(2009) 10 DEL CK 0153

In the Delhi High Court

Case No : Writ Petition (C) 3345 of 2005

Debasish Ghosh APPELLANT

Vs

Regional P.F. Commissioner and Others RESPONDENT

Date of Decision : 20-10-2009

Acts Referred:

Citation : (2010) 124 FLR 234 : (2010) 3 LLJ 412

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : K.B. Hina, for the Appellant; Reema Khorana, Ankit Khushu and Arun Batra, from Department and Bhuvnesh Singh Chauhan, for the Respondent

Final Decision : Allowed

Judgement

Sanjiv Khanna, J.—Learned Counsel for the respondent-Regional Provident Fund Commissioner seeks and is granted permission to place on record affidavit of Regional Provident Fund Commissioner, Mumbai. The petitioner, Mr. Devashish Ghosh, was an employee of Wimco Seedlings Limited, a subsidiary of Wimco Limited. Prior thereto, the petitioner was working in Bhadrachalam Paper Boards Limited till 1987.

2. In 1989, Wimco Limited opened a Provident Fund account with the Regional Provident Fund Commissioner, Delhi and was allotted PF account No. DL/9146/01. On August 11, 1994, Regional Provident Fund Commissioner paid Rs. 45,068/- to the petitioner as the total amount standing to the credit of the petitioner. Immediately after receipt of the statement, vide letter dated July 14, 1994 the petitioner informed the Regional Provident Fund Commissioner that Rs. 65,566/- was deposited by Wimco Limited at the State Bank of India, Bombay on July 8, 1989 in favour of the Regional Provident Fund Commissioner being the amount transferred by Bhadrachalam Paper Boards Limited on account of provident fund deposited with their trust and transferred to M/s Wimco Limited, Regional Provident Fund Commissioner has not specifically disputed the said letter in their counter affidavit. No reply was sent by Regional Provident Fund

Commissioner to this letter. The petitioner wrote another letter dated January 9, 1996 stating that Rs. 65,566/- along with interest has not been released to the petitioner by the Regional Provident Fund Commissioner and the said amount was deposited by Wimco Limited in the State Bank of India Bombay on July 8, 1989 in the provident fund account No. DL/9146/01. By letter dated January 24, 1996, Regional Provident Fund Commissioner informed the petitioner that no money had come into their account on account of transfer. The petitioner was asked to furnish details as to how the money was transferred with draft number along with copy of Annexure-K so that further action could be taken. By letter dated May 6, 1996, the petitioner reported the relevant facts enclosing therewith photocopy of the records available with him, which included the challan of deposit of Rs. 65,566/- in State Bank of India, Bombay along with Annexure-K as transfer certificate. Other letters were written on May 21, 2009, May 18, 2003 and on September 4, 2004. No response or reply to the said letters were received. The Regional Provident Fund Commissioner in his counter affidavit has not stated what steps are taken by them after the said letters along with the photocopy were received to trace out the said amount in their accounts and whether any deposit was made in their accounts at State Bank of India, Bombay.

3. Left with no option, the petitioner issued notice dated September 4, 2004 under registered post to which the respondents denied their liability vide letter dated October 15, 2004. In this letter, the respondent-Regional Provident Fund Commissioner stated that the cheque of Rs. 65,566/- stated to have been deposited towards past accumulations in State Bank of India, Bombay had not been received in the provident fund account or Regional Provident Fund Commissioner, Delhi and instead must have been deposited in the Regional Provident Fund Commissioner''s account, Bombay. In view thereof, it was difficult to release the amount from Delhi account. The letter reads as under:

This is with reference to your notice dated September 4, 2004 regarding payment received as transfer in from MH/801 to DL/9146/01 for Rs. 65,566.. It has been observed from the facts stated in your notice that the amount of EPF past accumulations had been transferred from Wimco Ltd. (MH/801) to Wimco Seedlings Ltd. (DL/9146/1) in the member''s account by way of a cheque No. 15080 dated July 8, 1989 drawn on Grindlays Bank, D.N. Road, Bombay. However, the said cheque has been deposited in SBI, Bombay. It is thus not been received in the PF A/c of the RPFC Delhi and instead it must have been deposited in the RPFC, Bombay''s A/c. In view of this it is difficult to release the amount from the RPFC Delhi''s A/c and credit it to the member''s A/c. Hence you are advised to contact the Bombay office of EPFO and arrange to transfer the amount to the RPFC Delhi''s A/c.

