
(1999) 07 AHC CK 0169
In the Allahabad High Court
Case No : C.M.W.P. No. 1144 of 1999

Sheetla Prasad Tiwari

APPELLANT

Vs

General Manager, Kanpur Electricity Supply Undertaking and
another

RESPONDENT

Date of Decision : 06-07-1999

Acts Referred:

Citation : (1999) 4 AWC 2839 : (1999) AWC 2839 : (2000) 1 LLJ 284 : (1999) 2 UPLBEC 1554

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : H.P. Misra, for the Appellant; S.P. Mehrotra, for the Respondent

Final Decision : Disposed Of

Judgement

D. K. Seth, J.—The judgment was dictated in open Court on 28th January. 1999. At the time of correction of the said judgment, it appeared that there were some grey areas which needed clarification. By order dated 19th February, 1999, an opportunity was given to both the counsel to address the Court on the question of such clarification proposed to be made in the judgment. Mr. S. P. Mehrotra, learned counsel for respondents had expressed his regret that he could not draw the attention of the Court to the fact that the case of the petitioner was not governed by the Employees Provident Fund and Miscellaneous Provisions Act. 1952 (E.P.F. for short) on which the decision was rendered. On account of incorrect instruction, he could not point out that it was Provident Fund Act. 1925 (G.P.F. for short) under which the case was governed. He further pointed out that the pleadings made in the writ petition was not clear. The petition did not disclose the correct situation. which was another factor for committing such mistake by him. Therefore, he prayed that the dictated order may not be signed and be recalled and the matter be re-heard. Mr. H. P. Misra did not raise any objection.

2. It seemed that there were some substance in the submission of Mr. Mehrotra.

He prayed for leave to file counter-affidavit. Accordingly. directions were so given.

3. With the leave of the Court, Mr. Mehrotra filed his counter-affidavit to which rejoinder-affidavit has also been filed. The counter- affidavit is not placed on record. The office is directed to trace out the counter-affidavit filed on 29th May, 1999 and place it on record. However, for the sake of convenience, a copy of the counter-affidavit has been furnished by Mr. Mehrotra which is taken on record.

4. I have heard both Mr. S. P. Mehrotra, learned counsel for the respondents and Mr. H. P. Misra, learned counsel for the petitioner. It appears that the entire judgment had dealt with the Employees' Provident Funds and Misc. Provisions Act, 1952. While it has been contended by Mr. Mehrotra that the petitioner was governed by the provisions of the Provident Fund Act, 1925. In the counter-affidavit, it has been disclosed that the petitioner was an erstwhile employee of Kanpur Electricity Supply Administration which was subsequently taken over by the State Electricity Board. While employed in the Kanpur Electricity Supply Administration, petitioner was a member of the Employees Provident Fund. By Notification dated 10th June, 1969, the State Government permitted the U. P. State Electricity Board to apply the provisions of the Provident Fund Act, 1925, to the employees of the Board with effect from 1st March, 1966. Under the said scheme, the employees of the Board were entitled to the pensionary benefits under the U. P. Retirement Benefits Rules, 1961 and Family Pension Scheme, 1965. The benefits of the above scheme were extended to the employees of the Kanpur Electricity Supply Administration with effect from 1st February, 1982. Consequently the Board had required the employees of the Kanpur Electricity Supply Administration to exercise their option, for pension, to the said scheme. The condition for such option was that the employer's shares of G.P.F. and E.P.F. with interest shall be refunded to the Board and the employees' share with interest shall be transferred to their G. P. Fund Account. The employees exercising the said option were entitled to pensionary benefits. Those employees not exercising the above option were entitled to receive both share of employers and employees of G.P.F. and E.P.F. along with gratuity payable under the Gratuity Act, 1972 and they would not be entitled to pensionary benefits. The petitioner had opted for the General Provident Fund Scheme and he was allotted G.P.F. Account No. EB/Estt./16475. Accordingly, pursuant to the Board's order dated 1st February, 1982, the share of the petitioner deposited in E.P.F. with interest was transferred to G.P.F. account of the petitioner in July, 1992 and October, 1992 while the employer's share in E.P.F. with interest was transferred to the Board. The account of the petitioner was maintained by the Board. On his retirement, 90% of the amount accumulated in the G.P.F. were paid to the petitioner by Cheque No. 169683 dated 9th March, 1995. The petitioner had retired on 31st July, 1994 but the balance 10% has not been paid to the petitioner as yet. On the alleged ground of violation of the provisions of G.P.F. in the matter of non-payment of the said amount, the petitioner had lodged a criminal complaint before the appropriate Court since being registered as Criminal Case No. 26794 of 1996 pending before the Chief Metropolitan

Magistrate, Kanpur, against one of the officer of the Board and the Commissioner, Employees' Provident Fund.

