

(2015) 05 PAT CK 0089

In the Patna High Court

Case No : LPA Nos. 838 and 1175 of 2014 in CWJC No. 14124 of 2013

Vijay Kumar and Others

APPELLANT

Vs

The Bihar State Co-operative Bank Ltd. and Others

RESPONDENT

Date of Decision : 08-05-2015

Acts Referred:

Citation : (2016) 148 FLR 847 : (2015) 4 PLJR 874

Hon'ble Judges : L. Narasimha Reddy, C.J. and Vikash Jain, J.

Bench : Division Bench

Advocate : Rajendra Narayan and Jai Prabhat Kishore, for the Appellant; R.S. Pradhan, Amrendra Narayan Rai, Jainendra Kumar, Y.V. Giri and Santosh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, C.J.

1. These two Letters Patent Appeals are filed against the order dated 4.4.2014, passed by the learned Single Judge in C.W.J.C. No. 14124 of 2013*. The Bihar State Cooperative Bank Limited, the 1st respondent in both the Appeals, filed the writ petition challenging the order dated 13.12.2010 and 22.5.2013, passed by the Regional Provident Fund Commissioner, i.e. 2nd appellant in L.P.A. No. 1175 of 2014 and 2nd respondent in the writ petition. While respondents 1 and 2 in C.W.J.C. No. 14124 of 2013* filed L.P.A. No. 1175 of 2014, respondents 3 to 9 therein filed L.P.A. No. 838 of 2014.

For the sake of convenience, the parties are referred to, as arrayed in the writ petition.

The 1st respondent is a Cooperative Bank, undertaking the banking activities in the State of Bihar. It is covered by the provisions of the Provident Fund and Miscellaneous Provisions Act (for short the Act) and thereby it was under obligation to make contribution to the provident fund, of its employees. The Act and the Rules provided for exemption in case the employer formed a scheme

which is equally, or more beneficial, to the employees, compared to the one under the Act and the Rules. The 1st respondent framed a scheme in the year 1984 in this regard and a Trust was formed to operate the same. The Board of trustees was formed for operation of the scheme.

2. The salient features thereof are that the 1st respondent was to deduct certain amount from the salaries of its employees towards contribution to their provident fund, and it shall contribute equal amount to the fund; to be maintained by the Trust. The manner in which the fund so created must be administered, is stipulated in Annexure-A/1 appended thereto. It not only deals with the maintenance of fund, but also certain other conditions of service of the employees, particularly as regards lending of loans and levy of interest thereon.

3. The petitioner advanced certain loans to various employees, including the respondents 3 to 11 in the writ petition. However, it started levying compound interest on the loans so advanced. The employees raised objection and, at one point of time, approached this Court. The writ petition was disposed of by leaving it open to the employees to approach the Regional Provident Fund Commissioner, the 2nd respondent. On receipt of such representations, and after taking note of the version presented by the petitioner, the 2nd respondent passed the orders impugned in the writ petition, holding that it is not entitled to levy compound interest on the loans. The said order was challenged in the writ petition.

4. The plea raised by the petitioner inter alia was that it is paying compound interest on the provident fund which is remaining to the account of an employees, and that the loan given to its employees deserves to be treated as part withdrawal of the provident fund and the amount which is paid as loan must carry the same interest, so that the entire amount of provident fund remains intact; by the time the employee retires. The writ petition was opposed by the respondents, i.e. the employees of the 2nd respondent.

5. The learned Single Judge accepted the contention of the petitioner and allowed the writ petition. Hence, these appeals.

6. Heard Shri Rajendra Narayan and Shri Jai Prabhat Kishore learned counsel for the appellants and Shri R.S. Pradhan, Shri Amrendra Narayan Rai, Shri Jainendra Kumar, Shri Y.V. Giri and Shri Santosh Kumar, learned counsel for the respondents in L.P.A. No. 838 of 2014 and Shri R.S. Pradhan, Shri Amrendra Narayan Rai, Shri Jainendra Kumar, learned counsel for the appellants, and Shri Y.V. Giri, Shri Santosh Kumar and Mr. Rajendra Narayan, learned counsel for the respondents in L.P.A. No. 1175 of 2014.

