(2011) 11 MP CK 0036

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4806 of 2011

VTP Higher Secondary School, Shivpuri — APPELLANT

Vs

State of M.P. and Others — RESPONDENT

Date of Decision : 29-11-2011

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 10, 16(1), 5, 7A
Madhya Pradesh Ashaskiya Shikshan Sanstha (Institutional Fund) Rules, 1983 — Rule 10(4), 10(6), 12, 3, 5

Citation : (2012) 132 FLR 485 : (2012) 3 LLJ 31 : (2012) 1 MPLJ 211

Hon'ble Judges : S.K. Gangele, J;Giriraj Das Saxena, J

Bench : Division Bench

Judgement

S.K. Gangele, J.

Petitioner has filed this petition against the order dated 9-5-2011, Annexure P-1, passed by respondent No. 4, Employees Provident Fund Appellate Tribunal, New Delhi and order dated 23-1-2006, Annexure P-1/A, passed by respondent No.3, Assistant Provident Fund Commissioner, Gwalior.

Petitioner-Institution did not pay provident fund contribution under the provisions of the Employees'' Provident Fund & Miscellaneous Provisions Act, 1952, (hereinafter referred to as the ''Act of 1952''), although, the institution is covered in accordance with the Notification dated 19-2-1982 issued by the Union of India, which came into effect on its publication in the Gazette of India dated 6th March, 1982. Hence, Assistant Provident Fund Commissioner issued notice u/s 7A of the Act of 1952 for quantification of dues from the year 1982.

Petitioner - institution resisted the claim and contended that the petitioner-institution is not covered under the Act of 1952 in view of the judgment passed by Hon''ble the Supreme Court in the case of M.P. Shikshak Congress and Others Vs. R.P.F. Commissioner, Jabalpur and Others, The prescribed Authority rejected the claim of petitioner on the ground that as per notification dated 19-2-1982, which came into effect w.e.f. 6th March, 1982 the petitioner - institution has been covered under the provisions of the Act of 1952 and the petitioner - institution could not get exemption u/s 16(1)(b) and (c) of the Act of 1952. The Authority further held that the petitioner - institution is liable to pay the provident fund contribution of its teachers and other employees for the period from 1-4-1982 to March, 2005 and ordered payment of Rs. 12,40,837/-. The Authority further held that petitioner -institution was also liable to pay damages and interest. Against the aforesaid order an appeal was filed by the petitioner - institution. That has also been dismissed.

Learned counsel for the petitioner - institution has contended that in view of amendment in section 16(1)(b) of the Act of 1952, which is made applicable w.e.f. 1st of August, 1988, the Act of 1952 shall not be applicable to the petitioner - institution in view of the provisions of the Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmachariyon Ke Vetano Ka Sandaya) Adhiniyam, (20 of 1978). It has further been contended by the learned Counsel that the State has also framed Rules, named as the Madhya Pradesh Ashaskiya Shikshan Sanstha (Institutional Fund) Rules, 1983. In view of the aforesaid provisions the petitioner - institution is not covered under the provisions of Act of 1952. Hence, the orders passed by both the Authorities are illegal. In support of his contentions learned counsel relied on judgment of the Hon''ble Supreme Court in the case of M.P. Shikshak Congress and Others Vs. R.P.F. Commissioner, Jabalpur and Others, and in the case of Regional Provident Fund Commissioner Vs. Sanatan Dharam Girls Secondary School and Others,

Contrary to this, learned counsel, appearing on behalf of respondent No. 3, has contended that there is no Scheme or Rule framed by the State Government in regard to payment of provident fund contribution and pension to the employees of aided institutions, hence, the petitioner-institution is covered under the provisions of the Act of 1952.