5. In this background, Mr. H. P. Mishra had contended that the petitioner has not been furnished any account of the fund and he has not been paid interest on the contribution made by him during the period 4th March, 1963 till 30th November. 1963 and 3rd December. 1963 till 30th April, 1964. Though in Court, Mr. Mishra had contended that the calculation is wrong and that the low amount credited in E.P.F, in employee's share was not transferred to the G.P.F., but neither in the pleading nor in documents annexed to the writ petition or the rejoinder-affidavit he has made out any case as to what amount was miscalculated. No materials had been furnished for the Court to come to the conclusion that there are some materials on which it could form an opinion that the amount calculated by the Board is incorrect. Then again in his assertion the petitioner showed that he is claiming his contribution even for the period 3rd December, 1963 till 30th April. 1964 when he had been given number of the G.P.F. account.

6. In this circumstance, the order dictated in open Court on 28th January. 1999 is not signed and stands recalled, since the said judgment proceeded on the basis of the provisions of Employees Provident Fund and Miscellaneous Provisions Act. 1952 instead of the Provident Fund Act, 1925.

7. I have heard both the learned counsel at length, once again.

8. From the documents disclosed in the counter-affidavit. Annexure-C.A. 2, it appears that the sum of Rs. 8,105,00 being the employee's share in the E.P.F. was transferred to the G.P.F. account of the petitioner on 8th July, 1992 and a further sum of Rs. 19,900 being employee's share in E.P.F. was transferred to the G.P.F. account in October, 1992. The said document again shows from the statement for 1987-88 that there was a credit of Rs. 8.532 in April. 1987 in the said G.P.F. account of the petitioner representing, according to Mr. Mehrotra. the contribution of the petitioner for the period 1982 till 1987. There is nothing in the pleading from which it could be asserted that the petitioner has disputed this calculation. Nowhere in the pleading, petitioner disputed the calculation made in the G.P.F. account. His only claim is that he should be paid 20% interest on the said amount with six months rest according to bank practice.

9. The application of E.P.F. and G.P.F. are mutually exclusive of each other. One cannot claim benefit under both the schemes. Since the petitioner had opted for the G.P.F., he cannot claim benefit under E.P.F. He has neither effectively disputed the correctness of the figures of the contribution in the E.P.F. transferred to G.P.F. nor the calculation of the contribution of the petitioner for the G.P.F. This Court cannot enter into such question simply on the basis of the dispute raised now in the pleading without any details or material and elaborated in Court during the course of arguments without being supported by any material. The Court cannot undertake a roving enquiry on the basis of such materials as are placed on record in this case.

10. It is again by the Government Order No. G. 4 G. 1. 74/X. 87-59-81 dated 31st December. 1987. Annexure-C. A. 6. 12% interest is sanctioned In G.P.F. There is no provision for claiming interest at the rate of 20% as claimed by the petitioner. The petitioner is claiming at the rate of 20% per annum as per bank practice which is not admissible in view of the said Government Order contained in Annexure-C. A. 5. It appears that there is no material placed before this Court nor anything to substantiate the contention of Mr. Mishra with regard to mistake in calculation of the contribution of the petitioner or with regard to the calculation of the interest payable in respect of the amount due in the petitioner's G.P.F. account.

11. Admittedly, 10% of the amount has not been paid to the petitioner. It is alleged that by reason of legal advice, the said amount, though calculated, was not paid to the petitioner. The explanation may not be acceptable. It could very well be paid despite legal advice and such legal advice may not be correct in law. Be that as it may. the petitioner is also guilty of suppression of material facts in that he did not disclose the lodging of the criminal case in the Court of Chief Metropolitan Magistrate, Kanpur Nagar, in the writ petition. The said lodging of the criminal case is also material fact which is relevant for purposes of the present case. Since the petitioner had not disclosed the lodging of the criminal case on account of suppression of material fact, the petitioner is not entitled to any relief. Balancing the misconduct of the petitioner in non-disclosure of the material fact in the writ petition and the non-payment of the amount due on account of 10% by the respondents, no steps need be taken either against the petitioner or against the respondents.

12. In the circumstances, the respondents are hereby directed to make payment of the balance 10% outstanding in the petitioner's G.P.F. account together with statutory interest as admissible till the date of payment for the whole period after retirement of the petitioner or on the date of payment of 90% in case Interest is calculated till that date within three months from today. In default, the amount would carry interest at the rate of 20% with half yearly rest with effect from the expiry of three months from this date. Let a writ of mandamus do issue accordingly. The writ petition is thus disposed of. No costs.

Let a certified copy of this order be made available to the learned counsel for the petitioner on payment of usual charges at the earliest.