Before K.Kannan, J.

DR. IQBAL SINGH DHILLON (RETIRED DIRECTOR, YOUTH WELFARE)—*Petitioner*

versus

PANJAB UNIVERSITY, CHANDIGARH AND ANOTHER—*Respondents*

CWP NO. 8966 OF 2009

May 09, 2012

Constitution of India, 1950 - Art. 226 - Provident Fund of University Employees Regulations - Reg. 6 - Provident Fund and other retiral dues denied to petitioner on ground that he had not accounted for advances taken for conduct of youth festival during his service - Such liability not determined till date of retirement - Whether amount due and payable from accumulation of provident fund could be withheld for setting of alleged liability - Contention of petitioner that for an amount that has not been ascertained and without holding an enquiry nonpayment of terminal benefits untenable - Writ petition allowed holding employee who denied his liability, cannot be fastened with such liability in absence of proactive approach to have liability determined through proper legal process.

Held, That the employer, at all times shall conduct his finances in such a way that for an amount which is advanced to any employee for which the employee is responsible, the demand for such accounting should be secured and liability finalized during the service itself. There are two options when liability is not admitted - (i) not to allow the employee to retire, constitute enquiry and finalize the liability; (ii) invoke any special provisions that allow for constitution of an enquiry subsequent to retirement according to the Rules. The reliance on Regulation 6 should be possible only in situations where the liability is clearly admitted. If liability is denied, without engaging proper adjudication and a final determination of liability. The employer shall not defeat the employee from claiming the retiral dues.

(Para 4)

Held further, that there have been several judicial approaches about how serious the issue is when it comes to duty of an employer to make the disbursals of the retiral benefits. There are also decisions which hold that no part of the amount due for the provident fund could be a subject of attachment. An employee who denied his liability cannot be fastened with such liability in the absence of pro-active approach to have liability determined through a proper legal process. More so, in this case, the liability that was sought to be fastened, was not for an advance received at or just before retirement but for the advances made over a period of 20 years during service. Gorakhpur University & Ors v/s Dr. Shital Prasad Nagendra & Ors; AIR 2001 SC 2443 relied upon.

(Para 7)

Held further, Deductions from the provident fund without engaging in any form of adjudicatory process admissible by Rules held to be indefensible. The non-release of the provident fund dues on alleged adjustments against liability which is not determined, also held to be untenable. Provident fund dues directed to be paid with simple interest @ 18% per annum.

(Para 8)

Deepak Sibal, Advocate, *for the respondents.*

K. KANNAN, J.

(1) The writ petition is at the instance of a retired Director, Youth Welfare, who claims that the provident fund and all the other retiral dues have been denied on a specious ground that he had not accounted for the advances that he had taken for conduct of several youth festivals during his service. The liability had not been determined upto his retirement and after he was allowed to be retired, the entire terminal benefits have been withheld on the ground that the liability of the petitioner to the respondent-University is much more than the amount due to him. The petitioner's grievance is that for an amount which has not been ascertained and without holding an enquiry therefor to fix the liability, the non-payment of terminal benefits was clearly untenable. The issue, therefore, that what fall for consideration is whether the amount due and payable for the accumulation of provident fund could be denied by setting off the petitioner's entitlement against alleged liability by him for advances received by him and which had not been duly accounted for. Some more facts would be necessary to come to the grips of the problem that is posed through this writ petition.

(2) The petitioner had joined the services as Director and Head of the Department, Youth Welfare, Chandigarh, on 31.03.1978 and retired from the services on 30.04.2005. It is an admitted fact that the petitioner had drawn advances from time to time from the respondent-University in the capacity of the Director of the Department of the Youth Welfare from 1978 to 2005. Grants and subsidies appear to have been given to the petitioner for onward disbursement to the Colleges for holding youth festivals etc. Out of several advances which had been given to the petitioner, the audit had an objection to 33 advances along with 25 subsidies that remained unadjusted and unaccounted. The petitioner had been served with several notices to reconcile the accounts and finalize the same by duly accounting for the advances made to him. The petitioner would contend that he had given all the explanations and the Vice Chancellor of the University had himself given post-facto sanction approval in respect of two objections pertaining to expenditure/utilization of about Rs.1,40,000/- on 08.04.2000. With respect to 31 other advances, the petitioner would claim that the copies of sufficient proofs from official records including the copies of the Dispatch Registers had been given with full details of fund utilization, accounts adjustment and expenditure reports from time to time. The petitioner would rely on several communications which he had with the Accounts Department and full details which he had furnished to the University and when on a particular incident on 20.01.2004, the office of the Registrar rejected the explanations and proofs given by the petitioner by letter dated 20.01.2004, the petitioner had sought to give a clarification for the doubts raised through his letter dated 16.02.2004 giving the necessary documents/information for accounts adjustments.

(3) The truth is that respondents were demanding due accounting for the advances received by the petitioner and the receipt of the advances were themselves not denied. The justification for the non-payment of the provident fund amount by the University is by its reliance on Regulation 6 of the Provident Fund of the University Employees Regulation, which is reproduced hereunder:-

> "A deduction from the Fund, of an amount not exceeding the amount of University contribution, with interest, can be made from the subscriber in respect of dues unde a liability to the University."

