
(2001) 11 PAT CK 0008
In the Patna High Court
Case No : C.W.J.C. No. 11967 of 1999

Dr. Sachidanand Shrivastava

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 23-11-2001

Acts Referred:

Citation : (2001) 11 PAT CK 0008

Final Decision : Allowed

Judgement

Shiva Kirti Singh, J.—This writ petition by a retired employee of the Rajendra Agricultural University, Pusa, (hereinafter referred to as "the University") has been filed for a direction to the Respondents to recalculate the interest with regard to proceeds of GPF at the rate applicable to the general provident fund governed by the rules and orders of the State Government and pay the correct amount of GPF to the Petitioner.

2. The question of law falling for determination in this writ petition is whether the University is liable to pay interest over provident fund contributions of the Petitioner as per interest paid by the Bank in the savings bank account where the contributions were deposited as per arrangement made by the University or at the rate prescribed by the State Government under statutory provisions governing a government provident fund. For this purpose, the relevant facts are few and not in dispute. The Petitioner was initially appointed in the year 1962 in the cadre of class II senior officer of Bihar Agricultural Service. The University was established in the year 1971. After 12 years and four months of service under the Government, Petitioner's service was transferred to the University in February 1980 and as per notification dated 9th February, 1980 (Annexure-1) issued under the signature of Vice Chancellor of the University Petitioner was treated to have been appointed to the post of Assistant Professor in the University with effect from 1st April, 1975 on a probation for two years and absorbed in the University with effect from 1.4.1977 on a permanent basis. Para 5 of Annexure-1 is relevant for deciding the present controversy and it runs as

follows:-5. In case he (Shri Sachidanand Srivastava, the Petitioner) joins the pensionary establishment of the University he will get pensionary and other terminal benefits at par with those given by the State Government for which the services rendered by him in the regular establishment under the State Government shall be taken into account in calculating his pension and gratuity and in addition, be admitted to the facility of General Provident Fund in lieu of Contributory provident fund.

3. It is also not in dispute that the Petitioner joined the pensionary establishment of the University and he was admitted to the facility of general provident fund. Since Petitioner's service in, 1962, till the financial year 1981-82 the account of Petitioner's contribution towards government provident fund was maintained by the Accountant General, Bihar in accordance with rules and orders governing government provident fund. Thereafter, the University recalculated and maintained the general provident fund of the Petitioner with effect from financial year 1982-83 under account No. 5704 in the Central Bank of India, Pusa Farm Branch till August 1993 and thereafter till 31st October, 1999 i.e. his retirement in account No. 502 in the Punjab National Bank, Waini Branch, Samastipur.

4. Petitioner claims that Respondent University never furnished copy of the provident fund account of the Petitioner but Petitioner came to know from office of the University that on the contributions of provident fund Petitioner was credited with interest only at the rate of savings bank interest i.e. 4.5% or 5% per annum and not at the rate of interest provided by the State Government which was 10% from Financial Year 1982-83 to June 1985 and 12.5% from 1.7.1985. He claims to have filed representations in March 1995 and subsequently but no reply was given to him. According to Petitioner, if rate of interest prescribed by the State Government is applied then Petitioner's GPF proceeds will amount to Rs. 5.25 lakhs otherwise, on savings bank interest it would amount only to Rs. 2.45 lakhs. Petitioner has claimed interest at the rate prescribed by the State Government on the basis of Annexure-1 and also on the basis of provisions in Chapter XVI of Rajendra Agricultural University Statutes, 1976 (hereinafter referred to as "the Statutes"), particularly Section 16.1, (e). which relates to general provident fund and provides as follows:

(e) General Provident Fund:

The University shall allow the benefit of the General Provident Fund to such employees as are not admitted to the Contributory Provident Fund. The General Provident Fund of the University will be governed by the rules and orders of the State Government.

5. Learned Counsel for the Petitioner first referred to Section 30 of the Rajendra Agricultural University Act, 1971 (hereinafter referred to as "the Act"). Since this section is of significance in the present case hence, it is being reproduced for ready reference:

30. Pension, Insurance and Provident Fund.-(1) The University shall constitute for

the benefit of its officers, teachers, clerical staff and other employees in such a manner subject to such conditions as may be prescribed, such pension, insurance and provident funds as it may deem fit.

(2) For such pension, insurance and provident funds so constituted by the University, the State Government may declare that the provisions of the Provident Funds Act, 1925 (19 of 1925) shall apply to such funds as if it were a Government Provident Fund:

Provided that the University shall have power in consultation with the Finance Committee of the Board to invest the provident fund amount in such manner as it may determine.

