

THE HIGH COURT OF TRIPURA
AGARTALA

W. P. (C) No.366 of 2007

Sri Amiya Bhattacharjee,
Son of late Akshay Kumar Bhattacharjee,
Vill. Nayapara, Dharmanagar,
North Tripura, PIN-799250,
(Presently residing at C/O-Dilip Kumar Choudhury near Yuba Sangha
Club, Ramnagar Road No.1, Agartala-799002, West Tripura).

.....**Petitioner**

- V E R S U S -

1. The State of Tripura,
(to be represented by the Commissioner-Secretary Department of School
Education, Govt. of Tripura).
2. The Director of School Education,
Government of Tripura, Agartala, West Tripura.
3. The Headmaster,
Padampur Higher Secondary School (HS+2) Dharmanagar, North
Tripura.
4. The Deputy Accountant General (A&E),
Office of the Accountant General (A&E), Agartala, West Tripura.
5. The Employees Provident Fund Commissioner,
Employees Provident Fund Organisation, near Bholagiri Ashram, Airport
Road, Agartala, West Tripura.
6. The Assistant Provident Fund Commissioner,
Employees Provident Fund Organisation, near Bholagiri Ashram, Airport
Road, Agartala, West Tripura.
7. The Managing Director,
Tripura Industrial Development Corporation Ltd., A Government
Undertaking, Silpaudyog Bhavan, Third Floor, Kunjaban, Agartala, West
Tripura, PIN-799006.

.....**Respondents.**

B E F O R E
THE HON'BLE MR. JUSTICE U. B. SAHA

For the petitioner	: Mr. P. Roy Barman, Advocate.
For the State respondents	: Mr. S. Chakraborty, Addl. G.A.
For the respondent No.4	: Mr. B. Majumder, Advocate.
For the respondent Nos.5-6	: Mr. A. Lodh, Advocate.
For the respondent No. 7	: Mr. P. Dutta, Advocate.
Date of hearing	: 01.06.2015
Date of delivery of judgment and order :	
Whether fit for reporting	: Yes

Judgment and Order

By this writ petition, the petitioner has prayed for a direction to the respondents for paying interest on the General Provident Fund accumulation of the petitioner w.e.f. 01.07.2003 i.e. till the date of actual payment is made in terms of the Memo No. F.8(5)-FIN(G)/78 dated 23.09.1985, issued by the Under Secretary to the Government of Tripura along with other benefits and also to cancel the Memo No. F.8(5)-FIN(G)/78 dated 17.08.2007, so far as the calculation of interest is concerned.

[2] Heard Mr. P. Roy Barman, learned counsel appearing for the petitioner and Mr. S. Chakraborty, learned Addl.G.A., for the State respondents. Also heard Mr. B. Majumder, learned counsel for the respondent No. 4, Mr. A. Lodh, learned counsel for the respondent Nos. 5-6 and Mr. P. Dutta, learned counsel for the respondent No. 7.

[3] The brief notes on the factual aspects required for deciding the matter are narrated hereinunder:-

On 09.01.1984, the petitioner joined as Assistant Teacher under the Directorate of School Education and while he was serving as Assistant Teacher in the Padampur H.S. School, he was placed on deputation under the disposal of Tripura Industrial Development Corporation (**for short 'TIDC'**) in exercise of powers delegated to the department, vide Rule 20 of the delegation of Financial

Power Rules, Tripura, 1994, vide Notification dated 23.07.1997 (**Annexure-A to the writ petition**), issued by the Joint Secretary to the Government of Tripura, Department of Education and the petitioner was accordingly released from the said School on 06.08.1997 to join at his new place of posting under the disposal of TIDC Ltd.

[4] Later on, the petitioner was absorbed by TIDC, vide Memo dated 12.06.2003, in the post of Company Secretary-cum-Financial Controller. The service of the petitioner in the parent Department, i.e. Directorate of School Education, was deemed to be ceased w.e.f. the date of absorption under the Proviso to Rule 37 and 37 A of the CCS (Pension) Rules, 1972.

