

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 25th August, 2021

Decided on: 20th September, 2021.

+

W.P.(C) 2759/2021 & CM APPL.8306/2021

ALOK KUMAR AGARWAL

..... Petitioner

Through: Mr. Himanshu Gupta, Advocate (M:
9818027581).

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms. Nidhi Bagga, Advocate for R-1.
Mr. Avnish Singh, Advocate with Ms.
Pushplata Singh, Advocate for R-2
and 3 (M: 8826437138).

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. The present petition has been filed by the Petitioner challenging the refusal by the EPF Authorities to pay interest for the period from 01st December 2017 to 28th December, 2018, on the total withdrawn EPF amount of Rs. 1,41,62,650/-, upon his retirement. The denial to pay interest was on the ground that the Petitioner's EPF Account has become an Inoperative Account in terms of Para. 72(6) of the Employees' Provident Fund Scheme, 1952 (*hereinafter "EPF Scheme, 1952"*), w.e.f. December 2017. As per the Respondent Authorities, interest is not liable to be paid on the said Inoperative Account, in view of the bar contained in Para 60(6) of the EPF Scheme, 1952. Hence, the Petitioner has preferred the present petition seeking payment of interest on the ground that the provisions of Paragraph 72(6) of the EPF Scheme, 1952, are not attracted to the facts of the present case. Accordingly, interest is sought at 8.55% per annum, or in the

alternative, at the bank rate, for the amount which was lying with the Respondent Authorities between 01st December 2017 to 28th December 2018.

2. The brief facts are that the Petitioner, Mr. Alok Kumar Agarwal, had joined the Centre for Railway Information System (*hereinafter* "CRIS") as a Deputy Chief Engineer in November, 1990 and left in January, 1996 as Manager (Technical Services). The Petitioner's EPF account was opened when he joined his services in CRIS. Thereafter, on 01st February, 1996, the Petitioner joined Business Standard Limited (BSL), New Delhi as Manager (Systems). In October, 2014, the Petitioner resigned from the designation of Chief Operating Officer (COO) at BSL at the age of 57 years. On 31st October, 2014, the Petitioner made his last contribution to his EPF account. The Petitioner transferred his EPF balance from CRIS to BSL on 16th October, 2017, and the same was acknowledged by the Regional Provident Fund Commissioner, Kolkata, vide letter dated 16th October, 2017.

3. The Petitioner's EPF account is stated to have become inoperative from December, 2017 onwards. Thereafter, on 18th December, 2018, upon realising that he had not been paid interest for the period beyond November, 2017, the Petitioner filed a claim in Form 19 for final withdrawal of the total EPF accumulation. On 21st December, 2018, the Respondent Authority credited the entire sum of Rs.1,40,87,869/- into the Petitioner's account and while settling the claim, interest was allowed for 36 months after the Petitioner's retirement, i.e., up to November, 2017. Thus, the interest for the period from 01st December, 2017 to 28th December, 2018, was then sought by the Petitioner vide communication dated 28th February, 2019 to RPFCL, Kolkata. The same was denied by Respondent No.4, vide the

impugned Letter dated 22nd April, 2019. Thereafter, vide email dated 26th May, 2020, an application was sent by the Petitioner to the Central Provident Fund Commissioner, New Delhi. The same was also rejected and vide reply email dated 27th May 2020, the Petitioner was advised to raise his grievances through the Grievance Management System (*hereinafter* “GMS”). Accordingly, the Petitioner raised his grievance through the GMS platform vide Registration No. ROKKT/E/2020/06106. Vide the impugned e-mail dated 25th June, 2020, the Petitioner was informed of the final decision of the Respondent Authorities, whereby interest payment for 01st Dec. 2017 to 28th Dec. 2018 was denied on the ground that the Petitioner’s account was inoperative in terms of Para. 72(6) of the EPF Scheme. Hence, the Petitioner has approached this Court.

4. The reliefs which are prayed for in the present petition are as under:

“(i) Allow the instant Writ Petition;

(ii) issue a writ of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India thereby declaring that the provisions of Section 72(6) of the Employees’ Provident Funds Scheme, 1952 are not attracted to the facts of the present case so as to deny the rightful and legitimate interest on the total withdrawn EPF amount of Rs.1,41,62,650/- of the Petitioner for the period from 1.12.2017 upto 28.12.2018;

(iii) issue a writ of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India thereby directing the Respondents to pay interest @ 8.55% per annum to the Petitioner on the total withdrawn EPF amount of Rs.1,41,62,650/- for the period

from 1.12.2017 upto 31.3.2018 and @ 8.65% per annum from 1.4.2018 upto 28.12.2018 and also to pay future interest @ 8.65% per annum on the said total interest amount from 29.12.2018 upto the date of actual payment.

(iv) In the alternative and without prejudice, issue a writ of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India thereby directing the Respondents to pay bank rate of interest per annum to the Petitioner on the total withdrawn EPF amount of Rs.1,41,62,650/- for the period from 1.12.2017 upto 28.12.2018 and also to pay future interest at the bank rate of interest per annum on the said total interest amount from 29.12.2018 upto the date of actual payment;

(v) issue a writ of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India further declaring that the impugned action of the Respondents in not paying interest @ 8.55% per annum to the Petitioner on the total withdrawn EPF amount of Rs.1,41,62,650/- for the period from 1.12.2017 upto 31.3.2018 and @8.65% per annum from 1.4.2018 upto 28.12.2018 (for the reason informed vide their impugned letter dated 22.4.2019 & email dated 25.6.2020), is irrational and unreasonable and hence arbitrary, illegal and unconstitutional;

(vi) issue a writ of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India thereby quashing and setting aside the impugned Letter dated 22.4.2019 issued by the Respondent No.4 and impugned email dated 25.6.2020 issued by the

Respondents, as being arbitrary, illegal and unconstitutional;

(vii) award the costs of the present petition in favour of the Petitioner and against the Respondents;”

Submissions on behalf of the parties:

5. Mr. Himanshu Gupta, Id. Counsel appearing for the Petitioner, relies upon Paragraphs 72(1) and 72(6) of the EPF Scheme, 1952. His submission on the basis of Paragraph 72(1) is that the Commissioner under the Act is under an obligation to make *prompt payment* in terms of the EPF Scheme, 1952. Therefore, he submits that the obligation is on the Commissioner, and not on the account holder, to make any application for receiving the said amount.

