

(2007) 08 AHC CK 0275
In the Allahabad High Court
Case No : Writ Petition No. 1603 (S/B) of 2000

Kunwar Bahadur Saxena v

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-08-2007

Acts Referred:

Constitution of India, 1950 — Article 21
Provident Fund Rules, 1985 — Rule 11(4), 24
Provident Funds Act, 1925 — Section 4

Citation : (2008) 6 AWC 5447 : (2008) 1 UPLBEC 97

Hon'ble Judges : Sudhir Agarwal, J; Sanjay Misra, J

Bench : Division Bench

Advocate : Hamendra Pratap, for the Appellant; N.K. Seth and S. C., for the Respondent

Final Decision : Allowed

Judgement

Sanjay Misra and Sudhir Agarwal, JJ.--

1. Heard Sri Hamendra Pratap, learned Counsel for the Petitioner and learned standing counsel appearing on behalf of Respondents No. 1 to 4 and Sri N. K. Seth, learned Counsel appearing on behalf of Respondents No. 5 and 6.

2. This writ petition is directed against the order dated 16.4.1998 passed by the State Public Services Tribunal, Lucknow dismissing Claim Petition No. 941 of 1996 of the Petitioner claiming interest on delayed payment of amount of G.P.F.

3. The facts of the case, in brief, are that the Petitioner was appointed as Assistant Development Officer (Statistics) Panchayat on 28.12.1953 and after getting his due promotions, retired from the post of Assistant Development Project Director on 31.7.1987 after attaining the age of superannuation. He was not paid his amount of Provident Fund and it appears that he was informed that he has not submitted Form No. 425A as required under Rule 24 of the General Provident Fund Rules, 1985 (hereinafter referred to as "Rules, 1985") and,

therefore, his claim for payment of provident fund could not have been considered by the authorities concerned. It is stated that the Petitioner thereafter submitted Form No. 425A on 7.6.1988 whereafter 90% of the amount of provident fund was authorised to be paid by letter dated 31st August, 1991 issued by the Competent Authority of the State Government. With respect to balance amount of 10% of the provident fund, the same could not have been paid by the authorities of the State Government until letter of authorisation is issued by the office of the Accountant General, Allahabad which it was issued on 9.2.1993, pursuant where to payment of 10% balance amount was made to the Petitioner on 10th September, 1993. Claiming interest on the delayed amount of provident fund, Petitioner filed the aforesaid claim petition which has been dismissed by the Tribunal observing that since the Petitioner was himself guilty of delayed submission of Form 425A, therefore, was not entitled for payment of interest in view of Sub-rule (4) of Rule 11 of Rules, 1985.

4. Learned Counsel for the Petitioner submitted that there was no deliberate delay or laches on the part of the Petitioner in submission of Form 425A. In fact, the department itself has not completed the provident fund account statement of the Petitioner as a result thereof there was no occasion for the Petitioner to submit Form 425A within time. Thus, reasons for delay in submission of aforesaid form was beyond the control of the Petitioner. He further stated that even though admittedly Form 425A was submitted on 7.6.1988, yet 90% of payment was made after more than three years, i.e., in August, 1991 and 10% balance amount was made after more than five years, i.e., in September, 1993 and therefore for the aforesaid delayed payment, the Petitioner was entitled for interest. He also placed reliance on Rule 11 (4) proviso of Rules 1985 stating that where the delay in submission of requisite application by the employee as required under Rule 24 is beyond control of the employee, in such circumstances, the employee is entitled for payment of interest on the delayed payment of amount of provident fund and it is said that the learned Tribunal has erred in law in failing to consider this aspect of the matter.

5. Sri N. K. Seth learned Counsel appearing on behalf of Accountant General submitted that since the Petitioner was guilty of delayed submission of Form 425A as required under Rule 24 of Rules, 1985, therefore, he was not entitled for interest as claimed and the Tribunal has rightly rejected his claim petition. Learned standing counsel has also reiterated and followed the said arguments and further contended that the liability for payment of 10% of the balance amount of provident fund cannot be fastened upon the State Government for the reason that unless authorisation is issued by the office of the Accountant General, the said payment cannot be made and therefore, if there is any laches in payment of 10% balance amount to the Petitioner, for the same the office of Accountant General is liable and not the Department of the State Government.

6. From the rival contentions, the short question cropped up and required to be considered herein is as to whether Rule 11 (4) proviso of Rules, 1985 would

apply in the case in hand entitling the Petitioner for payment of interest on delayed payment of the amount of provident fund or in view of the delayed submission of Form 425A under Rule 24 of the 1985 Rules, no interest is payable under Rule 11 of the said Rules.

