
(2007) 07 DEL CK 0206

In the Delhi High Court

Case No : Writ Petition (C) No. 12946 of 2005

Narender Kumar

APPELLANT

Vs

D.T.C.

RESPONDENT

Date of Decision : 30-07-2007

Acts Referred:

Citation : (2007) 07 DEL CK 0206

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Anil Mittal, for the Appellant; Vibhu Shankar, for the Respondent

Final Decision : Dismissed

Judgement

Hima Kohli, J.—The present petition is filed by the petitioner herein praying inter alias for quashing the letters dated 27th February, 2nd April, 2004 and 4th May, 2005 issued by the respondent/DTC (hereinafter referred to as 'the DTC') by which the petitioner was called upon to deposit a sum of Rs.1,23,686/- in favor of the DTC, and for directions to be issued to the DTC to pay to the petitioner his superannuation pension and arrears along with interest thereon.

2. Briefly stated, facts leading to the present petition are that the petitioner was appointed with the DTC on 31st March, 1967 as Retainer Crew Conductor and was promoted to the post of Assistant Traffic Inspector with effect from 25th November, 1985. In March 1992, the petitioner applied for a Non-Refundable Advance from his own share of Provident Fund (C.P.F.) amounting to Rs.75,334.10 paise for paying Installments to the DDA for purchasing a LIG flat. Against his request, he was sanctioned a sum of Rs.64,000/- by the DTC, i.e. Rs.34,000/- from his own contribution and Rs.34,000/- from the employer's contribution to provident fund. During the period from 1993-2002, the petitioner took refundable loan from his share of provident fund on various occasions and duly refunded the same to the DTC.

3. On 27th November, 1992, the DTC introduced a Pension Scheme (hereinafter

referred as 'the Scheme') vide Office Order No.16 for its employees retiring on or after 3rd August, 1981. The said Scheme was introduced on the same pattern as for the Central Government employees. The employees of the DTC were required to exercise their option for pension within 30 days from the date of issue of the said Office Order. The petitioner opted for pension under the Scheme and thereafter, continued to work with the DTC till he superannuated on 31st July, 2003 at the the age of 60 years.

4. Vide letter dated 23rd July, 2003, the DTC released the gratuity of Rs. 1,40,663/- in favor of the petitioner, which was received by him on the date of his retirement. On 17th September, 2003, the DTC informed the petitioner that he was entitled to his own share of provident fund as he had opted for pension and the same was ordered to be released to him. It is averred in the writ petition that a clearance certificate was also issued in favor of the petitioner stating inter alias that nothing was recoverable towards loan taken by the petitioner against his provident fund account. On 7th November, 2003, the pension case of the petitioner was forwarded to the Pension Department and as per the averments made in the writ petition, it was made clear that nothing was due from the petitioner and, Therefore, no amount was to be deducted from the amount payable to the petitioner. On 25th February, 2004, the difference of gratuity amount was released to the petitioner on account of enhancement of DA rate.

5. On 27th February, 2004, the petitioner received a letter from the DTC wherein it was mentioned that a sum of Rs.34,000/- had been withdrawn by the petitioner from the employer's share of provident fund vide letter dated 20th March, 1992 and the said amount had not been paid back and, Therefore, the petitioner was required to pay a sum of Rs.1,23,686/-, i.e. Rs.34,000/- towards the principal amount and Rs.89,686/- being the compound interest on the principal amount. The said request was repeated by the DTC vide reminder letter dated 2nd April, 2004 and finally vide letter dated 4th May, 2005 the petitioner was called upon to pay the aforesaid amount failing which, it was stated that his pension and commutation of pension would not be released. Immediately thereafter, the present petition was preferred.

6. It was contended by the learned Counsel for the petitioner that the aforesaid demand raised on the petitioner is illegal and irrational for the reason that when the petitioner was sanctioned a sum of Rs.64,000/- as Non-Refundable Advance, there was no indication that a part of it was refundable and that if the same was not refunded, interest would be charged thereon. It was further contended that if the DTC had advanced a part of the loan amount from the employer's contribution to provident fund as refundable loan, then the DTC should have informed the petitioner and asked him to refund the same and that by not informing the petitioner in time that the part of the loan paid from the employer's contribution being refundable in nature in the year 1992, the DTC is estopped from claiming interest thereon. It was also contended that the petitioner had applied for non-refundable loan from his own share of provident

fund in the year 1992 and in the absence of any intimation from the DTC that a part of sanctioned loan was paid as refundable loan from the employer's contribution to provident fund, the loan ought to be deemed to have been treated as non-refundable amount and the petitioner was not liable to repay the same.

7. It was also submitted on behalf of the petitioner that as per the clearance certificate issued by the concerned department, nothing was recoverable towards loan taken by the petitioner against the provident fund account. Lastly, it was submitted that had the DTC informed the petitioner in time about the repayment of Rs.34,000/-, he could have repaid the amount in Installments by getting the same deducted from his salary and the petitioner being a class-IV employee and not being well-versed with the Rules and Regulations, the DTC was under an obligation to have intimated the petitioner about the aforesaid position and having failed to do so, the DTC cannot be permitted to take advantage of its own wrong.

