

**(2014) 12 CAL CK 0029**  
**In the Calcutta High Court**

**Case No :** C.A.J. Appellate Side M.A.T. 1572 of 2014 and C.A.N. 8759 of 2014

Bank of Baroda

APPELLANT

Vs

Asim Kumar Basu and Others

RESPONDENT

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**Date of Decision :** 24-12-2014

**Acts Referred:**

**Citation :** (2015) 145 FLR 475

**Hon'ble Judges :** Jyotirmay Bhattacharya, J; Tapash Mookherjee, J.

**Bench :** Division Bench

**Advocate :** Siddhartha Banerjee, for the Appellant; R.N. Majumdar, Swarup Banerjee and Srinibas Mishra, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Jyotirmay Bhattacharya, J.—Service of the writ petitioner/respondent No. 1 herein was terminated by his employer, the appellant/Bank herein, after holding a disciplinary proceeding against him on 31st August, 1993. Long thereafter on or about 7th May, 2007, he applied for release of his provident fund dues together with interest. Since his service was terminated followed by a disciplinary proceeding, he was not entitled to employer's share of contribution towards provident fund. He was only entitled to get back his share of contribution. The appellant/employer has paid him the employee's share of contribution on 14th September, 2007.

Since interest was not paid on such employee's share of contribution, the writ petitioner/respondent No. 1 felt aggrieved. Accordingly, he filed a writ petition being W.P. 13186 (W) of 2012. The said writ petition was allowed by the Learned Single Judge of this Court on 19th February, 2014.

The employer/Bank was directed to pay interest @ 8% per annum from the date of cessation of his membership till the date of actual payment thereof. Such payment was directed to be made by the Bank within a period of four weeks from the date of communication of the said order.

2. While disposing of the said writ petition, the learned Trial Judge held that since the Bank has utilized the employee's share of contribution and has earned interest on it, it cannot now turn down the writ petitioner's request for payment of interest as denial of payment of interest would be against the principles for which the Scheme was enunciated.

3. His Lordship further held that equity lies in favour of granting relief to the writ petitioner as the appellant had made the payment of his contribution to the fund only and it will be inequitable to decline interest to a senior citizen merely because there was some delay in asking for the provident fund. His Lordship further held that refusal to make the payment of interest in a case like this will result in unjust enrichment in favour of the Bank.

4. The legality and/or correctness of the said judgment and/or order passed by the Learned Trial Judge has been challenged in this mandamus appeal at the instance of the Bank being respondent in the said writ petition.

5. Mr. Banerjee, learned advocate appearing for the appellant/Bank has drawn our attention to the Regulations of the Bank of Baroda (Officers") Service Regulations, 1979. By referring to the provision regarding payment of provident" fund claims contained in the said Regulation, he submits that at best the writ petitioner/respondent No. 1 can claim interest for three months from the date when he ceased to be a member of the Fund.

6. Let us consider the substance of such contention of Mr. Banerjee in the context of the relevant Regulation which is set out hereunder:--

"In case of retirement, retrenchment, termination of his/her service by the Bank on account of illness, physical disability or for reasons beyond his/her control and in respect of deceased employee, bank shall pay to such employee/nominees/ legal heirs, the full amount of the Bank's Contribution together with interest, irrespective of the length of service.

The accumulated balance standing to the credit of a member according to the rules shall be payable on the day he/she ceased to be a member of the Fund and shall be paid to him/her within one month from the date he/she ceased to be a member of the Fund whether on account of death or retirement of such member or the termination of his/her service and interest on such amount shall cease to be added in the individual account of such member on such payment.

In case of deceased member where the claimants are unable to fulfill all the requirements insisted on by the Trustees of the Fund before payment to them of the Provident Fund dues of such deceased member, the interest shall be added from the date of death of such member up to the date of payment or up to a maximum period of twelve months whichever is earlier, in other cases the interest shall cease to be added on the expiration of three months from the date a member ceases to be a member of the Fund."

7. We have considered the said Regulation. On plain reading of the said

Regulation, it appears to us that none of the provisions contained in the said Regulation deals with payment of provident fund dues to an employee who was dismissed from service after holding a disciplinary proceeding against him.

Termination of service of an employee on account of illness, physical disability or for reasons beyond his/her control is no doubt mentioned in the said Regulation, but such termination on account of illness, physical disability or for reasons beyond his/her control does not cover the case of dismissal of an employee followed by a disciplinary proceeding.

8. As such, we cannot agree with the contention of Mr. Banerjee that the appellant/Bank is not liable to pay any interest to the writ petitioner/respondent No. 1 herein beyond three months from the date when he ceased to be a member of the Fund. After all, the appellant/Bank is not paying any single farthing on account of the employer's contribution as the employee was dismissed from service. Under such circumstances, we fully agree with the findings of the Learned Trial Judge that equity demands for payment of interest to the employee from the date since when he was dismissed from service up to the date of actual payment thereof. If we hold otherwise, then the appellant/Bank will be allowed to be unjustly enriched as the Bank during the said period utilized the money of the employee and earned interest on it.

Thus, we find no merit in this appeal. The appeal thus stands dismissed.

The judgment and/or order of the Learned Trial Judge is thus affirmed.

We extend the time for payment of interest by the employer/Bank to the employee/respondent No. 1 herein in terms of the order of the Learned Trial Judge till 31st January, 2015.

Re: CAN 8759 of 2014 (Stay)

In view of dismissal of the appeal in the manner as aforesaid, no further order need be passed on the stay application. The stay application being CAN 8759 of 2014 is thus deemed to be disposed of.

Urgent photostat certified copy of this order, if applied for, be furnished to the applicant as early as possible.