
(2012) 07 DEL CK 0614
In the Delhi High Court
Case No : Writ Petition (C) 11106 of 2009

R.K. Gupta

APPELLANT

Vs

National Building Construction Corporation and Another

RESPONDENT

Date of Decision : 31-07-2012

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7 I(1), 7A, 7B(1), 7L(2), 7L(2)

Citation : (2012) LLR 1131

Hon'ble Judges : P.K. Bhasin, J

Bench : Single Bench

Advocate : S.K. Gupta, for the Appellant; Inderjeet Singh, Advocate R-1, Mr. Biji Rajesh, Advocate and Mr. Gaurang Kanth, Advocate Respondent-2, for the Respondent

Final Decision : Allowed

Judgement

P.K. Bhasin, J.—This writ petition had been filed by the petitioner to challenge the order dated 31.08.2007 passed by the Employees' Provident Fund Appellate Tribunal ("the Tribunal" in short) reviewing its earlier order dated 15.02.2007 whereby the appeal filed by the petitioner's erstwhile employer, respondent no.1 herein, u/s 7- I(1) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 ("the Act of 1952" in short) against the order passed by respondent no.2 herein, Regional Provident Fund Commissioner, u/s 7A of the said Act had been dismissed and consequently the appeal stood allowed. Facts in the background of which this petition came to be filed by the petitioner may be set out briefly. The petitioner was an employee of respondent no.1. He was suspended on 8th April, 1983 on some charges and then dismissed from service from 11.2.85. The petitioner challenged his dismissal before this Court and the writ petition filed him (being C.W.P. No. 419/1985) was allowed vide order dated 20.02.1998 and the order of his dismissal was set aside with directions to the respondent no. 1 to pay all consequential benefits from the date of his suspension till the date of his superannuation, since by that time he had already

reached the age of superannuation. The petitioner then in terms of Rule 13 of the NBCC CPF Rules, 1963 exercised his option in June, 1998 as to the mode and manner of payment of his provident fund contribution but subsequently he gave another option vide letter dated 07.07.1998 in which he had stated that his earlier option was provisional and he was opting for deductions from his salary dues to the full extent of his emoluments as admissible under CPF Rules. As per that option his subscription and employer's contribution were to be credited to his provident fund account which was to be opened by respondent no.1, since the earlier account was closed with his dismissal from service, and that money was to come to him through NBCC CPF Trust alongwith interest also as per the rates prevalent from time to time. The respondent no.1 however, sent him two cheques in September, 1998 one of which was for Rs.1,59,051/- on account of full and final payment of his salary dues and the other one was for Rs.79,370/- on account of employee's subscription and employer's contribution of provident fund. Those cheques were, however, not accepted by him and were returned as the payment of the provident fund amount was not routed through the NBCC CPF Trust and also because the provident fund dues were not calculated as per the option exercised by him vide his option letter dated 07.07.1998. While returning those cheques the petitioner had requested to settle his dues of salary and provident fund as per his option letter dated 07.07.1998.

2. When no response was received by him from respondent no. 1 he approached the Regional Provident Fund Commissioner(RPFC), respondent no. 2 herein. The RPFC after having received the petitioner's representation dated 30.09.1998, in which also he had pointed out some other violations also of the provisions of the Act of 1952 by respondent no. 1, issued certain directions on 12.10.1998 to the respondent no.1 for compliance including the one to open a new provident fund account in the name of the petitioner and to credit therein his subscription as per his option letter dated 07.07.1998 and employer's contribution also alongwith yearly interest within a week. Similar directions were repeated by RPFC again and again and the respondent no. 1 was asked to take necessary steps in respect of the case of the petitioner herein as per the provisions of the Act of 1952 but respondent no. 1 still did not comply with the directions of RPFC.

3. Since the respondent no.1 did not settle his case of provident fund dues as per his option given in July,1998 the RPFC initiated proceedings u/s 7A of the Act of 1952 read with Para 26-B of the EPF Scheme. The stand of the RPFC was that it had already settled the claim of the petitioner as per his option given in June, 1998. RPFC vide his order dated 18.07.2003 held that the claim of the petitioner was to be settled as per his option given in his letter dated 07.07.1998 and further that necessary deductions should have been made from the salary bill, which was to be prepared after his dismissal had been set aside, towards petitioner's subscription and deposited with CPF Trust while the respondent no.1 had arbitrarily deducted provident fund from his salary at the minimum rate of 8%. Various directions were given to respondent no.1 for compliance including for settling the provident fund claim of the petitioner as per his option letter

dated 07.07.1998.

4. In the meanwhile the respondent no.1 had in November, 1998 again sent to the petitioner the cheque for his salary which he had earlier returned in September,1998. This time in the covering letter the respondent no.1 had written that it was "on account" payment and so the same was accepted also as an ad hoc payment by the petitioner.