The point for consideration before this Court is that whether the petitioner-institution is covered under the provisions of the Act of 1952 or not? An amendment was made in section 16(1)(b) of the Act of 1952 w.e.f. 1st of August, 1988. The relevant section is as under:--

16. Act not to apply to certain establishments.-- (1) This Act shall not apply --

(a) to any establishment registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State relating to co-operative societies, empolying less than fifty persons and working without the aid of power; or

(b) to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits; or

The point of applicability of the Act of 1952, prior to the aforesaid amendment, in the case of aided institutions of the State of Madhya Pradesh, which are covered by the Madhya Pradesh Ashaskiya Shikshan Sanstha (Aadhyapakon Tatha Anya Karmachariyon Ke Vetano Ka Sandaya) Adhiniyam, (20 of 1978), has already been decided by Hon''ble the Supreme Court in the case of M.P. Shikshak Congress and Others Vs. R.P.F. Commissioner, Jabalpur and Others, where Hon''ble the Supreme Court has held that the provisions of the Act of 1952 would be applicable, however, the point in regard to applicability of the Act of 1952, in view of the amendment and introduction of section 16(1)(b) in the Act of 1952, has not been decided by Hon''ble the Supreme Court in the aforesaid judgment and for the aforesaid point the matter was remanded back to the Tribunal.

As per section 16(1)(b) of the Act of 1952, the Act of 1952 shall not be applicable to the establishments which are under the control of the State Government, whose employees are entitled to benefit of contributory provident fund or old age pension in accordance with any Scheme or Rules framed by the State Government. The first point that whether the State Government has control over the aided institutions has to be answered in affirmation in view of the provisions of the Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmachariyon Ke Vetano Ka Sandaya) Adhiniyam, (20 of 1978); the M. P. Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmachariyon Ki Bharti) Niyam, 1979; and the M.P. Ashaskiya Shikshan Sanstha (Adhyapakon Tathan Anyha Karmachariyon Ke Padachyut Karne/Sewa Se Hatane Sambandhi Prakriya) Niyam, 1983. After perusal of the aforesaid Rules / Act, it is clear that the State Government has total control over appointments, termination of services and payment of salary to the teachers and other employees of the aided institutions.

In regard to second point that whether teachers and other employees of the aided institutions are entitled the benefit of contributory provident fund or not ? The State Government has framed rules, named as the Madhya Pradesh Aashaskiya Shikshan Sanstha (Institutional Fund) Rules, 1983, hereinafter referred to as the ''Rules of 1983'', in exercise of powers conferred by clause (a) of sub-section (3) of section 10 read with sub-sections (1) and (7) of section 5 of the Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmachariyon Ke Vetano Ka Sandaya) Adhiniyam, (20 of 1978). Rule 3 of the aforesaid Rules of 1983 provides constitution of Institutional Fund, which is as under :--

"3. Constitution of Institutional Fund -- There shall be opened in a Treasury/Sub-Treasury of the area where the institution is situated a separate account for each institution under the head "K-Deposit Advance non-Interest bearing Deposits 843-Civil Deposits-F-Personal deposits; under which the institutional fund for the institution shall be deposited."

Similarly, in accordance with Rule 5 thereof the aforesaid fund shall be operated jointly be a representative of the institution nominated by the management, and the Education Officer or his nominee. In accordance with Rule 6 thereof the grant which is to be paid by the State Government shall be credited to the institutional fund. In accordance with Rule 12, out of total amount of fees recovered by the management, 50 % will be deposited with the Treasury / Sub-Treasury under the aforesaid institutional fund. Rule 10 of the Rules prescribes deductions. Rule 10 (4) prescribes provident fund deductions. The relevant Rule is as under :--

"10. Deductions --(1)....

(4) The Provident Fund deduction statement in Form IV in duplicate, wherein the amount of the provident fund contribution deducted and the amount of recovery of loans made by the salaries of the teachers and employees and the amount of the contribution of the management shall be shown, shall be enclosed with the cheques."

Form IV prescribes statement showing the provident fund deductions. From the aforesaid Rules, it is clear that there is a Scheme framed by the State Government in regard to provident fund contribution for the teachers and other employees of aided institutions.