[5] Thereafter, vide notification dated 04.08.2003 the petitioner was notified that his service in his parent department is deemed to have ceased w.e.f. 30.06.2003 and the date of absorption under proviso to Rule 37 and 37 A of the CCS (Pension) Rules, 1972 was adopted by the Government of Tripura vide Memo No. F-8(5)-FIN (G)/78 dated 23.09.1989 of the Finance Deptt. Govt. of Tripura, subject to the following conditions:

“(I) His membership to Group Insurance Scheme as a state Govt. Employee shall be deemed to have ceased w.e.f. the date of permanently absorption in that organization and be paid to the accumulation in

his Savings Fund after obtaining a simple application as prescribed in the Tripura State Govt. Employees' Group Insurance Scheme, 1993 as per provision (iii) of Finance Deptt. Circular No. F.8(5)-FIN(G)/78,

(II) Consequent upto permanent date of absorption in that organization payment of leave salary in respect of earned leave due at the credit of Shri Bhattacharjee on the date prior to the date of his permanent absorption, subject to the maximum of 300 days shall be made to the body by granting sua-moto issue and order as per Rule 6(a) of the TSCS (Leave) Rules, 1986 (corrected upto 26th April, 1997) as amended on 11.10.1988 vide Finance Deptt. Govt. of Tripura Officer Memo No. F.10(19)/FIN (G)/76 dated 11.10.1988 r.w provision (f) of the Govt. of Tripura, Finance Deptt. Circular dated 23.09.1985.

(III) The balance standing at the credit of GPF Account of Shri Bhattacharjee shall be transferred with interest to his new PF/CPF whatever account under the organization as per the explanation (III) below Rule 31 of GPF Rules. There shall no scope for option of the incumbent to receive final payment as per provision e (i) of the Govt. of Tripura Finance Deptt. Circular dated 23.09.1985."

[6] The balance standing at the credit of GPF Account of Shri Bhattacharjee shall be transferred with interest to his new PF/CPF whatever account under the organization as per the explanation (III) below Rule 31 of GPF Rules. There shall be no scope of the incumbent to receive final payment as per provision e (i) of the Govt. of Tripura Finance Deptt. Circular dated 23.09.1985. The relevant portion of the memorandum is as under:

"(i) The balance standing at the credit of G.P.F. Accounts of the Government servants absorbed permanently in a public undertakings/Autonomous Body/Board shall be transferred with interest to the subscriber's new P.F. Account under the organization as per Explanation II below Rule 31 of G.P.F. Rules. But there shall not be any scope for option of the government servant to receive final payment.

(ii) The Provident Fund Account of a Government servant who is permanently absorbed in a public undertakings/Autonomous Body/Board under this order shall cease to be 'alive' on and from the date of his permanent transfer to such organization. As such, no withdrawals from or subscription (other than recoveries of outstanding advances) to the fund shall be accepted. The accumulation of the P.F. Account shall be continued to be held by the Government until it is transferred to the employer's new PF/CPF Account under the organization. The balance thus held shall, however, continue to earn interest till the date of transfer of the amount to the organization. Where there is no provision for P.F. benefits in an organization, the balances shall be paid to the subscriber as final payment.

(iii) If a Government servant is a member of the Group Insurance Scheme for State Government Employees, he shall cease to remain a member of the Scheme from the date of his permanent absorption and be paid the accumulation in his Saving Fund after obtaining a simple application as prescribed in Rule 11'1 of the Tripura State Government Employees' Group Insurance Scheme, 1983.

[7] The General Provident Fund Rules, (Central Services) Rules 1960 has been adopted in the State of Tripura. In the Memo, dated 23.09.1985 (**Annexure-D to the writ petition**) reference to Explanation-II below Rule

31 of GPF Rules, has been given. It has been further stated therein, that, balance standing in the credit of GPF Account shall be transferred with interest to the subscriber's new PF Account and Government servant cannot receive the final payment.

[8] Explanation-II below Rule 31 of GPF Rules is not applicable to the petitioner.

[9] Explanation-III of GPF Rules 31 wherein and whereby it has been specifically provided, that, if the subscriber does not desire transfer of his GPF Accumulation, the amount aforesaid shall be refunded to the subscriber.

