(2015) 04 GUJ CK 0083

In the Gujarat High Court

Case No : Special Civil Application No. 14910 of 2012

Shailesh Manjulal Jadav APPELLANT

Vs

Gujarat State Land Development Corporation Ltd. and Others RESPONDENT

Date of Decision : 29-04-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2015) LabIC 3088

Hon'ble Judges : N.V. Anjaria, J

Bench : Single Bench

Advocate : Sureshm Shah and Mehul S. Shah, for the Appellant; H.S. Munshaw, Advocates for the Respondent

Final Decision : Allowed

Judgement

N.V. Anjaria, J.

1. By presenting this petition under Article 226 of the Constitution, the petitioner has prayed for appropriate writ and a direction against the respondent-Gujarat State Land Development Corporation Limited, to make payment of the amount of provident fund to the petitioner with interested at the rate of 18%, which is withheld by the respondents.

2. The petitioner was appointed as Head Clerk in the Accounts Department at the Ahmedabad Office of the respondent-Corporation. He retired from his service with effect from 31.01.2012 on reaching age of superannuation. The petitioner pleaded in the petition that all throughout he discharged the duties diligently. Upon his retirement, the respondent-employer issued office order dated 16.02.2012, whereby it sanctioned Rs. 3,71,640/- to the petitioner towards contributory provident fund as per C.P.F. Rules. In that order, it was mentioned inter alia that Rs. 72,607/- was withheld. By communication dated 31.08.2012, the petitioner sought for a clarification as to on what basis the said amount was withheld and kept deposited, requesting the respondent to pay the same with

interest at the earliest. It appears that the respondent-Corporation responded by reply dated 18.10.2012, wherein it was stated that a case relating to interest and damages to be payable by the Corporation was pending before the Appellate Tribunal at New Delhi and the amount in question would be paid to the petitioner after the decision in the said case. The petitioner reverted with letter dated 22.10.2012 asking about the details of the case, further asking the respondent to clarify as to between whom the same was pending. The Corporation did not respond. The petitioner thereupon filed the present writ petition.

3. The respondent-Corporation filed affidavit-in-reply to the petition. It contended that after it was registered under the Companies Act in the year 1978, it had requested the Regional Provident Fund Commissioner to recognize it for the purpose of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 and the Rules, but the request was turned down. After long gap, the authority addressed letter dated 15.02.2005 stating that the provisions of the Act were applicable to the Corporation and were applied with effect from 01.01.2005 with retrospective effect. The Corporation appears to have deposited certain amount for particular period. The Regional Provident Fund Commissioner issued notice dated 16.11.2009 asking the Corporation to deposit Rs. 3,72,71,827/- towards interest under Section 7-Q and Rs. 6,89,76,544/- towards damages under Section 14-B of the Act, aggregating to Rs. 10,62,49,371/-. The Corporation resisted the liability, but the Regional Provident Fund Commissioner by order dated 11.11.2011, rejected the case of the Corporation. The Corporation has challenged said order dated 11.11.2011 by filing Appeal before the Employees Provident Fund Appellate Tribunal at New Delhi.

3.1 It is further stated in the affidavit that in the said Appeal, interim relief is granted to the appellant. In paragraph-9 of the affidavit, the stand of the respondent precisely evinced was under,

"....considering the said factual and legal aspects and more particularly financial liability of Rs. 10,62,49,371/- fixed by the Regional Provident Fund Commissioner at Ahmedabad, it is though fit to withhold a proportionate amount payable to retiring employees towards Contributory Provident Fund Scheme. The respondent No. 1 submits that in view of this, an amount of Rs. 72,607/- payable to the petitioner herein is withheld pending the proceeding before the Appellate Tribunal at New Delhi. It is pertinent to note that such proportionate amount from the retiral benefits is withheld in case of in all 264 employees who have retired or resigned from the employment of the Corporation. It is stated as against withheld amount, the petitioner herein is already monthly pension under the Scheme by the Regional Provident Fund Commissioner at Ahmedabad. At the cost of repetition , the respondent No. 1 submits that against the said amount of Rs. 72,607/- withheld from the petitioner, in an event of rejection of appeal by the Appellate Tribunal and confirmation of the liability imposed by the Regional Provident Fund Commissioner at Ahmedabad, each of the employees of the Corporation will be liable to pay approximately an amount of Rs. 70,000/-

