



GUJARAT HIGH COURT  
Hon'ble Mr. A.S. Supehia, J.  
Hon'ble Mrs. Mauna M. Bhatt, J.  
R/LPA No. 1028/2019 in R/SCA No. 12638/2013,  
Dt/- 27-9-2024

*Satishkumar Induprasad Chaturvedi & Ors.*

v.

*SVM Institute of Technology & Anr.*

EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952 – Paragraph 26(a) – Employer paid EPF contributions upto prescribed ceiling limit of salary – Employees-appellants approached the EPF Authority proper directions against the employer which was allowed – Employer challenged order of EPF Authority in writ petition which was allowed – Employees-appellants have challenged order of writ court by filing writ appeal – Held, as per provisions of section 29(1) of the Act, contribution payable by the employer under the Scheme shall be @ 10%, in the present case 12% of basic wages which is being paid by the Institute – No doubt sub-paragraph No. 2 of Paragraph No. 29 mandates that the contribution payable by the employee under the Scheme shall be equal to the contribution payable by the employer in respect of such employee but the proviso to sub-Paragraph No. 2 gives a discretion to an employee to pay enhanced contribution exceeding 10% or 12% of his basic wages, with a rider that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under the Act – Thus the Act does not direct the employer to pay any contribution over and above his contribution payable under the Act, i.e., 10% or 12% of the basic wages even if the employee pays more contribution than the ceiling limit – Similar intention is there under Paragraph No. 26(a) of the EPF Scheme which regulates the intention of membership – The employer cannot be compelled to contribute more than which is provided by the statute – If any employer has voluntarily to contribute large amount than provided by the statutory obligation, it may be termed as a liability created by volition and not on account of discharge of statutory obligation – The employee cannot enforce the voluntary contribution of large amount as a statutory obligation – Hence, appeal fails and dismissed. **Paras 17 to 21**

*For Appellants No. 1 to 7:* Mr. Meet M. Thakkar and Mr. P.A. Jadeja, Advocate.

*For Respondent(s) No. 1:* Mr. A.K. Clerk, Advocate.

*For Respondent(s) No. 2:* Ms. E. Shailaja, Advocate.

## IMPORTANT POINTS

- The EPF Act does not direct the employer to pay any contribution over and above his contribution payable under the Act, i.e., 10% or 12% of the basic wages even if the employee pays more contribution than the ceiling limit.
- **The employer cannot be compelled to contribute over and above the statutory limit in case of those employees whose emoluments are more than the statutory limit** and their contribution is made on such emoluments.
- If any employer has voluntarily agreed to contribute larger amount than the statutory obligation, it may be termed as a liability created by volition and not on account of discharge of statutory obligation.
- The employee cannot enforce the voluntary contribution of large amount as statutory obligation.
- **The EPF Act does not compel the employer to contribute over and above the statutory ceiling limit** and at par with the contribution of the employee over and above the prescribed statutory limit.
- **The employer can reduce his contribution from over and above the statutory rate back to the ceiling limit.**

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## ORDER

**A.S. Supehia, J.–**

1. The present appeal emanates from the judgment and order dated 29-06-2017 passed by the learned Single Judge in the captioned writ petition filed by the respondent – SVM Institute of Technology assailing the order dated 30-06-2013 passed by the Assistant Provident Fund Commissioner directing the Respondent-Institute to pay the amount towards provident fund quantified by the said authority.

### **BRIEF FACTS:**

2. The appellant No. 1 is presently serving under the respondent-Institute, whereas appellant Nos. 2 to 7 have left the Institute. It is the case of the appellants that the Institute paid the contribution towards the provident fund in accordance with the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 read with the Employees' Provident Funds Scheme, 1952 from 22-09-1997 to 31-12-2002, i.e., as per the statutory ceiling limit.

3. From 01-01-2003, the Institute voluntarily increased the contribution and started paying contribution of 12% of basic salary at par with the contribution of the employees. Thereafter, from February, 2011 the Institute reduced the said amount and again started contributing as per the ceiling limit provided under the Act, i.e., 12% contribution of Rs. 15,000/-. Thus, the appellants were contributing Rs. 9,863/- of their basic salary of Rs. 82,000/- as per 12% of basic pay, whereas the Institute was contributing Rs. 1,800/- of Rs. 15,000/- of the ceiling limit provided under the scheme.

