(2020) 09 DEL CK 0180

In the Delhi High Court

Case No : Civil Writ Petition No. 4388 Of 2020, Civil Miscellaneous Application No. 15797 Of 2020

Malcolm John Campbell APPELLANT

Vs

Regional Provident Fund Commissioner & Anr RESPONDENT

Date of Decision : 24-09-2020

Acts Referred:

Citation : (2020) 09 DEL CK 0180

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Mohan Rao, Rajesh Manchanda, Rajat Manchanda, N. C. Sharma

Final Decision : Allowed

Judgement

Prathiba M. Singh, J

1. This hearing has been done by video conferencing.

2. The present writ petition has been filed, seeking release and transfer of the provident fund amount, lying with the Regional Provident Fund Commissioner (hereinafter, "RPFC"/Respondent No.1) to the Petitioner's bank account. A prayer is also made for initiation of action against Respondent No. 2, for recovery of damages and release of the same to the Petitioner.

3. The Petitioner was employed as a mechanical supervisor on a Tunnel Boring Machines (TBM) project with Respondent No.2. As he is a citizen and resident of United Kingdom (UK), his monthly salary was USD 12645.00. Respondent No.2 terminated his services with effect from 15th December, 2015 and he had to be paid his Provident Fund (hereinafter, "PF") contribution in January, 2016. Despite repeated reminders to the Respondents, the Petitioner was not paid the said amount. The Petitioner is stated to be under financial distress. He is currently living with his daughter in UK and is dependent on her for all his needs.

4. In view of the non-payments, the Petitioner got a legal notice issued to

Respondent No.2 on 24th December, 2018. In response to the said notice, Respondent No.2 provided details of the provident fund account but still did not give any proof of having deposited its provident fund contribution. Thereafter on 8th July, 2019, upon obtaining the PF account details, the Petitioner filed a claim with the RPFC seeking details of the amount and for release of the provident fund due to him. The said claim was rejected on 16th July, 2019 with remarks that "Certificate A/B/C/D/E/F not enclosed/signed and EPS CONT. NOT DEDUCTED". When no further action was taken by the Respondents, despite several visits and enquiries made, the Petitioner got another legal notice issued on 30th November, 2019. However, having not received any positive results, he has filed the present petition.

5. Vide order dated 21st July, 2020, Respondent Nos.1 & 2 were directed to file their counter affidavits and also provide details of the amount lying in the PF account of the Petitioner. On 21st September, 2020 after hearing submissions in part, further affidavit was called for, in respect of Employees' Pension Scheme (hereinafter, "EPS") amount. Today, submissions have been made on behalf of all the counsels.

6. As per the first affidavit filed by the RPFC, the amounts that been credited in the account of the Petitioner are a total sum of Rs.21,68,033/- as PF contribution and in addition to this amount, a sum of Rs.1,74,021/- as the EPS contribution. It is stated that though the Petitioner submitted an online claim form in July, 2019 - the said claim was rejected on account of the fact that Respondent No. 2 had not deducted the EPS contribution from his share and deposited the same in the EPS account. The form was therefore returned to Respondent No.2/ employer for taking appropriate steps. Copy of the rejected form was also issued to the Petitioner. Since no response was received from Respondent No.2, the RPFC could not release the amount in favour of the Petitioner.

7. The further stand of the RPFC is that in respect of any international employee, who is covered under the provisions of Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter 'EPF Act'), the EPS contribution can only be withdrawn if there is a Social Security Arrangement (SSA) with the country in question to that effect. If there is no SSA with a specific country, the amount from the EPS account cannot be withdrawn. The relevant portion of the affidavit of the Respondent No.1 is extracted hereinbelow:

"3. That as on date social security agreements (hereinafter called SSA) had been executed with Franxe, Netherland, Czech Republic, Denmark, Hungary, Norway, Luxembourg, Republic of Korea, Belgium, Germany and Switzerland. It is further submitted that negotiations are at various stages with Canada, Quebec, Sweden, Australia, USA and Austria. Government level talks are on with many other countries where sizable numbers of Indian workers are employed.

4. That international workers are of two types. One covered under SSA and others are non-protected/covered under SSA. The present petitioner falls under

the second category i.e. non-protected/covered under SSA, as there is no treaty/ SSA with the government of United Kingdom."

8. Further, Mr. Manchanda, ld. counsel for the RPFC relies upon the FAQs on `Withdrawal From PF and Pension Accounts in Case of International Workers', according to which, withdrawal cannot be permitted in respect of non-SSA countries' employees. The said FAQ is extracted herein below:

"7. What is the criterion for receiving the withdrawal benefit for services less than 10 years under EPS 1995?