[10] After joining in TIDC Ltd. on 12.06.2003, the petitioner by his representation dated 03.11.2003 (**Annexure-I to the writ petition**) requested the Headmaster, Padampur Higher Secondary School, Dharmanagar, North Tripura, the respondent No. 3 herein, to release his GPF, Leave Salary, Group Insurance, accrued upto 30.06.2003. In the said letter the petitioner also exercised his option under Rule 37 A of the Central Civil Service (Pension) Rules, 1972 read with Para 3 (iii) (v) (I) of Finance Department memo dated 23.09.1985 and read with Para 4 of the notification dated 04.08.2003 to receive monthly pension and DCRG worked out under usual arrangement.

[11] As there is no response from the respondent No. 3 regarding his representation, the petitioner again submitted reminder on 19.03.2004 and in the said representation he again asked for release of GPF and leave salary and other benefits. He has also requested to ensure finalization of pension at the earliest so that the petitioner does not suffer any loss due to the delayed finalization and subsequent delayed payment of his pension.

[12] Thereafter, vide letter 07.04.2004 (**Annexure-K to the writ petition**) the respondent No. 2, Director of School Education, Govt. of Tripura, made communication to the Managing Director, TIDC, respondent No. 7, that the petitioner had a credit balance in the GPF Account which required to be transferred in CPF Account under the TIDC Ltd. The Managing Director, the respondent No. 7 was also requested to communicate as to whether there is any CPF facility under the TIDC and if there is such facility whether TIDC is/was agreeable to allow the transfer of the GPF benefit of the petitioner to his present CPF Account under TIDC.

[13] In response to the aforesaid letter of the Director of School Education, respondent No. 7, MD, TIDC, vide his letter dated 12.04.2004 (**Annexure-L to the writ petition**) made a communication to the Commissioner,

Employees Provident Fund Organization, wherein, the Commissioner Employees Provident Fund Organization was requested to give his views as to whether the petitioner's GPF accumulation can be transferred to his present PF Account. The Managing Director, TIDC was informed by the Asstt. Provident Fund Commissioner, that, if the employee concerned desired and rules permitted, GPF accumulation can be transferred to the credit of CPF A/c of the concerned employee. Transfer of GPF accumulation could be effected only on the specific request in writing by the concerned employee for such transfer.

[14] The petitioner by his representation dated 07.04.2005 (**Annexure-P to the writ petition**) again asked the Headmaster, the respondent No. 3 to cause immediate release of his GPF credit balance, Leave Salary and pension. The petitioner again informed the respondent Nos. 2 and 3 for releasing his GPF amount with interest as he did not want to transfer of his GPF accumulation to CPF Account. But there was no response. Finally on 10.02.2006 (Annexure-W to the writ petition) he again submitted his representation seeking release of his GPF accumulation.

[15] The petitioner never sought for transfer of his GPF credit balance to his CPF Account and vide letter dated 30.04.2014 the petitioner categorically informed the

Managing Director, TIDC, that he is desired to get back the credit balance of GPF accumulation at the earliest.

[16] On 01.03.2006, the Director of School Education, the respondent No.2 asked the respondent No. 3 to intimate as to whether the petitioner had been paid final GPF amount. As there is no response from the respondent No. 3 the Director of School Education by Radio message on 15.01.2007 asked the respondent No. 3 to take necessary action for sanction of final GPF accumulation of the petitioner without further delay.

[17] Ultimately, GPF final payment was sanctioned in August, 2007 after elapse of 50 months from the date of his retirement i.e. 01.07.2003 as Assistant Teacher. The petitioner had been given interest only for 6(six) months on his GPF amount i.e. Rs. 5,79,648/-. Hence this writ petition.

[18] The respondent Nos. 1, 2 and 3 by way of filing an affidavit though admitted that Rule 31 of GPF (CS) Rules, provides that if the subscriber does not desire to transfer, the amount should be refunded to the subscriber and if the subscriber desires to get his GPF accumulation then that should be refunded to him with interest thereon. It is also contended that the petitioner expressed his desire to get back the final payment of his GPF and not desired to transfer the amount in the CPF A/c. maintained by the

Asstt. P.F. Commissioner but as per the notification dated 04.08.2003, it is required to transfer the balance standing at the credit of GPF account.

