
(1998) 04 CAL CK 0009
In the Calcutta High Court
Case No : F.M.A.T. No. 1173 of 1996

Gyan Bharti

APPELLANT

Vs

Regional Provident Fund Commissioner and Others

RESPONDENT

Date of Decision : 23-04-1998

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 2, 6

Citation : 1 CWN 284 : (1999) 82 FLR 567 : (1998) 1 ILR (Cal) 396 : (1999) 2 LLJ 776

Hon'ble Judges : R.K. Mitra, J;B.P. Banerjee, J

Bench : Division Bench

Advocate : Bhaskar Gupta, Sumit Kumar Talukdar, Bimalendu Das and Manashi Battacharjee, Bhudeb Bhattacharjee, for the Appellant;J.K. Biswas and A.K. Gupta for Respondent No. 1, Laskhmi Gupta and Debashis Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Banerjee, J.—This is an appeal against the judgment and order dated February 28, 1996 passed in C.O. No. 14917 (W) of 1992 passed by ASHOK KUMAR CHAKRABORTY (as His Lordship then was) dismissing the writ petition holding inter alia, that the School management was liable to pay the statutory liability of making payment of provident fund in accordance with the provisions of Section 6 of the Employees' Provident Funds and Miscellaneous Provisions Act in respect of Dearness Allowances paid by the Government to the School Authorities for payment to the teaching and non-teaching staff of the School concerned.

2. It is not in dispute that the petitioner is a Society registered under the Societies Registration Act and runs and manages an Educational Institution known as Gyan Bharati Vidyapith and the staff of the said School receive Government Dearness Allowance from the District Inspector of Schools (Secondary Education) at the Government prescribed rate. The question that falls

for our determination in this appeal is whether the Managing Committee of the School is liable to pay to the provident fund for that part of the Dearness Allowance which is contributed and given by the State as an aid to the Educational Institution. It is not in dispute that the Managing Committee of the said school is paying and it is admitted by the petitioners that they are liable to pay provident fund and they are paying provident fund on the salary and that part of the Dearness Allowance which is being paid by the Managing Committee but their case is that they are not liable to pay the provident fund in respect of that part of the Dearness Allowance which is sanctioned and granted by way of an aid by the Government under certain schemes which have been framed by the Government for the purpose of giving certain reliefs and/or mitigate the hardship of this Institution in the matter of paying Dearness Allowance at the Government rate.

3. Mr. Bhaskar Gupta, learned Counsel appearing for the petitioner appellant submitted that the Managing Committee of the School cannot be made liable to make payment of the provident funds in respect of the Dearness Allowance paid by the Government to the teachers through the Managing Committee of the said School. There is no doubt that the appellant has been regularly making all contributions towards provident funds of the teaching and non-teaching staff of the said School on salary and other emoluments paid by the appellant to the concerned staff. The Provident Fund Authorities issued a notice upon the Managing Committee requiring it to make payment of the provident funds in respect of that part of the Dearness Allowance which was paid by the Government and against that notice, the appellant moved the Writ Court. Upon hearing the parties the learned Single Judge by an order dated February 28, 1996 dismissed the said writ petition. Mr. Gupta submitted that the provisions of Section 6 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the said Act) has to be construed keeping in mind the provisions of Section 2(b) of the Act which defines basic wages. Section 6 of the said Act provides for liability to make payment and the same is the charging section under which the provident funds are required to be paid which are as follows:

6. "Contribution and matters which may be provided for in schemes - The contribution which shall be paid by the employer to the fund shall be eight and one third per cent of the basic wages (Dearness Allowance and Retaining Allowance (if any)) for the time being payable to each of the employees (whether employed by him directly or by or through a contractor) and the employees' contribution shall be equal to the contribution payable by the employer in respect of him and may, if any employee so desires, by an amount exceeding eight and one third per cent of his basic wages. Dearness Allowance and Retaining Allowance (if any), subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section.

Basic wages has been defined in Section 2(b) of the said Act which means:-

(b) "basic wages" means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include -

(i) the cash value of any food concession;

(ii) any Dearness Allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house rent allowance, overtime allowance, bonus, commission or other similar allowance payable to the employee in respect of his employment or of work done in such employment;

(iii) any presents made by the employer."