Ans. Only those employees covered under an SSA and who have not rendered the eligible service (i.e. 10 years) even after including the totalisation benefit, as may be provided in the said agreement, are eligible for Withdrawal benefit under EPS 1995. In cases of IWs not covered under SSA, withdrawal benefit under the EPS, 1995 will not be available.

The above position of the RPFC is not disputed by the Petitioner who basically submits that he is not willing to indulge in a long-drawn battle and desires that whatever amount is payable to him be released on an early date.

9. Insofar as Respondent No.2 is concerned, the affidavit on behalf of Respondent No.2 by Mr. Ankush Saxena, Manager (HR), is silent on the question as to whether the 6th July, 2019 rejection order was received by Respondent No.2 and as to whether any reply was given or not. The simple stand of Respondent No.2 is that no contribution towards EPS is liable to be made for an employee, who is more than 58 years of age. Mr. Sharma, ld. counsel for Respondent No. 2 submits that since the date of birth of the employee is 9th August, 1956, he was employed in 2014, no contribution towards of EPS is liable to be made as at the time of joining, he was running in his 58th year. Mr. Manchanda in response submits that the employee attained the age of 58 years only on 8th August, 2014 and not before that. Thus, for the months between February and August, 2014 the EPS contribution ought to have been made.

10. Mr. Mohan Rao, ld. counsel for the Petitioners, finally submits that the Petitioner has made repeated complaints, issued repeated notices and filed his claims. However, he did not receive any positive response from either Respondent No.1/the RPFC or Respondent No.2. He submits that if Respondent No.2 was in violation of law, proper action ought to have been taken by Respondent No.1. Despite more than 4 years having lapsed, a substantial sum of money has been retained by the RPFC without any basis. The RPFC could have always released the sum, which was undisputed and then Respondent No.2 could have been directed to take action for deposit of the amount under the EPS scheme. Mr. Rao submits that the Petitioner is in dire need of money and the same ought to be released to the Petitioner.

11. A perusal of the facts of this case show that undoubtedly the Petitioner has been made to run from pillar to post to get money, which is his entitlement in

accordance with law. Even the sums in respect of which there is no dispute i.e. the amount between February, 2014 to 8th August, 2014, were not deposited in the accounts of the Petitioner. The same could have been sorted out by Respondent No.2 in time, which it failed to do so. Even today, on a query put by the Court as to whether there was any reply sent to the rejection of claim by the RPFC dated 16th July, 2019, Respondent No.2 is unable to satisfy the Court.

12. Under these circumstances, the Court has no option but to direct the immediate release of the entire amount payable by the RPFC/Respondent No.1 i.e. the sum of Rs.21,68,033/- along with any interest accrued thereupon, within a period of 10 working days from today. The said amount shall be remitted by the Respondent No.1 directly into the bank account of the Petitioner, which is as per the prayer in the writ petition. The same is extracted herein below:

"Mr. M.J. Campbell & Mrs. A. Campbell

IBAN: GB80MYMB23058014619208

BIC: MYMBGB2L

Metro Bank

Branch - 64-66 Clarence Street, Kingston, Upon

Thames, KT1 1NP, UK"

13. In order to enable immediate payment, copy of the Petitioner's passport be given by Mr. Rao, ld. counsel to Mr. Manchanda, ld. counsel for the RPFC, within 2 days. No further details shall be sought from the Petitioner and the amount shall be released within 10 working days. No disputes shall be raised by the RPFC that the account is an international account, considering the fact that the Petitioner was an international employee. Insofar as the EPS amount is concerned, the Petitioner's remedies are left open. Any action liable to be taken by Respondent No.1 against Respondent No.2 firstly for not splitting the amounts and thereafter for not depositing or crediting the amount and delay in responding to the rejection dated 16th July, 2019, shall be taken in accordance with law. If there are any other complaints made by the Petitioner against Respondent No.2, the RPFC is also permitted to proceed against Respondent No.2, in accordance with law.

14. In view of above sequence of events, Respondent No.2 is directed to pay a sum of Rs.25,000/- converted to GBP, as costs to Petitioner directly into his bank account, within two weeks. If the said amount is not paid to the Petitioner within two weeks, the Petitioner would be entitled to recover Rs.1 lakh as costs from Respondent No.2. after the expiry two weeks.

15. It is made clear that this Court has not examined the legality or validity of the release of EPS amounts to individuals from non-SSA countries. The petition is allowed, in these terms. All pending applications are also disposed of.