[19] In reply to the averments of the petitioner in his letter dated 31.08.2007, wherein, the petitioner mentioned that the pension was sanctioned after 20 months and GPF final payment was sanctioned after elapse of 50 months from the date of retirement, it is contended by the respondents that the Headmaster Padampur H.S. School always made efforts for early release of various retirement benefits. But for some clarifications on the point of leave salary, gratuity and GPF final payment, it required a lot of time and for awarding of 3rd CAS benefit to the petitioner there also lost a lot of time. Except the GPF final payment other benefits were given in due course. But as the issue of transfer of GPF balance was not settled, there was delay in giving the GPF final payment.

[20] The respondent Nos. 5 and 6 , the Employee Provident Fund Commissioner and the Assistant Provident Fund Commissioner by way of filing a joint affidavit-in-opposition contended that the Managing Director, TIDC sought opinion from R.P.F.C.,SRO Agartala on the line whether GPF accumulation can be transferred to present CPF Account and accordingly the Managing Director was

informed that if the employee concerned so desires and the rules in relation to GPF permits, the P.F. accumulation may be transferred to the credit of EPF Account and it is further intimated that transfer of P.F. accumulation is to be effected on the specific request in writing through a letter or through the form prescribed.

[21] Respondent No.7, the Managing Director, in its affidavit contended that the writ petition is totally related to the release of GPF accumulation of the past service of the petitioner by the authority of Padampur H.S. School, Dharmanagar, North Tripura and the Director of School Education and the said respondents had no role or lapse on their part. They are not responsible for delay to pay the GPF final amount of the petitioner.

[22] Respondent No. 4, the Deputy Accountant General (A&E) in his affidavit contended that the continuance of earning of interest of accumulation of GPF is permissible under Rule 11(4) GPF (C.S.) Rules which provide that if a government servant is permanently absorbed in a public organization having been on deputation from a State Govt. Deptt. till the date of refund of his accumulation. But note (b) below Rule 11 (4) of GPF (C.S.) Rules provides that GPF interest will only be allowed beyond the period of six months if there is any

administrative delay on the part of the concerned department for which the subscriber is not responsible at all.

[23] It is also contended by the said respondent that the interest may be allowed as per note (b) below Rule 11(4) of the GPF Rules and accordingly the Director of School Education was requested vide letter dated 14.11.2007 (**Annexure R/1 to the affidavit**) to ascertain the administrative delay if any, on the part of their end the reply of which is still awaited. It is further contended that if the subscriber does not desire to transfer of GPF accumulation for the concerned enterprise, GPF accumulation will be refunded.

[24] Mr. Roy Barman, learned counsel appearing for the petitioner while urging for reliefs sought for would contend that admittedly GPF accumulation of the petitioner was released after 50 months from the date of his retirement as Assistant Teacher on 30.06.2003. He also contended that as per Clause e(i) of the notification dated 23.09.1985 (**Annexure-D to the writ petition**), the GPF balance was continued to earn interest till the date of transfer of the amount to the organization, where there is no provision for P.F. benefits in an organization, the balance shall be paid to the subscriber as final payment. But the

case of the petitioner is covered by Explanation-III of GPF Rules 31 wherein, it has been specifically provided that if the subscriber does not desire transfer of his GPF accumulation, the amount should be refunded to the subscriber.

[25] He has further submitted that Clause e(i) of the memo dated 23.09.1985 (**Annexure-D to the writ petition**) is not also sustainable as the same is contrary to the proviso of Explanation-III of Rule 31 of the Rules and for which the petitioner challenged Clause e (i) in this writ petition and the petitioner relies upon the aforesaid notification save and except Clause e (i) which is under challenge.

