

Balkrishan Malhotra vs.department of Post & Ors

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Court : Delhi

Decided On : Jul-16-2019

Appellant : Balkrishan Malhotra

Respondent : Department of Post & Ors

Advocate for Def. : Mr. Ajay Di, Ms. Soumava Karmakar, Mr. P. N. Shukla, Mr. Roop Chand, Mr. Manish Goyal

Advocate for Pet/Ap. : Mr. Ankur Bhasin

Judgement :

\$~25 * + IN THE HIGH COURT OF DELHI AT NEW DELHI W.P.(C) 27/2019
BALKRISHAN MALHOTRA

... Petitioner

Through: Mr Ankur Bhasin, Advocate. versus DEPARTMENT OF POST & ORS
.....

... RESPONDENTS

Through: Mr Ajay Digpaul, CGSC with Ms Soumava Karmakar and Mr P. N. Shukla, Advocates with Mr Roop Chand, Asstt. Director New Delhi, H.O. with Mr Manish Goyal, ASP for R-2 to R-5/UOI. CORAM: HON'BLE MR. JUSTICE VIBHU BAKHRU % VIBHU BAKHRU, J

ORDER

1607.2019 The petitioner has filed the present petition praying that the 1. respondents be directed to release a sum of 23,83,912/- as per the statement of accounts provided to the petitioner along with interest at the rate of 18% per annum with effect from 01.04.2018 till the date of payment.

2. The petitioner is a citizen of India. On 25.03.1998, the petitioner opened a Public Provident Fund Account (Account No.16627, subsequently renumbered as Account no.1146651453 - hereafter W.P.(C) 27/2019 Page 1 of 13 referred to as the PPF Account) in the name of his Hindu Undivided Family (HUF) with the GPO. It is stated that the PPF Account was opened by the petitioner for long term savings and in order to avail the tax exemptions available under Section 80C of the Income Tax Act, 1961.

3. The PPF Account was opened on 25.03.1998 with the maturity date as 31.03.2013 (that is, for a term of fifteen years) and the petitioner made an initial deposit of 18,000/- on 30.03.1999.

4. The petitioner states that from the year 1999 till 2017, he continued to deposit various sums in the said PPF Account. It is further stated that on 19.04.2017, the petitioner made the final deposit of 1,50,000/- in the PPF Account. The Passbook issued to the petitioner duly reflected the amounts 5. deposited by the petitioner and the interest accrued thereon.

6. In the meanwhile, the Government of India issued a notification (No.GSR291E)) dated 13.05.2005 discontinuing the PPF (HUF) accounts. Thereafter, a Savings Bank Order (No.23/2010) dated 13.12.2010 was issued by the Government of India stating that PPF accounts opened in the name of HUF prior to 13.05.2005 will be closed on maturity i.e 31st March of the 16th Financial Year from the year in which account was opened. No further interest will be admissible. 7. As per the aforesaid Government Order, the due maturity date of the petitioners PPF Account was 31.03.2013. The petitioner claims that W.P.(C) 27/2019 Page 2 of 13 no intimation was sent to him regarding the said amendment and as a consequence, he continued to make deposits in his PPF Account oblivious of any such policy.

8. On 22.04.2018, the petitioner sent a letter to the respondents requesting to close the PPF Account and issue a cheque amounting to 23,83,912/-, being the amount due and payable to the petitioner. This also included consolidated accrued interest till 01.04.2018. Respondent no.5 responded by a letter dated 19.05.2018 stating that as per the notification dated 13.05.2005, all the PPF (HUF) accounts opened prior to 13.05.2005 were to be closed on maturity - that is in the 16th financial year from the year in which account was opened - and no further interest will be admissible after maturity of such accounts. In light of the aforesaid, the petitioner was requested to get his PPF Account closed and accept the admissible amount of maturity value.

9. On 29.06.2018, the petitioner sent another letter requesting the respondents to close the PPF Account and intimate him the total amount accrued to date alongwith the principal interest with effect from 2003 till 2018. In response, the respondents sent a letter dated 11.07.2018 wherein it was stated that the petitioner was entitled only to a sum of 16,77,978/-. The petitioner claims that 10. the letter dated 19.05.2018 was dispatched by the respondents in late July, 2018. It is further claimed that the amount of 16,77,978/-, as mentioned by the respondents in the letter dated 11.07.2018, is contradictory to the Passbook and Statement W.P.(C) 27/2019 Page 3 of 13 of Account as provided by the Assistant Postmaster Savings Bank, GPO, New Delhi. The petitioner the stand of is not willing to accept 11. the respondents; consequently, the petitioner sent a legal notice dated 29.09.2018 to the respondents calling upon them to remit the sum of 23,83,912/-alongwith interest, in favour of the petitioner within fifteen days of the receipt of the notice.

