(2009) 08 JH CK 0053

In the Jharkhand High Court

Case No : Writ Petition (S) No. 2054 of 2004

Sabya Sachi Chatterjee APPELLANT

Vs

Hindustan Fertilizer Corporation Limited and Others RESPONDENT

Date of Decision : 01-08-2009

Acts Referred:

Citation : (2009) 08 JH CK 0053

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Advocate : R.S. Mazumdar, P.A.S. Pati and Rishavdev, for the Appellant; P.P.N. Roy and Sanjay Piprawal, for the Respondent

Judgement

D.G.R. Patnaik, J.—Heard J.C to Sri J. Mazumdar, learned Counsel for the petitioner, J.C. to Sri P.P.N. Roy, learned Counsel for the respondent Regional Provident Fund Commissioner and Sri Sanjay Piprawal, learned Counsel for the respondent Hindustan Fertilizer Corporation Limited.

2. The petitioner in this writ application has prayed for issuance of an order quashing the letter dated 19.01.2004 (Annexure-4) issued by the Respondent No. 2 whereby the petitioner has been advised to submit an account payee demand draft of any nationalized bank drawn in favour of the Trusties H.F.C. Ltd., Employees Provident Fund, EP & ARC payable at Kolkata for an amount of Rs. 43,000/-, during the period from 03.02.2004 to 10.02.2004 for settlement of monthly pension claim under the EPS-95 scheme. A further prayer has been made for quashing the letter dated 25.02.2004 (Annexure-6) issued by the Respondent No. 3 whereby the Respondent No. 3 has refused to return the contribution, deducted from the salary of the petitioner, unless the demanded amount of Rs. 43,000/- is deposited by the petitioner.

3. Learned Counsel for the petitioner would explain that the petitioner''s claim is on two basic grounds. The first being that under the Employees Pension Scheme which was in force during the period when the petitioner was in service, a duty

was cast upon the employer to seek the option from the employee in respect of the particular scheme of pension which he desires to adopt. No such option was ever demanded from the petitioner. Secondly, the payment of pension under the scheme was payable to the petitioner in the month of April, 2003 when the petitioner had voluntarily retired from service. Learned Counsel explains that during this period, another Employees Pension Scheme of 1995 was introduced. The vires of the Scheme was challenged before the Supreme Court in the case of OTIS Elevator Employees Union and Ors. v. Union of India and Ors. reported in AIR 2004 Sc 3264 and ultimately, upon considering the matter, the Supreme Court had declared the scheme to be intra-vires and mandatory upon the employer and the employees. Learned Counsel submits that the directives of the Supreme Court will not apply to the case of the petitioner in view of the fact that even before the passing of the judgment, the petitioner had already retired from service and he was certainly entitled for the payment of pension under the scheme which was in force and was applicable to him on the date of his retirement.

Learned Counsel adds further that the refusal of the respondent employer by virtue of the impugned letter to pay the pension of the petitioner as per the earlier scheme, is totally illegal and arbitrary.

4. Learned Counsel for the respondent employer submits, on the other hand, that earlier the entire amount of contribution, which was deducted from the petitioner''s salary, was forwarded to the Regional Provident Fund Commissioner Office but the same was returned with a directive that fresh papers should be forwarded in consonance with the 1995 Scheme.

5. Learned Counsel for the respondent Regional Provident Fund Commissioner and Assistance Provident Fund Commissioner (Respondent Nos. 7 & 8) would submit that as soon as the amounts are received from the employer, the office of Regional Fund Commissioner would process the same and after assessing the total amount payable to the petitioner, shall release the payments to him.

6. As it appears from the rival submissions, the dispute is in respect of the application of the particular scheme for payment of the pensionable benefits to the petitioner. The petitioner''s contention is that since he had retired prior to the date of judgment passed by the Supreme Court in respect of the 1995 Scheme, the petitioner has to be guided, for all practical purposes, by the scheme which was in force on the date of petitioner''s retirement and not by the scheme of 1995, notwithstanding the fact that the Supreme Court had declared that the 1995 Scheme would be mandatory. I find force in the argument. Prior to the date of retirement, the 1995 Scheme though promulgated, but its application was disputed and it was finally settled by the Supreme Court by its judgment in the case. Prior to the introduction of the 1995 Scheme, a previous scheme was also in existence and the employees were given the option to choose between the two and the petitioner''s case, as it appears, is not disputed by the respondent employer, that the petitioner''s option was not obtained and furthermore, there

was delay on the part of the employer itself in forwarding the petitioner''s contribution to the office of the Regional Provident Fund Commissioner. The petitioner''s claim cannot therefore be frustrated on account of technical bindings.

7. Accordingly, the respondent employer is directed to transmit within three weeks from the date of this order the entire amount which was deducted from the salary of the petitioner towards petitioner''s share of contribution along with the employer''s contribution together with statutory interest for the period of delay caused by it initially in transmitting the P.F. contributions to the office of Regional Provident Fund Commissioner, and within one month from the date of receipt of the amount along with the requisite papers, the Regional Provident Fund Commissioner namely the Respondent No. 6, shall ensure that the payments, which are legitimately payable to the petitioner, is assessed and the entire amount is paid to the petitioner along with the statutory interest.

With these observations, this writ application is disposed of.

Let a copy of this order be given to the learned Counsel for the respondent employer as also to the counsel for the respondent Regional Provident Fund Commissioner.

