(2012) 02 SHI CK 0080

In the High Court Of Himachal Pradesh

Case No : LPA No. 61 of 2011

Regional Provident Fund Commissioner, Employees Provident Fund Organization, Block No. 34, Bhavishaya Nidhi Bhawan, SDA Complex, Kasumpti, Shimla-171 009, Himachal Pradesh and Assistant Provident Fund Commissioner, Employees Provident Fund Organization, Block No. 34, Bhavishaya Nidhi Bhawan, SDA Complex, Kasumpti, Shimla-171009, Himachal Pradesh — APPELLANT

Vs

Smt. Saroj Kumari — RESPONDENT

Date of Decision : 29-02-2012

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 16

Citation : (2012) 3 LLJ 784

Hon'ble Judges : Rajiv Sharma, J;Kurian Joseph, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Justice Rajiv Sharma, J.—This letter patent appeal is directed against the judgment of learned Single Judge rendered in CWP(T) No. 3853 of 2008, dated 15.11.2010. Material facts necessary for adjudication of this letter patent appeal are that the husband of respondent Saroj Kumari was employed as Mixer Operator in the H.P.S.E.B. in the year 1977. He died on 25.1.1985 after prolonged illness. Respondent Saroj Kumari was denied the family pension. The matter was taken up by the H.P.S.E.B. with the Assistant Commissioner, Provident Fund on 6.6.1987. However, the fact of the matter is that the same was rejected by the Assistant Commissioner, Provident Fund on 25.6.1987. Respondent, Saroj Kumari approached the erstwhile learned H.P. Administrative Tribunal for the redressal of her grievance by filing O.A. No. 1684 of 1996. On the abolition of the learned H.P. Administrative Tribunal, the O.A. came to be transferred to this Court and was assigned CWP(T) No. 3853 of 2008. The learned Single Judge allowed the petition on 15.11.2010 and directed the appellants to pay the due and admissible family pension to the widow of Ramesh Chand from the due date, within a period of three months from the date of production of the copy of judgment alongwith interest at the rate of 9%, failing which higher interest at the rate of 12% was payable.

2. Mr. Rahul Mahajan, Learned Counsel for the appellants has strenuously argued that the Management of Electrical Division Project, Binwa Uttrala, Nurpur has not made contributions in compliance of Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the EPF and MP Act, 1952"). He has also supported the issuance of letter dated 22.6.1987 whereby the case of respondent Saroj Kumari was rejected for release of family pension.

3. Ms. Ranjana Parmar, Learned Counsel appearing on behalf of respondent No. 1 has argued that the necessary deductions were being made from the salary of the husband of her client and the amount was deposited with the Regional Provident Fund Commissioner, Chandigarh. She also argued that the period of absence of the husband of respondent Saroj Kumari from 10.1.1984 to 24.1.1985 was regularised.

4. Mr. Trilok Jamwal, Learned Counsel representing respondents No. 2 to 4 has argued that the Board has deposited amount with the Regional Provident Fund Commissioner and the stand of the appellants was contrary to record.

5. We have heard Learned Counsel for the parties and gone through the pleadings and record carefully.

6. We have directed the Board to file a Supplementary Affidavit on 1.9.2011 furnishing the particulars of the contributions made to the EPF in respect of Shri Ramesh Chand. The Supplementary Affidavit was filed, which is at page No. 70 of the paper book.

7. The husband of respondent Saroj Kumari was engaged as Mixer Operator in the respondent-Board in the year 1977. He was absent with effect from 10.1.1984 to 24.1.1985 due to illness. This period was regularised by the respondent-Board. As per letter dated 5.6.1987. The case of the widow was taken-up with the appellants by the Board on 6.6.1987. However, the same has been rejected on 22.6.1987 on the ground that the last break of non-contribution period exceeding one year cannot be regularised in any circumstances. However, the fact of the matter is that the period from 10.1.1984 to 24.1.1985 stood regularised vide letter dated 5.6.1987.

8. The Court has directed the appellants and HPSEB to produce the records to ascertain whether Ramesh Chand had been making contributions to the provident fund or not. The records have been produced by the HPSEB. A bare perusal of the extract of cash book entries placed before the Court by the HPSEB makes it abundantly clear that Ramesh Chand had contributed towards the employees provident fund from September, 1977 to January, 1984. The amounts

were remitted by the HPSEB to the Regional Provident Fund Commissioner, Chandigarh through State Bank of India, Shimla branch by way of cheques. Thus, the stand taken by the appellants before the learned Single Judge that no contributions have been made either by HPSEB or Ramesh Chand is factually incorrect. Rather, the appellants have taken a contrary stand before the learned Single Judge. Initially, the case of the appellants was that the Management of Electrical Division Binwa Project, Uttrala, Nurpur/HPSEB was excluded u/s 16 of the EPF and MP Act, 1952 and secondly no contribution in respect of late Shri Ramesh Chand was ever received in the office of Provident Fund Commissioner. It is evident from the tangible evidence placed on record that the HPSEB was covered under the EPF and MP Act, 1952 and the necessary contributions were also made by the HPSEB to the Provident Fund Commissioner, Chandigarh.

9. Shri Manjeet Singh has made a statement before this Court that the appellants have only seen the record of Assistant Provident Commissioner, Shimla and not of the Regional Provident Fund Commissioner, Chandigarh. It was necessary for the Assistant Provident Fund Commissioner, Shimla to produce the records from the Regional Provident Fund Commissioner, Chandigarh after the extract of cash book have been placed by the H.P.S.E.B. before this Court.

10. What emerges from the observations and discussion made hereinabove is that the Board had been making contributions towards the EPF by remitting the amount to Regional Provident Fund, Chandigarh of all its employees including late Shri Ramesh Chand. The period of absence from 10.1.1984 to 24.1.1985 stood regularised. Consequently, in view of the aforesaid discussion, the appeal fails and the same is dismissed. The pending application(s), if any, also stands disposed of. No costs.