12. On 15.11.2018, respondent no.3 replied to the aforesaid notice reiterating that HUF accounts were discontinued with effect from 13.05.2005. In terms of the SB Order dated 13.12.2010, PPF (HUF) accounts opened prior to 13.05.2005 would continue till maturity but their maturity period was not to be extended further after 13.05.2005. The said SB Order also stipulated that no further interest is admissible after maturity of such accounts. Accordingly, it was stated that an amount of only 16,79,978/- was payable to the petitioner. The relevant extract of the letter dated 15.11.2018 is set out below:-

"2. HUF accounts have been discontinued with effect from 13-05-2005 and as per SB Order No.23/2010 dated 13-12-2010, PPF accounts opened in the name of HUF prior to 13-05-2005 would continue till maturity but their maturity period cannot be extended further after 13- 05-2005 and no further interest will be admissible after maturity of such accounts. In this regard, notices were sent to all the PPF (HUF) account holders (Karta of account accordingly and this amendment was also displayed at the Notice Board of the Post Office for information of General Public. The Agent (Smt. Mira Jain, PPF DLI-178) who opened your clients PPF W.P.(C) 27/2019 Page 4 of 13 (HUF) account was well conversant with various schemes, Rulings or any amendment in Rulings of Department of Posts. Further, the amendment was notified vide Govt. of India, Gazette Notification No.GSR991(E) dated 13.05.2005. SB Order No.23/2010 is also available in Public Domain through website of the Department i.e. www.indiapost.gov.in.

3. Since PPF Account No.16627 (New No.1146651453) was opened in the name of HUF through Karta Sh. Bal Krishan Malhotra, i.e. your client, on 25.03.1998 and it was matured on 01.04.2013, and as such per SB Order mentioned in para 2 above, this HUF account cannot be extended further and no interest will be paid on the maturity amount of account after its maturity i.e. 01-04- 2013.

4. Therefore, amount of Rs. 1677978/- (Rs. Sixteen lakh seventy seven thousand nine hundred seventy eight only) is payable to the holder of the account No.16627 (New no.1146651453) and which is correct as per Govt. Order on the subject as it includes the maturity amount of Rs. 1092978/- as on 01-04-2013 and the amount of Rs. 585000/- which was deposited in the account by the holder after the maturity period i.e. 01-04-2013 of this account. The interest amount of Rs. 655934/- after maturity of the account is credited wrongly in account hence is not payable.

5. In view of above, the amount of Rs. 1677978/- is only payable to holder which is correct and as per instructions on the subject. 13. Aggrieved by the denial of petitioner has filed the present petition. interest after 01.04.2013, the 14. It is contended by the petitioner that he had continued to make deposits in his PPF (HUF) Account till 2018 and by virtue of the said W.P.(C) 27/2019 Page 5 of 13

deposits, he had also availed exemptions in his income tax returns of the financial years after 01.04.2013 and had paid income tax accordingly. It is further submitted by the petitioner that the passbook issued by the respondents also reflected entries for the interest accrued on the deposits made in the s PPF Account including on the deposits made after 01.04.2013. The petitioner contends that the respondents have failed to 15. explain as to why they continued to allow deposits to be made in the PPF Account and also credited the accrued interest for the said period between 01.04.2013 to 31.03.2018. It is further contended that no intimation was sent to the petitioner regarding the SBO Order No.23/2010 dated 13.12.2010 issued by the Government of India, and the petitioner was not informed about the said change in the policy.

16. The Public Provident Fund Act, 1968 (hereafter the PPF Act) was enacted for establishing the provident fund for general public. Section 3 of the PPF Act contains provisions for framing of a Public Provident Fund Scheme for the establishment of a Public Provident Fund. In terms of Sub-section (1) of Section 3 of the PPF Act, the Central Government is empowered to frame a Public Provident Fund Scheme in accordance with the provisions of the PPF Act.

