04.10.2023
Item No.5
Court No.550
Saswata

**W.P.A. 6229 of 2023**
**Asiatic Society's Employees' Union & anr.**
**Versus**
**Union of India & Ors.**

Mr. Kallol Basu
Mr. Suman Banerjee
... For the petitioners
Mr. Rajib Ray
...For the PF authorities
Mr. D.N.Ray
Mr. B. Nandy
...For the respondent nos. 2 to 4

1. The present writ application has been filed, inter alia, challenging the decision taken by the respondent nos. 1 to 4 to stop deduction of the provident fund contributions from the members of the petitioner no.1 in excess of Rs.15,000/- in terms of and in furtherance to the communication dated 25th January 2023 issued by the Director, Ministry of Culture, Government of India.
2. It is the contention of the petitioners that the respondent no. 2 is an autonomous institution and is covered by the provisions of Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "said Act"). According to the petitioners, the service rules for the employees of the respondent no. 2 were prepared sometimes in the year 1991 and the same became effective on and from 1st December 1998. Clause 28 of the said rules, inter alia, stipulates that the employees of the

respondent no. 2 shall be entitled to pension, gratuity, family pension and General Provident Fund benefits as admissible to the employees of the Government of India from time to time.

3. It is also the petitioners' case that the CCS (Revised) pay rules, 1986 as per the letter of the Government of India dated 16th April 1987 has been implemented. According to the petitioners, the revision of pay scales of the Central Government employees on the basis of the recommendation of the Central Pay Commission, have, from time to time, been implemented insofar as the respondent no. 2 is concerned.

4. By drawing attention of this Court to the Office memoranda dated 2nd December 1997, 3rd September 2008 and 13th January 2017 issued by the Government of India, Ministry of Finance, Department of Expenditure, it is submitted that by such orders the revision of pay and allowances have been made effective, insofar as the respondent no. 2 is concerned. By the aforesaid orders, the Government has also provided that deduction on account of provident fund or contributory provident fund will have to be made on the basis of the revised pay structure with effect from the date the employees opt to elect the revised pay structures. Reliance is also placed on office memorandum dated 10th June, 1999 at page 13 of the supplementary affidavit.

5. Relevant portion of the Government Order dated 13th January 2017 which, *inter alia*, provides for deduction of provident fund on the revised pay structure, is extracted herein below:

> *"(iii) Deductions on account of Provident Fund, Contributory Provident Fund or National Pension System, as may be applicable, will have to be made on the basis of the revised pay with effect from the date an employee opts to elect the revised pay structure."*

6. Mr. Basu, learned advocate appearing for the petitioners, by drawing attention of this Court to an office order dated 18th May 2001 submits that in terms of the said office order, as per regulation no. 7, the respondent no. 2 had, inter alia, decided as follows:-

> *" In accordance with this stipulation the employees are entitled to contribute at higher rate than that is prevailing at present which is 12% of salary as stipulated in the Act. The Employer's contribution should also be equal to the contribution of the employees subject to maximum of 12% of Pay and admissible D.A.*
>
> *It is, therefore, decided to follow the Regulation of the Society in terms of the aforesaid Provident Fund Act. This is being made effective from the salary month of May, 2001 onwards.*
>
> *In case any employee of the Society desires to contribute to C.P.F. at the old rate prevailing prior to May, 2001 the rate of employers' contribution will remain same as before. If no intimation is received from any employee in writing before 25th May, 2001 the contribution to the E.P.F. shall be guided in terms of provisions contained under Regulation VII of the Asiatic Society."*

7. According to Mr. Basu, the members of the petitioners had not only opted for deduction of

contributions at higher rate but also as per revised pay structure.

