

SUPREME COURT OF INDIA

Marathwada Gramin

Vs.

Mangt. of Marathwada Gramin Bank

C.A.No.7766 of 2011

(Dalveer Bhandari and Deepak Verma,JJ.,)

09.09.2011

JUDGMENT

SLP(Civil)No.1067 of 2009

Dalveer Bhandari, J.,

1. Leave granted in both the matters.
2. We propose to dispose of these appeals by a common judgment. These appeals emanate from the judgment and final order dated 14.11.2008 passed by the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Letters Patent Appeal Nos.347 and 348 of 2008.
3. Marathwada Gramin Bank (for short, respondent bank) was established in 1976. The provisions of the Employees Provident Fund Scheme, 1952 became applicable to the respondent bank from 1.9.1979. According to the respondent bank, it meticulously complied with the provisions of the Scheme till 31.8.1981. Thereafter, the respondent bank formed its own trust and framed its own Scheme for payment of provident fund to its employees. According to that Scheme of the bank the employees were getting provident fund in excess of what was envisaged under the Employees Provident Fund Scheme, 1952.
4. The Regional Provident Fund Commissioner vide order dated 29.8.1981 exempted the respondent bank from complying with the statutory provisions of the Scheme with effect from 1.9.1981 and permitted the respondent bank to pay provident fund to its employees according to its own Scheme. The respondent bank contributed provident fund to its employees as per its own Scheme for the period from 1.9.1981 to 31.8.1993.
5. On 14.10.1991, the said exemption/relaxation granted to the respondent bank was withdrawn and cancelled and the respondent bank was directed to implement the provisions of the statutory Scheme. Despite cancellation of exemption, the respondent bank continued to make payment of provident fund in accordance with the earlier Scheme till 31.8.1993. In the

said Scheme, the respondent bank was contributing provident fund for the employees in excess of the statutory obligation.

6. According to the respondent bank, owing to huge accumulated losses, it issued a notice of change under section 9A of the Industrial Disputes Act, 1947 expressing its intention to discontinue payment of provident fund in excess of its statutory liability with effect from 1.11.1998, but would continue to contribute towards Employees Provident Fund according to the statutory liability.

7. The Regional Provident Fund Commissioner-II issued a letter dated 13.5.1999 informing the respondent bank that it cannot withdraw the benefit of paying matching employer's share without any limit to wage ceiling and directed it to continue extending the same benefit as was granted prior to 01.11.1998.

8. Thereafter, the Central Government made a reference of the dispute to the Central Government Industrial Tribunal, Nagpur (for short, the Tribunal). The said Tribunal relied on Section 12 of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short, 1952 Act) and held that the management cannot reduce, directly or indirectly, the wages of any employee to whom the Scheme applies or the total quantum of benefits in the nature of old age pension gratuity (provident fund) or life insurance to which the employee is entitled under the terms of his employment, express or implied. Section 12 of the 1952 Act reads as under:-

"No employer in relation to [an establishment] to which any [Scheme or the Insurance Scheme] applies shall, by reason only of his liability for the payment of any contribution to [the Fund or the Insurance Fund] or any charges under this Act or the [Scheme or the Insurance Scheme] reduce, whether directly or indirectly, the wages of any employee to whom the [Scheme or the Insurance Scheme] applies or the total quantum of benefits in the nature of old age pension, gratuity [provident fund or life insurance] to which the employee is entitled under the terms of his employment, express or implied.]"

9. The Tribunal directed that the employees of the respondent bank shall continue to draw equal amount of contribution from the bank towards provident fund without any ceiling on their wages. According to the Tribunal, the action of the respondent bank to reduce the contribution of the provident fund or to put a ceiling on the provident fund is not justified. The Tribunal also directed that the workmen shall continue to draw the benefit of the prevailing practice of contribution of Employees Provident Fund without any ceiling.

10. The respondent bank, aggrieved by the said award passed by the Tribunal, preferred a writ petition before the learned Single Judge of the High Court of Judicature of Bombay at Nagpur Bench, Nagpur.

