IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 9013 of 2011

The West Bengal Power Development Corporation Ltd.
Vs
Union of India & Anr.

For the Petitioner	:	Mr. Ranjay De, ld. Sr. Adv. Mr. Basabjit Banerjee, Mr. Adityajit Abel.
For the EPF	:	Ms. Debjani Ghosal, Ms. Sanchayita Das.
Judgment reserved on	:	21.01.2026
Judgment delivered on	:	16.02.2026

Shampa Dutt (Paul), J.:

1. The writ application has been preferred praying for declaration to the effect that the provisions of Sub-sections (3), (4) and (5) of Section 7B are arbitrary and violative of principles of natural justice, and as such, ultra vires the Constitution. The petitioner has further prayed for setting aside of the impugned orders dated 24.02.2011 and 12.05.2011 passed by the respondent nos. 1 and 2.

2. The petitioner's case is that the proceedings under Section 7A of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 were initiated against one of the Units of the Corporation viz. Bakreswar Thermal Power Project vide Memo No.R-Ex-WB/26974/7A/CC-VI/1131 dated 27.09.2006.

3. It is further stated that Enforcement Officer from Durgapur Sub-Regional Office had visited the Bakreswar Thermal Power Project Unit of the Corporation on 16.01.2008, 22.01.2008 and 24.01.2008 and submitted their report dated 15.02.2008.

4. Petitioner further states that the Corporation submitted its comments by memo dated 25.09.2008 against the report submitted by the Enforcement Officials from Durgapur Sub-Regional Office.

5. Several reports after inspection was submitted by the Enforcement Officer against which the petitioner has filed his comments and has denied the allegations of the said officials.

6. It is the contention of the petitioner that:-

(a) The allegation of evasion of membership in respect of stipend for trainees, safety and security expenses and secondary school expenses are not correct and trainees are not employees under Section 2(f) of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952.

(b) 6 (six) Teachers, whom the Enforcement Officials alleged that as has not been covered by the Corporation under Provident Fund Scheme is not correct as these teachers were previously employed under State Government aided School and after retirement they are drawing pension etc. they were engaged at BKTPP Prabir Sengupta Vidyalaya on honorarium basis and hence they shall not be treated as employees as per Act. Further in support of the same, corporation has submitted their Pension Order etc. and appointment letter which has not been considered by the Regional Provident Fund Commissioner while passing his Order.

(c) The claim of Provident Fund under the Head of Safety & Security expenses is not correct inasmuch as there was total non-application of mind on the part of the Enforcement Officials including the facts in connection therewith.

7. The petitioner relies upon the Supreme Court judgment in the case of ***Noor Niwas Nursery Public School vs. RPFC & Ors., (AIR 2001 Supreme Court 277),*** and documents to substantiate that Bakreswar Thermal Power Project do not have any financial control over the said Holy Mother English Medium Primary School and also other documents to substantiate that the corporation has existence of one group of employees being member under West Bengal Power Development Corporation (Death-cum-Retirement Benefit Regulation 1992), the General Provident Fund of the Corporation. But the Regional Provident Fund did not consider the submission made in support of non-coverage of Trainee as well as Fire Fighters although sufficient documents substantiating non-coverage were produced.

8. It is further stated that the teachers of P.C. Sengupta Vidyalaya, Bakreswar Thermal Power Project are contractual and, as such, teachers as well as Fire Fighters and security personnel cannot be treated as employees in terms of Section 2(f) of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952.

9. It is further stated that the graduate engineer trainees were not given any guarantee of employment and all these employees were paid honorarium for their services and, as such, they come within the purview of excluded employees.

10. It is further stated that the impugned order under Section 7B of the EPF Act has been passed in a mechanical manner without application of mind since the amount of Rs.69,82,944/- provisionally decided has been kept in spite of the fact that **Holy Mother English Medium Primary School has been held to be beyond purview of the decision arrived at by the respondent and there is apparent contradiction in arriving at a conclusion in the instant case.**

11. Challenging the order under review, the petitioner has preferred the writ application on the ground that the provision of review has not been properly applied, while considering the application under Section 7B of the EPF Act.

12. Affidavits have been filed in the present case by the parties. Written notes of the petitioner is also on record.

13. The petitioner has relied upon the judgment in ***The Regional Provident Fund Commissioner, Mangalore vs. M/s. Central Arecanut & Coca Marketing and Processing Co-op. Ltd., Mangalore (2006) 2 SCC 381*** in support of their contention wherein the Supreme Court has held as follows:-

> *"…….provident fund contribution has been claimed and assessed in respect of trainees who were getting stipends during their training period in utter violation of the law laid down by the Hon'ble Apex Court."*

14. It is further stated that the impugned order under Section 7B is in violation of **paragraph 26B of the EPF Act** as the **respondent no. 2 did not give his finding** as to whether retired employees enjoying pension from the Government being engaged on "no work no pay basis" on a consolidated payment of Rs.5000/- for 6(six) months with a total earning more than Rs.6500/- shall be covered as excluded employee as defined under paragraph **2(f)(ii) of the said Scheme** and whether honorarium will come within the purview of "basic wages" as defined under Section 2(b) of the said Act of 1952.

