(2014) 09 KAR CK 0322

In the Karnataka High Court

Case No : Writ Petition Nos. 970-1044/2014 and 9171-9173/2014 (S-R)

V. Jagadeesh APPELLANT

Vs

Karnataka Power Corporation Ltd. RESPONDENT

Date of Decision : 17-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 16(1)(b)

Citation : (2015) 1 AKR 379 : (2015) 145 FLR 532

Hon'ble Judges : Dilip B. Bhosale, J

Bench : Single Bench

Advocate : S.S. Naganand, Sr. Advocate for Sriranga S., Advocate for Just Law, Advocate for the Appellant; S.N. Murthy, Sr. Advocate for S.N. Murthy Associates and Niloufer Akbar, A.G.A, Advocate for the Respondent

Judgement

Dilip B. Bhosale, J.—These writ petitions, under Article 226 of the Constitution of India, are directed against the order dated 30.11.2011 issued by respondent No. 1-Karnataka Power Corporation Limited (for short "KPCL"), insofar as it awards compound interest on the Management''s contribution towards the Contributory Provident Fund (for short "CPF") and on non-refundable loan. In other words, the petitioners seek declaration that the action of the KPCL in awarding compound interest on the Management''s contribution towards CPF from the date of retirement till 31-3-2011 and on non-refundable loan is illegal insofar as the petitioners are concerned. They have also prayed for refund of the compound interest amount recovered from the petitioners.

1.1 At the outset, let me observe at this stage that the petitioners have no objection for paying reasonable "simple interest" on the Management''s contribution towards CPF and objection is for the payment of interest upon interest or compound interest.

2. Briefly stated the facts leading to these writ petitions are as follows:

The petitioners are retired employees of the KPCL. The Government of Karnataka vide its Order dated 18.7.1970 established KPCL, incorporated under the Companies Act, 1956. Prior to July, 1970 the Government were getting the work of building, owning and operating Hydro Electric Power Projects in the State through HECP Organisation. The HECP was disbanded and the personnel who were working with them were placed at the disposal of KPCL on deputation basis. Later, in 1982 the employees of HECP were absorbed into the services of KPCL.

2.1. All employees of KPCL were covered by CPF Scheme introduced by it in 1974. After the absorption of HECP employees, as aforementioned, the service associations and trade unions of employees of KPCL raised a demand to extend pension as retirement benefit in lieu of CPF to all its employees. KPCL, by order dated 19.2.1983, decided to extend pension as retiral benefit in lieu of CPF and, accordingly called upon its employees to exercise the option. The order dated 19.2.1983 specifically stated that those opting for pension would lose their coverage under CPF.

2.2. Under the pension scheme introduced by the order dated 19.2.1983, employees of KPCL who had retired prior to 1.4.1983 were not eligible for coverage. However, by order dated 8.6.1988, the respondents extended benefit of the pension scheme even to the employees who had retired on or prior to 1.4.1983, subject to the condition that the benefits already drawn by them under CPF and allied schemes and Group Gratuity Scheme would be adjusted with pensionary benefits under the Pension Scheme 1983.

2.3. The petitioners, who were in the employment of KPCL, did not opt for pension when the scheme was introduced in 1983. Thereafter, several representations to the Management were made from time to time by the employees of KPCL, who had not opted for the pension scheme, 1983, requesting to allow them to switch over to the said scheme in lieu of CPF. KPCL accordingly examined the matter in detail and issued a circular dated 31.5.1996 calling upon the CPF optees to exercise option for the pension scheme and stipulated that their option should reach to them by 25.6.1996.

2.3.1. The Board of Directors of KPCL, however, passed a resolution dated 10.6.1996, whereby the condition, imposed by circular dated 31.5.1996 that extension of option to the pension scheme would be subject to grant of exemption by the Regional Provident Fund (for short "RPF") authorities, was withdrawn and the pension scheme became final and fully effective. The Board of Directors of KPCL thereafter, in its meeting held on 9.7.2001 approved the proposal to address to the Government of Karnataka to notify the scheme of terminal benefits of their employees under Section 16(1)(b) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (for short the "Act"). Pursuant to the decision of the Board of Directors, KPCL vide its letter dated 7.11.2011, requested the Government to notify the Scheme. It was made clear in the proposal that the entire financial burden would be borne by KPCL. The Government vide its order dated 15.11.2002, accordingly notified the terminal benefits scheme for all the employees of the respondent. Clause 1.3 of the scheme, however, states that the scheme was made applicable only to the employees who were on the roll of the KPCL on 31.3.2003 and who had exercised option in favour of the pension scheme 1983 and the employees joining the service of KPCL on or after 1.4.1983. Accordingly, by a memo dated 31.3.2003, the KPCL called upon the employees to exercise their fresh options and restricted the right to opt only to those who were on the roll of the KPCL on 31.3.2003. That is how, according to the petitioners, they were excluded from the scheme since they all had retired prior to 31.3.2003.