11. It was submitted by the respondent bank that the impugned award as well as the communication issued by the Regional Provident Fund Commissioner-II is contrary to

law as the same is based on the assumption that Section 12 of the 1952 Act creates bar for imposing the ceiling in accordance with the Provident Fund Act.

12. The learned counsel for the respondent bank in support of his contention, before the learned Single Judge of the High Court, placed reliance on the judgment of the Constitution Bench of this Court in *Committee for Protection of Rights of ONGC Employees and Others v. Oil and Natural Gas Commission and Another*¹ and the judgment of the High Court of Kerala in *Vijayan v. Secretary to Government*²

13. It was also submitted that the respondent bank is under an obligation to make contribution towards Employees Provident Fund in accordance with the statutory provisions of 1952 Act. It was further urged that the respondent bank all through has at least made contribution towards Employees Provident Fund in consonance with the statutory provisions. On behalf of the respondent bank it was submitted that the respondent bank has always complied with the statutory obligation. It was also contended by the respondent bank that the appellants cannot claim as a matter of right the amount in excess of the statutory provisions of 1952 Act.

14. Before the High Court, for the first time, the appellants herein submitted that Section 17(3)(b) of the 1952 Act regarding exemption of any establishment from the operation of the Scheme was subject to certain conditions. Section 17(3)(b) of the 1952 Act reads as under:-

“ 17. Power to exempt

(1) xxx xxxxxx

xxxx

(2) xxx xxxxxx

xxxx

(3) Where in respect of any person or class of

persons employed in an establishment an exemption is granted under this section from the operation of all or any of the provisions of any Scheme (whether such exemption has been granted to the establishment wherein such person or class of persons is employed or to the person or class of persons as such), the employer in relation to such establishment--

(a) xxx xxxxxx

xxxx

(b) shall not, at any time after the exemption, without the leave of the Central Government, reduce the total quantum of benefits in the nature of pension, gratuity or provident fund to which any such person or class of persons was entitled at the time of the exemption;"

15. The learned Single Judge in his judgment observed that Section 17(3)(b) of the 1952 Act was never pressed into service by the appellants herein either before it or the Tribunal and the appellants herein cannot be allowed to raise the said contention for the first time in the writ petition. In that judgment, it was also observed that even otherwise, the said provision applies when the exemption is granted and is in force and in the instant case admittedly the exemption was already cancelled. Therefore, Section 17(3)(b) of 1952 Act is not applicable.

16. On analysis of Section 12 of the 1952 Act, the learned Single Judge of the High Court came to the conclusion that Section 12 of the 1952 Act will operate as a bar in case the same is the term of employment expressed or implied. In the instant case, it is not in dispute that under Regulation No.56 of the Marathwada Gramin Bank (Staff) Service Regulations, 1980, the express term of employment accepted by the employees is that contribution to the provident fund shall be in accordance with the provisions of the 1952 Act. Regulation No.56 reads as under:-

"56. All officers and employees who have completed continuous minimum service as specified in the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1792) shall be members of the Provident Fund. The contribution to the provident fund by the officers and employees and the Bank shall be in accordance with the provisions of the aforesaid Act."

17. The learned Single Judge observed that in the instant case it is the express term of employment that the contribution of the bank shall be in accordance with the provisions of the 1952 Act. The learned Single Judge thus observed that the bar of Section 12 will not operate as otherwise held by the Tribunal in the impugned award.

18. The learned Single Judge also observed that under Section 17(3)(b) of the 1952 Act, the said permission would be required in case an exemption from the operation of the provisions of the 1952 Act has been obtained. In the instant case, the exemption was already cancelled on 14.10.1991 and consequently this provision has no application to the facts of this case. The learned Single Judge consequently set aside the impugned judgment of the Tribunal and allowed the writ petition filed by the respondent bank.

19. The appellants, aggrieved by the judgment of the learned Single Judge, preferred Letters Patent Appeals before the Division Bench of the High Court of Judicature at Bombay,

Nagpur Bench, Nagpur and contended that under Section 17(3)(b) of the 1952 Act once the exemption is granted by the Appropriate Government, it shall not, without the leave of the Central Government reduce the total quantum of benefits in the nature of pension, gratuity or provident fund etc.

