
(2014) 04 PAT CK 0063
In the Patna High Court
Case No : C.W.J.C. No. 14124 of 2013

The Bihar State Co-Operative Bank Ltd.	APPELLANT
Vs	
The Union of India	RESPONDENT

Date of Decision : 04-04-2014

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 10, 15, 17, 17(3)(b), 3

Citation : (2015) 144 FLR 422 : (2014) 4 PLJR 1

Hon'ble Judges : Kishore Kumar Mandal, J

Bench : Single Bench

Advocate : Y.V. Giri and Santosh Kumar Singh, Advocate for the Appellant

Judgement

Kishore Kumar Mandal, J.—The petitioner herein is a Body Corporate registered under the Bihar Cooperative Societies Act is a Cooperative Bank as defined in the Deposit Insurance Corporation Act, 1961 and is aggrieved by the order dated 13.12.2010 (Annexure-4) and 22.5.2013 (Annexure-11) passed by the Regional Provident Fund Commissioner, Bihar, (respondent No. 2) in the light of the direction issued by this Court in C.W.J.C. No. 17960 of 2009 and analogous writ petitions and C.W.J.C. No. 3993 of 2009, respectively whereby the respondent No. 2 was directed to take appropriate decision considering the claim and counter claim of the employees and the petitioner Bank. The matter pertains to grant of benefit of Provident Fund (PF) to the employees of the petitioner Bank covering the period 1.7.1983 to 31.3.2004.

Background facts:

2. Employees of the petitioner Bank are governed by Provident Fund Rules framed by the Bank in the year 1973 which after approval of its Board of Directors was submitted to the respondent Regional Provident Fund Commissioner (for short "the Commissioner") for approval and grant of exemption. The aforesaid P.F. Rules was/were approved by the respondent Commissioner and the exemption was granted to the Bank w.e.f. 1.6.1973.

Board of Trustee (BOT) was duly constituted under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for short "the 1952 Act") for the management of the Provident Fund of the employees of the petitioner Bank in accordance with the P.F. Rules. Section 17(3)(b) of 1952 Act prohibits the Bank or the BOT from making any change/amendment in the approved P.F. Rules after grant of exemption to the prejudice of the employees without taking permission/leave from the Central Government. The P.F. Rules provided payment of compound interest on PF, deposit(s) by the BOT. The respondent Bank was mistakenly enlarging simple interest on the advance taken out of the, P.F. deposit of the employees while paying compound interest on the entire P.F. deposits of the employees while passing compound interest on the entire P.F. deposits of the employees. The Bank, thus, suffered heavy loss on this account. In order to meet this situation and reduce the loss, the BOT took a decision in its meeting held on 20.3.1996 to charge compound interest on the P.F. Advance from the year 1995-96. Again the BOT in its meeting held on 20.10.2003 decided to charge compound interest on advance against P.F. deposit of the employees with effect from the date of actual advancement i.e. 1.7.1983. It is to be noted that BOT was empowered to grant advance/loans to employees against P.F. as per the staff regulation framed by it apart from others advances such as conveyance advance. As per the staff regulation, the advance/loan against P.F. deposit was required to be recovered from salary or to be adjusted at the final withdrawal of the P.F. amount of the concerned employee. Several writ petitions were filed for quashing the resolutions of the BOT of the petitioner Bank taken on 20.3.1996 and 20.10.2003 whereby and whereunder the BOT had resolved to charge 12%, compound interest per annum on the advance(s) made by the BOT to the members of the Employees Provident Fund Trust with effect from the date of actual advance i.e. 1.7.1983. These writ petitions being C.W.J.C. No. 17960 of 2009 (Hriday Prasad v. The State of Bihar and Ors.) and analogous was disposed of by order dated 29.1.2010 (Annexure-3) whereby the respondent Commissioner was directed to consider the grievance of the petitioner and pass appropriate order. It is apposite to extract relevant part/portion of the said order hereinbelow :--

"4. Counsel for the Bank states that the Regional Provident Fund Commissioner is aware of the resolution of the Board of trustees dated 20.3.1996 and 20.10.2003, as contained in Annexures-7 and 9, and it is for the Regional Provident Fund Commissioner to consider whether the aforesaid two resolutions are contrary to the scheme approved by him and this Court should not direct the Regional. Provident Fund Commissioner to prosecute the Bank for resolving to levy compound interest @ 12% from the date of advancement as such decision has been taken by the Board of Trustees only to salvage the financial crisis which has engulfed the fund/Bank.

