

(1999) 08 PAT CK 0064
In the Patna High Court
Case No : L.P.A. No. 1334 of 1998

State Bank of India and Others

APPELLANT

Vs

Surendra Mishra

RESPONDENT

Date of Decision : 19-08-1999

Acts Referred:

Citation : (2000) 1 LLJ 1025

Hon'ble Judges : I.P. Singh, J;B.P. Singh, J

Bench : Division Bench

Advocate : S.K. Sinha, K.K. Sinha and Binod Bihari Sinha, for the Appellant;
S.N. Jha, Anil Kr. Upadhyaya and Maurya Vijay Chandra, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Singh and I.P. Singh, JJ.—Heard counsel for the parties.

2. The respondent claimed to be a confirmed employee of the Bank, but that claim was resisted by the Bank which ultimately led to an industrial dispute in which an award was made in favour of the respondent declaring him to be a confirmed employee of the Bank from February 13, 1970. The award of the Tribunal did not bring to rest the controversy. This award was challenged by the Bank in a writ petition, but the writ petition was also dismissed by order dated January 10, 1996. In the year 1995 the respondent made his contribution to the Provident Fund account for the period from 1970 till the date of deposit. The respondent demanded, inter alia, that the Bank should also deposit its contribution in the Provident Fund account and also pay the interest to the respondent which would have normally accrued to his credit, had he been allowed to deposit the amount in the Provident Fund account. The claim for interest was confined to what would have accrued by way of interest on the Bank's contribution. Since this was not acceptable to the bank, the respondent filed the instant writ petition. The learned Judge by his judgment and order dated November 6, 1998, inter alia, directed the bank to get the interest calculated on the bank's contribution towards the Provident Fund account, and deposit the

same in the Provident Fund account of the respondent within three months.

3. The question which arises for consideration in this appeal is whether the learned Judge was justified in directing the appellant bank to deposit the amount in the Provident Fund account of the respondent including the interest that would have accrued on the bank's contribution towards Provident Fund dues. It is not in dispute that only a confirmed employee of the bank is permitted to make his contribution to the Provident Fund; and an equal amount is contributed by the bank. It, therefore, follows that if the respondent was treated by the bank as a confirmed employee, he would have made his contribution and could have also insisted that the bank should make its contribution to the provident fund. Such amount deposited by the respondent and the appellant bank would have earned interest at the prescribed rate to the benefit of the respondent.

4. The Counsel for the bank challenged the direction on the ground that under the provisions of State Bank of India Employees Provident Fund Rules, the bank is obliged to make its contribution only after the concerned employee makes his contribution. He, therefore, submitted that since the respondent made his contribution for the first time in the year 1995, the bank also made its contribution in the year 1995. He further submitted that since the deposit was made in the year 1995, no interest accrued on such deposit during any period prior to the date of deposit. Therefore no interest is payable on such deposit made by the bank by way of its contribution to the Provident Fund account of the respondent. The Provident Fund account is managed by a Board of Trustees and learned Counsel for the bank is right in submitting that the trustees cannot be asked to pay interest to the respondent for the years 1970 to 1995, even without a deposit being made either by the respondent employee or by the employer bank. The trustees are obliged to pay interest at the prescribed rates only on the deposits made in the account. Certainly the trustees are not obliged to pay interest for the period during which there was no deposit either by the bank or by the respondent, and there fore the submission urged on behalf of the bank is legally correct. But the submission ignores a basic fact. In the instant case the learned Judge has not directed the trustees to pay interest in accordance with the relevant Provident Fund Rules. The direction is to the bank to deposit in the Provident Fund account of the respondent an amount which he would have earned by way of interest in that account on the bank's contribution. Since the employer illegally did not treat him as a confirmed employee and did not deposit its contribution in the Provident Fund account, the Court has directed the appellant bank to deposit an amount equal to the interest that would have accrued on the bank's contribution only, to compensate the respondent for the monetary loss suffered by him on account of the bank's fault. The amount directed to be deposited by the bank in the respondent's Provident Fund account is to compensate the respondent for the loss suffered by him by way of loss of interest. Such direction can be made in exercise of writ jurisdiction and it is not correct to submit that the scheme or the rules have been violated. Those rules, or the provisions of the scheme, are not violated if the bank is directed to make

the payment, which it should have made, treating the respondent as a confirmed employee. The loss of interest suffered by the respondent is on account of the bank's fault, and therefore a direction has been issued to the bank to compensate the said loss. If such a direction were issued to the trustees of the fund, perhaps the direction could be challenged by the trustees. But that is not the case. We are of the view that the direction made by the learned Judge does not breach any provision of the Provident Fund Scheme or the Provident Fund Rules. We, therefore, find no merit in the appeal, and it is accordingly dismissed. As requested by the learned Counsel for the Bank, three months time from to-day is granted to comply with the direction of the learned Judge.