(3) Person in State Government services transferred to the University shall be governed under such terms and conditions as may be agreed to between the University, the State Government and the incumbent.

6. Submission advanced on behalf of the Petitioner is that the University has statutory competence to constitute pension, insurance and provident fund for the benefits of its employees. The State Government also has been given power to declare that the provisions of the Provident Fund Act, 1925 shall apply to provident fund constituted by the University as if it were a government provident fund. The State Government employees transferred to the University shall be governed by such terms and conditions as may be agreed to between the University, the State Government and the incumbent. According to learned Counsel for the Petitioner, Annexure-1 binds the University to pay to the Petitioner pensionary and other terminal benefits at par with those given by the State Government and hence, the facility of general provident fund, which is a terminal benefit finally payable only on termination of service, must also be paid at par with those given by the State Government. Annexure-1 is not in a conflict with any law rather it is in accordance within Section 30(3) of the Act. Although the State Government did not give specific agreement to the conditions in Annexure-1 but as would appear from Annexure-1 the copy of said order was given to all the concerned officers of the State Government and since there was no objection raised by the State Government hence, agreement of the State Government to the terms and conditions in Annexure-1 can safely be presumed. Further, Chapter XVI of the Statutes which governs pensions, general provident fund and contributory provident fund is also in accordance with Section 30(1) of the Act. The University while acting under the powers given by Section 30(1) had the legislative competence to provide as done by Section 16.1(e) that the general provident fund of the University will be governed by the rules and orders of the State Government. It was further submitted that in the State of Bihar the State Government has framed Bihar General Provident Fund Rules, 1948 and those are only rules relating to general provident fund hence, the general provident fund of the University must also be governed by the same rules unless and until some specific rules or orders are formulated by the State Government to regulate the general provident fund of the University.

7. On the other hand, the stand of the University is that no doubt as per Section 16.1(e) the general provident fund of the University was required to be governed by the rules and orders of the State Government but the State Government never issued any rules and orders for that purpose and there was no requirement of such rules and orders when there were provisions to govern the general provident fund in Section 16.2 and 16.4 of the Statutes. Further stand of the University is that under Annexure-1 the Petitioner was entitled only to be admitted to the facility of general provident fund but not to be paid the interest at par with employees of the State Government because GPF was dealt separately in paragraph 5 of Annexure-1 as an additional benefit and not included in the pensionary and other terminal benefits which were to be at par with those given by the State Government.

8. The stand of the State Government is that the University should not have deposited the contributions of general provident fund in savings bank account rather the fund should have been managed in a better manner so as to make sure that the rules and orders of the State Government were followed in the administration of these accounts. Thus, the State Government has treated the action of the University to be a lapse and has further pleaded that the Petitioner never made the Government aware of such serious lapses and now the matter is entirely between the Petitioner and the University and no liability, either financial or otherwise, rests with the Government.

9. The stand of the learned Counsel for the University that general provident fund of the University was being managed in accordance with provisions in Sections 16.2 and 16.4 of the Statutes is fit to be rejected at the outset because those sections clearly relate only to contributory provident fund of the University and not to general provident fund which has to be governed by the University by the rules and orders of the State Government. In fact, even the rate of deductions towards general provident fund of the University is not provided in Chapter XVI of the Statutes. From University's own document contained in Annexure-A to the counter affidavit it is clear that University was aware that no rules have been framed by the University for regulating the operation of general provident fund till 18th April, 1981, the date of Annexure-A, a circular issued by the University. By that circular the University decided to follow the rules of Chapter XVI of the Statutes with regard to GPF to the extent the same was not inconsistent with the principles underlying the operation of GPF. It was further made clear that any matter pertaining to general provident fund not covered by the provisions of Statutes may be decided by the rules of the Bihar Provident Fund Rules of the State Government. Thus, the final stand of the University is based upon Annexure-A a circular by which the University decided to adopt the provisions in Chapter XVI of the Statutes relating to contributory provident fund for the purpose of management of general provident fund to the extent the same was not inconsistent with the principles underlying the operation of GP fund. Under such "arrangement the concerned employees including the Petitioner opened savings bank account in the year 1982 under a clear impression that

those accounts were the general provident fund accounts.