4. Since, such dispute arose, the appellants approached the Assistant Provident Fund Commissioner for claiming/seeking directions against the respondent – Institute to contribute 12% of basic pay. The respondent – Provident Fund Authority accepted their demand and directed the Institute to contribute the provident fund at par with the appellants' contribution.

5. The Institute challenged the aforesaid order of the Assistant Provident Fund Commissioner before this Court by filing the captioned writ petition, which has been allowed. It appears that since the appellants were not made party to the writ petition, they filed an application seeking leave to appeal, which has been allowed vide order dated 22-04-2019 passed by the Co ordinate Bench and the captioned Letters Patent Appeal has been registered.

### **SUBMISSIONS ON BEHALF OF THE APPELLANTS-EMPLOYEES:**

6. Learned advocate Mr. P.A. Jadeja appearing for the appellants has submitted that the impugned judgment and order passed by the learned Single Judge setting aside the order dated 30-06-2013 passed by the respondent – Assistant Provident Fund Commissioner is required to be quashed and set aside since the learned Single Judge fell in error in placing reliance on the judgment of the Supreme Court in the case of *Marathwada Gramin Bank karamchari Sanghatana and Anr. v. Management of Marathwada Gramin Bank and Ors.*, (2011) 9 SCC 620. It is submitted that the judgment delivered by the Supreme Court in the said case and relied upon by the learned Single Judge does not apply in the present case in view of the specific provisions of Ordinance 69(a) of the Institute. He has referred to the Clause 17 of the Ordinance and has submitted that the said Clause regulates the provident fund of the employee's and the employer's contribution. It is submitted that as per the sub-clause (b) of Clause 17 of the Ordinance, the Management is required to contribute to the provident fund which shall be equal to the contribution of the employees. It is submitted that in the case of *Marathwada Gramin Bank karamchari Sanghatana* (supra), there was no such provision which fell for consideration by the Supreme Court. It is contended that since by this Clause, the Management has to contribute equally to the subscription of the employees, the Management cannot reduce the contribution which was being contributed prior to January, 2011.

7. Learned advocate Mr. Jadeja, while placing reliance on the provisions of section 12 of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 ('the EPF Act' for short) has submitted that the employer cannot reduce wages to which an employee is entitled for under the terms of his employment. It is contended that as per the terms of employment read with the Ordinance 69(a)-(17)(b), the Institute has unilaterally reduced its contribution which is impermissible and is in violation of the provisions of section 12 of the EPF Act. It is submitted that the Management continued to pay 12% of basic salary willingly till February, 2011 and they were required to maintain such contribution in view of the All India Council for Technical Education (AICTE) Notification dated 22-01-2010. He has placed reliance on the regulation governing the provident fund, which directs that the policy in regard to the contribution of provident fund which has been adopted by the respective Institutes such as the

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respondent, the *status quo* was required to be maintained. It is submitted that in the year 2011, all the Institutes including the respondent-Institute merged with the Gujarat Technical University and thereafter, they started contributing as per the ceiling limit.

8. In support of his submissions, learned advocate Mr. Jadeja for the appellants has placed reliance on the judgment of the Himachal Pradesh High Court dated 06-12-2016 rendered in Civil Writ Petition No. 1803 of 2014 and submitted that as per the decision of the Himachal Pradesh High Court, the employer is under an obligation to contribute as per the scheme which is beneficial to the employees and adopted by the employer/institute. It is submitted that in the present case, since the Institute has accepted the Ordinance 69(a), they are under an obligation to equally contribute the amount of provident fund at par with the contribution of the appellants. It is thus, urged that since the learned Single Judge has failed to appreciate this vital aspect, the judgment and order impugned in the Letters Patent Appeal may be quashed and set aside.

