

(2023) 07 DEL CK 0120

In the Delhi High Court

Case No : Letter Patent Appeal No. 486 Of 2021, 124 Of 2022

Chief Provident Fund Commissioner & Ors

APPELLANT

Vs

Alok Kumar Agarwal & Anr.

RESPONDENT

Date of Decision : 14-07-2023

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2023) 07 DEL CK 0120

Hon'ble Judges : Yashwant Varma, J; Dharmesh Sharma, J

Bench : Division Bench

Advocate : Siddharth, Amit Kumar Agrawal, Himanshu Gupta, Nidhi Banga, Nishant Kumar

Final Decision : Allowed

Judgement

Dharmesh Sharma, J

1. This common judgment shall decide the two above noted cross-appeals preferred by the parties as per Clause 10 of the Letters Patent, as applicable to the High Court of Delhi, thereby assailing the Impugned Judgment dated 20 September 2021 passed by the learned Single Judge of this court in "Alok Kumar Agarwal v. Union of India & Ors. WP(C) No. 2759 of 2021", whereby although the Writ Petition was dismissed, costs have been imposed upon the respondent authorities.

FACTUAL BACKGROUND

2. In a nutshell, the petitioner initially joined Centre for Railway Information System (CRIS) in November 1990 as Deputy Chief Engineer and later he migrated to private sector in 1996, and eventually retired as Chief Operating Officer from the Business Standard Limited 31 October 2014. During the course of his long period in service, both the petitioner and his employer contributed to the Employees Provident Fund [EPF] and it is an admitted fact that his last contribution to the EPF was in November, 2014. The grievance of the petitioner in

the main Writ Petition, now as appellant in LPA No. 124/2022, is that soon after retirement on 31 October 2014, he had not withdrawn his provident fund amounting to Rs. 1,41,62,650/- until December, 2018. It is stated that his online provident fund account status did not reveal whether his provident account was inoperative or closed on any date so much so that interest for the financial year 2017-18 was also not updated until November, 2018, and therefore, he was unaware if interest after November, 2017 having been stopped or the account becomes inoperative. It is stated that despite having his email address, mobile number and address details, besides a valid KYC as per UAN card, the respondents never sought any information from him and that charging of interest had been stopped w.e.f. December, 2017; and therefore, he applied for final withdrawal immediately in December, 2018 upon noticing such facts and only then was he informed that his account had become inoperative from December-2017.

3. The petitioner, therefore, claimed that he was entitled to interest on the total amount of EPF outstanding i.e. Rs. 1,41,62,650/- for the period commencing 01 December 2017 up to 28 December 2018 either at EPF interest rate i.e. interest @ 8.55% per annum for the period from 01 December 2017 up to 31 March 2018, or @ 8.65% per annum from 01 April 2018 up to 28 December 2018 or at the applicable bank rate of interest in the alternative without prejudice. To cut the long story short, the petitioner sent a communication dated 28.02.2019 (Annexure P-3) calling upon the respondent to pay interest accordingly, the same was declined by the respondent No.4 vide impugned letter dated 22 April 2019 (Annexure P-4) on the ground that the EPF account had become inoperative from December, 2017 and interest was not payable, and his subsequent application to the Central Provident Funds Commissioner, New Delhi vide email dated 26 May 2020, routed through Grievance Management System (GMS) was also declined vide impugned reply/email dated 25 June 2020 (Annexure P-7 colly) on the ground of applicability of provisions of paragraph 72(6) of the Employees' Provident Fund Scheme, 1952 [EPF Scheme], framed under the Employees' Provident Funds & Miscellaneous Provisions Act, 1952. The petitioner, therefore, approached this Court in Writ Petition bearing No. 2759/2021 seeking the following reliefs:

“(i) Allow the instant Writ Petition;

(ii) issue a writ of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India thereby declaring that the provisions of •section 72(6) of the Employees' Provident Funds Scheme, 1952 are not attracted to the facts of the present case so as to deny the rightful and legitimate interest on the total withdrawn EPF amount of Rs.1,41,62,650/of the Petitioner for the period from 1.12.2017 up to 28.12.2018;

(iii) issue a writ of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India thereby directing the Respondents to pay interest @ 8. 55% per annum to the Petitioner on the total withdrawn EPF

amount of Rs.1,41,62,650/- for the period from 1.12.2017 upto 31.3.2018 and @ 8.65% per annum from 1.4.2018 up to 28.12.2018 and also to pay future interest @ 8.65% per annum on the said total interest amount from 29.12.2018 up to the date of actual payment.

