(2022) 09 CAL CK 0143

In the Calcutta High Court

Case No : FMA No. 1756 Of 2019, (CAN 2 Of 2022)

Arani Mukhopadhyay APPELLANT

Vs

EPF Organisation & Ors RESPONDENT

Date of Decision : 30-09-2022

Acts Referred:
Industrial Disputes Act, 1947 — Section 33(2)(b)

Citation : (2022) 09 CAL CK 0143

Hon'ble Judges : T. S. Sivagnanam, J;Hiranmay Bhattacharyya, J

Bench : Division Bench

Advocate : Deepan Kumar Sarkar, Ananya Sinha, S.R. Saha, S.C. Prasad

Final Decision : Dismissed

Judgement

Hiranmay Bhattacharyya, J

1. This appeal is at the instance of the writ petitioner and is directed against a judgment and order dated September 6, 2019 passed by a learned Single Judge in WP No. 15262 (W) of 2018 whereby the writ petition was allowed in part directing the concerned authorities to correct the date of cessation from service in the pension payment order.

2. Facts relevant for the purpose of disposal of this appeal are as follows:-

On 16.04.1999 the appellant received a letter issued by the respondent company dismissing him from service with immediate effect. The respondent company moved an application before the learned First Industrial Tribunal (for short “the Tribunal”) under Section 33(2)(b) of the Industrial Disputes Act, 1947 (for short “the 1947 Act”) seeking approval of the decision taken by the respondent authority with respect to dismissal of employment of appellant. The learned Tribunal rejected the said application by an order dated May 19, 1999. The respondent company challenged the order dated May 19, 1999 by filing a writ petition being WP 1372 of 1999 which stood dismissed by a judgment dated April 25, 2003. The respondent company preferred an appeal before the Division

Bench of this Court being APO No. 291 of 2003 challenging the judgment dated April 25, 2003. The Hon'ble Division Bench by an order dated September 21,2006 held that the appellant is willing to resign from service from October 15, 2006 and the respondent company being the employer of the appellant would pay a sum of Rs. 5,50,000/- only in terms of full and final settlement of the appellant's claim. The order dated September 21, 2006 was modified by an order dated December 20, 2006 to the extent that the lumpsum amount payable to the appellant should be treated as retiral benefit.

The appellant made a representation before the Regional Provident Fund Commissioner 1 alleging non-payment of Provident Fund and less payment of Provident Fund linked monthly pension. The provident fund authority informed the appellant that due to the non-co-operation of the respondent company, the Provident Fund authority could not decide the claim of the appellant. This prompted the appellant to file the writ petition.

3. By the order impugned, the learned Single Judge directed the concerned authorities to correct the date of cessation from service of the appellant in the Pension Payment Order (PPO) book maintained by the respondent company according to the date mentioned in the order dated September 21, 2006 wherein the appellant has agreed to retire from service from October 15, 2006.

4. Being aggrieved by the portion of the order of the learned Single Judge thereby refusing to direct release of the amount claimed by the appellant on account of Provident Fund dues, the writ petitioner preferred this appeal.

5. Mr. Sarkar learned advocate representing the appellant submitted that the issue regarding payment of Provident Fund dues was not adjudicated upon by this Court in APO 291 of 2003 and therefore, the learned Single Judge ought not to have held that the adjudication on such issue had already attained finality. He further submitted that the Provident Fund dues could not form part of the lumpsum amount offered by the respondent company as the final settlement of the claim of the appellant. The appellant relied upon the decision of the Hon'ble Supreme Court of India in the case of Bakshish Singh vs. M/s. Darshan Engineering Works and ors. reported at 1994(1) SCC 9 and in the case of Otis Elevator Employees' Union S.Reg. and ors. vs. Union of India reported at (2003) 12 SCC 68 in support of his aforesaid contentions. The learned advocate further relied upon a decision of this Court in the case of Chanchal Kumar Chatterjee vs. State of West Bengal & ors. reported at (2019) 1 CHN 256 on the doctrine of finality of judicial decisions.

6. Mr. Saha, learned advocate representing the respondent no. 7 contended that the company has paid the lumpsum amount towards final settlement of the claim of the appellant. He further submitted that the appellant having accepted such amount without any protest cannot now claim further amount from the company.

7. The appellant relied upon the decision of the Hon'ble Supreme Court of India in the case of Bakshish Singh vs. M/s. Darshan Engineering Works and ors.

reported at 1994(1) SCC 9 and in the case of Otis Elevator Employees' Union S.Reg. and ors. vs. Union of India reported at (2003) 12 SCC 68. The learned advocate further relied upon a decision of this Court in the case of Chanchal Kumar Chatterjee vs. State of West Bengal & ors. reported at (2019) 1 CHN 256.

8. Mr. Prasad, learned advocate representing the provident fund authorities submitted that the provident fund authorities requested the company to file necessary documents for the purpose of adjudication of the claim of the appellant but due to non-co-operation of the company the provident fund authorities could not adjudicate the claim of the appellant.

9. Heard the learned advocates for the parties and perused the materials placed.

10. Record reveals that the Hon'ble Division Bench passed an order dated September 21, 2006 in APO No. 291 of 2003 which runs thus-

"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.”

11. The said order dated September 21, 2006 was modified by an order dated December 20, 2006. The relevant portion of the order dated December 20, 2006 is extracted herein 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.”

12. The learned Single Judge took note of the decision of the Hon’ble Supreme Court in the case of Bakshish Singh (supra), Otis Elevator Employees’ Union S.Reg. and ors. (supra) and the relevant provisions of the Employees Provident Fund Scheme, 1952 and observed that the lumpsum amount payable to the writ petitioner/ appellant herein by the respondent company which should be treated as retiral benefits includes the provident fund deposit which was lying with the respondent company. In paragraph 13 of the impugned judgment the learned Single Judge made the following observations-

“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.”

13. The learned Single Judge after taking note of the principles of doctrine of finality and its exceptions thereof and by relying upon the proposition of law laid down in the case of Chanchal Kumar Chatterjee (supra) observed that the orders passed by the Division Bench dated September 21, 2006 which was subsequently modified on December 20, 2006 have attained finality and is binding on all the parties.

14. It would be relevant to point out at this stage that the appellant has accepted the payment made by the respondent company in terms of the order dated September 21, 2006 without any protest. After accepting the said payment, the appellant cannot be permitted to turn around and contend that the lumpsum amount paid to him do not include the provident fund deposit which was lying with the company. Furthermore, it appears from the order dated September 21, 2006 that the payment of Rs. 5,50,000/- was in full and final settlement of the claim of the employee. Upon reading the said order as a whole, this Court is of the considered view, that all the disputes between the parties were resolved by such order. This Court is, therefore, unable to accept the contention of the appellant that the issue of Provident Fund dues was outside the issues resolved by the said order.

15. The learned Single Judge considered the arguments advanced by the respective parties, correctly applied the judicial pronouncements and have assigned cogent reasons in support of the ultimate conclusion. The impugned judgment does not suffer from infirmity warranting interference in an intra court mandamus appeal.

16. For the reasons as aforesaid this Court do not find any reason to interfere with the impugned judgment and order dated September 6, 2019 passed by a learned Single Judge in WP NO. 15262 (W) of 2018. The appeal accordingly stands dismissed without however any order as to costs. The connected applications stand disposed of accordingly.

17. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

I agree.

