GAHC030000042025

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WA/1/2025

Mizoram Rural Bank and Anr.
R/b its Chairman, Head Office, New Capital Complex, Khatla, Aizawl
2: The General Manager

VERSUS

Smt Lalrimawii and Anr.
W/o P.C.Lalnunmawia (L) R/o New Serchhip, IOC Veng, Serchhip District, Mizoram
2:The Employee Provident Fund Organization (Ministry of Labour)
Govt. of India

Advocate for the Petitioner : Mr C Zoramchhana

Advocate for the Respondent : Mr C Lalramzauva Sr. Adv. for R1

B E F O R E

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

HON'BLE MR. JUSTICE PRANJAL DAS

JUDGMENT & ORDER (ORAL)

21.01.2026

(Michael Zothankhuma, J)

1. Heard Mr. C. Zoramchhana, learned counsel for the appellants, Mizoram Rural Bank. Also heard Mr. C. Lalramzauva, learned Senior Counsel assisted by Mr. Stephen Lalbuatsaiha, learned counsel for respondent No. 1.

2. The appellants have put to challenge the impugned Order dated 18.10.2024 passed by the learned Single Judge in WP(C) No. 116/2023, wherein the learned Single Judge had directed the appellants to refund the forfeited amount of Rs. 5,79,376/- to the respondent, within a period of 2 (two) months from the date of the impugned Judgment & Order.

3. The issue relates to whether the forfeiture of Rs. 5,79,376/-, which was the Provident Fund amount of the respondent's husband, which had been transferred from the Provident Fund established under the Scheme to the Savings Bank Account of the respondent's deceased husband by the appellant, was hit by Section 10 of the Employee Provision Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the '1952 Act').

4. The brief facts of the case is that the respondent's husband, who was an employee of the appellant Bank had misappropriated money from the appellants while working in the Mizoram Rural Bank. The Departmental Proceeding that had been initiated against the respondent's husband found him guilty of having misappropriated money and vide the Order dated 30.03.2005, the respondent's husband was dismissed with immediate effect. The Chairman of the Mizoram Rural Bank thereafter issued Order No. G-24/558 dated 09.10.2006 allowing forfeiture of Rs. 5,79,376/-, which was lying in the Savings Bank Account of the respondent, for recovery of the part of the embezzled/misappropriated amount. Consequently, the amount of Rs. 5,79,376/- was forfeited from the respondent's Saving Bank Account No. SB 4813. On account of embezzlement of a large sum of money by manipulating accounts and fabricating false documents, a criminal proceeding was also registered against the respondent's husband, vide Serchhip P.S. Case No. 75/2000 dated 14.08.2000, under Section 409/465/471 IPC.

5. After submission of charge-sheet, trial was conducted by the Court of the Additional Sessions Judge, Aizawl, in Criminal Trial No. 1536/2000. The Criminal Trial culminated with the Judgment & Order dated 29.12.2009, passed by the learned Addl. Sessions Judge - I, Aizawl, convicting the respondent's husband under Section 409/465 IPC, and sentencing him to undergo a period of imprisonment, which had already been undergone by him. No appeal was filed by the respondent's husband against his dismissal on the basis of the Departmental Proceeding, which concluded vide Order dated 30.03.2005 and his conviction in the criminal case, vide Judgment & Order dated 29.12.2009.

6. The Judgment & Order dated 29.12.2009 passed by the learned Addl. Sessions Judge-I, Aizawl in Criminal Trial No. 1536/2000, recorded the following:-

> "*The accused himself in his examination u/s 313 of Cr.P.C. stated that his General Provident Fund (GPF) amounting to Rs. 5,66,000/- were forfeited by the bank, his Arrear of Pay a little over Rs. 1,00,000/- (one lakh) was with held by the Bank, and he also surrender his suspend allowance*

amounting to Rs. 52 thousand to the Bank. In all the amount of Rs. 7,18,000/- were surrendered by him to the Bank. Therefore, the accused, P.C. Lalnunmawia also held himself responsible for the detected discrepancies of the cash in the Bank, and has willingly surrendered the above said amount to the Bank."

7. The respondent's husband died in the year 2016.

8. Subsequent to the above events, the respondent filed WP(C) No. 116/2023 on 26.09.2023, 17 years later, praying for a direction to be issued to the appellants declaring Order No. G-24/558 dated 09.10.2006, passed by the Chairman of Mizoram Rural Bank, to be declared as null and void. The further prayer of the respondent was to issue a direction to the appellants for return of the provident fund amounting to Rs. 5,79,376/-, with interest. The Order No. G-24/558 dated 09.10.2006 had allowed forfeiture of Rs. 5,79,376/-, which was available in the Mizoram Rural Bank, Aizawl Branch Account No. SB 4813, standing in the name of the respondent.

9. The learned Single Judge held that in view of Section 10 (1) of the 1952 Act, the amount of Rs. 5,79,376/-, being the provident fund amount payable to the respondent's husband was protected. It also held that Section 60 (1)(k) CPC made a clarification with regard to the protection of the provident fund of a member in the fund provided in the 1952 Act from attachment, even from the respondent's husband's individual Bank Account.

