

Central Provident Fund Vs. Central Provident Fund

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Court : Delhi

Decided On : Jan-10-2012

Appellant : Central Provident Fund

Respondent : Central Provident Fund

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision: 10th January, 2012 + W.P.(C) 940/2006 % CENTRAL PROVIDENT FUND COMMISSIONER....Petitioner Through: Mr. Satpal Singh, Adv. Versus CENTRAL PROVIDENT FUND EMPLOYEES' UNION Respondents Through: Mr. V.P. Uppal, Adv. CORAM :- HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW JUDGMENT RAJIV SAHAI ENDLAW, J..

1. The petition impugns the award dated 13th October, 2004 of the Industrial Adjudicator on the following reference:- "Whether the action of the management of Central Provident Fund Commissioner, New Delhi in refusing.

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4. to pay wages to their Assistants/Stenographers/Hindi Translators/Superintendents in the same scale of pay as the officials with the

same designation are paid in the Central Secretariat, is just and legal? If not, to what relief are the concerned workmen entitled." W.P.(C) No.940/2006 *Page 1 of 11* and holding the action of the petitioner employer to be neither legal nor justified and holding the workmen members of the respondent Union to be entitled to equal salary which is paid to the officials of the same designation in the Central Secretariat and directing the petitioner employer to make payment accordingly along with arrears within one month of publication of the award and if in default, together with interest at 6% per annum on such arrears..

2. Notice of the petition was issued and vide order dated 2 nd November, 2007 which continues to be in force the operation of the award stayed. Counter affidavit has been filed by the respondent Union. The counsels have been heard..

3. Though the reference to the Industrial Adjudicator was of other disputes also but the award records that the other disputes were, without prejudice to the right to raise the same at a future stage, not pressed and only the dispute No.4 aforesaid was pressed..

4. The claim of the Assistants/Stenographers/Hindi Translators/ Superintendents employed / working in the petitioner for the same scale of pay as officials with the same designation are paid in the Central Secretariat was premised on Section 5D(7) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act) and which is as under:- "(7) (a) The method of recruitment, salary and allowances, discipline and other conditions of service of the Additional Central Provident Fund Commissioner, Deputy Provident Fund Commissioner, Regional Provident Fund Commissioner, Assistant Provident Fund Commissioner and other officers and employees of the Central Board shall be such as may be specified by the Central Board in accordance with the rules and orders applicable to the officers and employees of the Central Government drawing corresponding scales of pay: Provided that where the Central Board is of the opinion that it is necessary to make a departure from the said rules or orders in respect of any of the matters aforesaid, it shall obtain the prior approval of the Central Government. (b) In determining the corresponding scales of pay of officers and employees under clause (a), the Central Board shall

have regard to the educational qualifications, method of recruitment, duties and responsibilities of such officers and employees under the Central Government and in case of any doubt, the Central Board shall refer the matter to the Central Government whose decision thereon shall be final."

5. The Industrial Adjudicator found merit in the claim aforesaid of the workmen and held that since the petitioner employer had not shown that the Central Board of the petitioner employer had formed any opinion that it was necessary to make a departure from the rule contained in Section 5D(7) (a) (supra) or any order in that respect had been made or any prior approval thereof from the Central Government had been obtained, the conditions of service of officers and employees of the petitioner employer including pay scale had to be the same as of the employees of Central Government. W.P.(C) No.940/2006 Page 3 of 11.

6. The counsel for the petitioner employer before this Court has argued:- a. that no reference to the Industrial Adjudicator could have been made as the dispute aforesaid as to pay scale is not an industrial dispute; b. a Government Department is not "an industry" within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 (ID Act); c. the activity of the Provident Organization is not covered under the ID Act. Reliance in this regard is placed on *Regional Provident Fund Commissioner, Karnataka v. Workmen* AIR 1984 SC 1897; d. that the employees of the petitioner are not entitled to the same pay scale as of the employees of the Central Government. Reliance in this regard is placed on the order dated 15 th March, 2001 of the Full Bench of the Central Administrative Tribunal (CAT), Principal Bench in OA No.1901/1999 titled *Shri M.V.R. Rao v. Union of India* and other connected matters and the judgment dated 31st May, 2002 of the Division Bench of this Court in CWP 3844/1999 titled *Director General ESI Corporation v. All India ESIC Employees Federation* and other connected petitions. It is informed that the same pay scales have been introduced w.e.f. the year 2001 and the dispute now is only for the years 1996 to 2001; W.P.(C) No.940/2006 Page 4 of 11 e. reference is made to the office order dated 3rd April, 2007 of the Employees' Provident Fund Organization (EPFO) of implementation of revised pay scales of Assistants/PAs in EPFO at par with Central Secretariat Services and Central Secretariat Stenographers' Services w.e.f.