towards interest liability to meet with the demand of the Authority under the provisions of Employees Provident Fund Act. It is required to be pointed out that this amount of interest is credited to the account of present petitioner in the past. In order words, it is the liability of the employee to pay interest under the Act to avail the benefit of Pension Scheme with retrospective effect."

3.2 The petitioner filed affidavit-in-rejoinder dated 29.12.2012. Respondent No. 1-Corporation filed two affidavits-in-sur-rejoinder first dated 02.04.2013 and another dated 10.04.2013. Pursuant to order dated 29.04.2013 passed by the court, the Regional Provident Fund Commissioner came to be joined as party respondent No. 3 in the petition. The said authority filed its affidavit-in-reply dated 05.06.2013, to which, the Corporation filed further affidavit dated 12.06.2013.

4. Learned advocate Mr. Mehul Shah for the petitioner submitted that the action on part of the respondent-Corporation to withhold the amount of provident fund payable to the petitioner, even in part is palpably arbitrary. He submitted that it cannot be a ground not to pay the provident fund that the employer is called upon to discharge liability to pay interest and damages under the provisions of the Employees Provident Fund Act by the authorities thereunder. He submitted that the defence cannot be accepted that dispute in the above regard is pending before the Appellate Tribunal, which has nothing to do with the petitioner''s entitlement.

4.1 Learned advocate Mr. H.S. Munshaw justifying withholding of the amount, submitted that the liability of interest and damages is sought to be fastened by the department. He submitted that as back as in April 1981, the Corporation had addressed a letter to the Regional Provident Fund Commissioner to recognize the Corporation for the purpose of Employees Provident Fund Act, but the reply given was that the Corporation was not covered. He submitted that in February 2005, letter came to be addressed by the Regional Provident Fund Commissioner that the provisions of the Act were applicable to the Corporation with effect from 01.01.2005, pursuant to which the Corporation deposited almost Rs. 7 crores towards principal amount with the Regional Provident Fund Authority, still however subsequently, the Corporation was asked to deposit the amount towards interest and damages totaling more than Rs. 6.89 crores.

4.2 Learned advocate for respondent No. 2-Corporation submitted that looking to the huge liability towards interest and damages claimed by the Provident Fund Authority, the amount is proportionately withheld in respect of all the employees so that if the financial burden ensues in future, the same could be mitigated. He further submitted that the petitioner has been getting the pension amount.

4.3 Learned advocate for the Corporation submitted that the issue has yet not settled and the Appeal of the Corporation is pending before the Tribunal at New Delhi. It was further submitted that out of the total amount, only 8.33% of the contribution of the establishment with interest is transferable to the Regional

Provident Fund Commissioner to enable it to release the benefit of pension. It was submitted that the amount of Rs. 72,607/- is already transferred to the Regional Provident Fund Commissioner. Learned advocate submitted that what is withheld is the proportionate amount and as soon as the Tribunal decides the Appeal of the Corporation, the amount which is withheld would be paid to the petitioner.

4.4 The Regional Provident Fund Commissioner came to be joined as party respondent No. 3. In its affidavit-in-reply, it inter alia denied that it did not withhold any amount of provident fund or part thereof, but the said action is that of the Gujarat State Land Development Corporation.

