

PETITIONER:
JIYAJEERAO COTTON MILLS LTD.

Vs.

RESPONDENT:
DEV KUMAR HOLANI AND OTHERS

DATE OF JUDGMENT: 22/07/1998

BENCH:
G.T. NANAVALI, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

NANAVALI, J.

Leave granted.

Heard learned counsel for the parties.

Jiyajeerao Cotton Mills Ltd., respondent no.10 is an establishment covered by the Employees Provident funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the Act). It constituted 'Jiyajee Cotton Mills Employees Provident Fund Institution', the appellant herein, and framed its Rules and Regulations in 1952. Respondent No. 10 applied to the Government of India, that being the appropriate Government at the relevant time, for grant of exemption under Section 17(1)(a) of the Act. The Government of being satisfied that the employees were in enjoyment of Provident Fund benefits which were on the whole not less favourable than the benefits provided under the Act and the Scheme granted exemption w.e.f. 1.11.1952, by a Notification dated 1.1.63 published on 12.1.63. Respondents Nos. 1 to 9 who were the employees of the appellant and members of the Provident Fund were discharged from service and paid their provident fund amounts. The Central Government by its letter dated 29.1.83 forwarded to the appropriate Governments, revised conditions for granting exemption under Section 17(1). One of the revised conditions was that any amendment to the Employees Provident Fund Scheme which was more beneficial to the employees than the existing rules of the establishment shall become applicable to them automatically. In view of this revised condition the said respondents claimed the difference between the interest which was given to them at the rate declared by the Board to Trustees and the rate of interest declared by the Central Government for the years 1984-85 to 1988-89. As the appellant did not accept their demand they filed a claim petition before the Central Provident funds commissioner who referred that petition before the Central Provident Fund Commissioner who referred that petition to the Regional Provident Fund Commissioner. As their claim was not dealt with by the Regional Provident Fund commissioner for some time, they filed Writ Petition M.P. No. 901 of 1989 in the High Court of Madhya Pradesh. The High Court by its order dated 26.7.89

directed the Regional Provident fund Commissioner to dispose of the said respondent's claim within six months.

The matter was thereafter heard by the Regional Provident Fund commissioner who held - with respect to the revised conditions of exemption that "It is worthwhile, to mention that the said revised conditions of exemption that "It is worthwhile, to mention that the said revised conditions of exemption as notified by the Govt. of India cannot be given effect in respect of particular exempted establishment until and unless the same is notified in the Official Gazette by the appropriate Govt.

After referring to Rule 16(f) and Rule 18(i) of the exempted Provident fund Scheme of the appellant and Respondent No. 10, the Regional Provident Fund Commissioner held that the appellant being an exempted establishment the account of each of the employees was to be credited with interest at the rate decided by the Board of Trustees and as the exempted scheme was not amended by the State Government they were not entitled to the enhanced rate of interest. He also held that even with lesser rate of interest the exempted scheme as a whole was not less favourable than the Statutory Scheme. He, therefore, dismissed the claim petition of the respondents.

The employees challenged this order by preferring a writ petition under Article 227 of the Constitution of India to the High Court of Madhya Pradesh. The High Court was of the view that the approach of the Commissioner was perverse and the respondents were unnecessarily made to run from pillar to post for payment of their legal dues. It referred to para 60 of the Statutory Scheme and held that interest was required to be credited to the account of each member at such rate as was determined by the Central Government. It further held that in view of this clear provision made in the Scheme, not paying interest at the higher rate amounted to contravention of the Act and the Scheme. The High Court was also of the view that the moment the Central Government declared higher rate of interest, the rule in the exempted scheme enabling the appellant to pay interest at a lesser rate made it less favourable to the employees. It also held that in view of the revised conditions for grant of exemption, the appellant was duty bound to comply with that term regarding payment of interest at enhanced rate as and when it was notified by the Central Government. It accordingly allowed the petition and directed the appellant and respondent no.10 to pay the difference as claimed by the employees.