15. th September, 2006 and it is contended that these are matters of policy and the Court cannot grant a higher scale from a retrospective date; f. that duties cannot be equated. No evidence in this regard was led before the Industrial Adjudicator particularly in view of the judgments aforesaid of CAT and of this Court; g. that w.e.f. 12th May, 1986 the Central Board of Trustees constituted under the EPF Act has been notified in exercise of powers conferred by Section 14(2) of the Administrative Tribunals Act, 1985 and the jurisdiction over all disputes was thus of CAT and not of the Industrial Adjudicator;.

7. Per contra, the counsel for the respondent Union has: (i) referred to the letter dated 15th July, 2002 of the Ministry of Labour, Government of India to the EPFO clarifying that the Government has not exempted the Central Board of Trustees constituted under the EPF Act from the provisions of the ID Act in terms of Section 36B thereof and unless exemption from the provisions of ID Act is granted, EPFO will remain under the purview of the ID Act notwithstanding having been brought W.P.(C) No.940/2006 *Page 5 of 11* within the purview of CAT. It is thus contended that the objection to the jurisdiction of the Industrial Adjudicator is mala fide. (ii) contended that no objection to the jurisdiction of the Industrial Adjudicator was taken before the Industrial Adjudicator and cannot be taken now; and (iii) contended that the award bases itself solely on Section 5D(7) of the EPF Act and which provision has not been discussed in the order of the CAT or in the judgment (*supra*) of this Court..

8. As far as the objection by the petitioner employer to the jurisdiction of the Industrial Adjudicator for the reason of the petitioner having been brought within the purview of CAT is concerned, the same besides for the reasons given by the respondent Union, is no longer res integra. The Apex Court in *Telecom District Manager v. Keshab Deb* (2008) 8 SCC 402 held that Section 28 of the Administrative Tribunals Act itself saves the jurisdiction of the Industrial Adjudicator. The said aspect has also been the subject matter of *Kendriya Vidyalaya v. Sushil Kumar* ILR (2007) 2 Delhi 339, *Apeejay School v. Sh. Darbari Lal* 170(2010) DLT 608 and *General Manager, Northern Railways v. Dharam Pal* MANU/DE/1456/2010..

9. As far as the objection of the petitioner employer to the jurisdiction of the Industrial Adjudicator for the reason of being a Government Department is concerned, the ID Act while defining the "appropriate Government" in Section 2(a) thereof itself defines that the appropriate Government in W.P.(C) No.940/2006 *Page 6 of 11* relation to an industrial dispute concerning the Central Board of Trustees and the State Board of Trustees constituted under Sections 5A and 5B of the EPF Act is the Central Government. The statute itself having deemed it necessary to define the appropriate Government for a dispute between the petitioner and its workmen, it is not open to the petitioner to contend that it is outside the purview of the ID Act. Moreover the judgment in Regional Provident Fund Commissioner, Karnataka (supra) cited by the counsel for the petitioner employer himself, though laying down that a dispute between the RPF, Karnataka and its employees could not have been referred for adjudication by the Government of State of Karnataka, lays down that the same could be referred by the Central Government. It is not in dispute and is borne out from the order of reference in the present case that the reference was by the Central Government. Thus the said objection also has no merit. A Single Judge of the Rajasthan High Court also in Hemraj Gurjar v. State of Rajasthan MANU/RH/0125/1992 held the PF Department of the State to be an industry..

