

Writ Petition No.4143/2016

[CENTRAL MADHYA PRADESH GRAMIN BANK VERSUS EMPLOYEES PROVIDENT FUND ORGANISATION
MINISTRY OF LABOUR AND EMPLOYMENT]

13.2.2017.

Shri A.C. Thakur, learned counsel for petitioner.

Shri J.K. Pillai, learned counsel for respondent.

With consent of learned counsel for the parties, the matter is finally heard.

Petitioner, a Bank constituted under the provisions of Regional Rural Banks Act, 1976, seeks directions to the respondents not to insist for payment of Employers' Contribution towards provident dues in those cases where the employee is dismissed or removed from the service on account of misconduct causing financial loss to the petitioner-bank.

Petitioner takes shelter of Regulation 45(4) of the Central Madhya Pradesh Gramin Bank Service (Amendment) Regulation, 2013. A plea to that effect having been negated by the respondents vide their communication and notice dated 28.9.2016 issued in context to one Shri Shricand Saraiyya, a retired bank officer who has been visited with a penalty of removal from service.

Coming straight to the issue as to whether it will be lawful for the petitioner-Bank to withhold the sanction for disbursement of Provident Fund accruing under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short 'Act of 1952') on the strength of Regulation 45(4) of the Regulation, which envisages that :

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“The officer or employee against whom disciplinary proceedings has been initiated shall not receive any pay and/or allowances after the date of superannuation and also not be entitled for the payment of retirement benefits till the proceedings is completed and final order is passed thereon except his own contribution to Contributory Provident Fund (CPF)”

Two factors are borne out from above provision, *firstly*, it prohibits disbursement of employers' share in the CPF during pendency of enquiry after retirement and *secondly*, the prohibition is confined to employees' share in the CPF. In other words, if a final order is passed in a departmental enquiry continued after retirement, the employer cannot withhold even their share to CPF from disbursement and that the CPF is in contradistinction to other funds.

It is further borne out from material on record that there is no contributory provident fund scheme floated by the petitioner. Instead, they are governed by the Act of 1952 and the Scheme made thereunder.

The Act of 1952 provides for the institution of provident funds, pension fund and deposit-linked insurance fund for employees in factories and other establishments. Its applicability under Section 1(3) to the petitioner is not in dispute. Section 2(h) defines “fund” to mean the provident fund established under a scheme. That, Section 5 empowers the

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Central Government to frame Employees' Provident Fund Scheme for the establishment of provident funds under this Act for employees or for any class of employees and specify the establishments or class of establishments to which the said Scheme shall apply [and there shall be established, as soon as may be after the framing of the Scheme, a Fund in accordance with the provisions of this Act and the Scheme.

Rather, Paragraph 72 of the Employees' Provident Funds Scheme, 1952 obligates the employer to facilitate the payment of provident fund. Sub-paragraph (5) whereof mandates :

"72. Payment of Provident Fund :

...

(5)(a) Every employer shall, at the time when a member of the Fund leaves the service, be required to get the claim application, for payment of provident fund in cases specified in clauses (a) to (dd) of sub-paragraph (1), of paragraph 69, duly filled in and attested, and to forward the said application [within five days of its receipt] to the Commissioner or any other officer authorised by him in this behalf.

(b) Every employer shall, at the time when a member of the Fund leaves the service, be required to get the claim application, for payment of provident fund in cases specified in clause (e) of subparagraph (1), and in subparagraph (2) of paragraph 69, duly filled in and attested, and to give the said application to the member, for submission, on completion of the period specified in subparagraph (2) of paragraph 69, [provided the member continues to remain unemployed in a factory or other establishment to which the Act applies] either through post or in person with proper identification, to the Commissioner or any other officer authorised by him in this behalf.

(c) Every employer shall, on the death of the member

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and on receipt of an application for receiving the amount standing to the credit of such member, forward forthwith [but not later than five days of its receipt] the said application to the Commissioner or any other officer authorised by him in this behalf.

(d) If the applicant is unable to send the claim application through the employer or duly attested by him, for any reason whatsoever, he may forward it to the Commissioner or any other officer authorised by him in this behalf, and wherever necessary, the Commissioner or any other officer authorised by him in this behalf may forward such application to the employer and the employer shall be required, to return it within five days of its receipt.

(e) The payment may be made, in the option of the person to whom payment is to be made, (i) by postal money order, or (ii) by deposit in the payee's bank account in any Scheduled Bank or any Co-operative Bank (including the Urban Co-operative Banks) or any post office or (iii) by deposit in the payee's name the whole or part of the amount in the form of annuity term deposits scheme in any Nationalised Bank, or (iv) through the employer.