7. Rules 11 and 24 which are relevant for the purpose of present case are quoted as under:

11. Interest.-

(1) Subject to the provisions of Sub-rule (5) Government shall pay to the credit of the account of a subscriber interest at such rate as may be determined for each year by the Government of India.

(2) (a) Interest shall be credited to the account of a subscriber on the last day in each year in following manner:

(i) On the amount at the credit of a subscriber on the last day of the preceding year up to the end of current year ;

(ii) On all sums credited to the account after the last day of the preceding year from the date of deposit up to the end of the current year.

(b) No interest shall be admissible on any sum withdrawn during the current year from the first day of the month in which such a sum withdrawn up to the end of the current year.

(c) The amount of interest, determined as aforesaid, if such amount is not in whole rupee, shall be rounded off to nearest whole rupee, a part of the rupee less than fifty paise shall be ignored and any other part shall be counted as next higher rupee.

Explanation.--The amount at the credit of a subscriber on the last day of the preceding year will include the amount of bonus if any, payable for such preceding year:

Provided that when the amount standing to the credit of a subscriber has become payable, interest shall thereupon be credited under this sub-rule in respect only of the period from the beginning of the current year or from the date of deposit, as the case may be, upto the date on which the amount standing to the credit of the subscriber become payable.

(3) In this rule, the date of deposit shall, in the case of recovery from emoluments, be deemed to be the first day of the month in which it is recovered:

Provided that where there has been delay in the withdrawal of pay or leave salary and allowances of a subscriber and consequently in the recovery of his subscription towards the Fund, the interest on such subscription shall be payable from the month in which the pay or leave salary of the subscriber was due under the rules irrespective of the month in which it was actually drawn:

Provided further that where the emoluments for a month are drawn and disbursed on the last working day of the same month the date of deposit shall, in the case of recovery of his subscriptions, be deemed to be the first day of the succeeding month.

(4) In addition to any amount to be paid under Rules 20, 21 or 22 interest thereon up to the end of the month preceding that in which the payment is authorised, shall be payable to the person to whom such amount is to be paid:

Provided that where the application required under sub-rules (4) and (5) of Rule 24 is submitted complete in all respects to the Head of Office or Department, whose duty is to forward the same to the Account Officer, after the expiry of six months from the date the amount claimed became payable, interest shall be payable only up to the end of the month preceding that in which the payment is authorised or up to the end of the twelfth month after the month in which such amount become payable, which is earlier, except where it is proved to the satisfaction of the Head of Office or Department concerned that the submission of the said application was delayed by circumstances beyond the control of the applicant, in which case the restriction of this proviso shall not apply:

Provided further that where a subscriber, on deputation to an Undertaking, is subsequently absorbed in such Undertaking with effect from a retrospective date, then, for the purpose of calculating interest due on the Fund accumulations of the subscriber, the date of issue of the order regarding absorption shall be deemed to be the date on which the amount to the credit of subscriber became payable.

(5) Interest shall not be credited to the account of a subscriber if he informs the Drawing and Disbursing Officer that he does not wish to receive it, but if he subsequently asks for interest, it shall be credited with effect from the first day of the year in which he asks for it.

(6) In case a subscriber is found to have drawn from the Fund an amount in excess of the amount standing to his credit on the date of the drawl, the overdrawn amount, irrespective of whether the overdrawal occurred in the course of an advance or a withdrawal or final payment from the Fund, shall be repaid by him with interest thereon, or in default, be ordered to be recovered by deduction from the emoluments or other dues of the subscriber. In case the subscriber is still in service, the amount shall ordinarily be repaid by him or recovered from him in one lump sum, but if the total amount to be recovered is more than half of the subscriber's emoluments, recoveries may be made in monthly instalments as may be determined, taking into consideration the period left before the retirement of the subscriber. In case of a subscriber no longer in service, the entire amount with interest shall be repaid by him or recovered from him in one lump sum. In all cases of overdrawals, where the overdrawn amount or a part thereof, with interest, cannot be recovered by other means, it shall be recovered as arrears of land revenue. The overdrawn amount, after recovery, shall be

credited to Government account under the receipt Head of the Department concerned.

(7) The rate of interest to be charged on overdrawn amount referred to Sub-rule (6), would be 2 1/2 over and above the normal rate on Provident Fund balance under Sub-rule (1). The interest realised on the overdrawn amount shall be credited to Government account under the sub-head "Interest on overdrawals from Provident Fund" under the head "049-Interest Receipts-Interest receipts of State/Union Territory Government-Other receipts-Interest on other miscellaneous loans."