5. Having heard the counsel for the petitioners, Bank and the Regional Provident Fund Commissioner, I am of the view that the petitioners in these writ applications should invite the attention of the Regional Provident Fund

Commissioner towards the aforesaid two resolutions dated 20.3.1996 and 20.10.2003, contained in Annexures-7 and 9 and thereafter the Regional Provident Fund Commissioner should consider whether the two resolutions are contrary to the scheme, Annexure-3, approved by him and if he is satisfied that the two resolutions are contrary to the scheme approved by him then he should take appropriate action against the Bank in accordance with law. It shall be open for the Regional Provident Fund Commissioner to direct the Board of Trustees to modify the aforesaid two resolutions so that the resolutions are in tune with the original scheme approved by the Regional Provident Fund Commissioner. In the event the Board of Trustees does not choose to modify the aforesaid two resolution so as to make the resolution in tune with Annexure-3 then it shall be the duty of the Regional Provident Fund Commissioner to proceed in terms of the provisions, contained in sub-section (1B) of Section 17 of the Act against the Bank.

6. The Regional Provident Fund Commissioner shall pass appropriate orders in the light of my order, as early as possible in any case within sixty days from the date of the receipt of the representation along with a copy of this order and until disposal of the representation in the light of this order by the Regional Provident Fund Commissioner the compound interest as has been resolved to be charged under the two resolutions, shall not be charged but the amount already recovered shall be subject to the order of the Regional Provident Commissioner."

3. In the light of the aforesaid order, the respondent Commissioner passed an order on 13.12.2010 (Annexure-4) whereby the respondent Commissioner held as under:--

"I have gone through the provisions of the bye-laws and the order of the Hon'ble High Court, Patna passed in this regard. After going through the facts, it is observed that there is no provision of charging compound interest on the employees/ex-employees of the bank which has been done by the bank. This violated the very conditions. Again under Section 10 of the E.P.F. & M.P. Act, 1952, the amount standing to the credit of any member in the fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any court in respect of any debt or liability incurred by the member. Thus, it is very clear that the Provident Fund money of the members/employees/ex-employees cannot be attached from the Provident Fund money. Hence, the amount so deducted/recovered/attached from the Provident Fund money. Hence, the amount so deducted by the bank from the Provident Fund amount is bad in law and tantamounts to infringement of the statute.

Accordingly, it is ordered that the Managing Director of the Bank is to refund back the excess interest either deposited by the employees or recovered from their Provident Fund amount to the employees/ex-employees. The same has to be returned back within thirty days from the date of the order under intimation to the Regional Provident Fund Commissioner, Bihar."

4. The petitioner Bank is said to have carried out audit of the P.F. account by the Auditor/Chartered Accountant(s) in which diverse fundamental defect(s) in the manner the fund was being managed and accounting was being done by the respondent BOT were noticed and reported. The said report has been enclosed by the petitioner Bank at Annexure-5. Considering the fulcrum of dispute, this Court would notice in particular hereinbelow the observations/findings of the Auditor/Chartered Accountant contained in Clause (3) of the Audit Report:--

"3. LAPSES IN THE CONTRIBUTION/DEPOSIT LEDGER AND ADVANCE LEDGER

The provisions of P.F. Act were not fully complied with in the maintenance of Contribution Ledger since following blunders were noticed--

(a) The amount of Advances/Loans whenever given was not deducted from the balance of the Contribution amount standing on that date, though the same was debited in the Advance Ledger. However, the interest was continued to be provided on the whose balance (instead of on net balance) of the deposit in the Contribution Ledger.

(b) Interest was also being charged even on the advances and debited in the Advance Ledger.

(c) The most serious mistakes were found whereby the balance of advance accounts i.e. Dr. Balances were added and sometimes deducted to the balance of contribution amount on 4 to 6 occasions during the said period as mentioned below--

(i) On 31.12.1983, outstanding balance of advances as per Advance Ledger was created/added in the balance of deposit amount in the Contribution Ledger.