The Assistant Provident Fund Commissioner has mentioned in the order dated 23-1-2006 that there is no such Scheme or Rule framed by the State Government. The relevant findings are as under :--

"10. As regards the second condition regarding availability of the contributory provident fund or old pension to the employees of such establishments it cannot be disputed not has been disputed that there is no such scheme framed by the State Government or promulgated under the State Act. In absence of any rule or scheme providing old age pension or contributory provident fund it cannot be said that the aided educational institutions are excluded from the purview of the Act."

These findings are perverse in view of the provisions of the statutory rules. The Authority has not noticed the aforesaid Rules nor the petitioner -institution pointed out the provisions of the aforesaid Rules. This fact has also been noticed by Hon''ble the Supreme Court in M. P. Shikshak Congress and others vs. R.P.F. Commissioner, Jabalpur and others (supra), where the Hon''ble Supreme Court has held, as under :--

"15. However, after the application of the Employees'' Provident Fund and Miscellaneous Provisions Act, 1952 to education institutions, in 1983 new Rules were framed by the State of Madhya Pradesh under Act 20 of 1978. These are referred to as the State Rules of 1983. Under the State Rules of 1983, for the first time a scheme was set out for Contributory Provident Fund covering the teachers and employees of aided schools. The State Government, however, was conscious of the fact that the Employees'' Provident Fund and Miscellaneous

Provisions Act, 1952 was applicable in the State of Madhya Pradesh. Therefore, by Rule 10(6) of the State Rules of 1983, it was provided that the scheme as set out in the State Rules of 1983 would not apply where the provisions of the Employees'' Provident Fund and Miscellaneous Provisions Act, 1952 apply. Clearly, therefore, far from there being any conflict between the State and the Central Legislation, the State Legislation by Rules framed in 1983 has excluded from the operation of the State scheme as framed under the 1983 Rules, those employees to whom the Central Act applies.

In this view of the matter, there can be no doubt that for the period 1st August, 1982 to 1st August, 1988 the Employees'' Provident Fund and Miscellaneous Provisions Act, 1952 was applicable to such teachers and employees of the aided schools in the State of Madhya Pradesh who are covered by the provisions of the scheme framed thereunder, The orders of the Regional Provident Fund Commissioner, therefore, insofar as the orders cover the period 1st August, 1982 to 1st August, 1988 are valid.

The said orders, however, also refer to an additional period from 1st of August, 1988 to 1st of December, 1988. According to the appellants, on 1st of August, 1988, by virtue of the amended section 16(1)(b) of the Employees'' Provident Fund and Miscellaneous Provisions Act, 1952 coming into effect, the provisions of the 1952 Act are no longer applicable to them. Section 16(1)(b) provides that the 1952 Act will not apply to any establishment under the control of the State Government whose employees are entitled to the benefit of Contributory Provident Fund in accordance with any scheme framed by the State Government conferring such benefits. Whether on 1st of August, 1988, there was any scheme in existence of the State Government which conferred Contributory Provident Fund benefit to the employees covered earlier by the Central Act of 1952 or not is a matter which the Regional Provident Fund Commissioner will have to examine if such a contention is raised before him by the appellants."

In our opinion, it was obligatory on the part of Authority to consider provisions of the Rules of 1983 and the fact that whether any deductions were made by the relevant Authority of the employees under the aforesaid Rules.

Another fact we want to point out that Hon''ble the Supreme Court in initial stage stayed the operation of the Notification dated 19-2-1982 issued by the Central Government, which came into effect with effect from 6th of March, 1982, on which date it was published in the Gazette, by which educational institutions have been covered under the provisions of the Act of 1952, The Authority can also look into this aspect of the matter.

Consequently, petition of the petitioner is disposed of with the following directions:--

(1) The impugned orders, Annexure P-1 and P-1/ A are hereby quashed;

(2) Matter is remanded back to the Authority i.e. Assistant Provident Fund

Commissioner, Gwalior, to pass a fresh order in view of the observations made by us in this order.

(3) Looking to the facts of the case, there shall be no order as to costs.