(8) In case any excess or wrong payment is made, under Rule 23, the amount so paid together with interest as mentioned in Sub-rule (6) above shall be recovered from the emoluments or other dues of the deceased subscriber and credited to Government account in the manner prescribed in the aforesaid sub-rule. If there be no such dues or the over-paid amount with interest cannot be recovered in full therefrom, the outstanding amount shall be recovered, if necessary as arrears of land revenue, from the person who had received excess or wrong payment.

24. Manner of payment of amount in the Fund.-

(1) When the amount standing to the credit of a subscriber in the Fund becomes payable it shall be paid as provided in Section 4 of the Provident Funds Act, 1925 in the manner hereinafter prescribed.

(2) If the person to whom, under these rules, any amount or policy is to be paid, assigned, re-assigned or delivered is a lunatic for whose estate a manager has been appointed in this behalf under the Indian Lunacy Act, 1912, the payment or assignment or delivery will be made to such manager and not to the lunatic.

(3) Payment shall be made in India in Rupees only. The person to whome the amount is payable shall make his own arrangement to receive payment in India.

(4) Where the subscriber was a Group "D" employee, an application in Form 425B set forth in the Fourth Schedule shall be made to the Account Officer, ordinarily, in case of retirement on superannuation six months prior to the date of retirement and within one month from the date on which the amount became payable, in other cases. The Account Officer shall, subject to adjustment if any, make payment of the amount standing to the credit of the subscriber in his G.P.F. pass-book on the date of retirement in case of retirement on superannuation and within three months from the date on which the amount became payable, in other cases.

(5) (a) In the case of other subscribers two applications in Form 425A set forth in the Fourth Schedule shall be made to the drawing and disbursing officer, in triplicate, one for payment of 90 percent of balance in G.P.F. pass-book and the other for the residual amount. Ordinarily, the applications shall be made six months prior to the date of retirement in case of retirement on superannuation

and within one month from the date on which the amount became payable in other cases.

(b) The drawing and disbursing officer shall thereupon, prepare calculation sheets on the prescribed form the current as well as five preceding financial years, in triplicate, and forward within one month from the date of receipt of the applications, two copies of the calculation sheets with the two copies of the applications and G.P.F. pass-book to the senior most officer dealing with the accounts attached to the Head of the department, who, after subjecting them to appropriate checks, forward the same, within one month to the sanctioning authority mentioned in paragraph 2 of the Second Schedule with his recommendation for payment of 90 percent of the balance of G.P.F. pass book. Such sanctioning authority shall pass an order for the payment of 90 percent of the balance of G.P.F. on the application and communicate the same to the drawing and disbursing officer, the Treasury Officer concerned and the Account Officer, in the form set forth in Appendix "C" so as to enable to the recipient to receive the payment, in case of retirement on superannuation on the date of retirement, and within three months from the date on which the amount became payable, in the other cases.

Note.--Where, in any department, there is no officer dealing with accounts the checking of calculation sheets shall be done by the officer-in-charge of the Treasury of the concerned district.

(c) The sanctioning authority shall forward to the Account Officer the application duly completed, alongwith the order of 90 percent balance and the copies of the calculation sheets with the G.P.F. pass book to enable him to authorise payment of the residual amount. In case of retirement on superannuation the application shall be forwarded three months before the date of retirement and in other cases without avoidable delay. The Account Officer shall after reconciliation of account and subject to adjustment, if any, issue order for the payment of the residual amount so as to enable the recipient to receive the payment, in case of retirement on superannuation on the date of retirement or as soon thereafter as may be but, in any case, not later than three months after such date, and within three months from the date on which the amount became payable, in other cases.

8. From a perusal of Rules, 1985, particularly Rule 24, it is evident that the liability for payment of subscribers fund is absolute under Sub-rule (1) on the authority concerned maintaining the said fund. It is provided that when the amount standing to the credit of a subscriber in the fund becomes payable, it shall be paid as provided in Section 24 of the Provident Funds Act, 1925. However, the manner of payment has been prescribed in subsequent provisions of Rule 24. For the purpose of present case, it is not disputed that Sub-rule (5) of Rule 24 would apply since the Petitioner was an employee, other than Group-D employee. Sub-rule (5) (a) of Rule 24 provides that the subscriber shall submit two applications in Form 425A set forth in Fourth Schedule to the drawing and