(ii) On 1.4.1998 outstanding balance of advances as per Advance Ledger was debited/deducted in the balance of deposit amount in the Contribution Ledger.

(iii) Again on 30.6.1999, outstanding balance of advances as per Advance Ledger was created/added in the balance of deposit amount in the Contribution Ledger.

(iv) On 1.1.2004 outstanding balance of advances as per Advance Ledger was debited/deducted in the balance of deposit amount in the Contribution Ledger.

(v) During the period 1997-98, 1998-99 and upto May, 1999 the advances given were not debited/posted in the Advance Ledger and it was rather directly deducted from the balance of contribution amount in the Contribution Ledger however on 30.6.1999 these advances were then debited/added in the balance of advance amount in the Advance Ledger.

The overall impact of these addition, deduction and re-addition in the contribution amount led to give inflated amount of interest and the contribution in the Contribution Ledger."

5. When the said order passed by the respondent Commissioner was not being complied with, a contempt application being M.J.C. No. 3440 of 2010 was filed

before this Court for compliance of the order dated 29.1.2010 passed in C.W.J.C. No. 17960 of 2009. Few more such writ cases were also filed. A Bench of this Court by order dated 6.5.2011 (Annexure-6) disposed of the contempt application directing the respondent Commissioner to proceed to attach the account of the Bank with the Reserve Bank of India if the Bank had not complied with the order. Having regard to the said order, necessary steps were taken by the petitioner Bank and the petitioners of C.W.J.C. No. 17960 of 2009 and analogous cases were granted the relief in the light of order dated 13.12.2010 (Annexure-4) passed by the respondent Commissioner. Another writ petition being C.W.J.C. No. 3993 of 2009 raising similar issues as raised in C.W.J.C. No. 17960 of 2009 was filed by one Mr. Mahendra Prasad (intervenor respondent herein) for quashing the resolution(s) dated 20.3.1996 and 20.10.1996. This Court disposed of the said matter in the light of order passed in C.W.J.C. No. 17960 of 2009 by a proceeding dated 2.3.2012 (Annexure-7) relevant part/portion whereof reads thus:--

"From the pleadings on record and the submissions made in support thereof by the rival parties, it appears that there is agreement at Bar that the Bank would not be entitled to charge compound interest on the loans/advances paid to and received by the subscriber to the said fund. However, there is serious dispute with regard to the actual payment to be made to the petitioner from the said fund even without charging compound interest on the loans/advances made from the said fund to the petitioner. Learned counsel for the petitioner submits which is not disputed by the respondent Bank that in such a situation the petitioner shall have remedy of approaching the respondent Regional Provident Fund Commissioner. Learned counsel for the Regional Provident Fund Commissioner (respondent No. 5) submits that if any such grievance is raised before the said authority the matter shall be examined and resolved in accordance with the provision contained under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

Considering the claim and counter claim of the parties, this Court feels inclined to dispose of the application directing the petitioner to raise a claim in this regard by filing appropriate representation together with a copy of the present order before the Regional Provident Fund Commissioner (respondent No. 5) within a period of 4 weeks from today whereafter the said respondent shall examine the claim(s) of the petitioner as well as the case of the respondent-Bank and take appropriate decision in accordance with law as quickly as possible preferably within 6 weeks from the date of its filing/presentation, It will be open to the said respondent to provide an opportunity of filing additional ground(s), if any, to both the parties."

6. Few other writ applications were also filed thereafter. One of such writ petition being C.W.J.C. No. 7990 of 2012 was disposed of on 30.7.2012 (Annexure-8) wherein this Court having noticed the stand of the respondent Bank that the order dated 13.12.2010 passed by the respondent Commissioner had been

accepted and acted upon by the petitioner Bank (respondent in writ petition) directed the petitioner to raise a claim in this regard before the respondent Commissioner in the light of order dated 2.3.2012 passed in C.W.J.C. No. 3993 of 2009 for consideration and disposal thereof in accordance with law. This Court in the said order noticed the submission of the respondent Bank as under:--

