

(2014) 01 J&K CK 0006

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 178 of 2011 and C.M.A. No. 200 of 2011

Sudarshan Kumar Khajuria

APPELLANT

Vs

State of J. and K.

RESPONDENT

Date of Decision : 31-01-2014

Acts Referred:

Citation : (2014) 1 JKJ 10 : (2014) LabIC 1963

Hon'ble Judges : Hasnain Massodi, J

Bench : Single Bench

Advocate : Abhinav Sharma, Advocate for the Appellant; A.A. Khan, Advocate for the Respondent

Final Decision : Allowed

Judgement

Hasnain Massodi, J.—Petitioner after serving State Government, retired as Accounts Officer, J&K Vigilance Organization, Jammu on

31.5.2005. He, while in service, made contributions to his General Provident Fund (GPF) account. He claims to have made a request within the

time prescribed under rules to the respondents to refund his G.P. Fund deposits. However, for no fault of the petitioner, amount due was not paid

till July 2010. Petitioner's case is that he is entitled to interest on the amount illegally retained by the respondents, from the date it was due to be

released in his favour, till the actual date of its release. It is stated that an amount of Rs. 18,44,400.00 was lying in his G.P. Fund account on the

date of his retirement i.e. 31.5.2005 and only an amount of Rs. 12,96,334.00 was paid to him and that too on 23.7.2010.

2. According to the petitioner the amount of Rs. 5,48,066.00 is unauthorisedly withheld by the respondents and that the aforesaid amount together

with the interest in terms of G.P. Fund Rules, is payable to him by the respondents. It is pleaded that as petitioner submitted his claim within the prescribed time i.e. six months from the date of his retirement, Rule 20, G.P. Fund Rules would have no application in petitioner's case.

3. Petitioner on the strength of averments made in the petition seeks following relief:

(a) Writ of mandamus, commanding and directing respondent to refund the balance amount of Rs. 5,48,066/- to which the petitioner is entitled,

being interest on the G.P. Fund Deposit amount, due to the petitioner, on account of delayed payment of Final Refund of G.P. Fund, till the month

of June 2010.

(b) Writ of mandamus, commanding and directing respondents to pay an additional amount as interest at market rate on Rs. 5,48,066/- from the

month of July 2010 till the end of the month, preceding the month the respondents make payment of Rs. 5,48,066/-.

4. The writ petition is opposed on the grounds that petitioner's case was received from the Department he served before retirement i.e. Vigilance

Organization, on 12.5.2010 vide No. SSP/Accts/10/1247-05/VOJ and receipt No. 487 dated 15.5.2010 issued accordingly. It is pleaded that

as the case was received five years after petitioner's retirement, he was entitled to interest for a period of six months from the date of his retirement

in terms of SRO 254 dated 2.9.2008; that the Chief Accounts Officer, District Fund office Jammu transferred G.P. Fund balance in the account of

the petitioner to the Accounts Officer G.P. Fund Cell, Police Department on 12.7.2010 and the payment authority for an amount of Rs.

12,96,334/- issued on 23.7.2010.

5. It is next pleaded that petitioner's case for payment of G.P. Fund deposits, complete in all respects, was required, to, be submitted by the

respondent No. 6 to respondents 1 to 5 within six months from the date of his retirement and that the case was instead submitted, though

incomplete, on 21.01.2006 beyond the prescribed period. The case is said to have been returned in original vide letter No. DFOJ/PFB/505 dated

06.06.2006 to the Accounts Officer, Vigilance Office Jammu-Respondent No. 6 herein. The claim, according to respondents 1 to 5, was

resubmitted-complete in all respects on 15.5.2010 and settled for final payment

in July 2010. According to the respondents it is for the petitioner to establish that he discharged his part of the obligation in terms of G.P. Fund Rules, within time prescribed under Rules.

6. I have gone through pleadings and record available on the file. I have heard Id. Counsel for the parties.

7. J&K Civil Service Regulations, Vol. II Appendix XVI-A contains Rules regulating the General Provident Fund. Rule 7 provides for interest on

G.P. Fund deposits. It empowers the Government to reduce the rate of interest prescribed under the Rules. Note-1 to Rule 7 recast vide Finance

Department Notification SRO 313 dated 8.6.1978 assumes importance in context of present controversy. It reads:

Before the amount at an Officer's credit in the Fund is finally paid under rules, his account shall be credited with interest up to the end of the month

preceding that in which the payment is made.

8. A bare look at the Note-1 would reveal that the interest is to be added or credited till the amount to the officer's credit in the Fund is finally paid

under these rules. The expression ""finally paid under rules"" warrants our attention. The rule makers were free to lay down that interest would be

added till the Government employee retires or stops making subscription to the fund. In that eventuality the amount to the credit of an employee

would not earn any interest after retirement of a Government employee. However, the rules visualize that final payment of the deposit may take

some time without any fault on part of the retired Government employee or erstwhile subscriber to the Fund. In such a case the retired employee

cannot be penalized on account of delay in submitting G.P. Fund case, not attributable to him. Rule 20 also needs to be noticed. It states

Unclaimed deposits,-- Sums remaining unclaimed for a period exceeding 6 months should be transferred to deposits at the end of each year, and

be dealt with under the ordinary rules relating to ""deposits"".

The Rule has been amended vide SRO 254 of 2008 and ""2"" years substituted for ""6"" months. In view of the amendment the deposit will not earn

interest after two years in case it remains unclaimed.

9. On conjoint reading of Rule-7 and Rule 20 it becomes abundantly clear that a Govt. employee on his retirement has to submit an application for

payment of the amount lying in his G.P. Fund account. In case he fails to make

such application within the period mentioned in Rule 20 i.e. six months or two years as the case may be, the amount to his credit in the Fund is not to earn any interest. He, however, cannot be deprived of his right to have interest due, added to his deposit in the Fund in the event his G.P. Fund case is not processed by the office where he was employed at the time of his superannuation commits any lapse or delay in forwarding his G.P. Fund case.

10. In the present case there is nothing on record to suggest let alone establish that the petitioner submitted application for payment of his G.P.

Fund deposit six months after the date of his retirement on superannuation. The respondents in their reply in opposition of the writ petition have not

held petitioner responsible for delay in submitting his claim for payment of the deposit. The delay in processing the petitioner's case is attributed to

the office where petitioner was serving at the time of his retirement. The delay attributable to the said office, cannot be used to deprive the

petitioner of his right to get interest on his deposit, otherwise guaranteed under Rule-7, Note-1. The petitioner therefore would be entitled to

interest on his G.P. Fund deposit from the date of his retirement on superannuation till it is paid to the petitioner.

11. For the reasons discussed, the writ petition is allowed. The respondents are directed to work out the interest accrued on petitioner's G.P. Fund

deposit in terms of Rule-7, Note-1, Appendix-XVI-A, Volume-II Rules Regulating the General Provident Fund and pay the amount deposited

with the interest so worked out, to the petitioner within three months from the date of receipt of copy of this order. Disposed of.