(iv) In the alternative and without prejudice, issue a writ of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India thereby directing the Respondents to pay bank rate of interest per annum to the Petitioner on the total withdrawn EPF amount of Rs.1,41,62,650/-for the period from 1.12.2017 upto 28.12.2018 and also to pay future interest at the bank rate of interest per annum on the said total interest amount from 29.12.2018 up to the date of actual payment;

(v) issue a writ of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India further declaring that the impugned action of the Respondents in not paying interest @ 8.55% .per annum to the Petitioner on the total withdrawn EPF amount of Rs.1,41,62,650/- for the period from 1.12.2017 upto 31.3.2018 and @8.65% per annum from 1.4.2018 upto 28.12.2018 (for the reason informed vide their impugned letter dated 22.4.2019 & email dated 25.6.2020), is irrational and unreasonable and hence arbitrary, illegal and unconstitutional;

(vi) issue a writ of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India thereby quashing and setting aside the impugned Letter dated 22.4.2019 issued by the Respondent No.4 and impugned email dated 25.6.2020 issued by the Respondents, as being arbitrary, illegal and unconstitutional;

(vii) award the costs of the present petition in favour of the Petitioner and against the Respondents; "

4. Suffice to state that the respondent authorities in their reply reiterated that denial of interest was on the ground that the petitioner's EPF account had become inoperative in terms of EPF Scheme w.e.f. December, 2017, and therefore, no interest was liable to be paid on the said inoperative account in view of bar contained in paragraph 60(6) of the EPF Scheme.

IMPUGNED JUDGMENT DATED 20.09.2021

5. Learned Single Judge vide the impugned Judgment discussed the rigors of paragraph 60(6) and paragraph 72(6) of the "EPF Scheme" and after holding that the Judgments relied upon by the appellant/petitioner delivered by the learned Single Judge of the Hon'ble Punjab and Haryana High Court in Jagdish Kumar v. Employees' Provident Fund Commissioner 2015 SCC OnLine P&H 18034 and Judgment of Madras High Court in M.V. Ramakrishnan v. The Provident Fund Commissioner 2018 SCC OnLine 10760, were distinguishable and inapplicable in the matter; and placing reliance on decision in Dr. Arun Gopal Aggarwal v. Union of India WP (C) 278 of 2014 decided on 28.11.2016 of this Court, as also

examining amendments carried out in the year 2011 and later in 2016 in the EPF Scheme, it was held that interest beyond period of 36 months was not liable to be paid to the petitioner and resultantly the writ was dismissed. However, learned Single Judge found a flaw in the Press Release dated 29 March 2016 by the Central Board of Trustees that carried an impression that interest would be payable on amounts lying in "all inoperative account" and finding merit in the plea that there was no updation of the status of his EPF account on the website of Employees' Provident Fund Organisation Portal, and observing that every member holding an EPF account cannot be expected to know the nitty-gritty of the provisions as the same are quite complex besides amenable to amendment from time to time, it was held that there was a duty cast upon the EPFO to update the portal on the date when the account becomes inoperative and although Writ Petition was dismissed, the respondents were imposed with costs of Rs. 1,00,000/-, to be paid within eight weeks besides directing the Employees Provident Fund Officer to consider sending emails to the members at least three months before their accounts are rendered inoperative in future so as to sensitize the members that no interest would be payable on the amounts lying in their EPF account beyond a period of 36 months.

iv. The second major decision was to allow crediting of interest on inoperative accounts. Accounts of members who do not receive contributions for a continuous period of three years are treated as "Inoperative accounts". Interest on these accounts was stopped in 2011. The Board decided to resume crediting interest on such accounts w.e.f. 01.04.2016.

v. This is in view of recent amendment to paragraph 69(1) (a) that has been amended to provide for withdrawal of full amount on retirement from service after attaining the age of 58 years. Thus, the employer's share of contribution in the provident fund account of a member would be withheld by EPFO up to the age of retirement. Hence the decision has been taken to credit interest as per paragraph 60 of the Employees' Provident Funds Scheme, 1952. Such an account would not be classified as an "Inoperative Account" for the purpose of paragraph 72(6) of EPFO Scheme, 1952