The appellant is challenging the said order passed by the High Court on the ground that it is illegal. It was submitted by the learned counsel for the appellant that the establishment of respondent no.10 was an exempted establishment and as it has framed its own Provident Funds Scheme with rules and regulation, the provisions of the Statutory Scheme are not applicable to it. He also submitted that the scheme framed by it being not less favourable than the statutory scheme, the High Court was not justified in directing payment of interest at the higher rate declared by the Central Government. He also submitted that the revised terms and conditions for grant of exemption recommended by the Central Government did not become automatically applicable to the appellant and they could have been made applicable only after an amendment was made by the State Government in the appellant's exempted scheme to that effect and was notified in the official gazette.

The undisputed facts are that the establishment of JC Mills limited was granted exemption under Section 17(1)(a)

as the Provident Funds Scheme made by it was found not less favourable than the statutory scheme. The appellant had framed its own rules and regulations and under the exempted scheme the Board of Trustees was empowered to declare the rate of interest every year for crediting the same to the Provident Funds account of each member. It is also not in dispute that the Government of India revised the terms and conditions for grant of exemption under Section 17(1)(a) and circulated the same to all the State Governments and Union Territory Administrations by its letter dated 29.8.83. According to the revised condition No.4 any amendment made in the Statutory Scheme which was more beneficial to the employees than the existing rules of the establishment, was to become applicable to the exempted establishment automatically. It was on the basis of this revised condition that the High Court held that the appellant was duty bound to comply with the said term and grant interest at an enhanced rate notified by the Central Government, payment of interest at lesser rate made the exempted scheme less favourable to the employees.

As the establishment of respondent no.10 was granted exemption under Section 17(1)(a) the statutory Provident Funds Scheme did not apply to it. The High Court was, therefore, clearly wrong in applying para 60 of the statutory Scheme to the appellant and in holding that not paying interest at the rate in terms of para 60 amounted to contravention of the provisions of the Act and the Scheme. The High Court also misread the letter dated 29.8.83 issued by the Govt. of India and misconstrued Condition No.4 contained in the model notification sent along with that letter. Before we refer to the said letter it may be stated that the High Court also failed to consider that after 24.11.64 the State Government was the appropriate Government in respect of the establishment of respondent no.10 for the purpose of Section 17. By the said letter dated 29.8.83 the Government of India informed all the State Governments and the Union Territory Administrations that the sub-committee of Central Board of Trustees had reviewed the working of the exempted establishments and has recommended tightening of the existing terms and conditions for grant of exemption under Section 17(1)(a) so as to ensure better compliance. it was also stated therein that "A set of revised terms and conditions of exemption have accordingly been revised. A copy of the model notification incorporating the revised terms and conditions is enclosed. The State Government of Andhra Pradesh etc. are requested to apply the revised terms and conditions to all fresh cases of exemption under Section 17(1)(a)." Along with the said letter a copy of the model notification was also sent. What the High Court failed to notice was that the revised terms and conditions were to be made applicable to fresh cases of exemption. The Central Government had not made any statutory amendment nor given statutory directions but had only requested all State Governments and Union Territory Administrations to grant exemption under Section 17(1)(a) subject to the conditions specified in the schedule to the model notification. The revised terms and conditions did not and could not have become applicable automatically, and in order to make them applicable they were required to be incorporated by the appropriate Government in the notification granting exemption under Section 17(1)(a). As regards the exempted establishments it was rightly pointed out by the Regional Provident Fund commissioner that unless the appropriate Government issued a notification amending the exempted scheme and published the same in the Official Gazette,

condition no.4 did not apply to them. Admittedly, to such notification amending the exempted scheme framed by the appellant and respondent no.10 was issued by the State Government. Therefore, the appellant and respondent no.10 were not legally bound to credit the account of each of the respondent-employees with higher rate of interest for the years 1984-85 to 1988-89, only because for those years the Central Government had declared interest at higher rates. The High Court really misconstrued the correct legal position and unjustifiably criticised the Regional Provident Fund commissioner by observing that his approach was perverse. The view taken by the Regional Provident Fund Commissioner was quite correct and the High Court was wrong in taking a different view.

We, therefore, allow this appeal, set aside the order passed by the High Court and restore the order passed by the Regional Provident Fund commissioner. In view of the facts and circumstances of the case there shall be no order as to costs.