6. He further submits that under Paragraph 72(6), two categories of persons are covered. The Petitioner in the present case would be covered under the second category, i.e., persons retiring after attaining the age of 55 years.

7. He submits that before an account can be declared as inoperative, an intimation would have to be given to the account holder concerned. However, the Petitioner never received any intimation as to his account becoming inoperative.

8. He submits that owing to the obligation imposed under Paragraph 72(1), interest is liable to be paid for the entire period and not merely for the period of 36 months because the Commissioner delayed the payment of interest till 2018. It is, therefore, prayed that the interest at 8.55% per annum be awarded on the amount of Rs.1,41,62,650/- in favour of the Petitioner for

the said period.

9. On the other hand, Mr. Avnish Singh, Id. Counsel appearing for the Respondent Authorities raises two submissions.

10. The first preliminary submission is that this Court lacks the territorial jurisdiction as the entire record is available in Calcutta, and the account was maintained by Respondent No.4, which is the office of the Authority, Assistant Provident Fund Commissioner located in Calcutta. He further submits that the mere fact that the amount may have been credited in a Central Provident Fund office, would not vest the territorial jurisdiction on this Court. Moreover, he submits that the communication from the Delhi office, which is relied upon by the Petitioner, is a system generated automated message and can also not confer any jurisdiction.

11. Secondly, he submits that the counter affidavit filed by the Respondent does have some discrepancies in terms of date of birth and other details of the Petitioner, however, the last instalment of the Petitioner was paid in November, 2014. Thereafter, no claim was raised by the Petitioner. He submits that the Provident Fund Commissioner, on its own, had settled the account on 21st December, 2018. Thereafter, a further sum of Rs.74,781/- was also approved on 1st May, 2019, which was credited to the Petitioner's account. At this stage, Mr. Gupta, Id. Counsel for Petitioner, clarifies that as mentioned in the Rejoinder Affidavit, the total sum received includes the residual settlement amount which was paid to the Petitioner.

12. Mr. Avnish Singh, Id. Counsel for Respondent Authorities, further submits that since no claim was raised by the Petitioner, the interest is payable only for the period of 36 months, and not beyond the said period. He submits that the first claim was received on 18th December, 2018 in

Form 19, settled on 21st December, 2018, and finally the amount was credited on 28th December, 2018. Thus, there was no delay by the Provident Fund Commissioner in crediting the amount.

13. According to Mr. Avnish Singh, Id. Counsel, the legislative intent of the Employees' Provident Fund & Miscellaneous Provisions Act and Scheme, 1952 is clear from Paragraphs 69(1) and 72(1) of the said Scheme. As per Paragraph 69(1) of the Scheme, any person who has an EPF account can withdraw the full amount standing to his credit upon retirement from service after attaining the age of 55 years. For this purpose, in order to avail of the full benefit under Paragraphs 72(5)(a) and (b) of the Scheme, either the employer has to get the claim application signed by the employee and forward the same to the Provident Fund Commissioner, or alternatively, if the employer is unable to do so, the employee himself can send the claim application to the Commissioner who would then forward it to the employer thereafter.

14. He further submits that until and unless the claim is made, the obligation of prompt payment on the Commissioner is not triggered under Paragraph 72(1) of the Scheme. As per Paragraph 72(6) of the Scheme, if no claim is made or if a person dies, and if the amount is either not claimed, remitted or received back undelivered, the interest would be payable only for a period of 36 months from the date it becomes payable. Thereafter, the amount would be transferred to an Inoperative Account. When the amount is transferred to an Inoperative Account, no interest is liable to be paid beyond the said period of 36 months.

15. He relies upon the judgment of the Madras High Court in ***M.V. Ramakrishnan v. The Provident Fund Commissioner*** [W.P. No.

29166/2017] in support of his case. He further submits that the *vires* of Paragraph 72(6) of the Scheme is not under challenge. Hence, no interest is liable to be paid beyond the 36 months period.

16. In rejoinder submissions, Mr. Gupta, Id. Counsel for Petitioner urges that the Judgment of the Madras High Court in ***M.V. Ramakrishnan v. The Provident Fund Commissioner [W.P. No. 29166/2017]*** relied upon by the Respondent comes to the Petitioner's rescue inasmuch as, according to the said Judgment, interest is liable to be paid on the amount lying in an Inoperative Account after the amendment of Paragraph 72(6) of the Scheme, w.e.f. 11th November, 2016. Thus, it is only for the period from 1st April, 2011 to 10th November, 2016, i.e., when the earlier amendment to the said Paragraph 72(6) of the Scheme was in effect, that the interest is not liable to be paid on the amount lying in an Inoperative Account. He submits that as per the said Judgment, interest would be payable even for the period beyond 36 months in respect of any inoperative account w.e.f. 11th November 2016. Thus, according to him, there is no contradiction between the Judgement of the Punjab and Haryana High Court in ***Jagdish Kumar v. Employees' Provident Fund Commissioner [CWP No. 100071 of 2014 (O&M)]*** and the Judgment of the Madras High Court in ***M.V. Ramakrishnan v. The Provident Fund Commissioner [W.P. No. 29166/2017]***. Both are unanimous in the interpretation of Paragraph 72(6) in concluding that the interest would be liable to be paid, irrespective of the account being inoperative.

Analysis and findings:

17. Insofar as the territorial jurisdiction is concerned, although there may be a regional office of the EPF authority in Kolkata, the following factors vest jurisdiction with this Court:

- 1) The Central Provident Fund Commissioner is in Delhi;
- 2) The portal of the EPF Authority is centralized and maintained from Delhi;
- 3) The Petitioner is a permanent resident of Delhi;
- 4) No records from the EPF Authority's office in Kolkata are required to be called for;
- 5) The rejection of Petitioner's request was issued from Delhi; and
- 6) The question involved is a question of law.