"Learned counsel for the respondent Bihar State Co-operative Bank Limited, on the other hand, refers to the counter affidavit filed on behalf of the Bank in which it is stated that while the Bank has accepted the order of the Regional Provident Fund Commissioner a stand has been taken that only one way left is to calculate the provident fund loan taken by the members by reducing it from the deposit on the date on which the member has taken the loan as the same method for calculation of provident fund is also applicable to the members of Employees' Provident Fund Organisation. In this regard it is stated that a Chartered Accountant Firm was engaged to audit the P.F." Account of 70 persons with due information to the Provident Fund Commissioner by letter dated 9.3.2011. As per the report of the Chartered Accountant several lapses have been found;

It is further pointed out that in a writ petition being CWJC No. 3993 of 2009 (Mahendra Prasad v. The State of Bihar & Ors.) this Court by order dated 2.3.2012, in view of the same stand taken by the respondent Bank regarding the mode of accounting to be followed, disposed of the writ petition directing the petitioner to raise a claim in that regard by filing appropriate representation before the Regional Provident Fund Commissioner who shall examine the case of the petitioner as well as the case of the Bank and take appropriate decision in accordance with law within a period of six weeks from the date of filing of the representation.

In the aforesaid view of the matter, I am of the view that so far as the charging of compound interest is concerned, since the matter has already been decided by the Regional Provident Fund Commissioner which has not been challenged, the only issue remains as to the mode of accounting to be followed with respect to determining the final amount to be paid to the petitioner."

7. The respondent Commissioner again considered the representation of the petitioners of the said case and disposed of the same by order dated 22.5.2013 (Annexure-11). The said order is under challenge in this writ petition. The respondent Commissioner in the order dated 22.5.2013 (Annexure-11) having considered the submissions of the parties noted as under:--

"During the proceedings the bank submitted the ledgers volumes and other records and the employees also made document submission.

From the submission of the members and submission of the management, the following state emerged:--

(a)The loans/advances were applied for by the respective members to the extant Board of Trustees.

- (b) Loans were sanctioned by the Board of Trustees and given out of the bank account of the Board of Trustees.
- (c) Loans were given at simple interest.
- (d) A separate loan register was maintained for loans sanctioned.
- (e) There was no deduction in the Provident Fund account of the member in respect of the loans sanctioned.
- (f) At the option of members, loans were repaid to the Board of Trustees by deductions from the salary including the simple interest on the loan given by the Board of Trustees.
- (g) The loan amount was recovered and adjusted in the accounts and ledgers of the Board of Trustees.
- (h) It is submitted by the members that this facility of giving loans and advances is supported by the Bye-Laws of the Board of Trustees.
- (i) At the time of retirement, the outstanding loan along with (simple) interest was deducted from the (sic)

It is contended by the employees that while transferring funds on settling provident fund accounts on cancellation of exemption, the Management/Board of Trustees had applied compound interest to the loan accounts and had deducted the same from their Provident Fund accounts which has resulted in the negative balance on the claims of the employees.

From the submissions of both the parties during the proceedings as well as the decisions of the Hon'ble High Court given in the numerous writ applications filed by the employees of the bank remanding the matter back to the Regional Provident Fund Commissioner to decide essentially the following points are to be decided:--

- (1) Whether the resolution of the Board of Trustees dated 20.3.1996 and 20.10.2003 imposing compound interest on the loans availed by the employees are valid under the Provident Fund Rules of the bank?
- (2) Whether the mode of accounting followed by the Board of Trustees in maintaining a separate ledger for advances and not deducting the amount of loan from the provident fund balances are valid?
- (3) Whether the advances/loans given to the members by the bank were against the provident fund rules or from the provident fund balances.

In order to determine those issues, it would be necessary to understand that the Board of Trustees was constituted by the management of the bank to manage the provident fund accounts of its members through a trust deed. The provident fund rules applicable to the employees of the bank were approved by the Regional Provident Fund Commissioner through an order. Therefore, the first

point above can be very quickly answered that the resolution adopted by the Board of Trustees which are in the nature of changing the rules of provident fund are not valid because the Board of Trustees are not empowered to make changes in the rules as the rules and its amendments are to be prepared by the management and approved by the Board of Trustees.

