
(1923) 04 AHC CK 0067
In the Allahabad High Court

Devi Prasad

APPELLANT

Vs

Secretary of State for India in Council

RESPONDENT

Date of Decision : 19-04-1923

Acts Referred:

Provident Funds Act, 1925 — Section 2(4)

Citation : AIR 1924 All 68 : 74 Ind. Cas. 746

Hon'ble Judges : Daniels, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Daniels, J.—This is a revision from an order of the learned Judge of the Small Cause Court, Allahabad. The point for decision before him was whether a deposit is a Provident Fund; which so long as the subscriber was in service was a compulsory deposit within the meaning of Section 2(4) of the Provident Funds Act (IX of 1897), became attachable by a creditor the moment the subscriber retired. The subscriber in this case has retired but has not yet drawn his deposit. The learned Judge of the Court below has followed the decision in *Veerchand v. B.B. & C.I. Ry., Co.* 29 B. 259 : 6 Bom. L.R. 921, and has held that the deposit is not attachable. The learned Judges took the view that compulsory deposit in the Act was a term with a technical meaning and that a deposit which came within the definition remained a compulsory deposit until it was actually drawn out. The Subscriber's retirement made no difference to its nature. The same view as was held in Bombay has been taken by the High Court of Calcutta in *Hindley v. Joy-narain* 54 Ind. Cas. 439 : 46 C. 962 : 24 C.W.N. 288, in which the Bombay case was followed and approved. Another Bombay case, *Nagindas v. Ghelabhai* 56 Ind. Cas. 449 : 44 B. 673 : 22 Bom. L.R. 323, has gone even further and held that the deposit is protected even after payment to the subscriber. It is not necessary to go the length of the last mentioned decision in the present case. Against the authority of two High Courts the applicant can only cite an earlier Single Judge case of the Bombay High Court which was overruled in the case relied on by the Court below.; The learned Pleader for the applicant has

attempted to distinguish the Bombay ruling on the ground, that it was optional with the subscriber in the first place whether to join the Provident Fund or not. This makes no difference in view of the definition Contained in Section 2(4) of the Act. The question whether a deposit is a compulsory deposit depends on whether it was re-payable on demand or at the option of the subscriber. Under the Provident Fund Rules which have been placed before me the deposit in this case was not so re-payable. It is also urged that in certain cases an advance might be given to the subscriber out of the deposit even before retirement. This also does not affect the question of law involved for this advance could only be given under the orders of the sanctioning authority for special cause shown and not at the option of the subscriber. The weight of authority is distinctly in favour of the view taken by the Court below and I dismiss the application with costs.