10. After noticing the rival submissions and the relevant materials on record it becomes clear that u/s 30 of the Act the University was competent to constitute a general provident fund of the University. The benefit of such a fund may be subject to such conditions as may be prescribed by the University. Under the Act the word prescribed has been defined to mean prescribed by Statutes or regulations. Provisions in Section 35 relating to Statutes and in Section 37 relating to regulations make it clear that it is the Statutes which as per Section 35(10) may provide for matters relating to pension, provident funds etc. Thus, the Act does not permit laying down conditions relating to provident funds by letters or circulars of the University. The rate of contribution, the interest to be provided are important conditions relating to general provident fund and these could not have been done by Annexure-A. In the facts of the case, like the rate of contribution for GPF, the rate of interest over such contributions must also be governed by the rules framed by the State Government.

11. The University clearly misunderstood the scope of its power in managing the general provident fund once the Statutes were framed and it was provided therein that GPF of the University will be governed by the rules and orders of the State Government. In such circumstances, the University clearly took an erroneous stand in Annexure-A that it was required to frame rules for regulating the operation of GP Fund. Learned Counsel for the Petitioner appears to be right in submitting that either the University could have obtained special rules and operations from the State Government for governing the GRE of the University or else such general provident fund had to be governed by the general rules and orders of the State Government as contained in Bihar GP Fund Rules, 1948. The provisions in Section 16.1(c) of the Statutes make it clear that in the matter of some other benefits such as monthly pension, deathcum-retirement gratuity and family pension the University has provided to follow the general rules, orders and principles followed under the State Government. Thus, on the basis of the Statutes itself it is found that the University is liable to abide by the provisions made by the State Government for calculating interest over contributions to general provident fund.

12. Although it is not necessary to enter into the controversy arising out of claim of the Petitioner based upon the order of the Vice Chancellor contained in Annexure-1, however, it may be indicated herein that prima facie Annexure-1 also supports the claim of the Petitioner because final payment of proceeds of GPF are terminal in nature, payable finally either on account of death of the employees or on account of termination of employment. The State Government never objected to the terms and conditions agreed to by the University by Annexure-1.

13. It was also submitted on behalf of the University that since the Petitioner had signed and applied for opening of GPF account under Savings Bank Account carrying specified interest hence he, in any event, is guilty of contributory

negligence and therefore, not entitled for any relief. This plea cannot be accepted for the reasons that Petitioner had no choice but to apply for Savings Bank account as per University's policy and there can be no estoppel against statute.

14. At this stage it is relevant to refer to an alternative argument advanced on behalf of the University to the effect that in case this Court accepts the submission advanced on behalf of the Petitioner on the basis of Section 16.1(e) of the Statutes then the Court must also consider the fact that the University had for long years acted in bona fide confusion that GPF of the University will be governed by Section 16.2 and 16.4 of the Statutes as per circular contained in Annexure-A. In large number of cases GPF dues have been calculated and paid on the basis of interest earned through savings bank account. Hence, the law being found by this Court may be made prospective so as not to affect the earlier transactions which have already attained finality. For this purpose, learned Counsel placed reliance upon a recent judgment of the Supreme Court in the case of *M/s. Somaiya Organics (India) Ltd. Vs. State of Uttar Pradesh and Another*, and also upon the following judgments of the Apex Court (1) *The Belsund Sugar Co. Ltd. Vs. The State of Bihar and Others Etc.*, (2) *State of Rajasthan and Others Vs. D.R. Laxmi and Others*, . With regard to this submission it is sufficient to point out that the doctrine of settlement of law by Court with prospective effect has been established since long but such order or direction can be made only by the Apex Court under its power to do complete justice under Article 142 of the Constitution of India.

15. However, it is deemed relevant to observe here that this judgment should not be construed to create liability over the University with regard to such retired employees who have already received the proceeds of GPF on the basis of interest as per savings bank rate. Such concluded transactions should not be reopened and in those cases if an attempt is made by the concerned employees to raise a fresh claim, the University may be justified in treating those claims to be barred by delay or acquiescence.

16. So far as the claim of the present Petitioner is concerned, it has to be allowed in view of earlier finding that University was liable to govern the general provident fund of the University as per rules and orders of the State Government including the Bihar General Provident Fund Rules and orders issued thereunder with regard to rate of interest. The general provident fund proceeds of the Petitioner should be calculated accordingly and paid to the Petitioner within a period of three months. In view of settled law by several pronouncements of this Court the State Government is under obligation to meet the net expenses of the University relating to pay and allowance to the staff, contingencies, supplies and service of the University as mentioned in Section 32 of the Act itself. Hence, if the University does not have necessary funds for paying the dues of the Petitioner then it will be entitled to make a request for the necessary amount from the State Government which shall provide such amount expeditiously and in any case within one month of such request so that payment may be made to the

Petitioner without delay and within the time frame indicated above.

17. This writ petition is allowed in the aforesaid terms but in the facts of the case there shall be no order as to costs.