(2013) 06 CAL CK 0033

In the Calcutta High Court

Case No : Writ Petition No. 16931 (W) of 2009

Md. Kuddus APPELLANT

Vs

Assistant Provident Fund Commissioner (Pension) and Others RESPONDENT

Date of Decision : 28-06-2013

Acts Referred:

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

Citation : (2013) 139 FLR 861

Hon'ble Judges : Sambuddha Chakrabarti, J

Bench : Single Bench

Advocate : Lakshman Chandra Halder, for the Appellant;Shiv Chandra Prosad, Advocate for Provident Fund authority, for the Respondent

Final Decision : Disposed Off

Judgement

Sambuddha Chakrabarti, J.—By this writ petition the petitioner has inter alia prayed for a writ in the nature of Mandamus commending the respondent nos. 1 and 2 to pass necessary order so that the petitioner might get the full amount of provident fund with reference to his own contribution and a writ in the nature of Certiorari to set aside the decision as contained in annexure 9 to the writ petition. The Provident Fund authorities had paid Rs. 1,03,064.63 to the petitioner as the employer''s contribution amounted to Rs. 38,004.72. According to the petitioner his year of birth is 1945 and the same was duly recorded by the authorities of the Employees'' State Insurance Corporation. But the grant of the Short Service Pension in favour of the petitioner was arbitrary and unreasonable. By an impugned order dated August 31, 2009 the Employees'' Provident Fund Organization had forwarded the service particulars of the petitioner on the basis of which his Pension Payment Order was made. The petitioner submits that he is entitled to get equal amount of contribution to the contribution made by the petitioner and by not making the contribution the respondent company deprived the petitioner to get the actual Provident Fund dues.

2. In their affidavit-in-opposition the Provident Funds authorities have given a

short statement of the facts of the case as per the relevant information supplied by the respondent no. 3 company. The age of the petitioner was recorded as 36 years on January 17, 1976 which was the date of joining the company. He had attained 58 years on January 16, 1998 and had left the company on the day thereafter. The Provident Funds authorities say that at the time of the settlement of pension these facts were taken into consideration and the pension of the petitioner was settled in terms of the form submitted by the respondent no. 3 company and the respondents have denied that any lesser amount than what is due to the petitioner had been paid to him.

3. In reply the petitioner has alleged that the particulars furnished by the employer are self-contradictory and conflicting in nature and the respondents mechanically disposed of the grievances of the petitioner. According to him the respondents had knowingly tried to suppress the real facts of the case and in the process the petitioner got less than what was due to him. The petitioner''s case is that when a sum of Rs. 65,059.91 was shown as his contribution, the employer''s projected contribution of Rs. 38,004.72 had no legs to stand but the respondents tried to justify the same disputing the petitioners'' claim without clarifying the anomaly.

4. It may be mentioned that the respondent no. 3 did not contest the said case. The Provident Funds authorities have taken a stand that they had settled the pension on the basis of the information given to them in the form supplied by the employer company. The Employees'' Pension Scheme is provided in Section 6A of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 and in the pension scheme of 1995. Clause 17A of the Pension Scheme of 1995 says that the claims complete in all respects submitted along with requisite documents shall be settled and the benefit amount paid to the beneficiaries within 30 days from the receipt by the Commissioner. It also appears that on behalf of the petitioner his leaned advocate made representation to the Provident Funds authorities. But that did not produce any result. The statutory authorities in a social welfare legislation cannot simply get rid of their duties by going behind the information supplied by the employer. It is incumbent upon the Provident Funds authorities to look into the matter, to enquire into it and try to see if the employer was in any way guilty of furnishing incorrect information. By not doing the needful or for that matter by not taking any step in the matter the authorities have violated the statutory duties.

5. In such view of it the writ petition is disposed of by directing the respondent no. 1 to treat the writ petition as a representation and to dispose of the same by a reasoned order within a period of eight weeks from the date of the communication of the order after giving the petitioner and the respondent company an opportunity of being heard. The respondent no. 1 shall communicate his decision to the petitioner within a week thereafter. The respondent no. 1 is further directed to take necessary actions in accordance with law against the employer company in case it is found that they deliberately furnished wrong

information to the Provident Funds authorities.

6. The writ petition is disposed of.

7. There shall be, however, no order as to costs. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all requisite formalities.