8. The writ petition was opposed by the counsel for the DTC who drew the attention of this Court to the Memorandum dated 20th March, 1992 issued by the DTC wherein it was clearly stated that a sum of Rs.68,000/- was released in favor of the petitioner as 'Non-Refundable Advance' and break up of the said amount was given in the Memorandum by specifying therein that while Rs.34,000/- was released from the petitioner's own share of contribution, the balance sum of Rs.34,000/- was released from the employer's contribution to provident fund for purchasing a dwelling house from the DDA. Learned Counsel for the DTC submitted that the Scheme floated vide Office Order No.16 dated 27th November, 1992 contained a condition in clause 6 which mandated the existing employees who had drawn the employer's share under the EPF Act, partly or wholly, to refund the same with interest in the event of their opting for the Scheme. Thus, it was argued that the petitioner having opted for the aforesaid Scheme, was well aware of the terms and conditions of the Office Order and cannot claim ignorance at this stage, nor can the DTC be blamed for acting accordance with the terms and conditions of the Scheme.

9. Lastly, it was submitted on behalf of the DTC that the clearance certificate referred to by the petitioner, wherein it was stated that nothing was due from the petitioner was issued in the context of any refundable loan taken by an employee from his own contribution under CPF. As no such amount was due from the petitioner on account of refundable loan taken by him against the CPF at the time of his retirement, Therefore, the remark 'nothing else is due' was endorsed in the said certificate. However, when the case of the petitioner was forwarded to the Pension Department, on 7th November, 2003, to calculate the pension, it was indicated that the petitioner had drawn Rs.34,000/- from the employer's share of CPF which was to be adjusted from his pension arrears and on the same file, directions were issued to intimate the petitioner to deposit the aforesaid amount with interest in favor of the DTC Superannuation Ex-employee Pension Trust to

enable the DTC to release the pension in favor of the petitioner.

10. In respect of the contention of the petitioner that at the most the principal amount could be held to be refundable by the petitioner to the DTC and not the interest, learned Counsel for the DTC referred to the judgment of the Supreme Court in the case of D.T.C. Retired Employees Association and Others Vs. Delhi Transport and Others etc. etc., wherein after examining the pension scheme floated by the DTC on 27th November, 1992, the Supreme Court observed that the retired employees who had utilized the money from the employer's share of provident fund were bound to return the same with interest. Thus clause 6 of the scheme was upheld as being legal and valid.

11. Having heard the learned Counsels for the parties and having perused the pleadings as also the documents placed on the record, it clearly emerges that Memorandum dated 20th March, 1992 was explicit and categorical in its terms. While sanctioning a sum of Rs.68,000/- in favor of the petitioner, it was stated in the said memorandum that a sum of Rs.34,000/- had been sanctioned from the petitioner's own share of contribution and Rs.34,000/- was granted from the employer's contribution to provident fund for purchase of a dwelling house from the DDA. Thus the petitioner cannot be heard to state that the Non-Refundable Advance was released to the petitioner from his own share of provident fund.

12. Further, when the DTC floated the Scheme on 27th November, 1992 vide Office Order No.16 and the petitioner applied there under, his plea that he was unaware of the terms and conditions of the Scheme, cannot be entertained. The conditions contained in the Scheme were clear, categorical and unambiguous. Clause 6 thereof stipulated as below:

6. The employees who have retired on or after 3rd August, 1981 and the existing employees, who have drawn the employer's share under the E.P.F.Act, partly or wholly shall have to refund the same with interest in the event of their opting for the Pension Scheme. The total amount to be refunded by the retired employees/ existing employees would be the amount that would have accrued, had they not withdrawn the employer's share.

13. In view of the aforesaid clause which withstood the scrutiny of the Supreme Court in the case of D.T.C.Retired Employees" Association (supra), the same cannot be held to be irrational or illegal. The observations of the Supreme Court with regard to the aforesaid clause 6 are as under:

Para 16: The next contention urged by the appellants counsel is that DTC was not entitled to charge interest on employer's share of provident fund received by the employees on retirement. Prior to the Pension Scheme, the employees were entitled to get benefit of the Contributory Provident Fund. These employees on retirement accepted the employer's share of provident fund. The Scheme specifically provided that those who wanted to opt for Pension should return the employer's share of provident fund with interest. However, the retired employees had utilised the money received to their advantage. Therefore, they are bound to

return the same along with interest; otherwise, a section of the employees would be unduly benefited vis-a-vis other employees. Therefore, we do not think that such a clause in the Scheme is irrational or illegal. We do not find any infirmity in the findings recorded by the High Court.

14. Coming to the plea of the petitioner that he being a class-IV employee was unaware of the technicalities, and Therefore, ought to have been intimated by the DTC well in advance about the repayment of Rs.34,000/- and having not so intimated him, the principle of promissory estoppel came into play against the DTC, the same is taken note of only to be rejected. A plea of ignorance of the Rules and Regulations cannot be a defense in such a case. The Scheme was to be operated strictly in accordance with the terms and conditions mentioned therein and clause 6 thereof stipulated that such of the existing employees who had drawn the employer's share under the EPF Act had to refund the same with interest in the event of their opting for the pension Scheme. Thus the petitioner having opted for the Scheme, was deemed to be aware of the terms and conditions thereof. The DTC cannot be held to be under any obligation to intimate the petitioner separately, calling upon him to refund the employer's contribution to provident fund while availing of the said Scheme. The Explanation offered by the DTC with regard to the context in which the clearance certificate was issued by the DTC to the petitioner, is also justified in view of the memorandum dated 17th September, 2003 issued to the petitioner wherein 'nil' amount was shown as recoverable towards loan against the CPF and as there was no such amount payable by the petitioner on account of refundable loan against CPF at the time of his retirement, the DTC issued the clearance certificate indicating so in the aforesaid memorandum.

15. For the reasons stated above, it is held that the DTC acted strictly in accordance with the terms of the Pension Scheme dated 27th November, 1992 and cannot be faulted for adhering to the clauses contained therein. The writ petition Therefore fails and is rejected being devoid of merits. Parties are left to bear their own costs.