18. The facts in the present case are not disputed. The only question to be adjudicated upon is whether the Petitioner is entitled for payment of interest, on the amounts lying in his inoperative EPF account, for the period from 1st December, 2017 to 28th December, 2018. In order to decide this issue, two provisions would be relevant: Paragraph 60(6) and Paragraph 72(6) of the EPF Scheme, 1952. The said provisions are set out below:

“60. Interest. – (1) The Commissioner shall credit to the account of each member interest at such rate as may be determined by the Central Government in consultation with the Central Board.

... ..
[(6) Interest shall not be credited to the account of a member from the date on which it has become Inoperative Account, under the provisions of sub-paragraph (6) of paragraph 72:]¹
[Provided that if the settlement of claim in respect

1 Ins. by G.S.R. 25(E), dated 15th January, 2011 (w.e.f. 1-4-2011).

of Inoperative Account is delayed for more than thirty days from the date of receipt of the application for settlement of claim, interest shall be credited to the account in accordance with sub-paragraph (2) for delay period excluding the period of thirty days.]²

... ..
72. Payment of Provident Fund. – (1) *When the amount standing to the credit of a member becomes payable, it shall be the duty of the Commissioner to make prompt payment as provided in this Scheme. In case there is no nominee in accordance with this Scheme [or there is no person entitled to receive such amount under sub-paragraph (ii) of paragraph 70], the Commissioner may, if the amount to the credit of the Fund does not exceed [Rs.10,000] and if satisfied after enquiry about the title of the claimant, pay such amount to the claimant.*

... ..
[(6) Any amount becoming due to a member as a result of (i) supplementary contribution from the employer in respect of leave wages, arrears of pay, instalment of arrear contribution received in respect of a member whose claim has been settled on account but which could not be remitted for want of latest address, or (ii) accumulation in respect of any member who has either ³[retired from service after attaining age of fifty-five years or migrated abroad permanently] or died, ⁴[but no application for withdrawal under paragraphs 69

² Ins. by G.S.R. 891(E), dated 12th December, 2014 (w.r.e.f 1-4-2011). Notification G.S.R. 891(E) superseded G.S.R. 321(E), dated 6th May, 2014 and G.S.R. 360(E), dated 6th May, 2014.

³ Subs. by G.S.R 1065(E), dated 11th January, 2016, for “ceased to be employed” (w.e.f. 11-11-2016).

⁴ Subs. by G.S.R. 25(E), dated 15th January, 2011, for “but no claim has been preferred” (w.e.f. 1-4-2011).

or 70⁵[***] has been preferred] within a period of⁶[thirty-six months] from the date it becomes payable, or if any amount remitted to a person is received back undelivered, and it is not claimed again within a period of⁶[thirty-six months] from the date it becomes payable shall be transferred to an account to be called the⁷[Inoperative Account]:]

Provided that in the case of a claim for the payment of the said balance, the amount shall be paid by debiting the⁷[Inoperative Account]:]

⁸[Provided further that if any amount becoming due to a member, as a result of supplementary contributions on account of litigation or default by the establishment or a claim which has been settled but is received back undelivered not attributable to the member, shall not be transferred to the inoperative account.]

19. Both of these provisions have some background which would be relevant in the present case. Paragraph 60(6) of the EPF Scheme, 1952 was inserted by an amendment, vide Notification dated 15th January, 2011. By the said Notification, Paragraph 72(6) of the EPF Scheme, 1952 was also amended. The Notification dated 15th January, 2011 is set out hereunder:

**“MINISTRY OF LABOUR AND
EMPLOYMENT NOTIFICATION**

New Delhi, the 15th January, 2011

G.S.R.25(E). – *In exercise of the powers conferred by Section 5, read with sub-section (1) of Section 7 of the Employees’ Provident Funds and*

⁵ The words “or transfer, as the case may be” omitted by G.S.R. 1065(E), dated 11th November, 2016 (w.e.f. 11-11-2016).

⁶ Subs. by G.S.R. 215(E), dated 15th January, 2011, for “three years” (w.e.f. 1-4-2011).

⁷ Subs. by G.S.R. 228(E), dated 22nd March, 2007, for “Unclaimed Deposits Account”

⁸ Ins. by G.S.R. 1065(E), dated 11th November, 2016 (w.e.f. 11-11-2016).

Miscellaneous Provisions Act, 1952 (19 of 1952), the Central Government hereby makes the following Scheme, further to amend the Employees' Provident Funds Scheme, 1952, namely:-

1. (1) This Scheme may be called the Employees' Provident Funds (Amendment) Scheme, 2011.

(2) It shall come into force from the 1st Day of April, 2011.

2. In the Employees' Provident Funds Scheme, 1952, (hereinafter referred to as the said Scheme), in paragraph 60, after sub-paragraph (5), the following sub-paragraph shall be substituted, namely :-

"(6) Interest shall not be credited to the account of a member from the date on which it has become Inoperative Account, under the provisions of sub-paragraph (6) of paragraph 72."

3. In the said Scheme, in paragraph 72, in sub-paragraph (6) :-

(a) for the words "but no claim has been preferred" the words "but no application for withdrawal under paragraphs 69 or 70 or transfer, as the case may be has been preferred" shall be substituted;

(b) for the words "three years", at both the parties where they occur, the words "thirty six months shall be substituted".

[F.No. S-35012/01/2010-SS-11]

S.K. DEV VERMAN, Jt. Secy.

NOTE:- *The Employees' Provident Funds Scheme, was published in the Gazette of India, vide number S.R.O.1509, dated the 2nd September, 1952 and lastly amended vide number G.S.R 744(E), dated the 9th September, 2010."*

20. Further amendments were carried out in Paragraph 72(6) of the EPF Scheme, 1952, vide Notification dated 11th November, 2016, which is set

out hereunder:

“G.S.R.1065(E).—In exercise of the powers conferred by section 5 read with sub-section (1) of section 7 of Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), the Central Government hereby makes the following Scheme further to amend the Employees’ Provident Funds Scheme, 1952, namely:-

1. (1) This Scheme may be called the Employees’ Provident Funds (Sixth Amendment) Scheme, 2016.

