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(1935) 01 PAT CK 0024

In the Patna High Court

Case No : Appeal No. 230 of 1933

D. Palaiya APPELLANT

Vs

T.P. Sen and another RESPONDENT

Date of Decision : 23-01-1935

Acts Referred:

Citation : (1935) 01 PAT CK 0024

Judgement

Courtney-Terrell, C.J.—This is an appeal from an order of the District Judge of Mangham, attaching, on the application of the receiver in insolvency, certain provident fund money standing to the credit of the insolvent Mr. D. Palaiya in the account of his employers the Tata Steel Co. When this appeal was admitted an order was made by the Court giving notice to the company that inasmuch as they were interested in the subject matter of the dispute they should appear and put forward their view of the matter. They have appeared through a learned advocate of this Court and the matter is heard in their presence. The company, the receive and the insolvent have asked us to dispose of other points of law which I shall indicate.

2. The first matter to ha inquired into, is the nature of the contract between the employe Palaiya and his employers the Tata Company and that contract is to be found in a series of rules by which the Worker''s Provident Fund is governed. It would appear by these rules that the membership of the fund is voluntary and an employee who undertakes to subscribe does so at his own option. Under the scheme the employee pays into the fund l/24th of the wages actually received by him during the year and the employers are, to have the right of deducting that proportion from his salary monthly and paying it into the fund. If he makes this contribution, the employers are hound to contribute 1/12th of the wages actually received by the employee and the contribution of the employee and the contribution of the employer are both paid into the fund and the sum standing to the credit of the employee represented by those two contributions will bear interest at 6 per cent per annum in the circumstances of this particular employee.

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3. Now Rule 6 provides that an account is to be opened in the name of each subscriber showing his contribution and the contribution by the company and the interest accruing on the contribution and that the account so kept shall be audited. There are then provisions for payment out in the case of death of a subscriber and a provision for his being able to nominate a person to receive such amount as may be paid out in case of his death. Then follow provisions for payment out in the case of voluntary resignation from the service of the company, and after giving duo notice of his intended resignation he is to be paid the aggregate amount subscribed by him to the fund and the full amount standing to his credit with interest on his own contribution and then, according to the length of satisfactory service which he has put in, he is entitled to a proportion of the amount which shall have been contributed by the company to his account in the fund.

4. There are provisions in the rules that the company is to have a paramount charge upon the account of the subscriber for any loss, damage, cost and expenses which the company may be put to by reason of any misconduct on the pare of the employee during his period of service. That is provided by-Rule 18 and by Rule 17 it is provided that if a subscriber is dismissed from the service of the company for gross misconduct or he leaves the service of the company without giving due notice, then in that case he shall only be entitled to receive back a proportion of the funds standing to his credit represented by the actual subscriptions made by him to the fund out of his wages together with interest. The result of those two rules is chat the company holds the fund under a lien for misconduct on the part of the employee or for damage to its property which may be caused by him. Nevertheless it is reasonably clear that in most cases an employee, who has put in long and good service with the company, might well be excused from this obligation to allow his fund to remain as security for his good conduct and that view is clearly given effect to by Rule 13, which rule is as follows:

A subseriber shall at his option be entitled to draw the entire amount standing to his credit after satisfactory service for twelve years and in accordance with these Rules.

5. The precise construction of this rule is a matter of some difficulty, but at this point it may be said that the body of the rules as a whole together with this one give him the right at any time to withdraw the amount represented by his own subscriptions to the fund subject to two qualifications first of all if he shall voluntarily resign from the service of the company he gets hack his own subscriptions together with interest that may have accrued at the given rate upon the amount of such subscriptions; and if the is dismissed from the service of the company he is also allowed to take out the amount which he had personally contributed to the fund together with interest. The difficulty arises in this case by Reason of another condition which is imposed by Cl. 19 of the rules and the construction of this clause is also a matter of difficulty if it be taken

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sentence by sentence. Taken as a whole, however I think an inter pretation may be arrived at which is reasonably in accordance with the rest of the rules and in accordance with common sense, and it is the interpretation which I would adopt. The opening words of this Claus consist of a long sentence which runs thus:

No member shall assign or charge his interest in the fund or any part thereof, or do any other act whereby such interest may vest in any other person, and any assignment, charge or other act as aforesaid shall ipso facto and at once put an end to the member''s interest in the Fund and all claim thereto except as to the principal amount of his own contribution thereto; and no assignee, official or other, shall have any right or claim to any port on of the amount at credit of the member''s account except as aforesaid.