#### **SUBMISSIONS ON BEHALF OF THE RESPONDENT-INSTITUTE:**

9. In response to the aforesaid submissions, learned advocate Mr. A.K. Clerk has submitted that the impugned order and judgment passed by the learned Single Judge may not be interfered with as the issue is squarely covered by the decision of the Supreme Court in the case of *Marathwada Gramin Bank karamchari Sanghatana* (supra). He has referred to Paragraph No. 29 of the Employees' Provident Funds Scheme, 1952 ('the EPF scheme' for short), more particularly proviso attached thereto and has submitted that as per the said proviso, the Institute is already contributing 12% of the maximum ceiling limit of Rs. 15,000/- and the employer, i.e., the Institute is not obliged to pay any contribution over and above its contribution payable under the Act. It is submitted that the appellants are covered under the definition of Paragraph No. 2(f)(ii) and since they fall within the definition of excluded employees, they cannot claim the enhanced contribution over and above the ceiling limit. Learned advocate Mr. Clerk has also referred to Paragraph No. 26(a) of the EPF Scheme, which refers to the contribution payable by the employee or members and the contribution payable by the employer which is limited to the amount payable on pay of Rs. 15,000/-.

10. While referring to the provisions of section 12 of the EPF Act, learned advocate Mr. Clerk has submitted that the appellants cannot take benefit under the provisions of this section since the contribution of the Institute is paying as per the ceiling limit provided by the Act and the Scheme and the same would not amount to reduction of the wages or the amount of provident fund as per the terms of employment.

11. While referring to the provisions of Ordinance 69(b), it is submitted by learned advocate Mr. Clerk that Clause 17 which regulates the provident fund itself refers to the EPF Act and the Management was required to frame a scheme which provides for minimum requirement as prescribed under the EPF Act. It is further submitted that the Management instead of framing any scheme has adopted the EPF Scheme, and accordingly has paid the contribution of provident fund initially on the basis of the scheme. He has submitted that the respondent – Institute voluntarily paid its contribution on enhanced rate at 12% of basic pay + dearness allowance from 2003 to 2011 and since there was heavy financial burden on the Institute upon the revision of pay of its employees, it again started paying the contribution as per the ceiling limit of the Act. It is submitted that from the year 1997 to 31-12-2002, the appellants paid the contribution towards the provident fund in accordance with the Act and EPF Scheme and such contribution was paid till 31-12-2002. Thus, it is submitted that if the contention of the appellants is accepted, then it will lead to uncertainty as the Institute would be compelled to contribute more even if the Institute is not under an obligation to do so. It is submitted that the employees who can contribute more than the ceiling limit i.e. over and above the 12% can always withdraw their contribution and the Institute cannot be compelled to contribute equal to such amount as it would be perilous for the survival of the Institute.

12. Learned advocate Mr. A.K. Clerk has placed reliance on the judgment of the Division Bench of this Court in the case of *Jamnagar Rajkot Gramin Bank Officers Association and Anr. v. Saurashtra Gramin Bank and Anr.*, (2013) II CLR 867, whereby the Division Bench has confirmed the judgment and order passed by the learned Single Judge dated 09-01-2013 passed in Special Civil Application No. 3191 of 1995. While referring to the decision of this Court, both of the Division Bench and the learned Single Judge, he has submitted that this Court has categorically held that the employer cannot be compelled to contribute more than the statutory limit at par with the employees. It is submitted that this Court has held that the contribution @ 10% or 12% as the case may be of the salary of the employees is subject to ceiling prescribed under the Act and the Scheme. It is submitted that even if an employer has voluntarily agreed to contribute large amount over and above the statutory limit, the same cannot be



considered as a factor to compel the employer to further contribute its amount on enhanced at par with the contribution of the employees.

13. Learned advocate Mr. A.K. Clerk has finally submitted that since there was no Scheme framed by the Institute as per the Ordinance 69(a) and the Institute has adopted the EPF Scheme, the special Act will prevail over the Ordinance and the same cannot override the Ordinance norms. It is submitted that over and above 12% contribution on the statutory ceiling limit of Rs. 15,000/-, the Institute is also paying 1% administrative charge to the organization under the EPF Scheme. Thus, it is urged that the present appeal may be dismissed.

14. Learned advocate Ms. E. Shailaja appearing for the respondent No. 2 has also placed reliance on the provisions of the EPF Act and the EPF Scheme and has apprised this Court with regard to the same more particularly, Paragraph No. 29 and has submitted that as per the provisions of Paragraph No. 29(2), the contribution payable by the employee under the Scheme shall be equal to the contribution payable by the employer in respect of such employee subject to condition that the employer shall not be under an obligation to pay any contribution over and above its contribution payable under the Act. She has submitted that the maximum ceiling limit as provided under the Act is 12% of Rs. 15,000/-.