Mr. Gupta submitted that when basic wages has been defined to mean only the amount payable under the contract of employment, excluding the Dearness Allowance in that event the same meaning has to be given while deciding the right to make payment by the employer u/s 6 of the said Act. Mr. Gupta also submitted that in respect of Dearness Allowance paid by the State Government, State Government has to pay provident fund contribution and the Managing Committee or the School Authorities cannot be compelled to pay provident fund dues on that score. It was further submitted by Mr. Gupta that there is a Drawing and Disbursing Officer appointed by the State Government in respect of the Dearness Allowance contributions made by the State Government as State Government found that the Managing Committee had not been properly constituted and the Drawing and Disbursing Officer is drawing the amount and paying to the teachers. This was done solely for the purpose of taking care of the money paid by the Government and distribution is being made by an Officer appointed by the State Government. It is further submitted by Mr. Gupta that since the Dearness Allowance money is being withdrawn by the Drawing and Disbursing Officer and the same is being paid to the teachers, the Managing Committee has no manner of control over the same and the said money cannot form part of the funds of the said School and the fund of the said School cannot be made to be utilised for the purpose of meeting the provident fund liabilities in respect of the Dearness Allowance paid by the Government in this behalf.

4. The learned Single Judge after hearing the learned Counsel of the parties herein opined that there is no doubt that the Dearness Allowance of the teachers and staff of the School is not paid on regular basis and it is also true that it cannot be paid to the teachers and the staff of the School on each and every month as it falls due and it was observed by the learned Judge that it is also true that the School Authorities have no control over the amount remitted as consolidated dearness Allowance by the Government but the liability to pay provident fund is there as the School Management being admittedly the employer of the teachers and the staff of the School and the Dearness Allowance

forms part of their salary which is inseparable element of such salary, the statutory liability for payment of provident fund contribution on the wages, salaries and Dearness Allowance u/s 6 of the Act be created if a different view is taken in this matter because the statutory liability of payment of the wages remaining with the employer, it cannot be divided into two parts one for contribution on basic salary and the other on Dearness Allowance.

5. We are clearly of the view that Section 6 of the Act which is a charging section and the section which provides for contribution to be made to the Provident Fund Authorities lays down that the contribution which has been paid by the employer to the Provident Fund Authorities at certain rates on the basic wages and Dearness Allowance, an obligation is created by operation of Section 6 of the said Act making payment only on the basic wages and also on Dearness Allowance. In our view, the provisions of Section 6 is clear and under the said provision a liability has been created under the Statute under which the Managing Committee of the said School as an employer is bound to pay the provident fund contribution not only on the basic wages but also on the Dearness Allowance. Section 2(b) defines basic wages which excludes Dearness Allowance but the definition section cannot control the provisions of Section 6 of the said Act as the definition section provides with the clause "unless the context otherwise requires". In the instant case Section 6 clearly provides that Dearness Allowance should form part of the basic wages only for the purpose of payment of provident funds. In other words, provident fund is also payable in respect of Dearness Allowance. Our attention is drawn to the provision of Clauses 29 and 30 of the Employees' Provident Funds Scheme, 1952. Section 30 of the said scheme provides that the employer shall in the first instance pay both the contributions payable by himself and also on behalf of the member employed by him directly or by or through a contractor, the contribution payable by such member. In other words, for the purpose of facilitating the payment of provident fund, provision has been made that employer shall pay both the contributions payable by the employer and the employee and thereafter deduct the contributions payable by the employees concerned. Accordingly, we do not find that the provisions of the Act have created any right and/or obligation in favour of the management of the School not to pay any Dearness Allowance or part of Dearness Allowance paid by the State Government to the School Authorities for discharging the liability of the Managing Committee which was done in order to mitigate the hardships in the matter of payment of the Dearness Allowance to teachers concerned.

6. One of the arguments of Mr. Gupta was that the provident fund contribution is to be made within certain time or in other words at the end of the month. After payment of the salaries the provident fund is required to be paid. Inasmuch as the Government Dearness Allowance are not released every month but released after some months and in a lump and consequently because of such irregular payment or payment at such interval, the statutory provisions of making payment of the provident fund dues in accordance with and/or within the prescribed date could not be met. In our view, this contention cannot be