6. The second and concluding sentence of the rule reads thus :

No attachment or seizure of, or execution against any member''s interest shall operate or have effect except or further than the amount aforesaid.

7. Now it has been contended that the effect of this rule is that should the subscriber assign his interest in the fund or any part thereof, his right to any part of the fund is ipso facto forfeited: but if the concluding portion of the first sentence and if the last sentence are examined and read together with the opening word a of the first sentence, it becomes perfectly clear that the real meaning is not to prohibit the assignment, whether voluntary (or as the last sentence shows involuntary) of the member''s interest, but merely that if he shall assign or if there be an involuntary assignment, such assignment shall only take effect upon the principal amount of the member''s own contribution, so that in so far as it shall take effect on that principal amount of the member''s own contribution it stands good. Needless to say two parties by contract cannot put the property the subject of the contract out of reach of the creditors of one of them. But however ineffective the last sentence of the rule may be, it is of service in showing that the parties to the contract contemplated that there might be an assignment voluntary or involuntary which should at any rate be effective in so far as the principal amount of the member''s own contribution is concerned. Therefore the state of affairs under the rules as a whole and having regard to R. 13 and giving effect to the concluding words of R. 13--"in accordance with these rules--." I am of opinion that the contract between the parties contemplated that at all times during the 12 years service the amount contributed by the employee should fit least as to the principal sum contributed be within the disposal of, that contributor, and whether he resigned or whether he were discharged or whether he purported either voluntarily or involuntarily to assign his interest his assignee wan to receive back that proportion of the contributed fund.

8. Now the proportion contributed by the employer, in my opinion, stands on a different footing. The contract between the parties was as to that part that the employee was to receive it and get interest on it only on the fulfillment of certain conditions, and one of the conditions was, as imposed by R. 19 that; he should

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not have purported to effect any assignment of is whether voluntary or involuntary, In other words if he should have purported to assign it or if he should have so conducted himself that some third party should come in and claim that part under a show of legal right, the company should be under no obligation to hand it over to him. According to this view of the matter, that proportion contributed by the company to the fund which is a matter of book transaction did not pass to the subscriber until it should actually be handed over to him. The transfer of that part of the fund to the subscriber was to tike place only at the time when is was to be handed over. Accordingly the subscriber might properly be held, after he had put in 12 years of satisfactory service, as we are informed is the fact in this case entitled on demand to receive back the principal amount of his own contribution, but he was nut entitled to receive the amount which the company covenanted to book to his account because ho had by an involuntary assignment at law transferred his interest in the fund or a portion thereof to a third party, and under Cl. 19 of the rules he would also lose his right under the contract to receive the interest on his own contribution, Therefore the; only part to which he could be said to be entitled was the right to receive from the company forthwith and with out any question, (subject only to the} right of the Company to hold the capital sum subject to the lien for any damage which he might have caused to them), the balance, whatever it might be, absolutely.

9. Now under S. 28 sub S. (2), Provincial Insolvency Act, on the making of the order of adjudication of insolvency, the property of the insolvent vested in the receiver and the receiver stood in the shoes of the insolvent; and in so far as his relationship with respect to this debt or the contractual right with respect to that sum of money, whichever term may be properly applied to it, the Company was exactly in the same position as the insolvent and the Company therefore could not resist the order for attachment made by the learned Judge in respect of that sum. Before the amount could be handed over, however to the receive it would be necessary to give effect to the lien in so far as any money which the Company may have the right to claim against the insolvent under R. 18 of the Rules. At the present moment as a matter of form the question before us is really only the question of the Tightness of the order of the District Judge attaching the sum standing to the credit of the insolvent in the books of the Company. In so far as it applies to that portion of the fund which is concerned with the Company''s own contribution, in my opinion the order cannot be supported, In so far as it, however applies to the capital sum contributed by the insolvent, it is correct.

10. It was at first suggested that this was the only matter for our consideration but it was agreed, as I said earlier in this judgment, by both parties that in order to save the unnecessary cost of arguing a claim case by the Company when the time for payment over of the sums so attached to the receiver came to he argued that we should decide as between the Company and the receiver the matter of what the receiver would be entitled to receive. In my view of the law the receiver is entitled to take from the Company the principal amount of the contribution made by the insolvent. The Company will therefore hold at the

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disposal of the Court the principal sum contributed by the insolvent. There will be no order as to costs.

Dhavle, J.

11. I agree.

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