors. reported in (2011) 8 SCC 161 [Coram: Dr. Dalveer Bhandari and H.L. Dattu, JJ.] discussed the entire issue of finality of judgement in paragraphs 103 to 142. The principle on which the 'Doctrine of Finality' is based has been delineated in paragraphs 103 and 142 that are provided below:-

"103. The maxim interest reipublicae ut sit finis litium says that it is for the public good that there be an end to litigation after a long hierarchy of appeals. At some stage, it is necessary to put a quietus. It is rare that in an adversarial

system, despite the Judges of the highest court doing their best, one or more parties may remain unsatisfied with the most correct decision. Opening door for a further appeal could be opening a floodgate which will cause more wrongs in the society at large at the cost of rights.

104. It should be presumed that every proceeding has gone through infiltration several times before the decision of the Apex Court. In the instant case, even after final judgment of this Court, the review petition was also dismissed. Thereafter, even the curative petition has also been dismissed in this case. The controversy between the parties must come to an end at some stage and the judgment of this Court must be permitted to acquire finality. It would hardly be proper to permit the parties to file application after application endlessly. In a country governed by the rule of law, finality of the judgment is absolutely imperative and great sanctity is attached to the finality of the judgment. Permitting the parties to reopen the concluded judgments of this Court by filing repeated interlocutory applications is clearly an abuse of the process of law and would have far reaching adverse impact on the administration of justice.

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142. The applicants certainly cannot be provided an entry by back-door method; and permit the unsuccessful litigants to reagitate and reargue their cases. The applicants have filed these applications merely to avoid compliance with the order of the Court. The applicants have been successful in the endeavour and have not permitted the judgement delivered on 13-2-1996 to acquire finality till date. It is strange that other respondents did not implement that final order of this Court without there being any order or direction of this Court. These applications being devoid of any merit deserve to be dismissed with heavy costs."

15. Subsequently, in *Union of India and Others Vs. Major S. P. Sharma and Others* [Coram: Dr. B.S. Chauhan, J. Chelameswar and M.Y. Eqbal, JJ.] reported in (2014) 6 SCC 351 the Supreme Court once again elucidated the principles in paragraphs 75 to 90 with regard to the Doctrine of Finality. M.Y. Eqbal, J. observed in paragraphs 80 to 82 as follows:

"80. In *M. Nagabhushana V. State of Karnataka* this Court held that the doctrine of *res judicata* is not a technical doctrine but a fundamental principle which sustains the rule of law in ensuring finality in litigation. The main object of the doctrine is to promote a fair administration of justice and to prevent abuse of process of the court on the issues which have become final between the parties. The doctrine is based on two age-old principles, namely, *interest reipublicae ut sit finis litium* which means that it is in the interest of the State that there should be an end to litigation and the other principle is *nemo debet bis vexari, si constat curiae quod sit pro una et eadem causa* meaning thereby that no one ought to be vexed twice in a litigation if it appears to the court that it is for one and the same cause.

81. Thus, the principle of finality of litigation is based on a sound firm principle of public policy. In the absence of such a principle great oppression might result under the colour and pretence of law inasmuch as there will be no end to litigation. The doctrine of res judicata has been evolved to prevent such anarchy.

82. In a country governed by the rule of law, the finality of a judgement is absolutely imperative and great sanctity is attached to the finality of the judgement and it is not permissible for the parties to reopen the concluded judgements of the court as it would not only tantamount to merely an abuse of the process of the court but would have far-reaching adverse effect on the administration of justice. It would also nullify the doctrine of stare decisis, a well-established valuable principle of precedent which cannot be departed from unless there are compelling circumstances to do so. The judgements of the court and particularly of the Apex Court of a country cannot and should not be unsettled lightly."

16. I would go amiss if I do not consider the judgement delivered by the Division Bench of this High Court wherein Sanjib Banerjee, J. authoring the judgement on behalf of himself and the Hon'ble the Chief Justice had examined the issue with regard to the Doctrine of Finality and pronounced the principles thereto in *Indu Bhusan Jana Vs. Union of India and Ors.* reported in AIR 2009 Cal 24; (2009) 1 CHN 27[Coram: Surinder Singh Nijjar, C.J. and Sanjib Banerjee, J.]. The Principles of Doctrine of Finality have been succinctly captured in the paragraphs delineated below:

"11. Upon an order attaining finality, it matters little as to whether it was erroneous. A party aggrieved by an order has to work out his remedies within the legal framework. If an issue or the entire lis is concluded upon a finding being rendered and such finding remains unchallenged, it is no longer open to the party to undo the effect thereof at any subsequent stage or collaterally unless it is demonstrated that the finding was obtained by fraud or the Court lacked jurisdiction to pass the order. The hierarchy in the judiciary exists to afford litigants to climb up the ladder in pursuit of justice and to right a wrong committed at a lower level. But if a litigant accepts an order, he does it to his prejudice and binds himself thereby.