In order to answer point Nos. 2 and 3, one has to look into the provident fund rules as approved by the Regional Provident Fund Commissioner and the staff regulations of the bank. The staff regulation in Section 3 incorporates the provident fund rules which have been approved by the Regional Provident Fund Commissioner. In Sl. No. 8-advances, it is mentioned at point (a) that temporary advances not exceeding twelve months may be allowed only against the subscription at the employees credit with the sanction of the secretary on a number of grounds listed in the clause. Furthermore, it is an admitted fact by the bank not only during these proceedings but also in sworn affidavits given to the Hon'ble High Court, Patna in various writ petitions that they were maintaining loan ledgers separately from the provident fund contribution ledgers. The bank had submitted its ledgers during these proceedings and the same has been verified by the undersigned. It is clear in these that the advances were recorded separately in the loan register and they were not debited from the provident fund balances of the members. Therefore, if the fact that the loans were given against the provident fund contribution and the practice of maintaining separate ledger are considered together it would appear that the theory matched with the actual practice of accounting. It was only later when the Board of Trustees realized that it was incurring losses that it attempted to charge compound interest on the loans first through its decision dated 20.3.1996 which was with prospective effect and again through its resolution dated 20.10.2003 which was with retrospective effect. Both these resolutions were not within the power of Board of Trustees to adopt. The stand taken by the bank that the provident fund advances given should be debited from the provident fund balances of the members as is being done by the provident fund authorities has to be viewed in the context that the grant of exemption to establishment is based on the fact that the benefits available to the member should not be less than those available to the E.P.F. members. In this case, the benefits are definitely better than the E.P.F. members and therefore that the accounting practice adopted by the Board of Trustees under the existing provident fund rules of the bank are valid. It must be admitted that the practice adopted in the grant of advances and its accounting by the Board of Trustees of the Bank would create financial difficulties to the Board of Trustees but for the reason alone it cannot be cast as invalid.

In view of the foregoing, it is held that the bank is nor permitted to charge compound interest on the loans/advances given to the members and the maintenance of separate ledgers for advances and provident fund contributions is in consonance with the provident fund rules and applicable to the members of the bank and the resolution dated 20.3.1996 and 20.10.2003 adopted by the Board of Trustees are invalid.

The bank is directed to prepare the accounts of all the members in the light of these directions and pay the balances, if any, to the members accordingly within a period of three months. Records submitted by the bank may be collected on any working day."

8. Heard Mr. Y.V. Giri learned senior counsel for the petitioner, Mr. Rajendra Narain, learned senior counsel for one set of intervenor respondent(s) (I.A. No. 5417 of 2013), counsel for the another set of private respondents and Mr. R.S. Pradhan who appeared on behalf of the respondent Regional Provident Fund Commissioner. Parties have exchanged pleadings.

9. Learned counsel for the petitioner has contended that the petitioner Bank in the light of order passed by this Court in C.W.J.C. No. 17960 of 2009 while taking a decision through Board's item No. 8 dated 16.6.2011 decided to get the account of the P.F. audited by a registered Chartered Accountant. The Chartered Accountant after audit of the P.F. accounts found several lapses/loopholes in the mode of accounting and maintenance of separate ledgers inasmuch as there was no interest charged on the advance made to the employees from the said fund whereas, on the other hand, excess payment of compound interest @ 12% P.A. on the total deposit of the employee in P.F. account without deducting loans/advance therefrom was being claimed and granted. The compound interest was payable/admissible only on the remainder amount in the fund after grant of loan/advance. These serious lapses in the mode/manner of accounting had resulted in grant of undue benefit to the members of the Fund/Trust having telling effects on the financial health of the petitioner Bank. It has thus been submitted that the advances paid to and received by the employees out of the provident fund were required to be debited from the P.F. account of the concerned employee and on the remainder/balance amount only admissible compound interest is payable to the members of the Fund/Trust. The Bank was maintaining a separate register/ledger for such advance(s)/loan(s) and charging simple interest thereon without deducting the amount so advanced from the P.F. account of the concerned employee. The aforesaid method of accounting is permissible in law inasmuch as the respondent Commissioner is also maintaining and handling the P.F. account of the employees of the petitioner Bank after 1.4.2004 adopting the same method. The amount taken as advance by the employees are obliged to be deducted from the outstanding P.F. balance of the concerned employee and the compound interest is payable to the employee on the remainder amount (i.e. the actual balance in the fund). The petitioner Bank or the BOT of the Bank, in fact, allowed advances to its members from the P.F. (although termed as loan). The facility of advancing loan is not supported by the bye-laws of the BOT. The respondent Bank or the BOT had earlier curiously failed in complying with the provisions envisaged in Section 15 of the 1952 Act. Such method of accounting in the light of the prevailing Staff Regulation and the P.F. Rules framed by the Bank is permissible being not in breach of the provisions contained in Section 17 of the 1952 Act and as such, the order passed by the respondent Commissioner as contained in Annexure-11 is bad in law and merits to be quashed.