8. By referring to a communication dated 25th January 2023 issued by the Director, Government of India, Ministry of Culture, addressed to the General Secretary, Asiatic Society, it is submitted that the Government of India, contrary to the statutory provisions, had decided to limit the deduction of the provident fund contributions to Rs.15,000/- per month by, *inter alia*, by observing as follows:-

> *" It has been decided that for the existing EPF subscribers, Employer's Contribution to the EPF is to be made at the rate of 12% on EPF Wages (comprising Basic Pay & D.A.) applying EPF Wages limit of Rs.15000/- per month and that the contribution should not exceed this rate and limit as prescribe in the EPF rules. The Chairman advised for strict adherence to the contribution limit as per rules."*

9. As would appear from the letter dated 25th July, 2023 as aforesaid, consequent upon issuance of the same, the respondent no. 2 has been directed to take the following action:-

> *"Accordingly, ASK is requested to take the following action immediately:*
>
> *(i) Provide the monthly details of Salary of employees in an excel sheet (one sheet for each month) with at least columns namely Employee name, Basic Pay, DA, HRA, Transport Allowance, Total Salary, EPF contribution by employer, EPF contribution by Employee, irregular bonus paid to employee during 2015-2018;*
>
> *(ii) <u>Stop contribution to Employer's share in violation of EPF provision</u> as pointed out by Audit*

*immediately and send a revised ATN within 15 days.*

(iii) *<u>Fix responsibility of all officers in the chain for violation of EPF provisions and provide the name of officers responsible for non compliance of Government instructions.</u>*

(iv) *Convene the meeting of Planning Board immedaitely to deliberate this matter.*

(v) *Please ensure that all replies to any litigation in any court/tribunal on this subject matter etc be got vetted by Ministry.*"

10. The petitioners contend that the aforesaid direction is contrary to the statutory provisions and infringes upon the petitioners' rights. It is submitted that in terms of the aforesaid direction, the respondent no. 2 has already issued an office order dated 6th February 2023 and had thereby, resolved as follows:

> " *In pursuance to the decision of the Council of the Society vide resolution to the agenda item no. 8 of its meeting held on 31.01.2023, for the existing EPF subscribers of the Society, the Employer's contribution to the EPF will be made at the rate of 12% (Twelve percent) on EPF Wages (comprising Basic Pay & DA) applying the EPF Wages limit of Rs. 15,000/- (Rupees Fifteen Thousand) per month in terms of the existing provisions prescribed in Para 29 (1) and 26A(2) respectively of the Employees' Provident Fund and Miscellaneous Provisions (EPF & MP) Scheme, 1952 (Scheme) under the EPF & MP Act, 1952."*

11. According to Mr. Basu, the aforesaid decision taken by the respondent no. 2 is unilateral and cannot override the joint request made by the respondent no. 2 and the petitioners, before the Provident Fund authorities in terms of paragraph

26.6 of the Employees Provident Fund and Miscellaneous Provisions Scheme, 1952 (hereinafter referred to as the "Said Scheme"). The aforesaid office order seeks to infringe upon the petitioners' rights as envisaged under the provisions of paragraph 26.6 of the said Scheme. He further submits that as and by way of abundant caution, the petitioners have sought for a declaration that proviso to sub-para 2 of paragraph 26A of the said Scheme to be ultra vires. It is, however, the contention of Mr. Basu that the petitioners have an independent right to enforce its claim under paragraph 26.6 of the said Scheme.

12. On the other hand, Mr. Ray, learned advocate representing the respondent nos. 1 to 4 submits that the decision taken by the respondent nos. 1 as reflected in order dated 18th May 2001 is based on an incorrect appreciation of law. He submits that the statute does not permit contribution by a member, on his monthly pay exceeding Rs.15,000/-. As such, there is no irregularity, either in the directive issued by the Government of India dated 25th January 2023 or in the respondent no. 2, issuing the subsequent office order dated 6th February 2023, so as to bring the same at per with proviso to subparagraph 2 of paragraph 26A of the said Scheme. In any event, it is submitted that

scheme does not provide for payment of employer's contribution, exceeding Rs.15,000/- under any circumstances.