15. There has been violation of principle of natural justice as the person **who represented the P.F. organization is the person who passed the order under Section 7A of the Act.** But the order herein has been passed based on the report of the enforcement officer and there is no personal finding of the authority concerned.

16. The petitioner relying upon the judgment of ***Manipal Academy of Higher Education vs. Provident Fund Commissioner (2008) 5 SCC 428 para 10*****, submits that:-**

> *"………Undisputedly, coverage* ***in this case*** *has been claimed in respect of certain contractual teachers who are getting pension from other institutions and honorarium without resolving the doubt as to whether honorarium can be claimed as basic wages under Section 2(b) of the said Act of 1952……."*

17. It is further stated that the quantum of amount can be construed as **"basic wages" which are universally, necessarily and ordinarily paid to all the employees across the Board and not otherwise**. Admittedly, honorarium is not paid to all the employees of the petitioners and as such the same cannot be construed as "basic wages" without which no contribution can ever be claimed."

18. Petitioner relies upon the judgment of ***M/s. Hindustan Lever Limited vs. The Assistant Provident Fund Commissioner and Anr.(2014 SCC OnLine Bom 1222 Para 9)*** in support of his contention that the authority concerned did not come to a finding as to whether a person had "no work no pay" basis who are enjoying pensions from the State Government are entitled to be covered under the EPF Act.

19. On perusal of the **impugned order under Section 7A of the EPF Act** dated 24.02.2011, this Court finds that the authority concerned being the Regional Provident Fund Commissioner (C & R) passed a reasoned detailed order on the following findings:-

> *"(a) Non payment of P.F. and allied dues in respect of the employees of M/s Holy Mother English Medium Primary School located in the Bakreshwar Thermal Power Project township (allegedly run by M/s WBPDCL) and M/s BKTPP Prabir Sengupta Vidyalaya.*
> *(b) Non payment of statutory dues in respect of the stipend paid employees of the establishment.*
> *(c) Non payment of statutory dues in respect of Fire Fighter & Security Contractors engaged by the establishment at their site at Birbhum.*
> *(d) Non extension of P.F. benefits to the employees engaged by Panther Security Services, Sulabh Security Service and drivers*

of hired vehicles, workers engaged through Bakreshwar Co-operative Multi Society Limited as well as other employees engaged through contractors.”

20. The authority duly considered the **report of the Enforcement Officer** who gave his findings as follows:-

> *“The school was directly under the control of the Principal establishment and the teaching & non-teaching staff were directly under the muster rolls of the Principal establishment and were **enrolled as GPF members.** However, the squad observed that there were **some employees** who were engaged on **contractual basis** and **were neither GPF nor EPF beneficiaries.***
>
> *With respect to the contractual employees engaged as **Safety & Security staff as well as Fire Fighters** the squad observed that **they were paid directly by the Principal establishment under the ledger account head safety and security expenses from 04-05 to 08-09 and were neither extended GPF/nor EPF membership.***
>
> *With respect to the trainees, receiving stipendiary payments, the squad observed that they hadn’t been extended any GPF/EPF/benefits.*
>
> *The squad has made observations as regards the feasibility of coverage under section 2A of the Act by clubbing M/s Holy Mother English Medium Primary School, with M/s. BHEL as well as the compliance status of the various contractors working under the Principal Employer; M/s WBPDCL, which needed to be verified by the respective EPFO offices.”*

21. **The authority** then considered the contention of the petitioner herein in detail in respect of categories of persons employed by the petitioner. **In**

case of trainee employees the authority gave his findings as follows:-

> *"Thus in view of this it was obligatory on the part of the respondents to undergo the entire statutory exercise of preparing a standing order including the matters set out in the relevant schedule of the said Act and get it validated by the Certifying Officer as defined under section 2(c) of the same Act. On the basis of evidence on record, there which doesn't indicate any such actions embarked on by the respondents, I find no substance in the averments of the respondents that **the West Bengal Power Development Corporation Limited (employees service) Regulations, 1990,** though arguably approved by the State Government be considered the Standing Orders of the establishment. **As such, it is concluded that the respondents are liable to pay the dues calculated on the basis of available documents vis-à-vis the Graduate Trainees."***

22. In respect of persons engaged in Prabir Sen Gupta Vidyalaya & Holy Mother English Medium Primary School, the authority held as follows :

> ***"There is no estoppel in the Act for extending coverage to persons engaged after the age of 60 years even though receiving pensions from any other source.*** *Arguably enough the concerned persons were engaged on a **consolidated pay,** on a contractual basis and my view is that the respondents are liable to make statutory payments vis-à-vis these persons to the department.* ***However, I find that the respondents are on a firmer wicket when***

> ***they aver that M/s Holy Mother English Medium Primary School is a distinct & separate body and its employees can't be defined as employees of WBPDCL and accordingly their averments are accepted."***

