(1995) 12 P&H CK 0035

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 637 of 1995

S.D. College APPELLANT

Vs

Regional Provident Fund Commissioner and Others RESPONDENT

Date of Decision : 06-12-1995

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B

Citation : (1997) 3 LLJ 574 : (1996) 112 PLR 573

Hon'ble Judges : N.K. Sodhi, J;Ashok Bhan, J

Bench : Division Bench

Advocate : R.L. Chopra, for the Appellant; Ashok Aggarwal, Rajesh Bindal and Anupam Gupta, for the Respondent

Final Decision : Allowed

Judgement

1. This order shall dispose of Civil Writ Petitions 637 and 692, both of 1995, as common questions of law and fact are involved in these petitions.

2. Civil Writ Petition No. 692 of 1995 has been admitted whereas Civil Writ Petition No. 637 of 1995 is at the motion stage. On November 1, 1995, it was ordered by the Bench that both these petitions should be decided together and the office was directed to fix Civil Writ Petition No. 692 of 1995 as well for disposal. That is how, these two petitions are being taken up together.

Facts are taken from Civil Writ Petition No. 637 of 1995.

3. Challenge in this petition is to the damages imposed by the Regional Provident Fund Commissioner. Punjab. Himachal Pradesh and Union Territory Chandigarh at Chandigarh (hereinafter referred to as ''the RPFC'') for late deposit of the amount of the Employees Provident Fund with it.

4. Petitioner is an educational institution known as S.D. College and is located at Hoshiarpur. Petitioner is engaged in imparting education at the graduate level and in furtherance of the said adventure engaged teaching and other staff who

are in receipt of salary from the petitioner. Admittedly, service conditions of the employees employed by the petitioner are governed by the Punjab Affiliated Colleges (Security of Service of Employment) Act, 1974, and the Rules made thereunder, which are referred to as ''the Act'' and ''the Rules'', respectively, hereinafter. Petitioner is affiliated to the Punjab University and is in receipt of 95% grant in aid. Being in receipt of grant in aid to the extent of 95%, petitioner is directly under the control of the State of Punjab and also the Punjab University. Employees engaged by the petitioner are enjoying the benefits of the Contributory Provident Fund and the contribution of the employees employed and the employer''s contribution towards the Provident Fund is directly under the control of the Registrar of the Punjab University and also Director of Public Instructions, Punjab. Petitioner was depositing the contribution towards the Contributory Provident Fund with the Registrar of the Punjab University. In the year 1982, Central Government issued a notice thereby bringing the educational institutions under the Employees Provident Fund and Miscellaneous Provisions Act,'' 1952 (herein after referred to as ''the Employees Provident Fund Act''). The provisions of the Employees Provident Fund Act, were made applicable w.e.f. March 6, 1982.

5. Against the said order, various institutions filed writ petitions in the Supreme Court of India. The said petition was decided by the Supreme Court on January 29, 1988 and it was held as under :

"Shri S.K. Bagga, learned counsel appears for the petitioners. We do not find any substance in the contention of the petitioners in these cases that the Employees'' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as ''the Act'') has no application to the educational institutions, who are petitioners in these cases. We, therefore, dismiss all these cases.

We direct that the petitioners shall comply with the Act and the scheme framed thereunder regularly with effect from February 1, 1988. Whatever arrears they have to pay under the Act and the schemes in respect of the period between March 1, 1982 and February 1, 1988 shall be paid by each of the petitioners within such time as may be granted by the Regional Provident Fund Commissioner, if the petitioners pay all the arrears payable from March 1, 1982 upto February 1, 1988 in accordance with the directions of the Regional Provident Fund Commissioner he shall not levy any damages for the delay in payment of the arrears. Having regard to the special facts of these cases the subscribers (the employees) shall not be entitled to any interest on the arrears. The writ petitions are disposed of accordingly. No costs."

6. Immediately, on getting a copy of the judgment of the Supreme Court in the writ petitions referred to above, the petitioner approached the Punjab University seeking permission to transfer the Contributory Provident Fund Account with the RPFC. Copy of the letter dated July 19, 1988, written by the petitioner to the Punjab University is attached as Annexure P-1. This letter was replied to by the Punjab University, intimating the petitioner that the matter concerning transfer of

the Contributory Provident Fund Account was under consideration of the Committee and as soon as final decision was arrived at, the petitioner would be informed accordingly. Petitioner, thereafter, addressed three communications, Annexures P-3, P-6 and P-7, to the Punjab University to take an early decision. Letters written by the petitioner remained unreplied and, ultimately on June 7, 1990 the petitioner got orders dated June 7, 1990 from the Punjab University directing it to transfer the accumulation of the Contributory Provident Fund with the RPFC. Petitioner, immediately thereafter transferred the accumulations of the Contributory Provident Fund with the RPFC.