THE GROUNDS FOR CHALLENGE

6. In the said background, the petitioner is assailing the impugned Judgment dated 20.09.2021 passed in LPA No. 124/2022 whereas the respondent Authorities in the original Writ Petition have come in LPA No. 486/2021 assailing the imposition of costs of Rs. 1,00,000/- inter alia assailing the observations by the learned Single Judge that Central Board of Trustees had issued a misleading press release on 29 March 2016 contending that neither such circular was espoused by the petitioner nor the same was relevant to the matters in issue; and further on the ground that since the employee had been voluntarily contributing towards the provident fund and even after retirement deliberately left the provident fund for accumulation, there was no occasion for imposition of costs upon the department.

ANALYSIS AND DECISION

7. We have given our thoughtful consideration to the submissions made by learned counsel for the rival parties at the Bar. We have also meticulously perused the relevant record.

8. At the outset, we have no hesitation in holding that there is no merit in the instant appeal filed by the appellant/petitioner. Reasons are as follows: since much emphasis was placed on the duty cast on the EPF Authorities under paragraph 72 of the "EPF Scheme", it would be expedient to refer to the same that provides as under:

"72. Payment of Provident Fund -(1) When the amount standing to the credit of a member, becomes payable, it shall be the duty of the Commissioner to make prompt payment as provided in this scheme. In case there is no nominee in accordance with this Scheme, [or there is no person entitled to receive such amount under sub-paragraph (ii) of paragraph 70] the Commissioner may, if the amount to the credit of the Fund does not exceed [Rs. 10,000] and if satisfied after enquiry about the title of the claimant, pay such amount to the claimant.

Sub-section (2) to (4) omitted for being not relevant in the instant matter (5) (a) Every employer shall, at the time when a member of the Fund leaves the service, be required to get the claim application, for payment of provident fund in cases specified in clauses (a) to (dd) of sub-paragraph (1), of paragraph 69, duly filled in and attested, and to forward the said application [within five days of its receipt] to the Commissioner or any other officer authorised by him in this behalf.

(d) If the applicant is unable to send the claim application through the employer or duly attested by him, for any reason whatsoever, he may forward it to the Commissioner or any other officer authorised by him in this behalf, and wherever necessary, the Commissioner or any other officer authorised by him in this behalf may forward such application to the employer and the employer shall be required, to return it within five days of its receipt.

(6) Any amount becoming due to a member as a result of (i) supplementary contribution from the employer in respect of leave wages, arrears of pay, instalment of arrear contribution received in respect of a member whose claim has been settled on account but which could not be remitted for want of latest address, or (ii) accumulation in respect of any member who has either 3[retired from service after attaining age of fifty-five years or migrated abroad permanently] or died, 4[but no application for withdrawal under paragraphs 69 Or 70 has been preferred] within a period of [thirty-six months] from the date it becomes payable, or if any amount remitted to a person is received back undelivered, and it is not claimed again within a period of 6[thirty-six months] from the date it becomes payable shall be transferred to an account to be called the 7[Inoperative Account]:] Provided that in the case of a claim for the payment of the said balance, the amount shall be paid by debiting the 7[Inoperative Account]:] [Provided further that if any amount becoming due to a member, as a

result of supplementary contributions on account of litigation or default by the establishment or a claim which has been settled but is received back undelivered not attributable to the member, shall not be transferred to the inoperative account.]

{Rest of the sub-paragraphs omitted as not relevant for decision in this matter}

9. Much mileage was sought to be drawn by the learned counsel for the appellant/petitioner that paragraph 72(1) casts a primary duty upon the Commissioner to make prompt payment of the amount of the provident fund standing to the credit of a member irrespective of any act or omission on the part of the member in claiming the funds within reasonable time. The plea is belied from the fact that paragraph 69 of "EPF Scheme" provides that a member may withdraw the full amount standing to his credit in the fund on retirement from service after attaining the age of 55 years, or for that matter on termination of services on account of permanent or mental incapacity, termination in case of mass or individual retrenchment, on opting voluntary retirement, or retirement due to migration to a foreign country for permanent settlement, or if a factory or establishment is closed, or upon transfer, discharge or other circumstances enumerated therein. Further, a harmonious construction of sub-Section (1) with (5)(d) of paragraph 72 of the "EPF Scheme" would also show that a duty is also cast upon the employee/member to send the claim application directly to the Commissioner wherever the employer fails to do so for any reasons whatsoever. Paragraph 72(6) then clearly stipulates that in the event a claim is not forwarded under paragraph 69 or 70 (the latter recognizing right of the nominee(s) or the legal heirs of a deceased employee/member) within a period of thirty six months, the entire amount standing to the credit of the employee/member shall be transferred to an inoperative account.