accepted as the liability to pay provident fund in respect of the Dearness Allowance payable by the State Government would arise as soon as the same is released and paid to the School Authorities and at that time the School Authorities shall deduct the sums payable by the teachers as well as shall pay the employer's contribution towards the provident fund. Accordingly we are unable to hold that because of the delay in releasing the Dearness Allowance, the statutory provision becomes infructuous and the liability ceases. Liability is there and that if on receiving the Dearness Allowance the School Authorities make payment in respect of the sums given as contemplated in Section 6, in that event no exception can be taken either by the Authorities or by any other Authorities as the liability would arise as soon as the sums are received by the Managing Committee and as soon as the same is payable to the teachers concerned. There may be difficulty or hardship in this matter but hardship and/or difficulty cannot be taken into consideration for the purpose of interpreting the provisions of an Act and holding that hardship has rendered provisions of the Act unreasonable and/or it cannot be held that statutory liability ceases because of hardship. All the contingencies could not be taken care of by the Legislature but in the facts and circumstances of the case as soon as the Dearness Allowance is received by the School Authorities, the School Authorities are bound to pay the provident fund contributions in respect of that part of the money in accordance with the percentage laid down in Section 6 of the said Act because the Managing Committee is the ultimate employer in this behalf. The appointment of a Drawing and Disbursing Officer to handle the Dearness Allowance paid by the State Government to the School Authorities does not and cannot be a factor to hold that appellant/petitioner has no liability. Drawing and Disbursing Officer steps into the shoes of the Managing Committee by operation of law in respect of the sums payable by the Government and the sums thus being drawn and received by such Officer shall be disbursed by the same Officer for the very purpose for which the sums are payable. The liability is of the employer to pay at the first instance and accordingly we cannot take a view which will make the provisions of Section 6 nugatory and ineffective. We are to bear in mind that the Provident Fund Act is a welfare legislation for the purpose of protecting the interests of the employees and the construction that is sought to be given by Mr. Gupta appearing on behalf of the appellant would frustrate the very object and/or the scheme of the Act and the same would also result in making the provisions of Section 6 and other provisions of the Act nugatory. Accordingly, in the case of Prantiya Vidhyut Mandal Mazdoor Federation Vs. Rajasthan State Electricity Board and others etc. etc., the Supreme Court considered the point as to whether arrears of wages payable by employer of workmen pursuant to a wage revision award was made applicable from a back date. It was held by the Supreme Court that the same constitutes and forms part of basic wages for the time being payable and that the employer is liable to pay its own provident fund contributions and those of the workmen to be deducted from wage arrears payable by the employer to the workmen pursuant to wage revision which was made applicable in a back date. In that view of the matter, we do not find any

reason to interfere with the order passed by the learned Single Judge and we do not find any reason to hold that the appellant has no liability to pay to the provident fund in respect of the Dearness Allowance contributions made by the State Government for the purpose of payment of such Dearness Allowance to the teaching and non-teaching staff of the said School. We are also unable to hold that the State Government is bound to pay the provident fund contributions of the employer, namely the School Authorities to the extent of the Dearness Allowance contributions made by the State Government to the Managing Committee for the purpose of discharging the liability and/or obligation of the Managing Committee. State Government does not become an employer by simply giving the same aid to such institutions for the purpose of mitigating the hardship of the School Authorities and/or to make payment of the Dearness Allowance so that the teachers and other staff of the Schools in the State can get Dearness Allowance at an uniform rate but it is also the object of the Government to see that no discrimination is meted out in this behalf. The object of the State Government in this behalf is to extend benefits to the teaching and non-teaching staff of the Schools and Act has been legislated for the welfare of the teaching and non-teaching staff of the Schools and accordingly by giving some aid the State Government cannot be saddled with the liability of paying provident funds only to the extent of the Dearness Allowance paid by the Government under Granting-Aid Scheme of such School Authorities. Accordingly we do not find any merit in this appeal and the appeal is dismissed without any order as to costs.

7. Since there was an interim order of injunction subsisting under which the Provident Fund Authorities could not realise the amounts and since the appeals are being disposed of, accordingly the Provident Fund Authorities would be at liberty to realise the provident fund dues only with interest which the teachers concerned lost but for any delay in this matter the Provident Fund Authorities would not be at liberty to impose any damage u/s 14-B of the Act.

8. Prayer for stay is made but refused.

This order shall also govern in the other matter being Appeal No. 462 of 1996, Matter No. 7231 of 1994. N.R. Yuer Memorial Education Society v. Regional Provident Fund Commissioner and Ors., and accordingly both the appeal and the stay applications stand dismissed without any order as to costs.

All parties are entitled to have a Xeroxed certified copy of this judgment and order on the usual undertaking.

Mitra, J.

I agree.