5. The respondent no.1 filed a review application before RPFC u/s 7-B(1) of the Act of 1952 on 02.09.2003 but the same was rejected by RPFC vide order dated 28.09.2003. Thereafter, the RPFC initiated proceedings to assess the actual dues payable to the petitioner since the respondent no.1 had not complied with the directions given in the order dated 18.07.2003 and after giving hearing to the concerned parties RPFC vide order dated 25.07.2004 a sum of Rs.5,79,012/- was worked out to be payable by respondent no.1 alongwith prevalent interest from time to time on account of provident fund to the petitioner. That amount was inclusive of petitioner's subscription of Rs.5,41,525/- and it was required to be deposited with the CPF Trust within five days to be paid, in turn, to the petitioner.

6. Feeling aggrieved by the order dated 18.07.2003 of RPFC, respondent no.1 had filed an appeal before the Tribunal and while that appeal was pending another appeal was filed by respondent no.1 against the order dated 25.07.2004 of RPFC before the Tribunal. It was claimed in the second appeal that since the petitioner had not contributed any money towards provident fund, as had been worked out by RPFC in its order dated 25.07.2004 to be his subscription and since his salary account had already been settled in full and he had been paid also the entire arrears of his salary and no direction was also given to him for paying that money respondent no.1 was required to pay to him only its share which was also worked out in the order dated 25.07.2004 and since the same had already been paid to him there was no violation of any provision of the Act of 1952 committed by it. It was also pointed out that the amount of provident fund worked out by RPFC had already been recovered by RPFC by attachment of the accounts of respondent no.1 and so a prayer was also made for its refund by RPFC.

7. The Tribunal, however, dismissed both the appeals by its common order dated 15.02.2007. The respondent no.1 then filed an application before the Tribunal u/s 7- L(2) of the Act of 1952 seeking review of the order dated 15.02.2007. Review was sought on the ground that the Tribunal had not dealt with the plea that the petitioner had not made any contribution towards provident fund nor the Tribunal had given any direction to him to pay his share as worked out by RPFC in its order dated 25.07.2004 which direction should have been given even if it were to be accepted that the dues of the petitioner were to be calculated as per his option given on 07.07.1998 and till the time petitioner paid his share he was not entitled to receive any payment as per the order dated 25.07.2004 of RPFC. Another ground for review taken was that no finding had been given by the Tribunal even in respect of the plea taken in the memorandum of appeal that

employer's share already stood paid to the petitioner herein and so there was no violation of any provision of the Act of 1952 by the review petitioner (respondent no.1 herein).

8. The Tribunal allowed the review application vide impugned order dated 31.08.2007 in which it was observed that since the petitioner herein had failed to produce any evidence to show that he had made his own contribution on account of provident fund after his re-instatement in service that showed that he had not contributed any amount of the subscription which he had claimed and, therefore, there was an error apparent on the face of the order earlier passed by it and while allowing the review application it was observed by the Tribunal : "Accordingly, in the interest justice, the error is rectified and the order dated 15.02.2007 passed by this Tribunal is modified to this extent." After observing so, the Tribunal ordered refund of amount of Rs.5,41,525/- to respondent no.1 herein which had earlier been recovered from by attachment of its bank accounts. This shows that as far as the decision on the appeal against the order dated 18.07.98 of RPFC, wherein it had been held that the provident fund dues of the petitioner were to be calculated as per his option given 07.07.98 and the one given in June, 1998 and which was the subject matter of challenge in the first appeal filed in the year 2003, is concerned the same remained undisturbed by the Tribunal.

9. The petitioner felt aggrieved with the acceptance of the plea of respondent no.1 that he was not entitled to receive the payment of provident fund as ordered by RPFC in his order dated 25.07.2004 and so he filed this writ petition. The only point raised by the learned counsel for the petitioner was that the Tribunal had no power to review its own order on merits by invoking the power conferred on it u/s 7-L(2) of the Act of 1952 which permits only rectification of any mistake apparent from the record. It was contended that though the Tribunal had observed in the impugned order that its earlier order was just being modified by correcting a mistake which was apparent on the fact record but in fact what was actually was done was to totally reverse its earlier order by entering into the merits of the appeal once again. In support of his submissions, the counsel relied upon one judgment of this Court in "Modern Public School Education Society (Regd.) & Anr. V. Presiding Officer, EPF Appellate Tribunal & Ors.", 2007 Lab.I.C. 1"

10. On the other hand, learned counsel for respondent no.1, NBCC, while not disputing the proposition that the Tribunal has no power to review its own orders since there is no such power conferred upon it under the Act of 1952 submitted that the Tribunal in the present case had simply corrected a patent error in its earlier order though the effect of that correction/rectification had resulted in the passing of a direction to RPFC to refund the amount which it had recovered from the accounts of respondent no.1 herein(NBCC). Learned counsel further submitted that since the petitioner had not paid any money towards provident fund after the passing of the order dated 25.07.2004 by RPFC the Tribunal could

not have ignored that vital point specifically taken in the memorandum of appeal and when it was pointed out to the Tribunal by filing the review petition the Tribunal had rightly realized its mistake and corrected the same by modifying its earlier order which it was expected to do also. In support of these submissions, learned counsel for the respondent no. 1 cited two judgments of the Supreme Court in "Rajender Singh Vs. Lt. Governor, Andaman & Nicobar islands & Ors.", (2006) 1 AI SLJ 507 and Branch Manager, M.P. State Agro Industries Development Corpn. Ltd. and Another Vs. Shri S.C. Pandey, . The judgment of this Court in Modern School's case(supra) relied upon by the counsel for the petitioner was sought to be distinguished on facts as in that case the Tribunal under the Act of 1952 had reviewed and reversed its order suo moto and that too on merits of the case and not because of any error apparent on the face of record which, according to the counsel, as was not the case here in the present case.