#### ANALYSIS AND CONCLUSION:

15. The kernel of the issue raised before us is that as to whether the Institute can be compelled to pay its contribution towards the provident fund over and above the statutory ceiling limit at par with the contribution of the appellant-employees or not.

16. The learned Single Judge has primarily placed reliance on the judgment of the Supreme Court in the case of *Marathwada Gramin Bank karamchhari Sanghatana* (supra) while allowing the writ petition challenging the order dated 30-06-2013 passed by the Assistant Provident Fund Commissioner directing the respondent – Institute (original petitioner) to pay the amount of enhanced contribution towards the provident fund at par with the contribution of the appellants.

17. The facts, which are established from the pleadings are that the appellants who are / were employees of the Institute were depositing the contribution towards the provident fund by the Institute as per the provisions of the Act and the Scheme from 22-09-1997 to 31-12-2002. From 01-01-2003 to January, 2011, the Institute voluntarily increased the contribution and contributed their share of provident fund @ 12% of basic salary + dearness allowance regardless of statutory limit of salary. From February, 2011, the Institute reduced their contribution towards the provident fund and started paying as per the statutory limit @ 12% of Rs. 15,000/- ceiling limit. Thus, it contributed Rs. 1,800/-, whereas the employees – appellants contributed Rs. 9,863/- i.e. 12% of basic pay of Rs. 82,000/-. After the demand was accepted by the Assistant Provident Fund Commissioner, which culminated in passing of the order dated 30-06-2013, the captioned writ petition came to be filed by the Institute challenging such order, which had been allowed by the learned Single Judge.

18. The entire case of the appellants hinges on the Ordinance 69(a) (Clause 17), which regulates the provident fund of the employees of the Institute. The same is as under:-

#### “(17) PROVIDENT FUND

Members of the teaching staff in an Institution who have been in service should receive the benefit of a scheme for contributory Provident Fund or GPF. The Management frame a scheme which shall provide for the minimum requirement laid down in the Provident Fund Act, 1952 as amended from time to time. The Management shall get such scheme directly from the Government, and convey the approval of the government to the University.

(a) Every teacher shall become subscriber to the provident fund. The subscription shall be at the uniform rate of the one twelfth of the basic pay for the month.

(For a part – time teacher, who is exclusively engaged in teaching, the basic pay for the purpose of Provident Fund shall be one half of the basic pay that the teacher would be entitled to draw had he been a full-time teacher on the same post continuously from the date of his/her appointment as a part-time teacher)

(b) The Management's contribution to the Fund shall be equal to the subscriber's contribution every month and it shall be credited to the subscriber's account at the end of each month.

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(c) Whenever a teacher ceases to be in service of the Management he/she shall be paid the amount standing to his/her credit in the fund; provided that he/she shall not be entitled to the employer's contribution to his/her account and interest thereon if:

(i) he/she has not served the Management for a continuous period of at least five years as a teacher, or

(ii) he/she has been removed from service under clause (9) of this ordinance.”

**19.** The appellants have asserted their claim of enhanced contribution more particularly, on sub-clause (b) of Clause 17. It is the case of the appellants that the Management has to equally contribute the fund at par to that of the appellants in view of the said clause. It is contended that the decision of the Supreme Court in the case of *Marathwada Gramin Bank karamchari Sanghatana* (supra) will not apply in the present case since the Institute is already having the scheme in the form of Ordinance 69(a)-(17) regulating the provident fund. In order to buttress such submissions, reliance is placed by the appellants on the decision of the Himachal Pradesh High Court in the case of *Ajay Kumar Sud* (supra). We may at this stage refer to the provisions of Paragraph No. 29 of the EPF Scheme, more particularly Paragraph No. 29(1) and (2), which is as under:-

**“29. CONTRIBUTION:-**

(1) The contributions payable by the employer under the Scheme shall be at the rate of ten per cent of the basic wages, dearness allowance (including the cash value of any food concession) and retaining allowance (if any) payable to each employee to whom the Scheme applies:

Provided that the above rate of contribution shall be twelve per cent in respect of any establishment or class of establishments which the Central Government may specify in the Official Gazette from time to time under the first proviso to sub-section (1) of section 6 of the Act.

