



MADHYA PRADESH HIGH COURT
Hon'ble Mr. Vivek Rusia, J.
Hon'ble Mr. Binod Kumar Dwivedi, J.
Misc. Petition No. 670/2021, Dt/- 2-7-2025

Employees Provident Fund Organisation

v.

Ujjain Sahakari Dugdh Sangh Maryadit

EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952 – Sections 7Q and 14B – Reinstatement with back wages – Payment of damages and interest – Respondent constituted a Scrutiny Committee to scrutinize the service record of the employee for above 20 years – As per the recommendation of the Committee, number of employees were compulsorily retired treating to be a dead wood – They challenged their retirement by way of writ petition before the High Court – Division bench of the High Court directing reinstatement with 20% backwages – The judgment was challenged before the Supreme Court which dismissed the SLP and directed reinstatement with 50% backwages – The respondent paid them backwages and deposited the contribution in the month of February 2011 – In 2014, the petitioner initiated the enquiry under section 14B of the EPF Act in respect of deposit of contribution of Shri A.K. Jaiswal – APFC assessed Rs. 1,52,645/- under section 14B and Rs. 1,03,382/- under section 7Q of the Act from July, 2002 to May, 2009 and directed respondent to deposit the same – An appeal was preferred before the CGIT which set aside the order – Held, the Hon'ble Apex Court has not directed for payment of provident fund – While after reinstatement into the service, the period is liable to be treated on duty for salary and allowances but when the arrears of backwages are paid retrospectively and there is no actual performance of work, the contribution towards the provident fund cannot be made under this scheme – The penalty and damage are not liable to be imposed on Dugdh Sangh because admittedly the employees were compulsorily retired from service and after the order of Hon'ble Supreme Court they were taken back in the year 2009 and after giving joining, the backwages were paid and contribution was deposited *suo motu*, there is no question of deliberate non-deposit of provident fund – no case for interference is made out – Writ petition is dismissed. Paras 7 to 11

For Petitioner: Mr. Pankaj Kumar Jain, Advocate.

For Respondent (State): Mr. Rajvardhan Singh Raghuvarshi on behalf of Mr. Kuldeep Bhargava, Advocate.

IMPORTANT POINTS

- After reinstatement into the service, the period is liable to be treated on duty for salary and allowances.
- When the arrears of backwages are paid retrospectively and there is no actual performance of work, the contribution towards the provident fund cannot be made under this scheme.
- No damages or interest can be levied on payment of provident fund for the period for which back wages have been granted after reinstatement.

ORDER

Vivek Rusia, J.–1. Petitioner Assistant Provident Fund Commissioner (Employee's Provident Fund Organization) Regional Office at 7, Bharatpuri Administrative Area, Dewas Road, Ujjain (M.P.) has filed this petition challenging the judgment dated 04-02-2020 passed by the Central Government Industrial Tribunal Cum Labour Court / EPF Appellate Tribunal, Jabalpur (M.P.), whereby the order dated 20-08-2014 passed by Assistant Provident Fund Commissioner under sections 7Q and 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred as "Act, 1952") has been set aside.

LaBbrio Compliance Hub Private Limited

Corporate Office | Mumbai: T20-T21, Swastik Disa Corporate Park, Opp. Shreyas Cinema, Ghatkopar (W), Mumbai – 400086.

Registered Office | Pune: Kumbare Brothers, Near Sidhivinayak Temple, Azad Nagar, Kothrud, Pune – 411038

Website: www.labbriohub.com

Formerly known as Exertion HR Solutions Pvt. Ltd.



Facts of the case, in short, are as under:

2. The respondent is a society registered under the M.P. Co-operative Societies Act, 1960 engaged in the manufacturing and sale of milk products. Respondent constituted a Scrutiny Committee to scrutinize the service record of the employee for above 20 years. As per the recommendation of the Committee, number of employees were compulsorily retired treating to be a dead wood. They challenged their retirement by way of writ petition before the High Court. The writ petitions were dismissed by the Single Judge. Thereafter, writ appeals were filed which were allowed by directing reinstatement with 20% backwages. Thereafter, the M.P. State Co-operative Federation Ltd. approached the Hon'ble Apex Court by way of number of civil appeals.