(2) It shall come into effect from the date of its publication in the Official Gazette.

2. In the Employees’ Provident Funds Scheme, 1952, in paragraph 72, in sub-paragraph (6),-

(a) for the words “ceased to be employed”, the words “retired from service after attaining age of fifty-five years or migrated abroad permanently” shall be substituted;

(b) the words “or transfer, as the case may be” shall be omitted;

(c) after the proviso, the following new proviso shall be inserted, namely:-

“Provided further that if any amount becoming due to a member, as a result of supplementary contributions on account of litigation or default by the establishment or a claim which has been settled but is received back undelivered not attributable to the member, shall not be transferred to the inoperative account.”.

[F. No. G-20031/1/2016-SS-II]

R. K. GUPTA, Jt. Secy.

Note: *The Employees’ Provident Funds Scheme, 1952 was published in the Gazette of India, Part II, Section 3, Sub section (i) vide notification number S.R.O. 1509 dated the 2nd September, 1952 and was lastly amended vide notification number G.S.R. 1035 (E) dated 2nd November, 2016.”*

21. The conjoint effect of these two amendments, vide Notification dated 15th January, 2011 and Notification dated 11th November, 2016, in respect of payment of interest, on the amount payable in respect of a member of the EPF, but not claimed within a period of 36 months from the date it becomes payable, i.e., amounts transferred to an Inoperative Account, would have to be considered by this Court.

22. Under the EPF Scheme, 1952, Paragraph 60 provides for the manner and the mechanism of calculation and crediting of the interest. Paragraph 60(1) provides that the Commissioner shall credit to the account of each member interest at such rate as may be determined by the Central Government in consultation with the Central Board. Vide Notification dated 15th January, 2011, with effect from 01st April, 2011, Paragraph 60(6) was introduced stipulating that no interest would be liable to be credited to the account of a member from the date on which it has become an Inoperative Account, in terms of Paragraph 72(6) of the EPF Scheme, 1952. The only exception to this is if there is a delay in a settlement of a claim for more than 30 days, in which case, interest would be liable to be paid as per Paragraph 60(2). So, once an application seeking settlement of a claim, if the same is not settled within 30 days, interest would be liable to be paid. However, the amendment dated 15th January, 2011 in effect meant that once an account becomes inoperative, the members would not receive any interest.

23. As per Paragraph 69, any member can withdraw the entire amount standing to its credit under various circumstances which include –

- retirement from service after attaining the age of 55 years,
- retirement due to being incapacitated mentally or physically,

- retirement due to migration to a foreign country for permanent settlement,
- upon termination of service either individually or mass retrenchment,
- upon termination under voluntary scheme of retirement, if a factory or establishment is closed, upon transfer, upon discharge and other circumstances as set out in Paragraph 69.

24. Paragraph 72 of the EPF Scheme, 1952 sets out the various modalities for the payment of provident fund. Considering the fact that the EPF Act and Scheme, 1952 is for the benefit of the members, Paragraph 72(1) imposes a duty on the Commissioner to make *prompt payment* as per the Scheme, as and when the amount standing to the credit of a member becomes payable. As per Paragraph 72(2), even if any portion of the amount, which has become payable, is in dispute or doubt, the payment has to be prompt in respect of that portion of the amount in regard to which there is no dispute or doubt, the balance being adjusted as soon as may be possible. The purpose is to ensure that the benefit of the fund and the amounts which are meant for the members are released without any undue delay. As per paragraph 72(5), certain obligations are cast upon employers, i.e., when an employee leaves service, the employer would have to get the application for payment of provident fund duly filled. The same has to be then forwarded, within five days of its receipt, to the Commissioner for clearing the same. Such an obligation exists on employers even on the death of a member. If, however, a member is unable to send the application through an employer, he can directly make the claim application to the Commissioner who shall then obtain the necessary details from the employer concerned.

25. Paragraph 72(6) stipulates the various scenarios in which an account of a member is treated as an 'Inoperative Account'. An account can be declared as an Inoperative Account, if a member:

- whose claim has been settled, but has received supplementary contribution for any reason such as leave wages, arrears of pay, instalments or arrears contribution and the said contribution so received from the employer could not be remitted to him, for want of latest address;
- has retired from service after attaining 55 years of age but has failed to file an application for withdrawal under paragraphs 69 or 70 within 36 months from the date when the amount becomes payable;
- has migrated abroad permanently but has failed to file an application for withdrawal under paragraphs 69 or 70 within 36 months from the date when the amount becomes payable;
- or has died but no application for withdrawal under paragraphs 69 or 70 within 36 months from the date when the amount becomes payable, has been filed.

As per paragraph 60(6), if the amount gets transferred to an Inoperative Account, from the said date, no interest shall be claimed.

26. There is some confusion that has arisen as to the effect of the two amendments dated 15th January, 2011 and 11th November, 2016. Prior to the 2011 amendment, Paragraph 60(6) of the EPF Scheme, 1952 did not exist. It was for the first time introduced into the EPF Scheme in 2011, and it provided that no interest would be liable to be paid on an Inoperative Account. However, post 2016, certain changes were made in the EPF

Scheme, 1952 as set out herein above.

27. Just prior to the amendment being made in 2016, a press release was issued by the EPF Organization dated 29th March, 2016 which reads as under:

“Dated 29.03.2016

New Delhi

EPFO, Head Office

PRESS RELEASE

- *Organizational Restructuring of EPFO approved to address career progression of more than 20000 officials*
- *Inoperative EPF accounts that stopped earning interest in 2011, now to earn interest w.e.f. 01.04.2016*

EPFO’s highest decision making body, the Central Board of Trustees met today in New Delhi. This was its 212nd meeting.