10. The objection that a dispute as to pay scale cannot be an industrial dispute also does not find favour with me. The Third Schedule of the ID Act while prescribing the disputes within the jurisdiction of the Industrial Tribunal inter alia mentions wages, compensatory and other allowances, leave with wages, bonus profit sharing provident fund and gratuity, classification of grades. I fail to see as to how a dispute as to scale of pay can be said to be not within the domain of the Industrial Adjudicator. W.P.(C) No.940/2006 *Page 7 of 11* Reference with benefit may be made to the judgment of the Division Bench of the Bombay High Court in Shri Yamuna Mills Co. Ltd. v. Majoor Mahajan Mandal AIR 1958 Bombay 74 laying down that a wage scale is obviously within this definition of "wages", because a wage scale prescribes the remuneration that is payable to an employee in respect of his employment or work done in such employment. Similarly, the Division Bench of the Gujarat High Court also in State of Gujarat v. Saurashtra Mazdoor Sangh MANU/GJ/0555/2003 held that a claim for higher pay scale on the principle of

equal work equal wage is a dispute concerning wages referable to the Industrial Adjudicator. I respectfully concur with the said view..

11. The objections thus of the petitioner employer as to jurisdiction are without any basis..

12. The Full Bench of the CAT, in the order dated 15th March, 2001 (supra), was constituted to decide whether Stenographers and Assistants of subordinate and attached offices of the Government of India are entitled to the pay scale applicable to Stenographers and Assistants working in Central Secretariat Services. The Tribunal however held that granting of such scale would amount to treating unequals as equal and the case for equal pay for skilled work was not proved. Section 5D(7) of the Provident Fund Act was not considered. W.P.(C) No.940/2006 Page 8 of 11.

13. The Division Bench of this Court in Director General ESI Corporation (supra) also was concerned with Section 17 of the Employees State Insurance Act, 1942 which is found to be in pari materia to Section 5D(7) of the EPF Act and held that it had not been established, in what manner the jobs and functions of Assistants of ESIC were said to be equivalent to Assistants in Central Secretariat Services and that it may be one thing to say that keeping in view the requirement of the job a particular scale of pay is recommended but it is another thing to say that there has been a comparative job evaluation of both Assistants workings in the Corporation and their counterparts in the Central Secretariat..

14. Though some merit is found in the contention of the petitioner employer that the award does not render any finding of parity in educational qualification, method of recruitment, duties and responsibilities of the Assistants/Stenographers/Hindi Translators/Superintendents employed with the petitioner employer and persons with the same designation in the Central Secretariat and a perusal of the records of the Industrial Adjudicator does not show any evidence having been led in this regard save for a comparative chart filed by the workmen Union but I find that notwithstanding such claim of the respondent workmen Union, it has not been the defence, neither before the Industrial Adjudicator nor before this Court of the petitioner employer that persons with the designation of

Assistants/Stenographers/Hindi Translators/Superintendents in the petitioner employer were not performing the same work or duty and were not to have W.P.(C) No.940/2006 Page 9 of 11 the same educational qualification as those with the same designation in the Central Government. Further the argument of the counsel for the petitioner employer that w.e.f. 1st April, 2001 such parity has been granted and without any explanation as to why it was not so earlier, also confirms that there is parity in the employees of the petitioner employer and the employees of the Central Government with the same designation. The documents filed in this regard also show parity by designation. Thus notwithstanding absence of evidence, by non traverse and subsequent conduct, a case of parity is made out. The Supreme Court in Haryana State Minor Irrigation Tubewells Corporation v. G.S. Uppal (2008) 7 SCC 375 in the face of the employer Haryana State Minor Irrigation Tubewells Corporation not producing any evidence to establish that the working conditions, responsibilities and nature of duties were different from the counterparts and holding that the Courts should interfere with the administrative decisions pertaining to pay fixation and pay parity when they find such a decision to be unreasonable, unjust, prejudicial to the employees and in ignorance of material and relevant factors, upheld the order of the High Court granting pay parity. The award cannot be found fault with for the said reason also..

15. In the face of the aforesaid and Section 5D(7) supra and the petitioner having failed to show having made any departure in terms of proviso to Section 5D(7)(a), no ground for interference with the award is made out. W.P.(C) No.940/2006 Page 10 of 11.

16. The petition thus fails and is dismissed. The petitioner employer having enjoyed the interim order, is now directed to make payment in terms of the award within eight weeks with interest at 6% per annum as directed till the date of payment. No order as to costs. RAJIV SAHAI ENDLAW (JUDGE) JANUARY 10, 2012 pp.. W.P.(C) No.940/2006 Page 11 of 11