3. The Hon'ble Supreme Court dismissed the SLP with a direction to reinstate them with 50% backwages. After the order passed by the Hon'ble Apex Court, all the employees were taken back into the service. The respondent paid them backwages and deposited the contribution in the month of February 2011. In the year 2014, the petitioner initiated the enquiry under section 14B of the Employees' Provident Funds in Miscellaneous Provisions Act, 1952 (hereinafter referred as "Act, 1952") in respect of deposit of contribution of Shri A.K. Jaiswal.

4. *Vide* order dated 20-08-2014, the Assistant Provident Fund Commissioner assessed Rs. 1,52,645/- under section 14B of the Act, 1952, Rs. 1,03,382/- under section 7Q of the Act, 1952, in total Rs. 2,56,027/- under the head of damage and interest respectively from July, 2002 to May, 2009 and directed respondent to deposit the same failing which recovery action under section 8B and 8G of the Act, 1952 will be initiated. Being aggrieved by the aforesaid order dated 20-08-2014, Dugdh Sangh preferred an appeal before the CGIT-cum-LC under section 7(i) of the Act, 1952. *Vide* judgment dated 04-01-2020, the learned CGIT-cum-LC has allowed the appeal and set aside the order dated 20-08-2014. Hence, this petition before this Court.

5. This petition came up for hearing on 10-03-2021 and counsel for the petitioner sought adjournment and now today, it is coming up for hearing.

6. Shri Pankaj Kumar Jain, learned counsel for the petitioner submits that the learned Tribunal has not only set aside the impugned order under Order 14B & 7Q of Act, 1952, but also held that Dugdh Sangh has wrongly deposited the provident fund contribution on the backwages and granted liberty to Dugdh Sangh to claim the refund of its contribution. Shri Jain, further submits that the aforesaid direction has wrongly been given in view of the law laid down by the Hon'ble Apex Court in the case of *M.P. State Co-op. Dairy Fedn. Ltd. & Anr. v. Rajnesh Kumar Jamindar & Ors.*, in Civil Appeal No. 2442 of 2009.

7. Learned counsel has relied on Para 47 of the above judgment, in which it is held that when the termination or retirement of an employee from his service has been set aside by the Court and the employee is reinstated without any further departmental proceeding, then the period of absence from the period of suspension will be treated as the period on duty for all purposes including the grant of salary and allowances. Therefore, upon reinstatement into the service, the employees of respondent Dugdh Sangh are liable to be treated into the duty. Hence, respondent Dugdh Sangh rightly deposited the provident fund share suo motu and since there was a delay in deposition of the amount, thus, the order under section 14B & 7Q of Act, 1952 has rightly been passed.

8. So far as the judgment passed in case of *M.P. State Co-op. Dairy Fedn. Ltd. & Anr.* (supra) is concerned, the Hon'ble Apex Court has not directed for payment of provident fund. It is correct that after reinstatement into the service, the period is liable to be treated on duty for salary and allowances. But, at the same time, this Court in Writ Petition No. 6408 of 2011 (*Dr. Vishwanath Prasad Agnihotri & others v. The M.P. State Co-operative Dairy Federation Ltd. & Ors.*) under the similar facts and circumstances by placing reliance on a judgment passed by the Hon'ble Supreme Court has held that when the arrears of backwages are paid retrospectively and there is no actual performance of work, the contribution



towards the provident fund cannot be made under this scheme. The relevant paragraphs have already been quoted by the learned Tribunal in its judgment.

9. Even otherwise, the penalty and damage are not liable to be imposed on Dugdh Sangh because admittedly the employees were compulsorily retired from service and after the order of Hon'ble Supreme Court they were taken back in the year 2009 and after giving joining, the backwages were paid and contribution was deposited suo motu, there is no question of deliberate non-deposit of provident fund hence, the learned Tribunal has rightly passed the order and no interference is liable to be called for.

10. So far as the liberty granted to Dugdh Sangh to claim the refund of its contribution is concerned, in view of the judgment passed by this Court in case of *Dr. Vishwanath Prasad Agnihotri & Others* (supra), no interference is liable to be made. The order was passed in the year 2020. Shri Jain, learned counsel for the petitioner is not aware whether respondent Dugdh Sangh has filed any application seeking refund of provident fund. He has also no information whether A.K. Jaiswal, the sole employee involved in this case has claimed any provident fund.

11. In view of the above, no case for interference is made out. Admission is declined. Accordingly, this Writ Petition is dismissed.

Ref: LLR

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