The Union Minister for Labour and Employment (Independent Charge) and Chairman CBT, Mr Bandaru Dattatreya after the conclusion of the meeting said that the Board has taken two important decisions.

***The first** is in relation to Organisational Restructuring of EPFO. While approving the report in principle, the Board also constituted a Committee to look into the anomalies/gaps pointed out by the Board members. The committee chaired by the Central Provident Fund Commissioner has been asked to submit this report to the Board in a month’s time.*

***The Second** major decision was to allow crediting of interest on inoperative accounts. Accounts of members who do not receive contributions for a continuous period of three*

years are treated as “Inoperative accounts”.
Interest on these accounts was stopped in 2011.
The Board decided to resume crediting interest on
such accounts w.e.f. 01.04.2016

This is in view of recent amendment to paragraph 69(1) (a) that has been amended to provide for withdrawal of full amount on retirement from service after attaining the age of 58 years .Thus, the employer’s share of contribution in the provident fund account of a member would be withheld by EPFO up to the age of retirement. Hence the decision has been taken, to credit interest as per paragraph 60 of the employees ‘Provident Funds Scheme, 1952. Such an account would not be classified as an “Inoperative Account” for the purpose of paragraph 72(6) of EPFO Scheme, 1952.

..... ”

28. As per this Press Release dated 29th March, 2016, the intention behind the 2016 amendment was to bring in provisions to ensure that interest would be paid even on Inoperative Accounts. However, when one reads the Notification dated 11th November, 2016, it is clear that the said benefit was extended only to certain categories of persons. Vide Notification dated 11th November, 2016, the words ‘*ceased to be employed*’ were omitted from the provision, and instead, the words ‘*retirement after attaining age fifty-five years or migrated abroad permanently*’ were introduced. Further, the words ‘*or transfer*’ were omitted from the provision. Therefore, prior to the 2016 amendment, upon *cessation of employment* or death of an employee or transfer, if *an application for withdrawal under Paragraph 69 or 70*, was not filed within a period of 36 months from the date when the accumulated fund becomes payable, it could have led to an account being declared

inoperative. Whereas, post the 2016 amendment, an account would become inoperative only *if a member has retired from service after attaining age fifty-five years or migrated abroad permanently or died, without having filed an application for withdrawal under Paragraph 69 or 70* within a period of 36 months from the date the accumulation becomes payable. Thus, prior to 2016, in case of cessation of employment from one employer to another or transfer of the employee from one establishment to another, where the latter employer or establishment is not covered under the Act, if an application for withdrawal of the amount was not filed within 36 months, the account would be rendered inoperative. Post-2016, if the employee, even in the case of transfer to an employer or establishment not covered by the Act, fails to file an application for withdrawal of the amounts in his account within 36 months, the account would not be rendered inoperative. The second proviso to Paragraph 72(6) also gave benefit to such persons who may have received supplementary contributions. If the claim sent to such employees is returned due to reasons not attributable to the said employee, then the account would not be treated as inoperative and would continue to earn interest. Thus, the 2016 amendment, extended benefit to only a class of persons and not to all persons whose accounts were rendered inoperative. It is clear that the Press Release which was issued was not fully given effect to in the amendments, as the amendments did not extend the benefit to all categories of persons, despite claiming so.

29. In the present case, the Court is concerned with the Petitioner who retired from service after attaining fifty-five years of age, and has not filed an application for withdrawal under Paragraph 69 or 70 within a period of 36 months from the date the accumulation becomes payable. Whether such a

person would get the benefit of interest on the accumulations in his EPF account even after the account is declared inoperative, in terms of Paragraph 72(6) of the EPF Scheme, 1952, is the question before this Court.

30. The Petitioner has relied upon the Judgment of a Id. Single Judge of the Punjab & Haryana High Court in *Jagdish Kumar v. Employees' Provident Fund Commissioner [CWP No.10071/2014 (O&M)]*, decided on 14th September, 2015. In the said case, the Court held that even the amount lying in an Inoperative Account would have to be returned to the members, irrespective of any delay in applying for withdrawal of the amount. The Court after considering paragraph 60(6) and 72, observed as under:

“xxx xxx xxx

4. Because of the policy underlying sub-para 6 of Paragraph 72 and sub-para 6 of Paragraph 60 these provisions cannot be read narrowly in a manner that interest on the amounts shall not be credited to the account of the member from the date it becomes a Inoperative Account under the provisions of sub-para 6 of Paragraph 72 of the Scheme. The prohibition is really addressed to the EPF organization for maintenance of its books of accounts that interest shall not be credited to the account of the member. But that does not mean that interest would not accrue when not credited to the Inoperative Account and stands only deactivated for the time being and can never be brought to life. This is the only just and equitable interpretation that can be placed on the social welfare beneficial legislation as the Act and the scheme are built sincerely for the purposes they are meant to serve inasmuch as members should not lose their right to their own money earning interest accruing silently on such amounts as sit in the Fund while earning interest for the

organization. It appears trite that an Inoperative Account should mean an account which has died with respect to interest by lapse of thirty six months from the date it becomes payable. Inoperative Account means only a deactivated account which has been frozen by notification for the time being as an accounting method in transaction of PF business but it does not mean that right to interest stands extinguished since the principal amount is not money lying in the Fund in hard cash locked in trunks but in the economics of the flow of money in circulation. The RPFC does not say that the amounts lying in the Fund are not invested to earn interest under the scheme or not are collateral for debts, assets and liabilities or to run the show.