(2) The contribution payable by the employee under the Scheme, shall be equal to the contribution payable by the employer in respect of such employee:

Provided that in respect of any employee to whom the Scheme applies, the contribution payable by him may, if he so desires, be an amount exceeding ten per cent or twelve per cent, as the case may be, of his basic wages, dearness allowance and retaining allowance (if any) subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under the Act;”

**20.** A fair reading of the provisions of section 29(1) mandates that the contribution payable by the employer under the Scheme shall be @ 10%, in the present case 12% of basic wages which is being paid by the Institute. Sub-paragraph No. 2 of Paragraph No. 29 mandates that the contribution payable by the employee under the Scheme shall be equal to the contribution payable by the employer in respect of such employee. The proviso to sub-Paragraph No. 2 gives a discretion to an employee to pay enhanced contribution exceeding 10% or 12% of his basic wages, with a rider that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under the Act. Thus, the language of the statute is very specific and it does not direct the employer to pay any contribution over and above his contribution payable under the Act, i.e., 10% or 12% of the basic wages even if the employee pays more contribution than the ceiling limit.

**21.** Similar intention has been found under Paragraph No. 26(a) of the EPF Scheme which regulates the intention of membership. Proviso to Sub-Paragraph No. 2 of Paragraph No. 26(a) also refers that the contribution payable by the employer and the employee would be in accordance with the rates specified in Paragraph No. 29. We may at this stage refer to the observations made by the Single Judge in the case of *Jamnagar Rajkot Gramin Bank Officers Association and Anr . v. Saurashtra Gramin Bank and Anr .*, (2013) 4 GLR 3248:

“10. On conjoint reading of above sections of the Act and Paragraphs of the Scheme, the following four categories can be carved out of the employees to appreciate the arguments of learned counsel for the respective parties.

(i) Employees whose emoluments are upto Rs. 6,500 (as per the limit in force at present) and whose contribution is as per requirement, i.e., ten per cent or twelve per cent, as the case may be. In case of this category, the employer's contribution would be ten per cent or twelve per cent, as the case may be, of the emoluments, which is not more than Rs. 6,500.

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(ii) The second category of the employees is that where the employees get emoluments upto Rs. 6,500/- but he intends to contribute more percentage than statutory requirement. In such cases though he may contribute more percentage but the liability of the employer is limited to ten per cent or twelve per cent, as the case may be.

(iii) The third category is where the emoluments of an employee is beyond Rs. 6,500, which would have rendered him ineligible to be continued in the Scheme, but he, as per the rules, is permitted to be retained in the scheme and continues to contribute as per rules which would be ten per cent or twelve per cent of the amount of his emoluments which is more than Rs. 6,500, but in that case, the liability of the employer would be limited to stipulated percentage of Rs. 6,500.

(iv) The fourth category is of such employees who were drawing emoluments exceeding Rs. 6,500 and thereby who were excluded employees, but, who is permitted to join the scheme and start contributing to the fund. Such employees cannot contribute less than the prescribed percentage, creating an eventuality, where, say for example, an employee with emoluments of Rs. 7,000 contributes ten per cent or twelve per cent, as the case may be, and second eventuality of this category is that such employee, by his volition, contributes more than ten per cent or twelve per cent of his emoluments. Whether such type of employees can claim that the contribution of the employer in provident fund in their case should be on the basis of Rs. 7,000, i.e., over and above the statutory ceiling of Rs. 6,500, and further that, if the said employee contributes, say fifteen percentage, whether the employer should also be expected to contribute fifteen percentage. The controversy raised is with regard to this category. To be more precise, the first eventuality of this last category, i.e. an employee in whose case the emoluments are more than Rs. 6,500, in his case, whether the employer can be directed to contribute ten per cent or twelve per cent of an amount exceeding Rs. 6,500, which is statutory requirement."

11. At this juncture, reference may be made to the decision of Hon'ble the Supreme Court of India in case of *Marathwada Gramin Bank Karamchari Sanghatana and Another* (supra), where the observations of Hon'ble the Supreme Court are as under:

"28. The Respondent Bank is under an obligation to pay provident fund to its employees in accordance with the provisions of the 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."