10. Per contra, the private respondent as well as the respondent Regional Provident Fund Commissioner (respondent No. 2) supported the impugned order.

11. Mr. Narayan who appeared on behalf of the some of the private respondents advanced the lead submission(s). He contended that such method of accounting as propounded by the respondent Bank is contrary to the Regulation and the P.F. Rules framed by the Bank/BOT. It is also in teeth of the provisions contained in Section 17 of the 1952 Act as the respondent Bank having been granted/exempted under Section 17 of the 1952" Act cannot alter/modify any such rule provision to the detriment of the members of the P.F. Fund/Trust without obtaining prior sanction/approval of the Central Government which admittedly has not been done in the present case. Drawing attention of the Court to the Deed of Trust created on 14th October, 1982 between the Board of Directors of the petitioner bank and the BOT, it is submitted that BOT was made responsible for management, investment, custody and disbursement of the employees provident fund. The BOT was vested with the power to advance loan to the employees out of the Provident Fund and recover the same in installments. According to the P.F. Rules of the Bank, in case of any dispute/doubt, the matter was required to be referred to the Regional Provident Fund Commissioner for resolution thereof. The Bank framed Staff Regulation (Annexure-A/1) and under Clause (20) thereof, diverse advances were to be allowed in favour of the employees. Clause (3) of Rule 20 empowered the Board to frame separate Provident Fund Rules to deal with advance against provident fund. Sub-clause (vi) thereof states that advance against provident fund shall carry simple interest at the rate to be fixed by the Board from time to time. Clause/Rule 1 of the Provident Fund Rules framed by the Bank defines certain terms used in the Rule including "subscription" and "contribution". Rule 6 thereof provides that the rate of interest shall be fixed from time to time by the Board of Directors to be calculated on the balance at the credit of the subscriber on the last date of each month and to be added to the principal on the 1st January of each year. Rule 8 thereof provides temporary advances to be extended to the employees against the subscription at the employees credit. Such advances is liable to be recovered in not more than 48 successive monthly installments. Interest of such advances shall be charged at the rate referred to in Rule 6. The BOT in its meeting held on 20.3.1996 decided to charge 12% compound interest on advances to be made to the employees from the year 1995-96. The same was, however, not approved by the respondent Commissioner. Again on 20.10.2003, the BOT in its meeting held on 20 February vide Agenda No. 6 resolved to charge compound interest on the loan from the date of actual advancement (1.7.1983) and also that P.F. advance will be given after debiting the amount from the P.F. deposit w.e.f. 20.10.2003. The same was also not approved by the respondent Commissioner. The methodology of accounting as suggested by the petitioner Bank is contrary to the P.F. Rules framed by the Bank since any benefit accruing to the employees cannot be altered/modified without getting prior approval of the Central Government. The respondent Commissioner in the impugned order has clearly

held that the previous method of maintenance of separate ledger for advances and provident fund contribution is in consonance with the provident fund rules applicable to the members of the Bank and accordingly, the Bank has been directed to prepare the account of all members in the light of directions contained therein and to pay the balances if any. No fault therefore can be found with the said order.

12. I have considered the rival submissions of the parties. The petitioner Bank was granted exemption for the period in question under Section 17 of the 1952 Act. The condition for grant of exemption is that the establishment to which this Act applies if, in the opinion of the appropriate Government, the Rules of its Provident Fund with respect to the rates of contribution are not less favourable than those specified in Section 6 and the employees are also in enjoyment of other Provident Fund benefits which on the whole are not less favourable to the employees than the benefits provided under this Act or any Scheme in relation to the employees in any other establishment of a similar character or any establishment if the employees of such establishment are in enjoyment of benefits in the nature of Provident Fund, pension or gratuity and the appropriate Government is of the opinion that such benefits, separately or jointly, are on the whole not less favourable to such employees than the benefits provided under this Act or any Scheme in relation to the employees in any other establishment of a similar character.