xxx xxx xxx

9. There is no gainsaying that money belonging to the members remains in trust and custody of the EPF Organization and the object and purpose of the Act is to secure the worker's money lying in the Scheme/Fund in the shape of investment for the rainy day. In this duty, RPFC or the Board of Trustees cannot fail to remain vanguards of the rights of marginalized labour who are the weaker sections of society for whom Parliament enacted the law in the EPF&MP Act, 1952. Denial of interest on principal amount for the period in issue is not found just, fair and equitable and the provisions of the scheme under consideration are held to be addressed to the Organization advising it how to act in the two situations contemplated by sub-para (6) of paragraph 72 but not to the subscriber member so as to take away his valuable rights to interest since the provision is not subscriber centric or backed by the principal Act. It comes as some surprise if not a shock that the

blood, sweat and tears of migrant labour across India lie locked in a whopping Rs.27,500 crore of provident fund money lying with the Employees Provident Fund Organization (EPFO) in inoperative accounts, as of March 2014. This is indeed a scam of enormous dimensions that Central Government must address without delay. The notification GSR 1415 dated 24.9.1964 is presently anachronistic in the modern age with means of ready and easy access and tracking true owners of money held in trust by the Board of Trustees set up under the Act is possible and this dissuades the Court to read the provisions as a defence mechanism against payment of time barred interest and an outright denial of the right to contributions earning interest when it is not asserted that Inoperative Accounts do not yield interest or Inactive accounts will not also earn interest if an inactive account is integrated or merged in active account. If money sits idle in the Fund in inactive or Inoperative Account without earning interest then it is time to wind up the EFP Organization and think of better means to secure the ends of justice for the working class that have contributed to the Fund for their own welfare measured by the pipette of social justice and an insurance against want. The Organization cannot seen to behave like a Shylock or a businessman or a commission agent in the marketplace or a fly-by-night operator.”

31. Reliance is also placed by the Petitioner upon the Judgment of the Madras High Court in ***M.V. Ramakrishnan v. The Provident Fund Commissioner [W.P. No. 29166/2017]***, decided on 5th December, 2018. In this case, the employee sought interest at the rate of 9.5% per annum. He had worked in the company for a period from May, 1992 to September,

2006 and had claimed that he was entitled to interest. In this context, the Court held as under:

“7. The dispute between the parties is not in respect of the quantum of the principal amount payable towards provident fund payable to the petitioner. On the other hand, the dispute is with regard to the payment of interest, that too, for a particular period viz., 2011-12 to 2016-17. It is seen that paragraph 60(6) of the Employees’ Provident Funds Scheme, 1952, contemplates that the interest shall not be credited to the account of the member from the date on which it has become inoperative account under the provisions of sub paragraph 6 of paragraph 72. It is further seen that sub paragraph 6 of paragraph 72 had undergone amendment twice earlier, one with effect from 01.04.2011 and another with effect from 11.11.2016. It is seen that as per the amendment made to sub paragraph 6 of paragraph 72, which was in force from 01.04.2011 till 10.11.2016, if a member has ceased to be an employee and that no claim or application for withdrawal or transfer of provident fund account has been preferred within a period of 36 months from the date it becomes payable, his account becomes an inoperative account. Paragraph 72(6) with effect from 01.04.2021, as extracted in the counter affidavit, reads as follows:

“ ”

8. Admittedly, the Petitioner ceased to be in employment from July 2006. Therefore, as per the above amended provision of sub paragraph 6 of paragraph 72, his account became an inoperative account, as admittedly he has not made any application for withdrawal within a period of 36 months from the date such amount became payable. When such being the statutory provision, I

do not think that the petitioner is entitled to seek interest for the period, to which such payment of interest was specifically barred in view of the amendment made to sub paragraph 6 of paragraph 72 with effect from 01.04.2011, as stated supra.

9. *There is no dispute to the fact that the petitioner is entitled to get interest with effect from 11.11.2016, as admitted in the counter affidavit, in view of the subsequent amendment taken place to paragraph 72(6) with effect from 11.11.2016. The petitioner has not chosen to challenge the amendment made to paragraph 72(6) with effect from 11.11.2016. The petitioner has not chosen to challenge the amendment made to paragraph 72(6) with effect from 01.04.2011 as stated supra. Under such circumstances, this Court is of the view that the petitioner is not entitled for payment of interest for the period 2011-12 to 2016-17. However, the respondents are directed to make the payment of principal amount as well as interest for the undisputed period, if not already paid, to the petitioner within a period of four weeks from the date of receipt of a copy of this order. With the above observations, the writ petition is disposed of accordingly. No costs.*

32. Thus, the Madras High Court drew a distinction between interest prior to 2011 amendment and post 2016 amendment of the EPF Scheme, 1952. Moreover, the employee concerned had not retired from service after attaining the age of fifty-five years but had merely ceased to be employed, as is clear from a reading of paragraph 4 which reads as under:

“xxx xxx xxx

4. *Learned counsel appearing for the petitioner submitted that as the petitioner has not retired after attaining the age of 55 years and as there was no occasion for the petitioner to make*

withdrawal, the respondents are not entitled to deny the interest to the petitioner for the period 2011-12 to 2016-17.”

33. Thus, this appears to have been a case of cessation of employment prior to attaining the age of fifty-five years, wherein a specific change was made in Paragraph 72(6) of the Scheme vide Notification dated 11th November, 2016, and hence, the Court has granted interest to the Petitioner post-2016.

34. There are two other judgments which are found to be relevant by this Court. First, ***Dr. Arun Gopal Agarwal v. UOI & Ors. [W.P.(C) 278/2014, decided on 28th November, 2016]*** decided by a Division Bench of this Court. In the said case, the Petitioner had retired from service on 31st March, 2006. Even after retirement, he continued to make contributions to the fund. Finally, he applied for settlement of claim on 27th February, 2012, and a sum of Rs.40,34,821/- was credited to his account as full settlement. However, the claim of the Petitioner therein was that interest was wrongly paid only till 31st March, 2011, whereas it should have been paid up to 31st May, 2012. While adjudicating upon this issue, the Id. Division Bench of this Court considered the judgment in ***Jagdish Kumar*** (supra) and observed as under:

“6. Placing reliance upon the judgment of the High Court of Punjab and Haryana High Court in CWP No.10071/2014(O&M) dated 14.09.2015 titled Jagdish Kumar vs. EPF Commissioner, it is vehemently contended by the learned counsel for the petitioner that the money belonging to the members of EPF account remains in trust and custody of the EPF Organization and that the object and purpose of the EPF Act being to secure the money of the workers lying in the EPF in the shape of investment, the impugned provision is arbitrary and illegal and

is liable to be quashed.