17. In exercise of the aforesaid powers, the Central Government has framed the Public Provident Fund Scheme. The object of the PPF Act was to promote long term savings amongst general public. In terms of sub-paragraph (3) of paragraph 9 of the PPF Scheme, the subscriber is W.P.(C) 27/2019 Page 6 of 13 entitled to withdraw the entire balance standing to its credit and it is further mandatory for the Accounts Office to, on receipt of such an application, allow withdrawal of the entire balance together with interest up to the last date of the month preceding the month in which the application for withdrawal is made.

18. Sub-paragraph (3A) of paragraph 9 of the PPF Scheme entitles a subscriber (Account Holder) to extend the term of the PPF Account for a further block period of five years.

19. In the present case, the PPF Account matured on 31.03.2013. However, the said account was not closed and the petitioner continued to make the annual deposits in the said Account. In the counter affidavit filed by the respondents, it is

affirmed that the PPF Account was migrated as a normal account in Sanchay Post Software instead of as an HUF Account. It is, thus, contended that the same was extended irregularly after maturity, that is, after 31.03.2013. It is also conceded that statements of accounts were issued to the 20. petitioner periodically not only reflecting the principal amount but also the interest credited thereon.

21. It is apparent from the above that the petitioner was not informed that the PPF Account was to be closed on 31.03.2013. On the contrary, the respondents continued to accept deposits made by the petitioner and also reflect the interest accrued thereon.

22. Admittedly, interest amounting to 6,55,934/- was credited into W.P.(C) 27/2019 Page 7 of 13 to 10,92,978/-. According the PPF Account after 31.03.2013. The balance in the PPF Account, as on 01.04.2013, amounted the respondents, the petitioner is entitled to receive the said amount as well as a further sum of 5,85,000/-, which was deposited after 01.04.2013. However, the respondents are unwilling to pay any interest on the said balances. to 23. Mr Ajay Diggpaul, learned counsel appearing for the respondents submitted that in view of the Notification dated 13.05.2005, the Public Provident Fund Scheme was amended by the Public Provident Fund (Amendment) Scheme, 2005 and the words HUF and Hindu Undivided Family were deleted in Form A. He contended that by virtue of the said Notification, it would not be open for an HUF to open any PPF Account. He submitted that in terms of the Circular dated 13.12.2010, it was clarified that the PPF Accounts opened in the name of HUF prior to 13.05.2005 would continue till maturity and the account holder would enjoy all facilities but the maturity period will not be extended and after maturity, no further deposits can be accepted in such accounts.

24. He also referred to a Circular dated 12.03.2013 issued by Department of Post providing that if any subscription was accepted in PPF (HUF) Accounts matured after 13.05.2005, no interest would be credited in such accounts after maturity. The said Circular also specifies that if any such interest is credited, the same is required to be reversed immediately from the balances available in the accounts or to be recovered from the subscriber/officials responsible for accepting such

25. This Court is unable to accept that the petitioner can be penalised for extending its PPF (HUF) Account after it had matured on 31.03.2013. It is seen that the said Account was extended for a further block period of five years, as permissible in the case of individuals. The petitioner had parted with its money and the respondents had 26. accepted the same without any reservation. Further, the petitioner was also led to believe that its deposits in the said Account were earning interest in terms of the PPF Scheme. Clearly, it is not permissible for the respondents to now turn around and deny their liability to pay interest for the funds invested in Government Securities. The onus to ensure that no amount was deposited in the PPF²⁷ Account rested with the respondent authorities. If the PPF Account was required to be closed, it was incumbent upon the respondents to communicate the same to the petitioner. The petitioner would have invested his savings in other instruments/schemes. It is conceded that the error is on account of software used by the respondents and, clearly, the petitioner cannot be penalised for such error.