12. The conjoint reading of sections 6 and 12 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, paragraphs 26 with specific reference to paragraph 26(6), 26A, 27, 27A and 29 of the Employees' Provident Funds Scheme, 1952 and the observations of the Supreme Court of India as referred above, leaves no room, in my view, but to hold that the employer cannot be directed to contribute in the provident fund of the employee, more than ten per cent or twelve per cent, or on the monthly emoluments exceeding Rs. 6,500, the ceiling now prevailing. The liability of the employer, under this Act, under all these cases is limited to Rs. 6,500 and limited to ten per cent or twelve per cent, as the case may be. The argument of learned counsel for the employees that section 12 of the Act would prohibit reduction of contribution by the employer from the amount exceeding to Rs. 6,500 to the mandatory stipulation of Rs. 6,500, is not well-founded and is rejected. Reference in this regard may also be made to the decision of Hon'ble the Supreme Court of India in the case of *Committee for Protection of Rights of ONGC Employees & others v. Oil and Natural Gas Commission, Dehradun & Others*, (1990) 2 SCC 472. The reliance placed by learned counsel for the employers on the decision of the Kerala High Court in the case of *North Malabar Gramin Bank Officers' Association and Another* (supra), though is well-founded, the same may not be required to be gone into in detail, in view of the decision of Hon'ble the Supreme Court of India in the case of *Committee for Protection of Rights of ONGC Employees* (supra). The judgments relied upon by the employees which are referred above, will not have application in this fact situation and will not hold the field on the face of the judgments of Hon'ble the Supreme Court, relied upon by the employers, which are referred above. Thus on this bone contention, the case of the employees is rejected and that of the employers is accepted."

22. The learned Single Judge after threadbare examination of the provisions of the EPF Act including section 12 and the Scheme has categorized the employees in four categories. The issue deliberated upon by the learned Single Judge was akin to the one raised before us. The learned Single Judge after placing reliance on the judgement of the Supreme Court in the case of *Marathwada Gramin Bank Karamchari Sanghatana* (supra) has held that the employer cannot be compelled to contribute over and above the statutory limit in case of those employees whose emoluments are more than the statutory limit and their



contribution is made on such emoluments. The Division Bench has confirmed the view expressed by the learned Single Judge vide judgement dated 18-03-2013, (2013) II CLR 867, by holding thus:

“8 If the aforesaid observations, and the view taken by the learned Single Judge are further examined in light of the submission made by the learned Counsel for the appellants, it appears that as per paragraph 26(6), upon joint request in writing of any employee and employer, any employee may be allowed to become a member of the Scheme and he may also be allowed to contribute more than Rs. 6,500 of his pay per month if he is already member of the fund. Upon such request made by the employer and the employee, the employee would be entitled to the benefits and shall be subject to the conditions of the fund, but so far as the employer is concerned, the only requirement is that the employer has to give an undertaking in writing that he shall pay administrative charges and shall comply with all statutory provisions in respect of such employees. Therefore, one aspect is apparently clear that it does not speak for any counter obligation to be created upon the employer for his contribution more than provided by the statute. The only obligation created is as provided by the statute and additional liability to pay administrative charges. If any employer has voluntarily agreed to contribute large amount than provided by the statutory obligation, it may be termed as a liability created by volition and not on account of discharge of the statutory obligation. Once we proceed on that basis, the right, if any, by employee cannot be enforced as if the statutory obligation so created and there is abdication therefrom.”

**23.** After threadbare examination of section 12 of the Act and Paragraph No. 26(6) and other provisions of the Scheme read with Paragraph No. 26(a), the Division Bench has held that the employer cannot be compelled to contribute more than which is provided by the statute. It is further clarified that if any employer has voluntarily to contribute large amount than provided by the statutory obligation, it may be termed as a liability created by volition and not on account of discharge of statutory obligation. It is further held that the employee cannot enforce the voluntary contribution of large amount as a statutory obligation.

**24.** Thus, the contention raised before us by the appellant that once the Institute has voluntarily enhanced the contribution, they are statutorily obliged to contribute the same continuously does not merit acceptance. If such contention is accepted then the same would lead to an absurd situation since the employer would be enforced to contribute the enhanced rate over and above the statutory ceiling limit even though the same may have deleterious effect on its financial health. The statute does not compel the employer to contribute over and above the statutory ceiling limit and at par with the contribution of the employee over and above the statutory limit prescribed under the Act or Scheme merely because the respondent – institute was paying its contribution @ 12% of basic salary between 01-01-2003 to January, 2011, they cannot be compelled to pay the same at enhanced rate. The appellants have very conveniently ignored the fact that prior to that from 1997 to 2002, the Institute was paying the benefit to the appellants in accordance with the Act and Scheme and only after February, 2011 on account of revision of pay, and looking to the financial restrain, the Institute reverted to the statutory provisions and started paying the provident fund contribution as per the ceiling limit instead of paying @ 12% of basic salary + dearness allowance.