5. There is no gainsaying that upon reaching the age of superannuation, the petitioner-employee has become entitled to be paid the provident fund amount to the tune of Rs. 04,44,247/- as per order dated 16.02.2012. The order is on record (Annexure-A, Page 11) and the said order is an admitted fact. However from the said total amount Rs. 72,607/- shown to be a deduction as the amount towards contributory provident fund and the payment thereof is withheld and not paid to the petitioner. As noted above, it is on a ground that the respondent-Corporation is facing the orders under Section 7-Q and Section 14-B of the Employees Provident Fund Act and is required to pay the interest and towards the said total liability, aggregate amount of Rs. 62,49,371/- is claimed and further that the Corporation has filed Appeal before the Employees Provident Fund Appellate Tribunal at New Delhi and the same is pending. Now this reason, raised as a ground to withhold and not to pay the part of the contributory provident fund amount, for which otherwise an order is already passed and the petitioner-employee is entitled to receive, is both astonishing and irrational. It is astonishing because it is too foreign a ground to be accepted. It is irrational for the reason that, the claim of the provident fund authorities towards interest and damages is a dispute essential and entirely between the respondent-Corporation and the provident fund authorities. It has nothing to do whatsoever with the right of the employee to receive the provident fund amount.

5.1 Section 7-Q of the Act provides about interest payable by the employer and makes employer liable to pay interest at the rate of 12% or at such higher rate as may be specified in the Scheme on any amount due from him under the Act from the date on which the amount has become so due till the date of its actual payment. Similarly, Section 14-B is with regard to power to recover damages. It empowers the specified authority being the Central Provident Fund Commissioner or such other Officer as may be authorized by the Central Government to recover damages where a employer makes default in the payment of any contribution to the fund. Therefore, under the aforesaid provisions, the employer is made liable to pay interest or the damages as the case may be or both to the Provident Fund Authorities and creates a right and obligation between them too. It is a dispute between those two parties between the employer and the Provident Fund Authority.

5.2 There is no lis between the petitioner-employee and the respondent-Corporation with regard to the dispute on the count of liability of the employer-Corporation under Section 7-Q and 14-B of the Act. Nor the said dispute or pendency thereof with the Appellate Tribunal has an effect of creating jural relationship, much less in the nature of any liability in law of the petitioner, between the petitioner-employee and the provident fund authorities. The ground that the provident fund authorities has held the respondent-Corporation liable to pay interest and damages by passing orders under Sections 7-Q and 14-B respectively of the Act and the dispute in that regard is pending before the Appellate Tribunal is in no way a relevant factor and germane consideration to justify the withholding the amount of provident fund. Whether the respondent Corporation succeeds or loses in the said dispute and litigation, it will be of no relevance on the entitlement of petitioner or any other similarly situated employer to receive the amount of provident fund which the petitioner has become entitled upon his retirement.

5.3 The contention that the petitioner is paid the amount of pension is worth rejecting only inasmuch as the amount of pension to be paid by the Regional Provident Fund Commissioner is under the monthly pension scheme provided under the Act and the said payment is part of amount representing 8.33% of the employer''s contribution towards provident fund out of the employer''s total contribution of 12% as per the provisions of the Employees Provident Fund Scheme, 1995, therefore that entitlement is distinct and independent right of the petitioner. The fact that the said amount is paid cannot be deployed as a defence to justify the withholding of the provident fund amount.

6. Therefore in the aforesaid view, the action on the part of the respondent-Corporation in not paying the said amount of Rs. 72,607/- and deducting the same from the total entitlement on the aforesaid ground is wholly arbitrary and unreasonable. It tantamount to depriving the employee of his due provident fund amount. The action in withholding the amount, the justification offered therefore and the entire action is irrational, unreasonable, arbitrary and amounts to violation of petitioner''s right under Articles 14 and 16 of the Constitution.

6.1 For the aforesaid reasons and discussion, the present petition deserves to be allowed. The action on part of the respondent-Corporation reflected in order dated 16.02.2012 (Annexure-A, Page 11 to the petition) of withholding the amount of Rs. 72,607/- as above and deducting the same and not paying the same to the petitioner is hereby quashed and set aside. The respondents are directed to make said payment of Rs. 72,607/- with 9% interest from the date of order, that is 16.02.2012 till the date of actual payment.

7. The petition stands allowed as above.