13. The contention of the petitioner Bank is that the method of accounting as suggested by the Chartered Accountant in the report in question does not contravene any of the provisions contained in Section 17 of the 1952 Act, and as such, it is permissible in law. On the other hand, the contention of the respondents are that such method of accounting as suggested by the Chartered Accountant and relied upon by the petitioner Bank will result in accruing less benefit to the employees/members of the Fund/Trust and will also be in breach of the P.F. Rules framed by the petitioner Bank and therefore, not permissible in law. The aforesaid aspect of the matter was adverted to by the respondent Commissioner in the order dated 22.5.2013 (Annexure-11) inasmuch as an issue was framed in this regard and thereafter discussed as already noticed in the previous part of this order. The Staff Regulation framed in this regard by the petitioner Bank was approved by the Commissioner. It provides for advances in the nature of temporary advances against the subscription at the employees credit on certain grounds listed in the relevant clause. It was found that the petitioner Bank was maintaining separate loan ledgers from the Provident Fund Contribution Ledger. The Respondent Commissioner, therefore, came to the conclusion that loans/advances were given against the Provident Fund contribution and a separate ledger was maintained and therefore, there was no apparent contradiction or illegality in doing so. The grant of exemption to establishment (petitioner Bank) is based on the premise that the benefits available to the members should not be less than those available to E.P.F. members. Seen thus, it is apparent which is also not disputed that the benefits

being extended to the members of the Trust/Fund were better than the E.P.F. members and the same did not offend the existing provisions applicable to the E.P.F. members. The Staff Regulations framed by the Bank (Annexure-A/1) in Clause 20 provides for advances of different nature. Sub-clause (iii) of Clause 20 provides Advance against Provident Fund. Clause (Vi) thereof provides for interest on such advances. Chapter-III of the Staff Regulation contains the P.F. Rules formulated by the petitioner Bank which was approved by the Respondent Commissioner while granting the exemption. The Rules provide for grant of advance in Rule 8 thereof. This Court would reproduce hereinbelow sub-rule (a) of Rule 8 of the Provident Fund Rules framed by the bank:--

"8. Advance:

(a) Temporary advances not exceeding twelve month's pay may be allowed only against the subscription at the employee's credit with the sanction of the Secretary on any of the following grounds provided that the total of the advances shall at no time exceed 12 month's pay or 3/4th of his own subscription plus accrued interest whichever is less.

(1) To pay expenses in connection with the illness of the subscriber or member of his family.

(2) To pay expenses in connection with marriage, funerals or cremation which by religion of the subscriber it is incumbent upon him to perform and in connection with which it is obligatory that the expenditure should be incurred.

(3) For purchasing land.

(4) For building or repairing his own house.

and

(5) For payment of Life Insurance Premium."

14. Interest on such advances are to be fixed and realized as per Rule 6 which states that rate of interest shall be fixed from time to time by the Board of Directors. Interest shall be calculated on the balance at the credit of the subscriber on the last date of each month and will be added to the principal on the 1st January of each year. It thus appears that any advance to be made to the members of the Trust/Fund shall earn interest as per the rate as fixed from time to time by the Board of Trust. The rate of interest payable on the P.F. deposit cannot be altered/modified to the detriment of the member(s) of the Trust/Fund. However, interest on the P.F. deposit of an employee shall be calculated on the balance at the credit of the subscriber on the last date of each month which is required to be added to the principal on the first January of each year. What does the word "balance" mean? Obviously, it refers to the P.F. credit of the concerned employee/member of the Trust after deducting the amount of loan/advance taken therefrom by the employee. The method of accounting as suggested by the Chartered Accountant of the petitioner Bank in the audit report and propounded