7. We have already seen that as per the impugned paragraph 60(6) of EPF Scheme, no interest shall be credited to the account of the member from the date on which it has become 'inoperative account' under the provisions of paragraph 72(6).

8. Paragraph 72 of EPF Scheme provides for payment of provident fund. For proper appreciation of controversy involved, sub-para (6) may be reproduced hereunder:

"(6) Any amount becoming due to a member as a result of (i) supplementary contribution from the employer in respect of leave wages, arrears of pay, installment or arrear contribution received in respect of a member whose claim has been settled on account but which could not be remitted for want of latest address, or (ii) accumulation in respect of any member who has either ceased to be employed or died, but no application for withdrawal under paragraphs 69 or 70 or transfer, as the case may be has been preferred within a period of thirty six months from the date it becomes payable, or if any amount remitted to a person is received back undelivered, and it is not claimed again within a period of thirty six months from the date it becomes payable shall be transferred to an account to be called the Inappropriate Account.

Provided that in the case of a claim for the payment of the said balance, the amount shall be paid by debiting the Inappropriate Account."

9. A perusal of paragraph 72(6) shows that any amount which becomes due to a member as a result of accumulation in respect of any member who has ceased to be employed but no application for withdrawal or transfer has been preferred within a period of 36 months from the date it becomes payable, shall be transferred to an account to be

called the 'inoperative account'. The impugned paragraph 60(6) provides that interests shall not be credited to the account of a member from the date on which it has become inoperative account under the provisions of paragraph 72(6).

10. On a combined reading of above provisions, it is clear that in case a member of EPF retires from employment and has not chosen to withdraw the amount in his account, no interest shall be payable on such amount after a period of 36 months from the date it becomes payable.

11. In the counter affidavit filed on behalf of the respondents, the genesis of incorporating para 72(6) and para 60(6) has been explained as under:

"It was observed by the Employees Provident Fund Organization (hereinafter referred to as EPFO) that the members do not withdraw their PF accumulations available in their account on the following reasons.

- The balances in the PF account yield higher rate of interest.
- The safety of the accumulations in the funds also encourage member not to withdraw their PF amount.
- There is no time limit for a member to retain his PF accumulations in his account.

In a separate exhaustive exercise on the accumulations available in the inoperative accounts were done and it was found that:-

- Inoperative accounts were actually not unclaimed amounts but purely residual balances and very small amounts which were not worth maintaining as the cost of maintaining the accounts would be is more than the amount available in the account.

- 51% of the total accounts were having balances less than Rs.1,000/-.
- 1.05 crore accounts (34.58%) were having accumulations less than Rs.500/-. These are mostly residual balance with very meager balance due to calculations mistakes couples with interest earned over the years.
- 33 lakh accounts constituting 11.13% of total inoperative account having less than Rs.100/-.
- Members having sumptuous balances preferred to retain the amount due to higher rate of interest.

The inoperative accounts are additional burden on EPFO not only in terms of workload but also in terms of additional burden on the resources of EPFO for maintaining these accounts, as no administrative charges were received on these accounts.

Further, the members who were having sumptuous balances in their inoperative account were keeping the money in the EPFO 25-08-2021 only to earn higher rates of interest. These members were rich, educated and capable of planning for future. Further the members are still serving in other establishments but do not transfer their amount to the present account. This results in multiple Provident Fund accounts of the same member. Such practices are also beyond the scope of social security enactment and therefore should be discouraged."

12. For the aforesaid reasons, the issue was considered by the Finance and Investment Committee, EPF in its 99th and 100th Meeting and it was recommended:

"a) No interest may be credited to account holders from the 37th month, who do not come forward to collect their dues for 36 months.

b) The balance lying in Inoperative Account will

remain inoperative. In case, a member claims such amount later, he can be given the principal amount as existing on the day it become inoperative, with no further interest added.

c) A dormancy charge towards maintenance of Inoperative Accounts is proposed to be levied at the rate of Rs.100 per account per annum, provided in the Scheme. This amount will be credited in the Interest Suspense Account."

35. Further, the above judgment of the Id. Division Bench of this Court records the background of the amendment in 2011 which led to the enactment of Paragraph 60(6). The Court after considering the rationale, held as under:

"16. It may be added that the object of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short 'the Act') is to provide social security cover in the form of provident fund to augment the livelihood of a member when he is not earning or superannuates. The contention of the petitioner that the object of the EPF Scheme is to provide an investment option to the members who have already superannuated appears to be without any basis. Therefore, we are of the view that sub-para (6) of para 60 of EPF Scheme has rightly been incorporated providing a period of 36 months to the members who have superannuated to withdraw the amount accumulated in their PF accounts. As noticed above, the impugned notification was issued after due deliberations and following due process of law. By this provision the subscribers are required to withdraw the amount within 36 months of their superannuation which is apparently for the purpose of reducing the extra burden on the corpus of EPF Organization for maintaining inoperative accounts on which it does not earn any administrative charges as provided under Section 39 of the Act. Admittedly, the Act is a beneficial social legislation to ensure

better future of the employee concern on his retirement and for the benefit of the department in case of his death. Therefore, it is expected that the members will withdraw their PF accumulation after superannuation. It is also relevant to note that the denial of interest is not immediately after superannuation but only after 36 months from the date it becomes payable. There is absolutely no justifiable reason to hold such a provision arbitrary, unjust or illegal. It may be true that EPF Organization holds the money belonging to the members as a trustee, however, payment of interest beyond three years of the superannuation of the members would defeat the very object of the Act and Scheme.