[26] He finally contended that the respondents in their affidavit failed to explain the reasons for delay of 50 months in releasing the final GPF balance of the petitioner and admittedly the delay was caused for the administrative fault of the respondent Nos. 1 to 3, the petitioner is entitled to the interest of his GPF amount.

[27] He has referred to the decision in **D.D. Tewari (D) Thr. LRs. V. Uttar Haryana Bijli Vitran Nigam Ltd. and Others**, reported in **AIR 2014 SC 2861**, wherein, the Apex Court considered a case relating to the delayed payment of pension and gratuity and noted as under:

"5. It is needless to mention that the respondents have erroneously withheld payment of gratuity amount for which the appellants herein are entitled in law for payment of penal amount on the delayed pay-Payment of Gratuity Act, 1972. Having regard to the facts and circumstances of the case, we do not propose to do that in the case in hand.

"6. For the reasons stated above, we award interest at the rate of 9% on the delayed payment of pension and gratuity amount from the date of entitlement till the date of the actual payment. If this amount is not paid within six weeks from the date of receipt of a copy of this order, the same shall carry interest at the rate of 18% per annum from the date of amount falls due to the deceased employee. With the above directions, this appeal is allowed."

[28] Mr.S. Chakraborty, learned Addl. G.A. appearing for the respondent Nos. 1 to 3 while countering the submission of Mr. Roy Barman admitted that there was a delay in payment of GPF accumulation of the petitioner and contended that as per GPF Rules 31, interest upon the balance amount is payable only up to six months from the date of the closer of the amount and beyond that date, the same is not payable under the Rule. Thus, the respondent State is not under obligation to pay the interest beyond the period of six months from the date of claim of the amount.

[29] He has also admitted that the petitioner made an application on 03.11.2003 (Annexure-I to the writ petition) requesting the Headmaster, Padampur High School, Dharmanagar, North Tripura, the respondent No. 3,

to release his GPF, Leave Salary, Group Insurance, accrued upto 30.06.2003 and reminder was also given on 19.03.2004.

[30] The learned counsel appearing for the respondent Nos. 4 to 7 reiterates the contention made in the affidavit of the respondents for which they appeared.

[31] The question arises for decision in the instant writ petition is that as to whether for delayed payment of GPF amount due to the administrative fault of the employer, the subscriber is entitled to get the interest or not on his GPF accumulation? And whether by way of administrative memo dated 23.09.1985 (**Annexure-D to the writ petition**) the prescription in proviso to the explanation III of Rule 31 of General Provident Fund (CS) Rules, subordinate legislation can be frustrated? The relevant portion of Rule 31 is as follows:

"31. Final Withdrawal of accumulations in the fund.

When a subscriber quits the service, the amount standing to his credit in the fund shall become payable to him;

Provided, that a subscriber, who has been dismissed from the service and is subsequently reinstated in the service shall, if required to do so by the Government, repay any amount paid to him from the Fund in pursuance of this rule, with interest

thereon at the rate provided in Rule 11 shall be credited to his account in the Fund.

Explanation-III

When a subscriber, other than one who is appointed on contract or one who has retired from service and is subsequently re-employed, is transferred, without any break, to the service under a body corporate owned or controlled by Government, or an autonomous organization, registered under the Societies Registration Act, 1860, the amount of subscriptions together with interest thereon, shall not be paid to him but shall be transferred with the consent of that body, to his new Provident Fund Account under that body.

Transfers shall include case of resignation from service in order to take up appointment under a body corporate owned or controlled by Government or an autonomous organization, registered under the Societies Registration Act, 1860, without any break and with proper permission of the Central Government. The time taken to join the new post shall not be treated as a break in service if it does not exceed the joining time admissible to a Government servant on transfer from one post to another.

Provided that the amount of subscription together with interest thereon, of a subscriber opting for service under a Public Enterprise may, if he so desires, be transferred to his new Provident Fund Account under the Enterprise if the concerned Enterprise also agrees to such a transfer. If, however, the subscriber does not desire the transfer or the concerned Enterprise does not operate a Provident Fund, the amount aforesaid shall be refunded to the subscriber”.