by the petitioner Bank before this Court, therefore, does not appear to be in conflict with the P.F. Rules framed by the Bank. The petitioner Bank has asserted and which has not been disputed by the private respondent(s) or the respondent Commissioner that in similar manner the management of P.F. Account and grant of interest thereon are adopted by the other establishments including the Commissioner. If that is the case then can it be said that the petitioner Bank in proposing to adopt the same methodology in maintenance of the P.F. account and paying declared or admissible interest thereon to the members of the Fund/Trust is contrary to the provisions contained in Section 17 of the Act. If the advances have been made out of or against the P.F. credits of an employee/member of the Trust then the same is obviously required to be deducted from the P.F. credit of the concerned employee and interest on the remainder is only liable to be paid. Otherwise, it will result in grant of undue benefit to the employees on account of obvious mistake in the mode of accounting which is in the teeth of the P.F. Rules framed by the petitioner Bank. The P.F. Rules framed by the petitioner Bank and approved by the appropriate Government provides to the same effect. If the petitioner bank was earlier not doing so under some misconception resulting in undue benefit to the members of the Fund/Trust which was having telling effect on the financial health of the petitioner Bank then can it be said that they are stopped from rectifying the said mistake in the manner which is not contrary to the provisions of the 1952 Act. This Court in the present proceeding is not concerned with the two resolutions passed in this regard by the Board of Trust which became subject matter of consideration of diverse writ petitions and got disapproval thereof. The question posed is whether such mistake in the matter of accounting/maintenance of the P.F. Account of the concerned employee by the petitioner Bank should be allowed to be continued although the same is not in accordance with the Staff Regulation as well as the P.F. Rules framed by the Bank.

15. In my considered view, the petitioner Bank is entitled to rectify the mistake if the same is not found contrary to the P.F. Rules framed by it and approved by the Respondent Commissioner for grant of exemption.

16. A contention has been raised that some of the employees of the petitioner Bank in the light of orders passed by this Court have already been granted the benefit of the existing method of accountancy of the P.F. and the respondent(s) cannot be treated differently. The said contention, in my view, does not hold much water. Any mistake and the undue benefits flowing therefrom cannot be allowed to be perpetrated if the same is found unjust and contrary to the relevant rule framed in this regard. The acceptable mode of accountancy is that if any employee or member of the Fund or Trust takes advance/loan from or out of the P.F. Fund then the loan/advance amount is required to be deducted from the P.F. credit/deposit of the concerned employee and payment of compound interest on the balance or remainder of the credit is only payable. Even the P.F. Rules of the petitioner Bank provide for such deduction and calculation of interest. The submission of the respondent that such method of accounting of the P.F. Fund and payment of interest only on the remainder (after deducting the advance

taken by the employee) would result in a situation which will be less beneficial to the employees/members of the Fund/Trust although appears to be attractive but on deeper scrutiny is found hollow since the benefits now flowing to the members of the Fund/Trust/employees of the petitioner Bank cannot be said to be less favourable than the benefits provided under the Act. This Court would again notice here that as per the petitioner Bank, the Respondent Commissioner after revert of the management of the fund to it is adopting the same methodology of accounting of the P.F. Fund for calculating interest. It would be unacceptable to contend that the mistake committed by the petitioner Bank in maintaining the P.F. account should be allowed to be perpetrated as rectification thereof would make the benefits flowing to the employees of the establishment (petitioner Bank) less favourable to the employees. No one has a legal or vested right to get unjust enrichment/benefit.

17. Be it noted here that in C.W.J.C. No. 7179 of 2013, this Court under order dated 12.12.2013 (Annexure-8) did not find any infirmity in the stand of the petitioner Bank taken to the same effect.

18. I am, therefore, unable to uphold the impugned order dated 22.5.2013 (Annexure-11) passed by the respondent Regional Provident Fund Commissioner, Patna, -"insofar as it negates the claim of the petitioner Bank to rectify its obvious mistake in the method of accounting of the P.F. Fund as per the provisions of the Act and P.F. Rules framed in this regard by the petitioner Bank. That part of the order dated 22.5.2013 is quashed and set aside.

19. Before parting with the records, this Court would clarify one aspect of the matter that would result following this order. The benefits already given to the employees of the petitioner Bank shall not, in any way, be affected by the present order. In other words, the present order shall be given effect to in the cases where the employee(s) of the petitioner Bank are to be given their lawful dues, if any. To put it differently, the petitioner Bank shall calculate the pending claims of the P.F. amount to its employees for the period in question in the light of the present order. The writ application is allowed in the aforesaid terms. There shall be no order as to cost(s).