28. Even if it is assumed that the petitioner was not entitled to interest under the PPF Scheme, he would, nonetheless, be entitled to interest since the deposits were made by the petitioner with the understanding that the same would bear interest and further, it was also represented by the respondents that the interest was accruing on the deposits made by the petitioner. W.P.(C) 27/2019 Page 9 of 13 In the year 1948, the Government of India established National 29. Savings Organization (NSO) for giving more impetus to the domestic savings as a force for national development. NSO, currently, is known as the National Savings Institute (NSI). It works under the Department of Economic Affairs, Ministry of Finance. One of the main objectives of NSI is to create awareness about importance of savings and popularize National Savings Schemes for financial inclusion and mobilization of resources for financing developmental projects of the Government. Prior to April 1999, deposits and withdrawals made by the subscribers of the small saving schemes were made from the public account. Further, to the subscribers was recorded in the revenue account of the Consolidated Fund of India. the payment of interest Thereafter, in the year 1999, a National Small Savings Funds

30. (NSSF) was created in the Public Account of India. The Fund is administered by the Government of India, Ministry of Finance (Department of Economic Affairs) under National Small Savings Fund (Custody and Investment) Rules, 2001, framed by the President under Article 283(1) of the Constitution. The said Rules were deemed to have come into force on 01.04.1999 and by the virtue of it, NSSF also came into effect from the said date, that is, 01.04.1999. After the creation of NSSF, all deposits in small savings schemes including the PPF Scheme, are credited to this Fund. The withdrawals are made by the subscribers out of the accumulation of this Fund and the interest on such deposits is also disbursed from the same. The balance fund in NSSF is invested in the Central and State Government Securities. The Reserve Bank of India is entrusted with the task of collecting interests on such investments (securities) and credit the same to the account of Department of Economic Affairs, Ministry of Finance of the Central Government. It is apparent from the above that the money collected by the Government through deposits in small savings schemes is channelized into the economy of our country and the Government also receives interest on such investments. The said utilization of public money by the Government puts them under a lawful obligation to repay the subscribers the principal amount along with interest, as the aforesaid utilization of public money by the Government is in the form of investment and the public, being the fund providers, are entitled to receive a return on such investment both in principal and interest.

32. In the present case, the petitioner has continued to make deposits in his PPF Account even after 31.03.2013 (the maturity date) and till April, 2017 (On 19.04.2017, the petitioner made the final deposit of 1,50,000/- in the PPF Account). The respondents, on the other hand have, admittedly, failed to close the petitioners PPF account and continued to accept deposits. The said deposits along with the interest on such deposits, have also been reflected in the passbook and the statements of accounts. Undisputedly, the said amounts, deposited in the PPF Account of the petitioner, have been utilized (invested) by the Government. Clearly, the petitioner is entitled to receive the interest for such deposits (investment) made by him and he cannot be deprived of this entitlement on account of an error/irregularity/omission on part of W.P.(C) 27/2019 Page 11 of 13

the respondents. In *Varinder Jeet Singh v. Municipal Corporation of Delhi* & 33. Anr. 2013 (134) DRJ284 a coordinate bench of this Court held as under: 15. It is settled law that if a person is deprived of the use of money to which he is legitimately entitled, he has a right to be monetarily compensated for the said deprivation. [Ref: (1992) 1 SCC508: *Secretary, Irrigation Deptt. Govt of Orissa vs. G.C. Roy*; (2004) 5 SCC65: *Ghaziabad Development Authority vs. Balbir Singh*, and (2009) 8 SCC507: *Sri Venkateswara Syndicate vs. Oriental Insurance Company Ltd. and Anr.*]. The object behind awarding interest to a party, who has suffered loss, due to a legitimate deprivation of the enjoyment of the use of money that he was entitled to rightfully, is to balance the equities and while doing so, the facts involved in each case must be examined by the Court. 34. This Court is also of the view that since the amount deposited by the respondents has not been remitted to the petitioner as yet despite his request to close the account, the respondents would also be liable to pay interest on the balance outstanding as on 01.04.2018 as confirmed to the petitioner (23,83,912/-), till the date of payment. This Court is also informed that the interest on the PPF Account has been fixed at the rate of 7.6% for the period 01.04.2018 to 30.09.2018 and 8% per annum for the period, thereafter. The petitioner would also be entitled to interest at the said rates.

35. In view of the above, the petition is allowed and the respondents W.P.(C) 27/2019 Page 12 of 13 are directed to close the PPF Account as requested by the petitioner and remit the amount of 23,83,912/-, as was reflected in the petitioners passbook as on 01.04.2018, alongwith further interest calculated at the rate of 7.6% on the said amount from 01.04.2018 to 30.09.2018 and 8% per annum for the period thereafter till the date of payment.

36. The parties are left to bear their own costs.

37. Order dasti under signature of Court Master. JULY16 2019/RK VIBHU BAKHRU, J W.P.(C) 27/2019 Page 13 of 13