[32] From bare reading of the proviso to the aforesaid Rules it is abundantly clear that the GPF subscription is to be transferred to new PF Account of the subscriber on his option with interest. But if the subscriber does not desire for transferring his GPF accumulation in his new PF Account or the concerned enterprise does not operate the P.F, the amount of subscription with interest shall be refunded to the subscriber. In the instant case the petitioner, the subscriber of the GPF, admittedly did not opt for transferring his amount of subscription to his new PF Account.

[33] Therefore, question of transferring the GPF accumulation in his new P.F. Account, does not arise at all. Admittedly, in the instant case, the GPF accumulation of the petitioner was paid with 6 months interest after lapses of 50 months and the delay caused due to administrative lapses.

[34] Now let us see whether the prescription in the memo dated 23.09.1985 (**Annexure-D to the writ petition**), wherein, it is mentioned that “*there shall not be any scope for option of the Government servant to receive final payment.*” is contrary to the provision of proviso to Explanation-III of Rule 31. Proviso to Rule 31 states about the option of the subscriber wherein, the respondents by

way of e(i) in the memorandum departed the Government servant from his option to receive his final payment.

[35] Depriving a person from obtaining his option by way of the provision of the memorandum is wholly contrary to the provision in the proviso of Explanation-III to Rule 31. Thus, according to this Court later part in e(i) of the aforesaid memorandum i.e. *"there shall not be any scope for option of the Government servant to receive final payment."* is bad in law and the same is to be set aside to maintain the prescription in the proviso to Explanation-III of Rule 31. Accordingly, the said prescription of the provision of e(i) of the aforesaid memorandum is set aside.

[36] As per proviso to the Explanation-III of Rule 31 if a subscriber does not desire to transfer of his GPF accumulation in his new PF Account, the employer is bound to refund the GPF accumulation to the subscriber with interest. In the instant case from scrutiny of the record it appears that the petitioner resigned from the post of Assistant Teacher w.e.f. afternoon of 30.06.2003 and thereafter vide his letter dated 03.11.2003 he has requested the Headmaster of Padampur Higher Secondary School for making the payment of GPF, Leave Salary, Group Insurance etc., up to 30.06.2003 and thereafter, he has also reminded again and again but fact remains that the

respondents neither transferred the GPF accumulation to his new PF Account nor refunded it up to 50 months, without any fault of the petitioner. It also appears from the record that the Assistant Provident Fund Commissioner, vide his letter dated 29.04.2004 informed the Managing Director TIDC that if the employee concerned so desires and the rules in relation to such GPF permit, the P.F. accumulation may be transferred to the credit of his EPF Account and admittedly the petitioner did not desire to transferring his GPF accumulation to his EPF Account.

[37] Thus, according to this Court the respondent No.2 was bound to refund the PF accumulation of the petitioner at the earliest but the same was not done due to administrative lapses as the GPF accumulation was provided after 50 months. According to this Court the petitioner is entitled his interest on the said GPF accumulation w.e.f. 01.07.2003 till the date of payment of GPF accumulation. With the aforesaid view, this Court is supported by the decision of the Apex Court in **D.D. Tewari (D) Thr. LRs. V. Uttar Haryana Bijli Vitran Nigam Ltd. and Others**, (supra) wherein, the Apex Court awarded interest at the rate of 9% on the delayed payment of pension and gratuity amount from the date of entitlement till the date of the actual payment.

[38] Accordingly, the respondent Nos. 1, 2 and 3 are directed to pay the interest on delayed payment of GPF accumulation w.e.f. 01.07.2003 at the rate of 9% within the period of 3 months. If this amount is not paid within 3 months from the date of receipt of a copy of this order, the same shall carry interest at the rate of 18% per annum from the date of amount falls due to the petitioner.

[39] The prayer of the petitioner to cancel the memo No. F.8 (5)-FIN(G)/78 dated 17.08.2007 cannot be allowed as the said memo is not annexed with the instant writ petition. In absence of a document on record and without providing any opportunity to the other side it would not be proper either to cancel or to make any observation on the said document.

[40] In the result the writ petition is allowed and is accordingly disposed of.

JUDGE

A.Ghosh.