11. Responding to the submission of the learned counsel for the respondent no.1 that there was a mistake apparent on the face of record which could be corrected by the Tribunal, learned counsel for the petitioner had submitted that since admittedly the payment remitted to him by respondent no.1 in November,1998 was an ad hoc payment and subject to the final settlement of his salary dues the Tribunal had rightly not accepted earlier that his dues stood settled and paid also and so that factual controversy could not be decided by the Tribunal in exercise of its limited power u/s 7-L(2) of the Act of 1952.

12. After having considered the submissions advanced from both the sides and going through the orders of RPFC and the Tribunal as well as the judgments relied upon by counsel for the parties I am of the view that this is not a case where the Tribunal had, in fact, in exercise of its powers u/s 7-L(2) of the Act of 1952 rectified any mistake committed by it or any procedural defect was rectified but it had reviewed and completely overturned its earlier order dated 15th February, 2007 and allowed the appeal of respondent no.1 which had earlier been rejected.

13. The point which respondent no. 1 had taken in its appeal before the Tribunal to the effect that petitioner had not contributed his share as worked out by RPFC in its order dated 25th July, 2004 was not even urged during the course of hearing of the appeal before the Tribunal and that is evident from a reading of the Tribunal's order dated 15th February, 2007 wherein it was observed by the Tribunal that "The appellant has assailed the impugned order of the RPFC, Delhi mainly on the ground that the appellant had fully discharged its liability in accordance with the directions issued by the Hon"ble High Court of Delhi in its order dated 20.02.1998 and all the dues alongwith interest thereon have been paid to Shri R.K.Gupta Accordingly, the contention of the appellant cannot be accepted that all the PF dues are settled and paid to the respondent no.2 Shri R.K.Gupta according to law.

14. So, if the point which was highlighted by respondent no.1 in its review

application that the petitioner herein had not contributed his share as determined by RPFC in its order dated 25.07.2004 was not even urged on behalf of respondent no.1 before the Tribunal at the time of hearing of its appeals then it could not be said by the Tribunal in its subsequent order that there was a apparent mistake or error in its earlier order dated 15.02.2007.

15. When it was brought to the notice of the Tribunal by respondent no.1 in the review application about its plea taken in the appeal regarding the non-payment of any amount by the petitioner herein towards his subscription of provident fund and that it was not dealt with then the Tribunal dealt with the same and observed "At hearing, the counsel for the respondent no.2(petitioner herein) did not clearly answer that any revised subscription opted by Shri R.K.Gupta, after his reinstatement is service, as pleaded by him before the respondent no.1(RPFC) has been made towards PF contribution. No records evidence was produced by the respondent no.2 to this effect. This goes to establish that the respondent no.2 has not contributed any amount of the subscription which he had claimed. There is an error apparent on the face of order passed by this Tribunal." In my view, the Tribunal had virtually started an enquiry while dealing with the review application of respondent no.1 which certainly was not permissible for the Tribunal to do in exercise of the limited power of correction of some apparent mistakes conferred on the Tribunal u/s 7-L(2) of the Act of 1952. That enquiry could have been done when the appeals were being heard and not after their disposal. And if the respondent no.1 was aggrieved with the rejection of its appeals despite it having taken the aforesaid plea in the memorandum of its second appeal and without even having been dealt with by the Tribunal the only option available to respondent no.1 was to challenge that order of the Tribunal and the remedy of review was not available to it nor was the Tribunal having any power to entertain the review application. In one of the two judgments of the Supreme Court relied upon by the counsel for the respondent no.1 it had been held that High Court has inherent power of review of its orders. It was not held that even quasi judicial tribunals also have such inherent power of review even if no power of review is specifically conferred upon them under any statute. While in the decision of this Court cited by the counsel for the petitioner it was clearly held by a Single Judge Bench relying upon some judgments of the Supreme Court on the point that the Tribunal under the Act of 1952 has no power of review. In the second judgment cited by the counsel for the respondent no.1 it was held by the Supreme Court that no litigant should suffer because of some fault of the Court. There is no dispute about this proposition but the same is not applicable here since the Tribunal had committed any fault in not allowing the appeals filed by respondent no.1 on the basis of points urged and pressed before it. This writ petition is, therefore, allowed and the order dated 31st August, 2007 passed by the Tribunal allowing the review application of respondent no. 1 is set aside.