**25.** We may now at this stage refer to the observations made by the Supreme Court in the case of *Marathwada Gramin Bank Karamchari Sanghatana* (supra). The learned Single Judge has referred to the said decision and the relevant paragraph, on which the reliance is placed, which is as under:—

“28. 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.”

**26.** In the said case, despite the cancellation of the exemption granted to the Bank, the Bank continued to pay excess provident fund to its employees in accordance with the earlier Scheme till 31-08-1993. Since, there was huge losses to the respondent-Bank, the Bank paid the contribution as per the provisions of statutory EPF Scheme and discontinued the payment of provident fund in excess of its statutory liability. The Supreme Court in context of the provisions of section 12 of the EPF Act has held that the employer (Bank) is under obligation to pay provident fund to its employees in accordance with the provisions of the statutory scheme and it cannot be compelled to pay the amount in excess of its statutory liability in all times to come. It is not the case of the appellants that the Institute has discontinued its contribution, but they have restricted it to the statutory liability and they are also paying the administrative charges, hence we do not find any infirmity in the observations recorded by the learned Single



Judge while allowing the writ petition. Hence, the contribution paid by the respondent as per the statutory ceiling limit since February, 2011 will not attract the rigors of section 12 of the EPF Act.

**27.** The appellants in support of their submissions have placed reliance on the judgment of the Himachal Pradesh High Court in the case of *Ajay Kumar Sud* (supra) and has tried to draw similarity to their case however, on perusing the aforesaid judgment we find that the same would not apply to the appellants. In the case before the Himachal Pradesh High Court the concerned College had already framed a Scheme known as “Non-Government Affiliated College Teachers Contribution Provident Fund Rules” and their provident fund was regulated under such Rules. In such circumstances, the Himachal Pradesh High Court has held that once the respondents or the College have implemented such Scheme, they cannot now turn around and question the Scheme or deny the benefits available to the employees. It is also recorded by the Himachal Pradesh High Court after perusing the Scheme that the same nowhere bars or prevents the applicability of any other Scheme which obliges the employer to contribute a larger amount than the one envisaged and prescribed under the Act, Rules and Scheme framed under the Central Act. Thus, the entire judgment is premised on the provisions of the Non-Government Affiliated College Teachers Contribution Provident Fund Rules which was applicable to the institute and its employees.

**28.** In the present case, the appellants have tried to equate the said Scheme which was considered by the Himachal Pradesh High Court with the Ordinance 69(a) and an attempt has been made to establish their case on sub-clause (b) of Clause 17 of the Ordinance. It is contended that the Management has to equally contribute to the fund at par with the employee's contribution.

**29.** We may at this stage, assert that no Scheme has been framed under Clause 17 of the Ordinance 69(a), but the Institute have adopted the EPF Scheme which is statutory for regulating the provident fund which includes their contribution as well as the contribution of the appellants. In absence of any Scheme framed under Clause 17 of Ordinance 69(a) and in wake of the fact that the respondent has adopted the statutory EPF Scheme, the contribution towards provident fund would be governed and regulated by the EPF Scheme and the EPF Act. In such circumstances the provisions of EPF Act and EPF Scheme will override the provision of sub-clause (b) of Clause 17 of Ordinance 69(a) and as held by the Supreme Court as well as Division Bench of this Court, an employer cannot be compelled to pay contribution over and above the statutory limit at par with the employees' contribution in case an employee on its own volition and discretion pay their contribution above the statutory ceiling limit in view of their increased basic wages.

**30.** In view of above, we do not find any infirmity or illegality in the judgment and order passed by the learned Singe Judge. Hence, the present appeal fails. The same is hereby dismissed.

Ref: LLR

**If you have any questions, feel free to reach out to us on WhatsApp at Jay Shah - +91 9167121333**