10. As regards the claim for interest is concerned, paragraph 60 of the "EPF Scheme" then lays down the mechanism for assessment and payment of interest on pending EPF amount/account that reads as under:-

"60. Interest - (1) The Commissioner shall credit to the account of each member interest at such rate as may be determined by the Central Government in consultation with the Central Board.

.....

(6) Interest shall not be credited to the account of a member from the date on which it has become Inoperative Account, under the provisions of sub-paragraph (6) of paragraph 72.

{Rest of the sub-paragraphs omitted as not relevant for decision in this matter}

11. Without further ado, the learned Single Judge committed no error in finding that sub paragraph (6) to 60 of the EPF Scheme was initially introduced vide notification dated 15 January 2011 and then amended/modified vide notification dated 11 November 2016 providing that no interest would be payable on transfer

of amount standing to the credit of an employee/member to the "inoperative account". We are not impressed with the submissions of the learned Counsel for the appellant/petitioner/employee that transfer of the fund to inoperative account is only for the purposes of accounting or financial discipline, and in case of failure of the Commissioner to pay interest promptly, interest shall remain liable to be paid on the funds de hor paragraph 60(6) of the EPF Scheme. It is pertinent to mention that the said provision was not in existence prior to amendment vide notification dated 15 January 2011, and thus there was no stipulation for payment of interest on transfer of the fund to the inoperative account. We find ourselves in agreement with the submissions of learned counsel for the respondent authorities/appellant in LPA no. 486/2021, that vesting the authorities/government with liability to pay interest beyond thirty six months shall be unfair and not striking to common sense as the Commissioner of EPF may have no information as to when the employee/member decided to hang up his boots and left service/employment. We are, however, unable to agree that the Press Release dated 29 March 2016 regarding proposed amendment to the paragraph 60(6) caused any confusion so as to allow interest beyond 36 months for the simple reason that such Press Release was merely in the nature of an advisory on a policy decision and had no legally binding effect in view of the law on the subject.

12. There is no gainsaying that an unscrupulous employee/member cannot be allowed to be benefited from deliberately not filing a claim application in terms of paragraph 69 of the EPF Scheme, and thereby reap benefit of claiming interest on his inoperative account beyond a period of 36 months. Needless to point out that the interest yielded on such fund is marginally higher than what is otherwise prevalent in the financial market, we do not see any justification to prolong the academic discussion, and to sum up, we find that the facts of the instant case are squarely covered by the decision in the case of Dr. Arun Gopal Aggarwal, wherein the employee had retired from service on 31 March 2006 but continued to make contributions and finally applied for settlement of his claim on 27 February 2012, and a sum of Rs.40,34,821/- was credited to his account as full settlement. Since interest was only assessed till 31 March 2011, he raised a grievance that it should have been assessed and paid up to 31 May 2012. Learned Judges in the Division Bench of this Court embarked on a detailed and incisive discussion on the law and categorically held that "on combined reading of paragraph 72(6) and 60(6), it is clear that in case a member of EPF retires from employment and has not chosen to withdraw the amount in his account, no interest shall be payable on such amount after a period of 36 months from the date it becomes payable." Thus, in the instant matters, we find no legal justification to deviate from the said proposition of law.

13. In view of the foregoing discussion, we find no legal infirmity, incorrect approach or perversity in the impugned judgment dismissing the claim of the appellant/petitioner, and therefore, LPA No. 124/2012 is hereby dismissed. However, in so far as LPA No. 486/2021 is concerned, it must be indicated that

during course of the hearing learned counsel for the respondent authorities/ appellant stated at the Bar that the authorities are now complying with the directions passed by the learned Single Judge on the aspects of providing measures to intimate the employees/members about the proposed act of transferring funds to the inoperative account, hence we find that imposition of costs of Rs.1,00,000/- shall be unfair, harsh and excessive and the impugned order is quashed, in so far as it imposes costs and thus LPA No. 486/2021 is allowed to that extent only.

14. The appeals along with all the pending applications are disposed of accordingly.