7. On February 5, 1994, the RPFC issued a notice, Annexure P-5, u/s 148 of the Employees'' Provident Fund Act, proposing to impose damages for the period March, 1988 to May, 1990. In response to the said notice, petitioner appeared before the RPFC and submitted that the Contributory Provident Fund Account was transferred to the RPFC soon after getting permission from the Punjab University and no case was made out for imposition of the damages. The objections raised by the petitioner were not accepted and the RPFC vide the impugned order dated December 21, 1994, Annexure P-8, imposed damages to the tune of Rs. 2,71,387-00. Petitioner, being aggrieved against the aforesaid order, Annexure P-8, imposing damages, has filed the present writ petition.

8. In response to the notice of motion issued to the respondents, written statement has been filed.

9. In the written statement filed, the stand taken by the respondents is that there is no justification for the petitioner for late transferring the Contributory Provident Fund Account to the RPFC after the judgment was rendered by the Supreme Court of India; that the petitioner was duty bound to deposit the contribution of the Provident Fund with the RPFC immediately thereafter and that the petitioner was liable to pay damages as imposed by the RPFC.

Counsel for the parties have been heard.

Section 14-B of the Employees'' Provident Fund Act, reads as under :-

"Power to recover damages.-- Where an employer makes default in the payment of any contribution to the Fund (the Family Fund or the Insurance Fund) or in the transfer of accumulations required to be transferred by him under Sub-section (2) of Section 15 (or Sub-section (5) of Section 17) or in the payment of any charges payable under any other provision of this Act or of any Scheme or Insurance Scheme or under any of the conditions specified u/s 17, the Central Provident Fund Commissioner or such other officer as may be authorised by the Centra] Government, by notification in the Official Gazette in this behalf may recover from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in this Scheme :

Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard :

Provided further that the Central Board may reduce or waive the damages levied underthis Section in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established u/s 4 of the Sick Industrial Companies (Special Provisions) Act, 1985, subject to such terms and conditions as may be specified in the Scheme."

10. A perusal of Section 14-B of the Employees'' Provident Fund Act, reproduced above shows that the said Section would be attracted when there is a default on the part of the establishment to which it applies. In case of default, such establishment is liable to pay damages.

11. In the present case, petitioner had been regularly depositing the employees'' share along with the employer''s share with the Punjab University. Thus, the petitioner did not have the intention to withhold the deposit of the employees'' share along with the employer''s share in the Contributory Provident Fund Account. Prior to the applicability of the Employees'' Provident Funds Act, petitioner had been depositing the amount of the Provident Fund with the Punjab University. After the judgment of the Supreme Court was rendered in the writ petition filed by various institutions, petitioner is depositing the Provident Fund with the RPFC. So far as the arrears from March, 1988 to May, 1990 are concerned, immediately after the receipt of a copy of the judgment, petitioner wrote to the Punjab University for permission to transfer the Contributory Provident Fund Account to the RPFC. Punjab University did not take a decision for nearly two years inspite of persistent follow up action taken by the petitioner. Immediately , on receipt of the permission, petitioner transferred the Contributory Provident Fund Account to the RPFC in the year 1990. Thereafter, petitioner has been depositing the Provident Fund amount, including both the employees'' share as well as the employer''s share, with the RPFC.

12. On these facts, in our view, no case is made out for imposition of damages against the petitioner for late deposit of the Provident Fund amount for the period March 1988 to May, 1990. As has been stated in the earlier part of the judgment, petitioner is under the control of the State Government which grants 95% aid to it and has framed an Act controlling and governing the conditions of service of the employees of the affiliated colleges. Punjab University has granted it affiliation for the purposes of conducting examinations. Petitioner could not withdraw the provident fund amount deposited by it with the Punjab University on its own and could do the same only after taking permission from the Punjab University. No loss has been caused to the employees who would get full amount of their contribution and the employer''s share of contribution towards the Provident Fund. The Contributory Provident Fund Account already stands transferred to the RPFC. Supreme Court of India, while passing the order on January 29, 1988, reproduced in the earlier part of the judgment, had also directed the RPFC not to levy damages for the delay in the payment of arrears. No doubt, in the present case, there is some part of the petitioner in transferring

the Contributory Provident Account from the Punjab University with which it was depositing the amount of the Provident Fund, to the RPFC but for that reasonable and plausible explanation has been rendered which deserves to be accepted, in the given facts and circumstances of the present case. In any case this delay has not caused any loss to the employees or to the Fund.

13. Accordingly, this writ petition is accepted. Order of the RPFC, Annexure P-8, is quashed and it is held that no case for imposition of damages has been made out against the petitioner. No costs.