disbursing officer, in triplicate, one for payment of 90% of balance in the G.P.F. pass book and the other for the residual amount. It further provides that ordinarily, the applications shall be made six months prior to the date of retirement in case of retirement on superannuation and within one month from the date on which the amount became payable in other cases. Sub-clause (5) (b) of Rule 24 of Rules, 1985 provides that the drawing and disbursing officer shall thereupon prepare calculation sheets on the prescribed form, the current as well as five preceding financial years, in triplicate, and forward within one month from the date of receipt of the applications, two copies of the calculation sheets with two copies of the application and G.P.F. pass book to the seniormost officer dealing with accounts attached to the Head of the Department, who, after subjecting them to appropriate checks forward the same within one month to the sanctioning authority mentioned in paragraph 2 of the Second Schedule with his recommendation for payment of 90% of the balance of G.P.F. pass book. The Sanctioning authority thereafter is required to pass an order of payment of 90% of the balance G.P.F. on the application and communicate the same to the drawing and disbursing officer, the Treasury Officer concerned and the Account Officer, in the form set forth in appendix "C" so as to enable the recipient to receive the payment. Therefore the entire procedure under Sub-rule (5) of Rule 24 of the Rules, 1985 is based on the amount mentioned in the G.P.F. pass book. The balance amount shown therein would be the basis against which 90% and 10% of the amount respectively shall be mentioned by the officer concerned in Form 425A. The record shows that the department of the Petitioner had not completed the said pass book and not only till the date of retirement but even much late thereafter as alleged in April, 1988 as is evident from the letter No. Fund-27/62 dated 26/27.4.1988 issued by office of the Accountant General-I (A&E), U. P., Allahabad informing the Petitioner that his G.P.F. account credited for the month of April 1983, January, 1984, February, 1984, September, 1984, May, 1984 to March, 1985 and July, 1985 to March, 1986 were missing and unless those entries are completed no further action could be taken. It appears that the said entries were thereafter completed. The Petitioner admittedly thereafter submitted Form 425A on 7.6.1988. It is evident that the Respondent authorities from the facts stated above, did not discharge their obligation even then in the manner and the procedure prescribed under the Rules as reproduced above and for this reason authorisation letter for payment of 90% of the G.P.F. amount could be issued only on 31st August, 1991. The office of the Accountant General also delayed sanction of balance 10% of amount and pass authorisation order only on 9.2.1993 whereupon the payment was made to the Petitioner by the department on 10th September, 1993. In the aforesaid facts and circumstances, it is evident that reasons for delayed submission of Form 425A are not attributable to the Petitioner but it was for the reason beyond his control. The competent authority of the department of the Petitioner failed to pass appropriate order in this respect as required under the proviso of Rule 11 (4) of the 1985 Rules which would have entitled the Petitioner for payment of interest on the delayed payment of provident fund. It is evident that the authorities have

taken various pretexts to shift their liabilities for payment of interest to the Petitioner though he was neither responsible nor guilty either for late submission of Form 425A or for subsequent delayed payment of the actual amount of provident fund. From perusal of entire order of the Tribunal it is evident that this aspect of the matter has been completely ignored by the Tribunal and it has simply reproduced Rule 11 (4) of the 1985 Rules and observed that there is no material to show that there was any fault on the part of the department, therefore, Petitioner is not entitled for payment of interest on the delayed payment of provident fund. The aforesaid findings and reasons given by the Tribunal are totally erroneous and cannot be sustained.

9. Interest on the amount of provident fund is not only compensatory but is a statutory liability of the Respondents to pay the same for the reason that the amount deducted from the Petitioner's salary remain with the Respondents and they may have utilized the same for their own purpose hence entitling the Petitioner for payment of interest on the said amount. Had the amount of provident fund been paid in time to the Petitioner, he could have invested the same for better utilization so as to live an honourable life after retirement in the absence of any other source of earning livelihood. The attitude and conduct of the Respondents borne out from the record is nothing but is reprehensible and should be condemned in strongest words. It is no doubt true that an employer for just and valid reasons and in exercise of power vested in it can defer or deny pension and other retiral benefits to an employee provided the action of the employer is in accordance with the procedure prescribed in law and such a power also emanates from statute or the relevant provisions having force of law. In our system, the Constitution being supreme, yet the real power vest in the people of India since the Constitution has been enacted "for the people, by the people and of the people". A public functionary cannot be permitted to act like a dictator causing harassment to a common man and in particular when the person subject to harassment is his own ex-employee who has served for a long time and has earned certain benefits under the rules recoverable after attaining the age of superannuation. Pension and retiral benefits are not bounty but right of an employee crystallized in deferred wages to which he is entitled under the rules after retirement and non-payment thereof is clearly violative of Article 21 of the Constitution of India. Therefore, it becomes more important for the public functionaries and the authorities to act with better sense of responsibility so that their ex-employee may not be subject to harassment at the old age when they have already retired and have to survive and maintain themselves and their family with the meagre amount payable in the form of retiral benefits. The Respondents being a State Government and function through its officers appointed in various department is supposed to discharge his duty strictly in accordance with law as observed under our Constitution, sovereignty vest in the people. Every limb of the constitutional machinery therefore is obliged to be people oriented. Public authorities acting in violation of constitutional or statutory provisions oppressively are accountable for their behaviour. It is high time that

