(2015) 03 CAL CK 0097

In the Calcutta High Court

Case No : Writ Petition No. 7223 (W) of 2015

Jute Textiles Workers'' Union and Others APPELLANT

Vs

State of West Bengal and Others RESPONDENT

Date of Decision : 24-03-2015

Acts Referred:

Employees Provident Funds Family Pension Fund and Deposit-linked Insurance Fund Act, 1952 — Section 17(1), 17(4), 17(5)

Citation : (2015) 145 FLR 889 : (2015) LLR 848

Hon'ble Judges : Sambuddha Chakrabarti, J

Bench : Single Bench

Advocate : Arunava Ghosh and Saumya Majumdar, for the Appellant; Narayan Bhattacharyya and Sanjib Das, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Dr. Sambuddha Chakrabarti, J.

1. The petitioner No. 1 is a registered trade union of Victoria Jute Company, i.e. the respondent No. 6 herein. In the year 1962 the Central Government granted exemption under section 17(1) of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 to the concerned establishment. The said exemption, however, was cancelled by a Notification dated April 24, 2002 under section 17(4) of the said Act as the performance of the establishment had not been found satisfactory. Since it had become a defaulter and failed to transfer the provident fund, pension fund etc. and other dues the company was put on notice in the year 2002 itself and was directed to transfer the fund and to submit the past accumulation statements in respect of all the employees of the Trust Fund within ten days from the date of receipt of the communication. It appears from the writ petition that Bengal Chatkal Mazdoor Union and its Secretary had filed a writ petition being WP 15074(w) of 2002 challenging the cancellation of exemption. Initially, an interim order had been obtained by the petitioners on that writ petition restraining the transfer of accumulated amount from the

Victoria Jute Workers'' Provident Fund, i.e. the respondent No. 10 to the Provident Fund authorities. Thereafter, the interim order was vacated.

2. According to the present writ petitioners, they have come to learn that by a communication dated June 21, 2002 the Provident Fund authorities had intimated the concerned Establishment about the cancellation of the exemption. There is absolutely no mention of when the Union had come to learn about the cancellation of the order.

3. The immediate occasion for filing the present writ petition seems to be the communication dated February 11, 2015 made by the Provident Fund authorities to the Branch Manager of Standard Chartered Bank, Kolkata- 700001.

4. It was communicated that pursuant to the Gazette Notification dated April 24, 2002 the provident fund exemption had been cancelled but till date the employer of the establishment and the trustees of Board of Trustees had failed to surrender/transfer the said trust fund accumulation to the statutory authority in terms of section 17(5) of the Act read with para 28 of the Employees'' Provident Funds Scheme, 1952. Therefore, an order of censure was issued to the bank directing them not to allow any debit operation in the accounts maintained by Victoria June Workers'' Provident Fund without obtaining due approval from the Provident Fund authorities.

5. The petitioners have expressed their inconvenience as a result of this order of censure issued by the Provident Fund authorities. In order to forestall the same the petitioners decided to challenge the order of cancellation and prayed for stay of the communication dated February 11, 2015 as an incidental prayer connected with the order impugned in the writ petition. The principal relief sought for in the writ petition is for a mandamus commanding the respondents to cancel the order for cancellation of exemption.

6. There is absolutely no explanation in the writ petition why the petitioners moved this writ petition about 13 years after the cancellation of exemption. The petition is gleefully silent on the date on which they had acquired the knowledge about the cancellation. The silence is eloquent. It is inconceivable that when an operating trade union could challenge the order of cancellation contemporaneously the petitioners would not in the know of it absolutely.

7. Mr. Arunava Ghosh, the learned advocate for the petitioners, submitted that the workers are in favour of continuation of the exemption. Even, the locus of the Union to challenge the cancellation of exemption remains a question to be decided. After all, it is not an industrial dispute. Exemption was granted to the establishment. So also the cancellation order.

8. Mr. Ghosh further submitted that the Provident Fund authorities also did not act on the Notification of cancellation inasmuch as an election was held under the supervision of Provident Fund authorities. He has taken me through two communications which do not exactly prove that it was done on the supervision

of the Provident Fund authorities, but the Provident Fund authorities nonetheless wrote to the establishment to conduct the election.

9. Mrs. Aparna Banerjee, the learned advocate for the Provident Fund authorities, submits that this was because of the pendency of the writ petition.

10. But that does not give any right to the petitioners to challenge the cancellation of exemption thirteen years later.

11. Mr. Ghosh has submitted that the workers are facing difficulty in getting loans and it has also been mentioned in the writ petition that if exemption is cancelled they will have to repeatedly visit the Provident Fund authorities and there may be difficulties in getting loans. That is no ground for not complying with the order issued by the appropriate authority or challenging an order after 13 years. Much of such argument including the anticipated harassment is based on surmises and are speculative in nature. For the reason of delay, I decline to entertain this writ petition. The writ petition is dismissed.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.