2.4. The KPCL notified its stand vide order dated 15.11.2002. In other words, vide order dated 15.11.2002, the scheme was brought into effect from 31.3.2003 and it was made applicable only to the employees who were on the roll of the KPCL on 31.3.2003, and the persons like the petitioners who had retired prior thereto were not admitted to pension under the Scheme.

3. It is against this backdrop, some of the employees including petitioner Nos. 1 to 11 filed writ petitions bearing W.P. Nos. 24102/2005, 17907/2005 & 21174/2005 before this court against the order excluding the employees who retired prior to 31.3.2003. The writ petitions were dismissed by learned Single Judge vide judgment and order dated 17.2.2009. It would be relevant to reproduce the concluding paragraph of the judgment dated 17th February 2009, which reads thus:

"17. In the light of the above and given the sequence of events, where the petitioners have already enjoyed the benefit of the retiral benefits they have received, the exercise of giving a retrospective effect to the Memo dated 31.3.2003, by which an option has being granted to the KPCL Contributory Provident Fund optees to switch over to KPCL pension scheme and to accordingly work out a relief for the petitioners with retrospective effect in an exercise that is not warranted. There is no injustice caused to the petitioners. Hence the writ petitions are dismissed."

4. The order of learned single Judge was carried in Writ Appeals bearing W.A. Nos. 949-966/2009. In the meanwhile, other employees had also filed writ petitions and those writ petitions were clubbed with W.A. Nos. 949-966/2009. The writ appeals and the writ petitions were heard and disposed of by the Division Bench vide order dated 24th June 2011. The order of the Division Bench reads thus:

"It is not a matter of dispute, that a representation made by the petitioners, is subject matter of consideration at the hands of the Board of Directors of the respondent-Corporation. The respondent-Corporation in turn has constituted sub-committee, exclusively to consider the representations made by the petitioners. It is also the contention of the learned counsel for the petitioners, that the Board of Directors of respondent-Corporation is expected to hold a meeting for the said purpose, within the next few days, in order to take a final decision on the representation of the petitioners.

2. In view of the above, we consider it just and appropriate to dispose of the instant writ petitions as also the connected appeals, with a direction to the Board of Directors of respondent-Corporation, to take a final decision on the representation made by the petitioners, by passing a well reasoned speaking order, within two months from today.

3. Disposed of accordingly. Needless to mention, that it shall be open to the petitioners to avail of their remedy in accordance with law in case, the decision rendered by the Board of Directors of respondent-Corporation is not acceptable to them."

(emphasis supplied)

4.1. Thereafter, vide order dated 18.11.2011, the time stipulated by the order dated 24.6.2011 was extended.

5. In view of the order dated 24.6.2011, the Board''s Sub-Committee considered case of the petitioners on humanitarian ground afresh and submitted its report. The Board considered the report and vide its resolution dated 22.11.2011, (for short "Board Resolution") authorised the Managing Director to implement the KPCL pension scheme for the retired employees-CPF optees, subject to the following conditions:

i) No payment of arrears of pension from the date of retirement;

ii) they should be ready to refund the KPCL Contribution on CPF amount that has already been settled with interest up to 31.3.2011 as done for others when opted from CPF Scheme to KPCL Pension from 31.3.2003;

iii) they should be ready to refund the Non-refundable loan (management contribution) drawn from the CPF amount during their service in KPCL with interest up 31.3.2011 as done for others when opted from CPF Scheme to KPCL Pension from 31.3.2003;

iv) they should be ready to pay the difference in Gratuity that has already been paid by the KPCL at the time of final settlement;

v) they shall not be eligible for the Commutation of Pension under the KPCL Pension and Allied Schemes;

vi) they should be ready to accept the KPCL Pension and or Family Pension as the case may be minus the amount of Pension and or Family Pension that is being received form the RPF authorities.

vii) they should submit the required option/s (devised for the purpose) duly signed by each of the retired employee (CPF optees) in writing.

viii) they should be ready to repay the amount towards KPCL CPF (management contribution) with interest, Non-refundable loan (management portion) drawn during the service in KPCL with interest & the repayment of Gratuity difference amount in lump sum by way of Cheque/DD/Pay Order within one month;