(emphasis supplied)

4. The said stand has been reiterated in the counter affidavit. In addition, the respondent Regional Provident Fund Commissioner has taken the plea that Wimco Limited had made a mistake by sending the payment to State Bank of

India, Mumbai Branch. It is further stated that they are not able to get confirmation from both the banks, i.e., Grindlays Bank now known as Standard Chartered Bank, DN Road Branch Mumbai and State Bank of India, Mumbai as the transaction pertains to July, 1989 and the said bankers have expressed their inability to confirm the same.

5. The fault squarely lies with the respondent-Regional Provident Fund Commissioner. The said respondent had failed to respond to letter dated July 14, 1994 and thereafter when the petitioner had submitted photocopies and explained the entire factual position vide letter dated May 6, 1996. It was for the respondents-Regional Provident Fund Commissioner, Delhi to take immediate steps, and if steps were taken, this problem of verification and destruction of records by the banks would not have occurred. Further, the petitioner has placed on record another letter dated September 27, 1989 written by Wimco Seedlings Limited, the respondent No. 3 herein to Regional Provident Fund Commissioner, Nehru Place, New Delhi. The said letter has not been specifically disputed and denied by the respondent-Regional Provident Fund Commissioner. In this letter, it is stated that the accumulation from the petitioner amounting to Rs. 65,566/- had been transferred to the Regional Provident Fund Commissioner''s office along with Annexure-K. In case there was an error or mistake in depositing the amount in Regional Provident Fund Commissioner''s office in Mumbai through State Bank of India, Mumbai, the respondent-Regional Provident Fund Commissioner''s office in Delhi should have taken immediate action for correction of the mistake and to ensure that the amount is credited to the right account. No letter was written by the Delhi office of the respondent to the Mumbai office. Delhi office should have taken up the matter with Mumbai office at the earliest.

6. The petitioner has produced before this Court photocopy of the challan issued by State Bank of India for deposit of Rs. 65,566/- in the account of Regional Provident Fund Commissioner in State Bank of India, Mumbai. Photocopy of the said challan was furnished to the counsel for the respondent-State Regional Provident Fund Commissioner. Learned Counsel for the respondent-Regional Provident Fund Commissioner states that the said challan is in respect of establishment bearing MH-801 and as per Regional provident Fund Commissioner, Mumbai, credit of Rs. 65,566/- is not reflected in their books. It is also stated that Wimco Limited, the respondent No. 4 herein is an exempted establishment under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 having established a separate trust. The aforesaid affidavit, however, does not meet the allegation with regard to challan issued by the State Bank of India mentioned above. The State Bank of India, Mumbai has filed counter affidavit in this Court stating that it is evident from the counter foil submitted by the petitioner that cheque No. 15080 drawn on Grindlays Bank, DN Road, Mumbai dated June 21, 1989 for Rs. 65,566/- was deposited and would have been cleared and credited to EPF account. It is further stated that the issuing bank, i.e., Grindlays Bank, has clarified whether cheque was cleared from their account. State Bank of India has stated that they do not maintain old records

and vouchers after a period of ten years and their own records for the aforesaid period have been destroyed. The petitioner has placed on record copy of statement of accounts received from Grindlays Bank, which shows that cheque of Rs. 65,566/- was cleared for payment on July 12, 1989 from the account of Wimco Employees Provident Fund, Nicol Road, Ballard Estate, Bombay. The said amount tallies with the counter foil and the challan issued by the State Bank of India as the amount is identical and the dates of the challan and the cheque and the date of encashment are in seriatim. These aspects read with letter dated September 27, 1989 written by Wimco Seedlings Limited to the Regional Provident Fund Commissioner, Delhi show the laches and negligence on the part of the respondent-Regional Provident Fund Commissioner. The stand now taken is also contrary to the stand taken by the Regional Provident Fund Commissioner in their letter dated October 15, 2004, which has been quoted above.

7. In view of the aforesaid, the writ petition is allowed and the respondent-Regional Provident Fund Commissioner, Delhi is directed to refund this amount to the petitioner along with interest accrued thereon within a period of four weeks from the date copy of this order is received. If required, it will be open to the respondent-Regional Provident Fund Commissioner, Delhi to get credit from their counterpart in Mumbai. In the facts and circumstances of the case, there will be no order as to costs.