20. It was also contended by the appellants that in the instant case, the respondent bank did not obtain leave of the Central Government before acting on the communication dated 14.10.1991 by issuing notice of change.

21. The appellants relied on the case of *Madura Coats Employees Union v. Regional Provident Fund Commissioner and Others*³ Bombay and particularly relied on paragraphs 6, 7 and 8 of that judgment where the Court observed that the benefit cannot be taken away by the employer without prior permission of the Central Government. The Division Bench approved the view of the learned Single Judge that the case of *Madura Coats* (supra) did not apply to the present case because in the instant case the relaxation/exemption was withdrawn/cancelled. The Division Bench also observed that in *Madura Coats* case there was no contention that the relaxation/exemption was withdrawn at any time. This is the main distinguishing feature in both these cases. The Division Bench did not interfere with the judgment of the learned Single Judge and dismissed the appeals filed by the appellants. The appellants are aggrieved by the impugned judgment of the Division Bench of the High Court and have approached this Court by preferring these appeals under Article 136 of the Constitution.

22. The appellants contended before this Court that this case involved substantial question of law regarding interpretation of the provisions of Section 12 of 1952 Act. It was also argued by the appellants that the contribution to provident fund is a component of wages and when admittedly the respondent bank has paid its share of the provident fund contribution in excess of the amount prescribed in the 1952 Act for a long period of time and continued to contribute at such higher rate without any ceiling even after withdrawal of the exemption for a period of 7 years and had also framed rules whether it is open to the respondent bank to reduce its contribution towards provident fund.

23. The appellants submitted that in view of the facts of this case, Section 12 of the 1952 Act is clearly attracted. The appellants reiterated before this Court the submissions advanced before the Division Bench of the High Court.

24. We have heard the learned counsel for the parties at length and perused the relevant provisions of the Act. It may be pertinent to mention that the respondent bank complied with the provisions of the 1952 Act meticulously after it became applicable from 1.9.1979. The respondent bank complied with the provisions of the Scheme till 31.8.1981. Thereafter, the respondent bank formed its own trust and framed its own Scheme for payment of provident fund. In that Scheme, the respondent bank paid higher amount of provident fund to its employees than what the respondent bank was obliged to pay according to the statute or the agreement with the appellants.

25. The Regional Provident Fund Commissioner vide order dated 29.08.1981 exempted the respondent bank from complying with the statutory provisions of the Scheme with effect from 1.9.1981. Admittedly, the respondent bank paid provident fund to its employees as per its own Scheme for the period from 1.9.1981 to 31.8.1993.

26. The said exemption/relaxation granted on 29.8.1981 was withdrawn and cancelled on 14.10.1991 and the respondent bank was directed to implement the provisions of the statutory Scheme. Despite cancellation of the exemption, the respondent bank continued to pay excess provident fund to its employees in accordance with the earlier Scheme till 31.8.1993. Thereafter, the respondent bank issued a notice of change under section 9A of the Industrial Disputes Act, 1947 expressing its intention to discontinue payment of provident fund in excess of its statutory liability with effect from 1.11.1998. It may be pertinent to mention that owing to huge accumulated losses of the respondent bank, the bank though continued to pay according to the provisions of the statutory Scheme, but discontinued payment of provident fund in excess of its statutory liability.

27. The respondent bank is under an obligation to pay provident fund to its employees in accordance with the provisions of statutory Scheme. The respondent bank cannot be compelled to pay the amount in excess of its statutory liability for all times to come just because the respondent bank formed its own trust and started paying provident fund in excess of its statutory liability for some time. The appellants are certainly entitled to provident fund according to statutory liability of the respondent bank. The respondent bank never discontinued its contribution towards provident fund according to the provisions of the statutory Scheme.

28. The view which has been taken by the learned Single Judge and affirmed by the Division Bench of the High Court is just, fair, appropriate and in consonance with the provisions of the 1952 Act.

29. In our considered view, no interference is called for.

These appeals filed by the appellants being devoid of any merit are accordingly dismissed. In the facts and circumstances of these appeals, the parties are directed to bear their own costs.

Judgment Referred.

¹(1990) 2 SCC 0472

²(2006) 3 KLT 0291

³(1999) ILLJ 0928