Some of the retired employees (CPF optees) may find it difficult to pay all the mentioned amount at one go. In such cases, the retired employee may be permitted to pay the interest amount in installments;

ix) with regard to the interest on Management Contribution and Nonrefundable loan (management portion) up to 31.3.2011, the retired employee may opt to pay the whole interest amount in lump sum or in 48 equal installments recoverable from the pension payable. In case the retired employee deceases within that period (i.e. 48 months), the Management may consider the waiving off the balance interest amount);

x) if the retired employees (CPF) fulfills all the above conditions, then only they are eligible for the KPCL Pension and or Family Pension with effect from 1.4.2011 only;

xi) they should give an undertaking in the form of an Affidavit that they would not move any court of law to claim any arrears of Pension etc., in this regard in future."

(emphasis supplied)

6. Pursuant to the decision, as aforementioned, KPCL issued letters/ communications dated 19.12.2011 to the petitioners stating that as per the aforesaid conditions they should pay the CPF amount as well as the "interest amount" to avail the pension scheme. Petitioners were also informed in writing the "interest amount" which they were obliged to pay as per the resolution of the Board.

7. The petitioners did not dispute their liability to pay interest. They, however realized that compound interest was awarded, which they never contemplated, only after they opted for the scheme and furnishing the undertakings, as provided for in the Board resolution. Therefore, they made representations contending that the action of KPCL in awarding compound interest was wholly arbitrary and wrong.

8. The respondent-KPCL have filed statement of objections dated 6.3.2014. They have specifically stated that the petitioners had agreed to all conditions including the condition to refund the Management''s contribution with compound interest and that they had furnished undertakings and affidavits stating so. They have also stated that since the petitioners did not opt for the pension scheme in 1983 and 1995, they were given one more opportunity in 2011 to opt for the scheme only on humanitarian ground.

9. Mr. Naganand, learned Senior Counsel for the petitioners urged that the decision to award "compound interest" was not only wrong but was also illegal. He submitted, in the resolution of the Board dated 22.11.2011, rate of interest

was not decided to be awarded and in any case, it was not decided to award "compound interest" on their contribution from the date of retirement or from the date of receipt of the employers contribution by the petitioners till 31.3.2011. He submitted that, as a matter of fact, the interest earned on the Management contribution by the petitioners was a means of their survival and that awarding of compound interest on the said amount from the date of retirement till 31.3.2011 negates the very means of their survival. He submitted that the petitioners were entitled for the pension scheme in their own right, and asking them to pay compound interest, for the aforementioned period, would amount to leaving them with no benefits for the period from the date of their retirement till 31.3.2011. Mr. Naganand, on instructions from his instructing clients, who were present in the Court, in all fairness, submitted that the petitioners are prepare to pay simple interest, and insofar as the rate of interest is concerned, he left it to the Court. Admittedly, KPCL recover from the petitioners compound interest at the rate of 8% to 12% on the Management''s contribution towards CPF and on nonrefundable loan.

10. On the other hand, Mr. S.N. Murthy, learned senior Counsel appearing for KPCL invited my attention to the letter issued to the petitioners, dated 19.12.2011, to contend that each of the petitioners and other similarly placed employees were informed about the amounts with interest which they were obliged to refund. In other words, he submitted that the petitioners were made aware about the compound interest amount which they were suppose to refund. In support of his contention, he also invited my attention to the undertakings given by the petitioners and affidavits filed by them to submit that the petitioners had unconditionally accepted the scheme and offer made by KPCL on the basis thereof and therefore, it is not open for them to turn-around and make any grievance about charging of compound interest. My attention was also drawn to clause (ii) of the Board''s resolution to contend that as per the resolution the retired employees were extended benefit of pension scheme only if they were ready to refund KPCL contribution on CPF amount that had already been settled "with interest" upto 31.3.2011, as "done for others" when opted from CPF scheme to KPCL pension scheme from 31.3.2003. In short, he submitted once having accepted all terms and conditions to seek benefits of the pension scheme it is not open for the petitioners to challenge it insofar as it awards compound interest on the CPF amount.

11. Against this backdrop, the question that falls for my consideration is whether on the basis of the Board resolution and letters dated 19.12.2011 it was open for the KPCL to award compound interest on the Management''s contribution towards CPF at the rate, of 8% to 12% per annum? In other words, on the facts and in the circumstances of the case, whether KPCL was justified in asking the petitioners to pay interest upon interest or compound interest on the Management''s contribution towards CPF?