this Court should remind the Respondents that they are expected to perform in a more responsible and reasonable manner so as not to cause undue and avoidable harassment to the public at large and in particular their ex-employees like the Petitioner. The Respondents have the support of the entire machinery and the various powers of the statute and an ordinary citizen or a common man is hardly equipped to match such might of the State or its instrumentalities. Harassment of a common man by public authorities is socially abhorring and legally impressible. This may harm the common man personally but the injury to society is far more grievous. Crime and corruption, thrive and prosper in society due to lack of public resistance. An ordinary citizen instead of complaining and fighting mostly succumbs to the pressure of undesirable functioning in offices instead of standing against it. It is on account of, sometimes, lack of resources or unmatched status which give the feeling of helplessness. Nothing is more damaging than the feeling of helplessness. Even in ordinary matters a common man who has neither the political backing nor the financial strength to match the inaction in public oriented departments gets frustrated and it erodes the credibility in the system. This is unfortunate that matters which require immediate attention are being allowed to linger on and remain unattended. No authority can allow itself to act in a manner which is arbitrary. Public administration no doubt involves a vast amount of administrative discretion which shields action of administrative authority but where it is found that the exercise of power is capricious or other than bona fide, it is the duty of the Court to take effective steps and rise to the occasion otherwise the confidence of the common man would shake. It is the responsibility of the Court in such matters to immediately rescue such common man so that he may have the confidence that he is not helpless but a bigger authority is there to take care of him and to restrain the arbitrary and arrogant unlawful inaction or illegal exercise of power on the part of the public functionaries.

10. In a democratic system governed by rule of law, the Government does not mean a lax Government. The public servants hold their offices in trust and are expected to perform with due diligence particularly so that their action or inaction may not cause any undue hardship and harassment to a common man. Whenever it comes to the notice of this Court that the Government or its officials have acted with gross negligence and unmindful action causing harassment of a common and helpless man, this Court has never been a silent spectator but always reacted to bring the authorities to law.

11. In the case of Lord Hailsham in *Cassell & Co. Ltd. v. Broome*, 1972 AC 1027, the Apex Court held as follows:

An ordinary citizen or a common man is hardly equipped to match the might of the State or its instrumentalities. That is provided by the rule of law... public functionary if he acts maliciously or oppressively and the exercise of power results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. He who is responsible for it must

suffer it.... Harassment of a common man by public authorities is socially abhorring and legally impermissible. It may harm him personally but the injury to society is far more grievous.

12. In the case of Registered Society v. Union of India and Ors. (1996) 6 SCC 530, the Apex Court has held as under:

No public servant can say "you may set aside an order on the ground of mala fide but you cannot hold me personally liable". No public servant can arrogate in himself the power to act in a manner which is arbitrary

13. In the case of Shiv Sagar Tiwari v. Union of India, (1996) 6 SCC 558, the Apex Court has held as follows:

An arbitrary system indeed must always be a corrupt one. There never was a man who thought he had no law but his own will who did not soon find that he had no end but his own profit.

14. In the case of Delhi Development Authority v. Skipper Construction and another, AIR 1996 SC 715: 1996 AWC (Suppl) 1.20 (SC) (NOC), has held as follows:

A democratic Government does not mean a lax Government. The rules of procedure and/or principles of natural justice are not meant to enable the guilty to delay and defeat the just retribution. The wheel of justice may appear to grind slowly but it is duty of all of us to ensure that they do grind steadily and grind well and truly. The justice system cannot be allowed to become soft, supine and spineless.

15. In view of the aforesaid discussion, the writ petition is allowed. The impugned order dated 16.4.1998, passed by the State Public Services Tribunal, Lucknow is hereby set aside and the Respondents are directed to pay interest to the Petitioner on the entire amount of provident fund till the said amount was actually paid at the same rate which he was entitled under Rule 11 of the 1985 Rules. Writ petition is allowed with costs of Rs. 10,000 to be proportionately borne by Respondents No. 1, 2, 4 and 6 which shall be paid to the Petitioner alongwith amount of interest. Entire exercise as aforesaid shall be completed within six months from the date of production of certified copy of this order.