23. Regarding security and fire fighting, the authority held as follows:-

> *"Thus in view of the material evidences on records and in the back ground that there is no estoppel in the statute to make the salaries of such personnel liable for Provident Fund deductions, I hold that the salaries/wages of such persons,* ***upon re-employment*** *are liable for PF deduction."*

24. The following direction of the authority concerned, on the basis of evidence, is as follows:-

> *"(i) In respect of* **Security Agencies,** *having independent code nos. let the records relating to details of payment made to them monthwise be sent to the respective offices to assess the dues if any.*
> *(ii) The records pertaining to* ***various contractors*** *having independent code numbers, complying under M/s BHEL as the Principal Employer be sent to different areas for re-assessment.*
> *(iii) Similar steps to be taken in respect of M/s. Bakreshwar Co-Operative Multipurpose Society covered incidentally in Durgapur."*

25. The authority concerned then assessed the dues along with damages and interest thereon and directed payment.

26. Vide the impugned order dated 12.05.2011 passed under Section 7B read with paragraph 79A of the Scheme, the authority disposed of the Special Review application on the following findings:-

"A perusal of the application, alongwith the oral submissions of the respondents, indicate that the issues that have been emphasized upon in this application, are nothing but a mere repetition of the averments of the respondents during the course of the 7A proceedings. As such the respondents have not been able to bring to light any new facts, which were not taken up during the course of the 7A proceeding. As regards the allegations of any error apparent on the face of record, with respect to the issue of M/s. Holy Mother Primary School, the same has been verified and ***there is no ground to believe that any liability pertaining to this school has been raised.*** *Thus, the allegation is clearly unsustainable. Lastly, the issue as regards the adjudicating authority having been a departmental representative at one point of time, is not relevant at this juncture, in view of the fact that the said authority conducted the proceedings, for almost about an year in which the respondents having duly participated, never raised this as a point of objection. Thus, it appears nothing but a presumptive attempt to impede the legal process at this belated stage.*

With the aforesaid observations, the application for review is dismissed as not admissible, and the 7A order is upheld along with all its concomitant directions."

27. In respect of the findings in respect of the issue at:-

(a) **Para 18 (a) herein,** the authority in its order under Section 7A EPF Act held:-

"However, I find that the respondents are on a firmer wicket when they aver that M/s Holy Mother English Medium Primary School is a

distinct & separate body and its employees can't be defined as employees of WBPDCL and accordingly their averments are accepted."

The said finding is in favour of the petitioner.

(b) **Para 18(b)** herein, the authority's finding that:-

"As such, it is concluded that the respondents are liable to pay the dues calculated on the basis of available documents vis-à-vis the Graduate Trainees."

is prima facie erroneous considering the view of the Supreme Court in ***The Regional Provident Fund Commissioner, Mangalore vs. M/s. Central Arecanut & Coca Marketing and Processing Co-op. Ltd., Mangalore (Supra),*** wherein the Court held:-

> *"………..In the present case, admittedly the Standing Orders were not at the relevant point of time certified. Therefore, in terms of Section 12-A of the Standing Orders Act, the Model Standing Orders are deemed to be applicable. Section 2(f) of the Act defines an employee to include an apprentice, but at the same time makes an exclusion in the case of an apprentice engaged under the Apprentices Act or under the Standing Orders. Under the Model Standing Orders an apprentice is described as a learner who is paid allowance during the period of training.*
>
> *In the case at hand, trainees were paid stipend during the period of training. They had no right to employment, nor any obligation to accept any employment, if offered by the employer. Therefore, the trainees were 'apprentices' engaged under the 'Standing Orders' of the establishment.*
>
> *Above being the position, it cannot be said that the concerned 45 trainees were employee in terms of Section 2(f) of the Act. In other words, an apprentice engaged under the Apprentices Act or under the*

Standing Orders ***is excluded*** *from the definition of an 'employee' as per Section 2(f) of the Act……"*

(c) Regarding **Para 18(c) and (d)** herein that:-

"Thus in view of the material evidences on records and in the back ground that there is no estoppel in the statute to make the salaries of such personnel liable for Provident Fund deductions, I hold that the salaries/wages of such persons, ***upon re-employment*** *are liable for PF deduction."*

is on the basis of the report of the enforcement officer which is as follows:-

"With respect to the contractual employees engaged as ***Safety & Security staff as well as Fire Fighters*** *the squad observed that* ***they were paid directly by the Principal establishment under the ledger account head safety and security expenses from 04-05 to 08-09 and were neither extended GPF/nor EPF membership."***

28. Thus, the authority rightly held that the petitioner is liable for PF deductions for the fire fighters and security personnels being directly employed by the petitioner herein.

29. In view of the findings above, the impugned orders dated 24.02.2011 and 12.05.2011 passed by the respondent nos. 1 and 2 are modified to the extent as noted. The decision of the authority in respect of the "graduate trainees" is set aside. Rest of the impugned orders require no interference being in accordance with law.

30. WPA 9013 of 2011 is disposed of.

31. Connected application, if any, stands disposed of.

32. Interim order, if any, stands vacated.

33. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously after due compliance.

(Shampa Dutt (Paul), J.)