12. I have gone through the resolution of the Board dated 22-11-2011, in

particular the conditions on which the pension scheme was extended to the petitioners, and I find substance in the submissions advanced by learned senior Counsel for the petitioners. It is apparent that the Board resolution does not make any reference either to the "rate of interest" or to "compound interest" to be paid from the date of retirement till 31.03.2011. It is true that condition No. 11, based on the Board resolution, does make reference to the "interest" to be paid upto 31-3-2011 "as done for others". On the basis of the expression "as done for others", it was contended on behalf of KPCL that "other employees" viz., employees in service as on 31.3.2003 paid compound interest, and therefore, it cannot be stated that the petitioners were not informed about compound interest or that they were not aware of compound interest, that they were obliged to pay on the management''s contribution. This argument, in my opinion, deserves to be rejected outright for more then one reason. Firstly, I do not see any valid reason for not making it clear in the Board resolution itself that the employees, like the petitioners, would be liable to pay compound interest. Secondly, it cannot be assumed that they were aware about the compound interest paid by "other" employees who were in service as on 31.3.2014, and lastly, it is not possible to accept that the expression "as done for others" indicate payment of compound interest by others. Moreover, in my opinion, comparison of the petitioner''s case with the employees in service on 31.3.2003, itself is wrong. The employees, who were in service as on 31.3.2003, their amounts were already at their credit, which were transferred to the pension fund. Therefore, the apprehension, expressed by learned counsel for KPCL that, all the employees, who were in service on 31.3.2003, would also approach for seeking refund of compound interest amounts paid by them, may not be correct. The petitioners admittedly had retired before 31.3.2003 and some of the petitioners had retired even 5-10 years before 31.3.2003.

13. I have carefully perused the letters addressed to the petitioners, all dated 19.12.2011, and the undertakings furnished by them, on which heavy reliance was placed by learned senior counsel for KPCL to contend that it is not open to the petitioners to turn around and challenge awarding of compound interest. The question whether KPCL was justified in awarding "compound interest" on the basis of the letters dated 19.12.2011, the undertakings, and the Board Resolution, in my opinion, must be answered against them.

14. KPCL, by their letters to the petitioners dated 19.12.2011, informed them that their request to cover them under the Pension scheme was accepted purely on humanitarian ground. They also produced/mentioned in the letters, the amounts to be refunded and the interest to be paid on those amounts. In the letters, they were specifically told to submit undertakings in writing that they would repay the amounts as follows: CPF amount (Management contribution) + interest, non-refundable loan (management portion) + interest and the difference amount of gratuity in lumpsum by way of demand draft/PO/RTGS mode within two months. A close look at the conditions imposed for opting the pension scheme and the letter dated 19.12.2011 issued on the basis thereof,

would show it does not provide for awarding "compound interest". In otherwords, the Board Resolution does not provide for recovering their contribution with compound interest on the Management''s contribution. The resolution only speaks about refund of Management''s contribution with "interest". Even when the undertakings were furnished by the petitioners, it was specifically stated that they voluntarily opted for the pension scheme of KPCL and agreed to refund Management''s contribution with "interest" on the following terms and conditions:

"1. that I am not entitled for payment of arrears of pension from the date of retirement;

2. that I am ready to refund the KPCL Contribution on CPF amount that has already been settled, with interest up to 31.3.2011 as done for others when opted from CPF Scheme to KPCL Pension Scheme from 31.3.2003;

3. that I am ready to refund the Nonrefundable loan (management contribution) drawn from the CPF amount during the tenure of my service in KPCL with interest up to 31.3.2011 as done for others when opted from CPF Scheme to KPCL Pension Scheme form 31.3.2003;

4. With regard to the interest on Management Contribution and Nonrefundable loan up to 31.3.2011, I opt to pay the whole interest amount in lump sum or in 48 equal installments.

5. that I am ready to pay the difference in Gratuity that has already been paid by the KPCL at the time of final settlement;

6. that I shall not be eligible for the Commutation of Pension under the KPCL Pension and Allied Schemes;

7. that I am ready to accept the KPCL Pension and or Family Pension as the case may be minus the amount of Pension and or Family Pension that is being received from the RPF authorities;

8. that I am ready to pay the above amount in lump sum by cheque/DD/pay order drawn in favour of Karnataka Power Corporation Ltd., (i.e., towards the repayment of KPCL CPF Management contribution + interest, Non-refundable loan drawn during the tenure of my service in KPCL + interest & the repayment of difference amount of Gratuity) within two months;

9. that I am ready to submit an undertaking in the form of an Affidavit that I would not move any court of law to claim any arrears of Pension etc., in this regard in future;

10. that I accept the KPCL Pension and or Family Pension with effect from 1.4.2011 only."

