

(2015) 09 PAT CK 0117

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10955 of 2013

Gouri Shankar Mishra and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 23-09-2015

Acts Referred:

Employees Provident Funds Family Pension Fund And Deposit-linked Insurance Fund Act, 1952 — Section 17-B, 8

Citation : (2015) 147 FLR 938

Hon'ble Judges : Rakesh Kumar, J.

Bench : Single Bench

Advocate : Rajeev Ranjan, for the Appellant; Prashant Sinha and Sanjay Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Kumar, J.—Heard Sri Rajeev Ranjan, learned Counsel for the petitioners, learned AC to SC No. 1, Sri Prashant Sinha, learned Counsel, who has appeared on behalf of the Respondent No. 3 to 5/Employees Provident Fund Organization and Sri Sanjay Kumar, learned Counsel, who has appeared on behalf of the respondent Nos. 8 and 9. Two petitioners, who claim to be son and daughter-in-law of one Late Jibach Mishra, have approached this Court invoking its writ jurisdiction to direct the respondent Nos. 3 to 5 to pay entire dues of Provident Fund of Late Jibach Mishra. Late Jibach Mishra was earlier employed in the Laheriasarai-Samastipur-Daulatpur Central Co-operative Bank Ltd. presently known as Darbhanga District Central Co-operative Bank Ltd., Laheriasarai, which was covered under the scheme of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act 1952"). The said Establishment was provided the Fund Code bearing No. BR/1752. It is case of the petitioners that father of the petitioner No. 1 namely, Late Jibach Mishra retired in the month of January, 1985 and died in the month of September, 1985. At later stage Darbhanga District Central Co-operative Bank Limited, Laheriasarai was bifurcated into two identity i.e. Darbhanga District Central Cooperative Bank

Ltd., Laheriasarai and Samastipur District Central Co-operative Bank Ltd., Samastipur. It has been pleaded that services of late Jibach Mishra was transferred to the Samastipur District Central Co-operative Bank Ltd., from where he finally retired in the month of January, 1985. By way of referring to Annexure-"1" to the writ petition it has been argued that under the head of Provident Fund, deduction was made from the salary of Late Jibach Mishra. Learned Counsel for the petitioners further submits that after bifurcation entire detail was sent by the Darbhanga District Central Co-operative Bank Ltd., Laheriasarai to Samastipur District Central Co-operative Bank Ltd., Samastipur and detail of father of petitioner No. 1 has also been mentioned. According to learned Counsel for the petitioners as per paragraph No. 26 of the Employees' Provident Fund Scheme, 1952 membership of Fund shall continue until it is withdrawn. According to learned Counsel for the petitioners since membership of the father of the petitioner No. 1 was continuing, it was duty on the part of the Employees Provident Fund Organization to pay the deducted Provident Fund amount, which has not been done. Learned Counsel for the petitioners has also tried to impress upon the Court that under the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act 1952") certain guidelines have been prescribed which is mandatory in nature. As per section 8 of the Act 1952 mode of recovery from employer has been prescribed. Similarly under section 17-B liability of Establishment has also been fixed. It has further been argued that in a similarly situated case a bench of this Court on 18.3.2013 in CWJC No. 3781 of 2013 by order dated 18.3.2013 had disposed of the writ petition with a direction to Employees Provident Fund Commissioner to take consequential steps for release of Provident Fund amount. On aforesaid grounds a prayer has been made to direct the Respondents to pay the Provident Fund amount of the father of petitioner No. 1 Late Jibach Mishra to the petitioners.

2. Sri Prashant Sinha, learned Counsel for the respondent/Employees Provident Fund Organization by way of referring to submissions made in the counter affidavit has raised preliminary objection on the ground of maintainability of the writ petition. He submits that the present writ petition has been filed almost after 28 years of death of the employee. By way of referring to the counter affidavit he further submits that the available Form - "24" reflects that no contribution was received from Late Jibach Mishra. The record does not reflect any receipt of contribution for Late Jibach Mishra. He further submits that petitioners' case is not similar to the case i.e. CWJC No. 3781 of 2013. He submits that in said case most of the contributions were received whereas in respect of Late Jibach Mishra there is no record suggesting receipt of any contribution. Besides hearing learned Counsel for the parties, I have also perused the materials available on record. The writ petition is primarily required to be rejected on the ground that after 28 years from the death of the employee the petitioners' claiming to be legal heirs of the employee have approached this Court without giving any plausible explanation for delayed approach. Secondly, the present writ petition is required

to be rejected on the ground that before approaching this Court no demand of justice was made. In the writ petition mere is no chit of paper to suggest that before approaching this Court petitioners had approached the authority concerned demanding justice. So far as the scheme is concerned, there is no doubt regarding the provisions but fact remains that the claim of the petitioners are completely stale and the counter-affidavit of Employees Provident Fund Organization suggests that whatever record is available it does not reflect any contribution from the employee concerned. Accordingly, in view of the facts and circumstances particularly the fact that petitioners" have approached this Court belatedly that too, without demanding justice before the authority concerned, I do not find any ground to interfere with the matter. The writ petition stands dismissed.