12. The principle of finality or res judicata is a matter of public policy and is one of the pillars on which a judicial system is founded. Once a judgement becomes conclusive, the matters in issue covered thereby cannot be reopened unless fraud or mistake or lack of jurisdiction is cited to challenge it directly at a later stage. The principle is rooted to the rationale that the issues decided may not be reopened, and has little to do with the merit of the decision. If it were to be otherwise, no dispute can be resolved or concluded. The principles of res judicata and constructive res judicata apply equally to proceedings under Article 226 of the Constitution.

13. A decision pronounced by a Court of competent jurisdiction is binding

between the parties unless it is modified or reversed, by adopting a procedure prescribed by law. It is in the interest of the public at large that finality should attach to the binding decisions pronounced by a Court of competent jurisdiction and it is also in the public interest that individuals should not be vexed twice over in the assessment of the same matter in issue. Even in case of a judgement passed incuriam which is unchallenged, the efficacy and binding nature of the operative order is conclusive inter parties. The principle applies both to an order from which an appeal lies and no appeal is preferred and to an order from which no appeal is provided."

17. On an analysis of the above judgement on the Doctrine of Finality one concludes that the above Doctrine is based on two age-old principles, namely, interest reipublicae ut sit finis litium which means that it is in the interest of the State that there should be an end to litigation and the other principle is nemo debet bis vexari, si constat curiae quod sit pro una et eadem causa meaning there by that no one ought to be vexed twice in a litigation if it appears to the court that it is for one and the same cause. It is clear that once an order attains its finality, that is, it is not challenged in appeal or by way of any procedure established in law, it matters little whether such order was erroneous and bad in law. This order inter se the parties becomes final and is not open to challenge by either of the parties on a subsequent occasion. The only exceptions to the Doctrine of Finality are that the finding of the earlier order was obtained by fraud or the court lacked jurisdiction to pass the order."

15. Moreover, in the present matter the respondent company has made the payment to the writ petitioner according to the terms mentioned in the order dated 21st September, 2006, which the writ petitioner has accepted without any challenge to such order. Upon closer examination of the order dated 21st September, 2006 it can be seen that the amount which was asked to be paid by the court to the writ petitioner was in terms of retrenchment compensation which was further modified by the order dated 20th December, 2006 to the extent that the amount payable to the writ petitioner must be treated as retiral benefits. Since, there is no challenge to the any of the above orders, I am of the considered view that the order dated 21st September, 2006 and 20th December, 2006 has attained finality as the present writ petition is arising out of the same facts and circumstances which has already been adjudicated by this court. Furthermore, the present case does not fall within the exceptions of doctrine of finality as discussed by me in the matter of Chanchal Kumar Chatterjee (Supra) and hence the earlier orders of this court has attained finality and is binding on all the parties in the writ petition.

16. With reference to the judgments cited by the writ petitioner in Olga Tellis and Others (Supra) wherein the apex court held that the no estoppel can be claimed against the enforcement of fundamental rights and in the matter of Arcot Textile Mills Limited (Supra) wherein the court held that the said act is a beneficial social legislation to ensure health and other benefits of the employees and the

employer under the Act is under a statutory obligation to make the deposit that is due from him on a timely basis, one need not join issue with the same as both the judgments lays down two different settled principles of law. In the present case, there are no such issues raised by the petitioner which shall attract any of the two judgments cited above. Had it been the case wherein the respondents would have denied the payment of the retirement dues to the writ petitioner in that case the writ petitioner would have had the opportunity to have cited the above two cases. Moreover, these judgments would not apply to the particular factual matrix as these judgments are on certain principles of beneficial social legislation while the present case deals with a completely different issue as already discussed in the earlier paragraphs.

17. With regards to the prayer (d) of the writ petition, I direct the concerned authorities/respondent(s) to correct the date of cessation from service of the writ petitioner in the Pension Payment Order (PPO) book maintained by the respondent company according to the date mentioned in the order dated 21st September, 2006, wherein the writ petitioner has wilfully agreed to retire from service from 15th October, 2006. Since, there is no objection regarding the date of cessation of service of the writ petitioner the concerned authorities/respondent(s) are directed to recalculate the amount of pension which is to be received by the writ petitioner according to the schemes and procedure established by law. The concerned authority/respondent must take necessary steps in crediting the actual amount due to the writ petitioner in terms of provident fund linked pension within a period of six weeks from date.

18. The writ petition is allowed only in terms of prayer (d) of the writ petition and is thus disposed of without any order as to costs.

19. Urgent photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.