(emphasis supplied)

15. From perusal of the undertaking, it is clear that what the petitioners had agreed to pay was only "interest" and not "compound interest" or "interest upon

interest". Thus, having regard to the Board resolution dated 22.11.2011, in particular, the terms and conditions mentioned therein, as also the letters addressed to the petitioners dated 19.12.2011 and the undertakings given by them, it is clear that what the petitioners had agreed to pay was only "interest" and certainly not "compound interest". And in my opinion, "interest" means or will have to be construed to mean "simple interest". Admittedly, KPCL so-far has recovered from the petitioners compound interest at the rate of 8% to 12% on the Management''s contribution towards CPF and on non-refundable loan. Even by way of Board Resolution and letters dated 19.12.2011 issued by the MD in pursuance thereof, KPCL did not ask for "compound interest". In this backdrop, I am of the considered view that it was not open to KPCL to award compound interest on the amounts which the petitioners had agreed to refund. While refunding the amount, when they opted for the scheme, it has come on record, that they refunded the employers contribution with the accrued interest. That being so, I find substance in the submission that to recover compound interest would be harsh and unsustainable in law. Further, I find substance in the submission that if the petitioners are made to pay compound interest, as claimed by the KPCL, that would not only take away the benefits of CPF from the date of their retirement till 31.3.2011, but that would, perhaps put additional financial burden on the petitioners and as a result thereof, they would be left with no benefits for the period from the date of their retirement till 31.3.2011, of either CPF or the pension scheme, which was made applicable w.e.f. 1.4.2011. That cannot be stated to be the intention in introducing the pension scheme.

16. In this connection, it would be relevant to notice the observations made by the Supreme Court in State of Haryana and Others Vs. S.L. Arora and Company, . In this case, the Supreme Court observed that payment of interest arises in different circumstances. It can be the consideration paid by a borrower to a lender for use of the money lent or made available by the lender. It can be the return given by a bank, financial institution or a company on amounts deposited or invested with them by a customer or constituent. It can be the compensation paid by a person who withholds or defaults in paying an amount or in discharging a liability, when it is due and payable. Interest may be payable in pursuance of a contract or a provision in a statute, or the fiat of a court or tribunal. It is usually quantified in terms of a percentage of the ''principal'' or the ''investment'' or the ''amount of liability''. Interest unless otherwise specified, refers to simple interest, that is, interest paid on only the principal and not on any accrued interest. The Supreme Court has further proceeded to observe that compound interest refers to a method of charging interest where interest is computed not only on the principal, but also the accrued interest. Compound interest can be awarded only if there is a specific contract, or authority under a statute, for compounding of interest. There is no general discretion in courts or tribunals to award compound interest or interest upon interest.

17. Having regard to the observations made by the Supreme Court in S.L. Arora (supra), I am of the considered opinion, that KPCL was not justified to charge

compound interest and that too, at the rate of 8 to 12% per annum. On the facts and in the circumstances of the case, in my opinion, it would be just and proper to allow KPCL to recover their contribution at 10% interest or the actual rate of interest, whichever is less.

18. Thus, having considered overall facts and circumstances of the case and considering that the petitioners, who are all retired employees, have refunded the employers contribution along with accrued interest, when they opted for the scheme, awarding of compound interest at the rate of 8% to 12% per annum, is legally unsustainable and hence the order dated 30.11.2011 deserves to be set aside insofar as it awards compound interest on the Management''s contribution is concerned. Order accordingly. The apprehension expressed on behalf of KPCL that the employees, who were in service as on 1.3.2003, and, who opted for the scheme in 2003, would also seek similar relief, in my prima-facie opinion, is baseless and even if it is correct, the same cannot be and need not be taken into account while considering the petitioners'' claim. Moreover, it is pertinent to note that those who were in service as on 31.3.2003, their amounts were already at their credit which were transferred to the pension fund. This observation, however, shall not be construed to have expressed any opinion on the rights, if any, of the employees or ex-employees, who are not before the court, and who were in service/employment as on 31.3.2011.

19. In the result, writ petitions are partly allowed. KPCL is directed to recalculate the interest amount in the light of the observations made in this judgment and if it is found that the petitioners are entitled for any refund, they may either adjust it towards the future installments, if any, or refund the same in installments to the petitioners within reasonable time. I hope and trust that KPCL shall complete the exercise of recalculation within 6-8 weeks and till then shall not deduct any amounts from the petitioners'' pension.