10. The learned Single Judge held that as no amount standing to the credit of any member in the fund could be attached, the forfeiture of the respondent's husband provident funds, which had been transferred from the fund defined in the 1952 Act to the Savings Bank Account of the respondent, could be forfeited to the appellants. The learned Single Judge thus directed refund of the forfeited amount of Rs. 5,79,376/- to the respondent.

11. The learned counsel for the appellants submits that the protection provided to the provident fund of any member under the 1952 Act, would only be in terms of the particular members money lying in the fund, as defined in Section 2 (h) of the 1952 Act. He submits that once the provident fund amount of the respondent's husband had left the fund defined in Section 2 (h) of the 1952 Act and had been credited into the Savings Bank Account of the respondent's husband, the protection provided in Section 10 (1) was no longer available.

12. Mr. C. Lalramzauva, learned Senior Counsel for the respondent submits that the interpretation given by the learned Single Judge, with regard to the immunity from attachment, provided to the provident fund amount of the respondent's husband, in terms of the 1952 Act was correct and the said impugned decision should not be interfered with.

13. We have heard the learned counsels for the parties.

14. Section 2 (h), (j) & (l) and Section 10 (1) of the 1952 Act states as follows:-

> "***2.(h)*** *"Fund" means the provident fund established under a Scheme;*
>
> ***(j)*** *"member" means a member of the Fund;*
>
> ***(l)*** *"Scheme" means the Employees Provident Fund Scheme framed under section 5;]*
>
> ***10. Protection against attachment.-***
>
> *(1) The amount standing to the credit of any member in the Fund [or of any exempted employee in a provident 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 [or the exempted employee], and neither the official assignee appointed under the Presidency-towns Insolvency Act, 1909 (3 of 1909), nor any receiver appointed under the Provincial Insolvency Act, 1920 (5 of 1920), shall be entitled to, or have any claim on, any such amount."

15. A perusal of the above provisions of the 1952 Act clearly shows that the protection against attachment provided to the provident fund of any member, would only be in relation to the money that has been put in the fund established under the Scheme, in terms of the 1952 Act. It does not provide protection from attachment to any money, provident fund or otherwise, if the same is in the Savings Bank Account of any individual member/employee.

16. Besides the above, the protection from attachment is only against any decree or order passed by any Court in respect of any debt or liability incurred by the member. In the present case, there is no decree or order passed by any Court for attachment of the provident fund amount of the respondent's husband.

17. In view of the above interpretation to Section 10 read with Section 2 (h), (j) & (l), we do not agree with the findings of the learned Single Judge, in directing refund of the forfeited amount. The impugned Judgment & Order passed by the learned Single Judge has clearly stated in paragraph No. 9 that the provident fund amount was credited into the account of the respondent's late husband, vide Cheque No. 891112 amounting to Rs. 5,79,376/-, which is exactly the amount, which has been forfeited from the account of the respondent's late husband, vide the impugned Order dated 09.10.2006. The above facts having clearly proved that the protection given to a provident fund amount of a member was absent when the said amount was transferred to the account of the respondent's husband. Thus, there was no infirmity in the forfeiture of the amount from the Savings Bank Account of the respondent's husband.

18. One other aspect of the matter is that when it is proved beyond all reasonable doubt that there has been embezzlement/misappropriation of money and which finding has attained finality as on date, there is no reason not to realise the embezzled amount or a part of it from the property of the said charged individual.

19. One other aspect of the matter that bothers us is that the Department Enquiry culminated with the dismissal order in the year 2005 and the criminal case ended with conviction in the year 2009. The amount of Rs. 5,79,376/- was forfeited in the year 2006, from the account of the respondent's husband. The respondent's husband died in the year 2016. The writ petition was filed by the respondent, claiming refund of the forfeited amount in the year 2023 and the only reason given for the delay in filing the appeal is reflected in paragraph No. 11 of the writ petition, which states as follows:-

> "*11. That the petitioner being a widow, house wife, she could not come forward to file the instant Writ Petition in time due to financial reasons and Nation wide Pandemic lock down. As such, your humble Petitioner most earnestly pray to this Hon'ble Court to condone the delay, as delay caused was not necessarily due to intentional negligence on the part of Petitioner, but it was due to unavoidable circumstances."*

20. A perusal of the above shows that no proper reason has been provided for the huge delay in filing the writ petition. However, in view of the fact that we find no infirmity with the action of the appellants in directing the forfeiture of a part of the embezzled/misappropriated amount from the Savings Bank Account of the respondent's husband, we do not wish to make any observation, except to say that ordinarily, proper reasons should be given for filing a writ petition after a lapse of so many years, which has not been done in this case. For all the reasons stated above, we are of the view that the appeal should be allowed.

21. The appeal is accordingly allowed.

22. Consequently, the impugned Order dated 18.10.2024 passed by the learned Single Judge in WP(C) No. 116/2023 is hereby set aside.

JUDGE **JUDGE**

Comparing Assistant