The point that would fall consideration is whether the deduction could be made in respect of the amount which has not been determined yet. Assuming that the amount was drawn by an employee and not duly accounted during his service, would it be possible for the employee to deny the payment due to him and treat the liability cast on the employee as finalized, although the employee objects to the deductions? The answer to the question is straight and simple. The entitlement to a provident fund is assessed by the employee's own contribution to the organization during his service coupled with the contributions made by the employer by way of statutory mandates. The amount is a statutory entitlement and if any liability were to be deducted on the retirement of an employee, it could be drawn only with reference to the amounts which are ascertained by a due process.

(4) It must be noticed in this case that the liability cast on the petitioner is not for any amount received on the eve of his retirement, but these advances purport to be during the entire period of service for over 20 years. The employer, at all times, shall conduct his finances in such a way that for an amount which is advanced to an employee for which the employee is responsible and duty bound to account, the demand for such accounting should be secured and the liability finalized during the service itself. There are two options open when the liability is not admitted: (i) not to allow the employee to retire, constitute an enquiry and finalize the liability of the employee to the employer; (ii) invoke any special provisions that allow for constitution of an enquiry subsequent to the retirement in the manner that the rules provides for. In a situation where the amount sought to be deducted is disputed by the employee, it shall be impermissible for the employer to assume the amounts to be finally assessed. This would lead to arbitrary exercises of an employer completely defeating an employee's retiral benefits in the evening years of his life. The reliance on Regulation 6 should be possible only in situations where the liability is clearly admitted. If the liability is denied, without engaging a proper adjudication and a final determination of such liability, the employer shall not defeat the employee from claiming the entire retiral dues.

(5) The denial to the petitioner's demand is made on a plea by the respondent-University through its letter dated 08.09.2008 that the amount would not be paid till the compliance of audit requirements. I find this reply itself to be irresponsible. The petitioner could have no control over when

the audit will close its queries. When the queries are raised by the Audit Department and in the perception of the employer, the employee is not able to give satisfactory replies, it must move towards a final process of either constituting an enquiry or press for an adjudicatory mechanism in the manner contemplated by rules or by resort to a common law remedy of an institution of a suit to finalize the liability. If the liability is not finalized, there is no manner by which the employer can treat the liability as ascertained at its own whims.

(6) The University has given a list of unadjusted advances under R-1. I am not impressed by a mere reference to several entries which have not been finalized. The receipt of amounts themselves are not in denial. It is the statement of the petitioner's claims that they have been expended which is denied by the University. They surely could not have been resolved by merely engaging the employee in a long drawn volley of communications. The communications must have stopped and an adjudicatory process started.

(7) There have been several judicial approaches about how serious the issue is when it comes to the duty of an employer to make the disbursals of the retiral benefits. It is true that adjustments against the provident fund accumulations themselves would not be possible for any liability during his service unless there are specific provisions allowing for such adjustments. In this case, Regulation 6 duly makes possible such adjustments. I see no need to refer to several decisions which the learned counsel for the petitioner has cited where adjustments of liability against provident fund dues have been quashed, where there were no regulations or rules providing for such adjustments. There are also decisions which hold that no part of the amount due for the provident fund could be a subject of attachment. We are not dealing with such like situations and I would not, therefore, find a reason to apply them. In **Gorakhpur University and others *versus* Dr. Shitla Prasad Nagendra and others (1),** an attempt to adjust the pension and retiral dues against liability of a retired teacher, who was continuing to occupy the official quarter, was found to be illegal, on a reasoning that the pension and gratuity were no longer matters of any bounty to be distributed by Government but are valuable rights acquired and property in their hands and any delay in settlement and disbursement whereof should be viewed seriously. The Supreme Court held that lethargy shown by the authorities in not taking any action according to law to enforce their right to recover

(1) AIR 2001 SC 2443

possession of the quarters from the respondent or fix liability or determine the so-called penal rent would itself deny them the right to adjustment. I would apply the same logic in this case, for, an employee, who denies his liability, cannot be fastened with such liability in the absence of pro-active approach to have the liability determined through a proper legal process. More so, in this case, the liability that was sought to be fastened, was not for an advance that was received at or just before the retirement but for the advances made over a period of 20 years during his service.

(8) I find the attitude of the employer in making deductions from the provident fund without engaging in any form of adjudicatory process admissible by rules to be indefensible. The non-release of the provident fund dues on alleged adjustments against liability which is not determined, is untenable. The petitioner shall be paid the provident fund dues forthwith with simple interest at 18% per annum. The petitioner has claimed damages of Rs.2 lakhs for the unjust denial of his entitlements. Having regard to the award of interest, I decline damages as a separate head of claim.

(9) The writ petition is, therefore, allowed directing the respondents to release the provident fund with simple interest at 18% per annum with cost assessed at Rs.10,000/-.

M. Jain

Before K. Kannan, J.

DR. DALER SINGH, MEDICAL OFFICER AND OTHERS—*Petitioners*

versus

STATE OF PUNJAB, AND OTHERS—*Respondents*

CWP 1020 of 1992

11th May, 2012

Constitution of India, 1950 - Art. 226 - Stoppage of Rural Health Allowances - Doctors working in rural areas had been drawing Rural Health Allowances and also House Rent Allowance - Rural Health Allowance stopped from October, 1998 in terms of audit