7. But for the scheme framed by it, the petitioner was under obligation to implement the scheme framed under the Act and the Rules made thereunder. On the one hand, it was under obligation to deduct contribution from the salary of the employees and, on the other hand, to pay equal amount, towards its contribution, and remit them with the 2nd respondent. The amount of provident fund that remains to the credit of an employee earns interest at a stipulated rate.

The petitioner came forward with an alternative scheme, in lieu of the one under the Act and the Rules. A trust was created for administration of fund and Board of trust is authorized to operate the same.

8. Chapter-I of the Scheme framed by the petitioner deals with Introduction, Chapter-II deals with the Staff Regulations and Chapter-III deals with the Provident Fund Rules. It has already been mentioned that the scheme provides for extension of loans or advances also. The manner in which interest must be levied thereon is provided for under sub-clause (vi) of Clause-20 of Chapter-II which reads as under:--

"Interest on Advance: Salary advance and Festival Advance shall be interest free. On Conveyance Advance and Advance against Provident Fund, simple interest shall be charged at a rate to be fixed by the Board from time to time."

9. Clause 20 of Chapter-II of the scheme provides for payment of advances of various categories, such as car advance, salary advance, festival advance.

10. In Chapter-III, the various aspects of provident fund are dealt with in detail. The rate of interest to be paid on the provident fund is provided for under Clause-6. It reads:--

"Rate of Interest: The 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 is also important to take note of Clause-7 which provides for refund. It reads:--

"(a) The Provident Fund shall not be withdrawn except on resignation or retirement or dismissal or discharge or death.

(b) A subscriber who has completed not less than 5 years of service and has not been discharged for gross neglect of duty or dishonesty or has not been dismissed, shall receive on his retirement, resignation and discharge the sum standing to his credit in the Provident Fund." (rest of the portion is not reproduced, since not necessary in this case)."

11. From a combined reading of the provisions referred to above, it becomes clear that advance that is payable to an employee can never be out of the provident fund. At the most, it will bear some proportion to the provident fund. For example, if the amount of provident fund that has accrued to an employee is Rs. 36,000.00 at a given point of time, he can be advanced a loan of not exceeding Rs. 24,000.00, if the ceiling is 2/3rd. This is totally different from saying that Rs. 24,000.00 out of Rs. 36,000.00 can be paid. The Rules clearly mandate that no refund of provident fund shall be made to an employee except on his retirement or termination of services. Even where partial withdrawal of provident fund is permitted, the question of levying interest on the amount so withdrawn does not arise.

12. In the instant case, the facility of partial withdrawal of provident fund is not provided. The advances, on the one hand, and provident fund, on the other hand, are treated in separate compartments and are dealt with under separate provisions. There is a clear mandate that interest can be levied on the advances only in accordance with Clause-20 of Chapter-II. The contention of the petitioner, that Clause-6 of Chapter-III enables it to advance part of the provident fund amount and to levy compound interest thereon is unacceptable. The word "balance" is employed in Clause-6 of Chapter-3 would only connote that the amount keeps on changing in every month and it refers to the figure that was existing at a particular point of time, and not the one after any deduction. The whole gamut of the Rules clearly prohibits the levy of compound interest. The writ petitioner cannot deviate from the specific Rules framed by itself and it cannot justify the levy of compound interest. At the cost of repetition, it may be observed that once the scheme does not provide for withdrawal of any part amount of the provident fund, and if what is paid to an employee is only an advance, and the question of levy of compound interest thereon by treating it a part of the provident fund is untenable.

13. We, therefore, allow the appeals and set aside the order under appeal. The writ petition shall stand dismissed.

14. Interlocutory application, if any, stands disposed of. There shall be no order as to costs.

* Ed.--Reported in The Bihar State Co-Operative Bank Ltd. Vs. The Union of India, .