Provided that the provident fund amount payable by postal money order shall be to the extent of maximum Rs.2000. Any payment of benefit above Rs.2000 under the scheme shall be remitted through cheque only. Where the amount payable by postal money order exceeds Rs.500 it shall be remitted at the cost of the payee.

(6) Any amount becoming due to a member as a result of: (i) supplementary contribution from the employer in respect of leave wages/arrears of pay, instalment of arrear contribution received in respect of a member whose claim has been settled on account but which could not be remitted for want of latest address, or (ii) accumulation in respect of any

member who has either ceased to be employed or died, but no claim has been preferred within a period of three years from the date it becomes payable, or if any amount remitted to a person, is received back undelivered, and it

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is not claimed again within a period of three years from the date it

becomes payable, shall be transferred to an account to be called the [Inoperative Account]:

Provided that in the case of a claim for the payment of the said balance, the amount shall be paid by debiting the [Inoperative Account].

(7) The claims, complete in all respects submitted along with the requisite documents shall be settled and benefit amount paid to the beneficiaries within 30 days from the date of its receipt by the Commissioner. If there is any deficiency in the claim, the same shall be recorded in writing and communicated to the applicant within 30 days from the date of receipt of such application. In case the Commissioner fails without sufficient cause to settle a claim complete in all respects within 30 days, the Commissioner shall be liable for the delay beyond the said period and penal interest at the rate of 12% per annum may be charged on the benefit amount and the same may be deducted from the salary of the Commissioner."

Thus, it is beyond the powers of the employer to withhold the formalities which they have to undertake on the retirement of an employee.

Petitioner fails to commend to any such provision under the Act of 1952 or the Employees' Provident Fund Scheme framed thereunder which empowers the employer to withhold the attestation and forwarding of an application for withdrawal of the fund by a member on his retirement even if there is a departmental enquiry pending.

Petitioner has placed reliance on the certain decisions, viz **State Bank of India vs C.B. Dhall (1998) 2 SCC 544,** **State Bank of India vs Ram Lal Bhaskar (2011) 10 SCC**

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249 and a full Bench decision of Punjab-Haryana High Court in **UCO Bank vs Anju Mathur** : Letters Patent Appeal No.566/2012 (O&M) decided on 7.3.2013.

Whereas, in the case of **C.B. Dhall**'s (supra), the issue pertained to Imperial Bank of India Pension and Guarantee Fund Rules and Regulations and not in respect of entitlement of Provident Fund vide 1952 Act. Thus, the decision there, in turns, on different set of Rules framed under Section 7 of State Bank of India Act, 1955.

Similarly, in the case of **UCO Bank**'s (supra), the Full Bench was concerned with the gratuity under the Officers' Regulations and the Disciplinary and Appeal Regulations, 1976. As to the forfeiture of employer's share of Provident Fund, the full Bench while dwelling on Rules 17 and 18 of the UCO Bank Employees' Provident Fund Rules, observed :

29. As far as Rule 18 is concerned, the Bank is given the right to recover from the contribution made by the Bank i.e. employer's share, in case of any loss or damage resulting to the Bank. Here also it is the Board i.e. Board of Directors which is entitled to declare the amount of loss or damage so resulting. In the instant case, there is no declaration by the Board of Directors. Furthermore, this Rule applies only when the contributor is "dismissed" for fraud or misconduct. This Rule does not apply when he is "retired" from the Bank even by imposing the penalty of "compulsory retirement". Whereas, Rule 17 mentions the punishment of dismissal and also includes the retirement, the element of retirement i.e. penalty of

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compulsory retirement as a consequence of fraud or misconduct is conspicuously absent in Rule 18. It is, thus, clear that Rule 18 would not apply in the present case where the punishment imposed is not that of dismissal but that of compulsory retirement. Therefore the appellant-bank cannot forfeit the employer's contribution in the instant case. The action of the appellant-bank in forfeiting the employer's share is not correct and is, therefore, set aside. However, liberty is given to the Trustees of the Fund to proceed in the matter in accordance with Rule 17 of the UCO Bank Employees' Provident Fund Rules.

No such provisions as exist in UCO Bank Employees' Provident Fund Rules are commended at. Moreover, such the Provident Fund in the petitioner-establishment is governed by the provisions of 1952 Act and the scheme made thereunder having overriding effect on the departmental rules, the petitioner is not benefited by the decisions in **C.B. Dhall's** (supra) and **UCO Bank's** (supra).

The decision in **Ram Lal Bhaskar** (supra) does not deal with the payment of provident fund.

Having thus considered, it is held that the petitioner cannot withhold the authorization and forwarding of the claim even if a departmental enquiry is continuing after retirement.

Consequently, petition fails and is **dismissed**. No costs.

(SANJAY YADAV)
JUDGE