13. Having regard to the aforesaid, he submits that no interim order is called for at this stage, especially when the petitioners have challenged the vires of the said Scheme. In support of his contention, that no interim order can be passed when vires of a statue is under challenge, reliance is placed on a judgment of the Hon'ble Supreme Court in the case of ***Health for Millions v. Union of India & Ors.***, reported in **(2014) 14 SCC 496.**

14. Per contra, Mr.Ray, learned advocate appearing for the Provident Fund authorities on the other hand submits that the decision taken by the respondent no. 2 to call upon its employees to make contribution at higher rate was in consonance with the provisions of paragraph 26.6 of the said Scheme. Both the respondent no. 2 as also its employees having jointly applied, in terms of paragraph 26.6 of the said Scheme and such request having found in order, was accepted by the provident fund authorities and consequent thereupon, both the employer and the employee had been contributing at higher rate in terms of the said Scheme.

15. The communication dated 25th January 2023 issued by the Director, Ministry of Culture,

Government of India calling upon the respondent no. 2, to revise the contributions payable both by the employee and the employer is contrary to the said Scheme. According to Mr. Ray, paragraph 31 of the said Scheme read with Section 12 of the said Act, creates an impediment on the respondent no. 2 in reducing the contributions payable by the employees of the respondent no. 2.

16. The decision taken by the respondent no. 2 vide order dated 6th February 2023, if implemented would create an incongruous situation.

17. Heard the learned advocates appearing for the respective parties and considered the materials on record. Admittedly, in this case, I find that the petitioners are employees of the respondent no. 2. It is also an admitted position that in terms of the option given to the members of the petitioners and the members having opted, jointly with the respondent no. 2, for contributing at higher rate and the respondent no. 2 since the year 2001 having deducted contributions from the members of petitioners, who are its employees at higher rate, I find that any steps taken at this stage to reduce the contributions would interfere with the provisions of the Scheme. Although, it has been submitted by Mr. Ray, learned advocate appearing for the respondent nos. 1 to 4 that the original decision taken in the year 2001

permitting the petitioners to contribute at higher rate, had been taken by reasons of inappropriate appreciation of law, I am however unable to accept such a contention.

18. In this context it may be relevant to quote Paragraph 26(6) of the said Scheme:-

> *" Notwithstanding anything contained in this paragraph (an officer not below the rank of an Assistant Provident Fund Commissioner) may, on the joint request in writing, of any employee of a factory or other establishment to which this Scheme applies and his employer, enroll such employee as a member or allow him to contribute more than rupees (fifteen thousand rupees) of his pay per month if he is already a member of the Fund and thereupon such employee shall be entitled to the benefits and shall be subject to the conditions of the Fund, provided that the employer gives an undertaking in writing that he shall pay the administrative charges payable and shall comply with all statutory provisions in respect of such employee."*

19. Having regard to the aforesaid, I have no doubt in mind that the aforesaid order dated 18th May 2001 was in consonance with paragraph 26(6) of the said Scheme. In any event, as is rightly pointed out by Mr. Basu, that the Government of India, while implementing the revision of pay scales on the basis of the recommendation made by the Central Pay Commission had categorically from time to time provided for deduction on account of provident fund, on the basis of the revision of pay with effect from the date, the employee opts to elect the revised pay structure.

20. Having regard to the same, it cannot be said that the aforesaid decision taken by the respondent

no. 2 to permit contribution at higher rate is on the basis of the incorrect appreciation of law. Although, Mr. Ray, learned advocate appearing for the respondent nos. 2 to 4 by placing reliance on the judgment of ***Health for Millions*** **(supra)** has contended that no interim order should be passed in a case where vires of an act is under challenge, I find that the right of the petitioners flows independent of challenge to proviso of paragraph 26A(2) of the said Scheme and is based on paragraph 26.6 of the said Scheme.

21. Having regard to the aforesaid, I am of the view that the petitioners, at this stage, having made out a prima facie case are entitled to protection. Balance of convenience also is in favour of grant of protection.

22. In view thereof, the decision taken by the respondent nos.2 to 4 to implement the office order dated 25th January 2023 issued by the Director, Ministry of Culture, Government of India by issuing the office order dated 6th February 2023 shall remain stayed.

23. This interim order shall continue till the end of January 2024.

24. Let affidavit-in-opposition be filed within four weeks from date. Reply, if any, thereto be filed two weeks thereafter.

25. Liberty to mention after expiry of the period for exchange of affidavits.

**(*Raja Basu Chowdhury, J.*)**