(2010) 10 SHI CK 0263

In the High Court Of Himachal Pradesh

Case No : C.W.P. (T) No. 5953 of 2008

Mrs. Sharda Tondon and Others — APPELLANT

Vs

State of H.P. and Others — RESPONDENT

Date of Decision : 18-10-2010

Acts Referred:

General Provident Fund (Central Services) Rules, 1960 — Rule 2, 8(1)

Citation : (2010) 10 SHI CK 0263

Hon'ble Judges : Kurian Joseph, C.J;Kuldip Singh, J

Bench : Division Bench

Judgement

Kurian Joseph, C.J.—The Writ Petition is filed, mainly with the following prayers:

a) That in view of the facts and circumstances of the case stated here in above, it is most respectfully prayed that the present application may be allowed and the Respondents'' action to withhold the amount of GPF of the applicant may be held void-eb-initio and particularly Respondent No. 3 may be directed to release the interest on the amount of Rs. 1,78, 406/- till date of release and to refund a sum of Rs. 10,000/- approximately which has been wrongly withheld by the Respondents alongwith interest till the date forthwith.

2. In the reply filed by the 3rd respondent at paragraph 6, it is stated as follows:

Para. 6(i) to (ii) In reply to these paras it is respectfully submitted that final payment case of G.P.F of the applicant, holder of G.P.F. Account No. H-Ind. 494 who had retired from the Govt. service w.e.f. 30/6/95 on attaining the age of superannuation was forwarded by the Respondent deptt. Vide its letter No. 1652, dated 31.5.95. While processing the final payment case of the applicant it was noticed that the applicant was subscribing towards G.P.F. beyond permissible limit under rules during the year 1989-90 to the date of retirement. Under Rule 8(1)(b) of C.C.S. (G.P.F.) Rules, 1960, the maximum amount of G.P.F subscription should not be more than total emoluments. Total emoluments represents basic pay only under Rule 2(b) ibid. Accordingly, a reference was made to the Respondent deptt to intimate the factual position showing basic pay & rate of G.P.F subscription of the applicant from 1987-88 to the date of retirement vide letter dated 16.6.95 (A-8 to OA). In response to above communication, the Respondent deptt vide its letter dated 17.6.95 (A-9 to OA) had furnished the statement showing the basic pay DA & G.P.F subscription in respect of applicant from 1987 onwards. From the perusal of the statement it was noticed that the applicant was subscribing towards G.P.F more than basic pay from the year 1989-90 to the date of retirement which was in contravention of G.P.F Rules ibid. Accordingly, the final payment case of G.P.F of the applicant was processed and G.P.F final payment authority of Rs. 1,68, 702/- after allowing admissible interest was issued vide authority dated 9/8/95. This amount include the over subscribed amount of Rs. 1,15,220/- also, subscribed by the applicant during the year 1989-90 to the date of retirement, but interest about Rs. 33,000/- on over subscribed amount of Rs. 1,15,220/- was not allowed which was otherwise not admissible in terms of Para 52 of Provident Fund Manual 2nd edition which read as under:

Para 52. "No interest should be allowed on the amount recovered on account of the G.P.F in excess of the actual amount due". Thereafter, the applicant vide its representation dated 14/9/95 (A-1 to OA) had represented to the Replying Respondent regarding less payment of Rs. 33,000/- on account of denial of interest on over subscribed G.P.F amount. Accordingly a detailed reply vide letter dated 13.10.95 (A-2 to OA) was sent to the applicant stating therein that the interest on over subscribed amount has not been allowed and payment already authorized is correct and final. In fact even during the year 1993 i.e. before the retirement of the applicant the Replying Respondent vide letter dated 16/12/93 (Copy enclosed as annexure -R-1) had brought to the notice of the Respondent deptt regarding excess deductions towards G.P.F and it was made clear therein that no interest would be admissible thereon. Inspite of this, excess subscription continued upto the last final deductions. Even Respondent No. 1 had also taken a serious note of these things vide their letter dated 2/4/96 (Copy enclosed as annexure-R-2) and on this account matter was also taken up by the Respondent No. 1 with the Respondent No. 2. It was also reitereated in letter dated 13/10/95 (A-2).

3. In the reply furnished by respondents No. 1 & 2, at sub-paras iv to vi, of para 6, it is stated as follows:

iv) It is correct that Respondent No. 1 sought certain clarifications from the office of the Respondent No. 3. The clarification was received vide Sr. Accounts Officer office of the Senior Deputy Accountant General, H.P. letter No. Fds.-XII/H Ind 494/96-97/205 dated: 28-5-1996 (Copy annexed as R-I) vide which it has clarified that cases of H.P. State Subscribers are governed by CCS(GPF) Rules, 1960 and as per provisions of Rule 8(i)(b), the maximum amount of GPF subscription should not be more than the basic pay of the subscriber. It has also been informed that at the time of making final payment to the retiree, his whole account has to be rechecked right from the beginning and the amount in excess or less allowed at the time of year to year closing is adjusted accordingly. The action in this case has accordingly been taken by Respondent No. 3 and final payments made after making all such adjustments. In view of these facts interest on over subscription has not been allowed by Respondent No. 3. In this connection, clarification received from the Govt. of India, Deptt. of Pension and Pensioners Welfare, Ministry of Personnel, Public Grievances and Pensions, New Delhi, vide letter No. 20/2/97-p & PW (F), dated: 24th March, 1998 is also annexed as R-II. The applicant is, therefore, not entitled for interest on over subscription. Moreover, the applicant remained posted on supervisory post of Superintendent (grade-I) and all such matters were been dealt with under his supervision, he was well conversent with the Rules. As such it seems that applicant has knowingly over subscribed and remained silent while in service, and taken up the matter only after his retirement.

v) It is not correct to say that representation of the applicant were not attended to. Action on all the representations, as and when received was taken. As the applicant was not entitled for any relief under Rules, his application could not be decided in his favour.

vi) It is denied that the action on the part of Respondent departments is wrong, illegal and unjust. The representations of the applicant have been examined thoroughly and action taken as per the provisions of the relevant Rules. It is not correct that dearness allowance sanctioned from time to time shall be reckoned as emoluments for the purpose of CCS (GPF) Rules. The clarifications dated 1-10-1996 (annexure-a-7) has prospective effect and is not applicable in this case as the applicant stand retired from Govt. service on 30-6-1995. As such the contention of the applicant is not based on facts and the present O.A. filed by the applicant is required to be rejected.

4. Learned Counsel for the petitioner, however, submits that in the case of S/Sh. S.D.S. Jaswal, Brij Lal Chauhan and Het Ram Chauhan interest was granted on over subscribed amount. It is seen from the reply that the matter was inquired into. We make it clear that in case any officer has been paid, be it those mentioned above or others, interest on the oversubscribed amount, the petitioner shall also be entitled for the same. It is also made clear that in case any amount has been unduly withheld, other than the interest of oversubscription, the same shall also be disbursed to the petitioner with prescribed rate of interest till the date of actual disbursement. The needful in this regard shall be done within a period of two months from the date of production of the copy of this judgment by the petitioner.

5. The Writ Petition is disposed of, so also the pending application(s), if any.