36. Secondly, in ***L.D. Joshi v. Central Provident Fund Commissioner and Ors. [W.P.(C) 8996/2014, decided on 9th June, 2017]***, decided by a Id. Single Judge of this Court, the Petitioner was a person who had moved from one company to another. The case was decided on 9th June, 2017, and the Court did not extend the benefit of 2016 amendment, despite noticing the Press Release extracted above, as the same was yet to be incorporated in the EPF Scheme, 1952. The relevant paragraphs of the said Judgment reads as under:

“xxx xxx xxx

40. *It is essential to observe that in terms of a press release of the EPFO New Delhi dated 29.03.2016, major decisions were taken of likely re structuring of the EPFO and the crediting of interest of inoperative accounts observing to the effect that the account of the member who had not received contributions for a continuous period of three years, which was being treated as inoperative account and on which accounts interests had stopped in 2011, would start*

receiving/crediting interest w.e.f. 01.04.2016 as the Board had decided to resume crediting interest on such account w.e.f. 01.04.2016.

41. Undoubtedly, the decision taken on 29.03.2016 is yet to be incorporated into the EPF Scheme and would not apply to the facts and circumstances of the instant case in which the petitioner would be governed by the EPFC Scheme, 1952 as it stood amended w.e.f. 01.04.2011.

37. Thus, in view of the 2011 amendment and the interpretation of Paragraph 60(6) read with Paragraph 72(6), the clear conclusion of the Division Bench was that in case of members who have either ceased to be employed or died, the amounts lying in their account have to be withdrawn within 36 months, failing which, the account would be declared inoperative and no interest would be liable to be paid. Thus, so long as the 2011 amendment was in operation, there can be no doubt that no interest was payable once the account was declared inoperative.

38. Therefore, the only question that arises now is whether the 2016 amendment changes the position, and whether the same would have any effect with respect to the Petitioner in the present case.

39. A perusal of the Press Release dated 29th March, 2016 shows that the same is quite misleading, when viewed in the light of the amendments, inasmuch as an impression is sought to be given that interest would be paid on amounts lying in '*all Inoperative Accounts*'. The 2016 amendment in the EPF Scheme, 1952, however, does not repeal Paragraph 60(6) but merely extends some benefit *qua* certain categories of persons who may seek transfers from covered to non-covered establishments, to those persons who may have left employment prior to attaining 55 years of age, as

also those not at fault for non-delivery of claim amounts. In case of those persons who have retired from service after attaining 55 years of age, there would, in fact, be no difference between the position of law prior to the 2016 amendment and post-2016 amendment. If a member does not file an application for withdrawal or claims the amounts lying in his account within a period of 36 months from the date it becomes payable, the amount would be transferred to an inoperative account, and no interest would be liable to be paid beyond a period of 36 months. Paragraphs 60(6) and 72(6) are not challenged in this petition.

40. The *raison d'être* behind this provision appears to be to ensure that undue burden is not placed on the EPF Organization, which pays a higher amount of interest to members than the interest rate prevalent in the market. There is a limit put on the period for which the higher amount of interest can be enjoyed by the member i.e., a period of 36 months. If a member continues to leave the amount indefinitely in the EPF account, in order to earn a higher amount of interest, there would be an enormous burden on the exchequer inasmuch as the amount would be incapable of earning such higher rate of interest due to the prevalent rate of interest in market, whereas the EPF Organization would be forced to pay higher rate of interest to the members. In order to curtail the same, 36 months have been prescribed as a reasonable period during which the interest would be paid and members would be entitled to enjoy the said interest. Upon attaining the age of 55 years, the member can enjoy the interest paid by the EPF organization for 36 months. Within that period, the member would have to move an application for claiming the said amount in which case the entire interest would be credited to the member's account.

41. Thus, this Court is of the opinion that the judgment of the Id. Division Bench of this Court in *Dr. Arun Gopal Agarwal* (supra) which was dealing with this issue, would clearly be applicable in the facts of this case. Neither the Id. counsel for the Petitioner, nor the Id. counsel for the Respondent Authorities brought the above two judgements of the Division Bench and the Single Judge, to the notice of the Court. Even the press release was not cited by either party. The same were extremely relevant to the issue being considered.

42. The Court notes that the 2016 amendment did not give full effect to the Press Release dated 29th March, 2016, which was initially published by the EPF Organization for whatever reasons. The 2016 amendment extended some benefits to certain categories of persons including those who received supplementary contributions, and for no fault of theirs, the amounts sent were received back undelivered. If the intention was to give interest to all accounts indefinitely, Paragraph 60(6) ought to have been repealed. This, however, did not happen.

43. Thus, the interest in the present case, beyond the period of 36 months, is not liable to be paid to the Petitioner.

44. The Petitioner in this case is stated to have repeatedly checked the online status of his account on the EPFO portal. However, there was no updation or intimation to the effect that the Petitioner's account had been rendered inoperative. As averred by the Petitioner, upon checking the online passbook, the same did not show the status of the EPF account as "Inoperative" till November, 2018. Therefore, the Petitioner was unable to know the exact status of his EPF account. Every member holding an EPF account cannot be expected to know the nitty-gritty of the provisions as the

same are quite complex and are amended from time to time. Thus, there was a duty on the part of the EPFO to update the portal on the date when the account was being declared inoperative which would have enabled the Petitioner to withdraw the amount and invest it, in the manner he deems fit. The Petitioner remained under the impression that the amount in his EPF account would continue to earn interest. This, coupled with the Press Release dated 29th March, 2016 which gave an incorrect impression to the members of the public, may have led the Petitioner to litigate the present case. Thus, costs of Rs.1 lakh are imposed on the Respondent Authorities. The same shall be paid within a period of 8 weeks.

45. The EPFO shall, in future, consider sending e-mails to members at least three months before their accounts are rendered inoperative so as to sensitize the members that no interest would be paid on the amounts lying in their EPF accounts post the 36 months' period. Such e-mails could even be auto-generated e-mails for which the necessary change could be made in the EPF software. Copy of this order be communicated to the Central Provident Fund Commissioner, EPFO (e-mail: cpfc@epfindia.gov.in).

46. The petition, along with all pending applications, is dismissed.

भारतमेव जयते

PRATHIBA M. SINGH
JUDGE

SEPTEMBER 20, 2021/*Rahul/Aditi*