

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.R. RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN

WEDNESDAY, THE 21ST DAY OF DECEMBER 2016/30TH AGRAHAYANA, 1938

WA.No. 1059 of 2012 () IN OP.8586/1993

AGAINST THE JUDGMENT IN OP 8586/1993 of HIGH COURT OF KERALA DATED 22-08-2011

APPELLANT(S)/1ST RESPONDENT:

THE REGIONAL PROVIDENT COMMISSIONER
EMPLOYEES PROVIDENT FUND ORGANISATION, SUB REGIONAL OFFICE,
P.B. NO. 1895, COCHIN-17.

BY ADVS.SRI.N.N.SUGUNAPALAN (SR.)
SMT.T.N.GIRIJA, SC,EPF ORGANISATION

RESPONDENT(S):

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1. FEDERAL BANK LTD
P.B. NO. 103, ALUVA-683101. REP. BY ITS DEPUTY GENERAL
MANAGER (PERSONNEL) SHRI. P.K. SIVADAS MENON.
 2. K. CHANDRA BABU
S/O. N.K. KUNHU PILLAI, 'RAGAM', ALUVA-683101.
 3. JOHN CHERIYAN,
DEPUTY GENERAL MANAGER (ACCOUNTS), FEDERAL BANK LTD,
THOTTAKATTUKARA, ALUVA-683101.
 4. THE FEDERAL BANK OFFICERS ASSOCIATION
REP. BY ITS GENERAL SECRETARY, ALWAYE-683101.
 5. FEDERAL BANK RETIRED OFFICER FORUM (FBROF)
FBOA CENTRE, FBOA BUILDING, ALUVA-683101, REP. BY ITS
PRESIDENT.

Addl. 6. FEDERAL BANK EMPLOYEES' UNION
CENTRAL OFFICE, BANK ROAD, ALUVA, ERNAKULAM -683101.
(impleaded as per order dated 17.06.2014 in I.A. No. 486/2014)

R1 BY ADV. SRI.M.PATHROSE MATTHAI (SR.)
ADV. SRI.SAJI VARGHESE
ADV. SMT.MARIAM MATHAI
R4&R5 ADV. SRI.C.C. THOMAS (SR.)
R4 ADV. SRI.T.A.JOY
R5 ADV. SRI.PRAVEEN K. JOY
R4&5 BY ADV. SRI.C.C.THOMAS (SR.)
RADDL.6 BY ADV. SRI.C.ANIL KUMAR
RADDL.6 BY ADV. SRI.P.RAMAKRISHNAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 27-10-2016, THE
COURT ON 21-12-2016 DELIVERED THE FOLLOWING:

[CASE REPORTABLE]

P.R. RAMACHANDRA MENON

&

ANIL K. NARENDRAN, JJ.

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W.A. No. 1059 of 2012

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Dated, this the 21st day of December, 2016

JUDGMENT

Ramachandra Menon, J.

The first respondent/EPF organization in O.P. No. 8586 of 1993 is the appellant. Grievance is against the verdict passed by the learned single Judge in the Original Petition filed by the respondent Bank, whereby a sum of Rs.43,35,74,751/-, which represents the total claim including interest on contribution/remittances made towards Family Pension Fund, Employees Deposit Linked Insurance, Administrative Charges and EDLI Administrative charges along with Provident Fund has been directed to be refunded within two months; also ordering payment of interest at current rate fixed by the Central Government for similar amounts, from the date of judgment, till the payment. The appellant has also been directed to furnish all particulars and details of contributions, loans as well as withdrawal benefits granted in the account of each of the employees/retired employees of the Bank, along with the fund directed to be

transferred.

2. The respondent Bank is a Banking Company governed by the provisions of the Banking Regulations Act. Earlier, the Bank was having activities only in the State of Kerala and was governed by the relevant provisions of the Employees' Provident Fund and Miscellaneous Provisions Act 1952 ['Act' in short]. The coverage was extended by virtue of the relevant notification issued in the year 1965, in exercise of the powers of the Central Government conferred under Section 1 (3) (b) of the Act. By virtue of the Scheme of the Statute, it was initially to have application only in respect of such establishments as listed in the schedule mentioned under Section 1 (3) (a), though it was also to be made applicable in the case of such other establishments notified by the Central Government in terms of Section 1 (3) (b). Since the notification issued by the Government under Section 1 (3) (b) of the Act covered the Banks having operation only within a State and further since the respondent Bank was having activities only within the State of Kerala at that point of time, it came to be covered as aforesaid and was remitting the contributions in respect of the employees and on their behalf.

3. By the passage of time, somewhere in the year 1973, the Bank widened its activities crossing the borders of the State, by virtue of which, it was to be taken outside the purview of the Act. A question had come up for consideration before a Division Bench of the Mumbai High Court in **United Western Bank Ltd. Vs. Central Provident Fund Commissioner [1984 Lab. I.C. 1504]** as to the course of action under such circumstances. The Bench declared that a Bank which is already covered under the Act having confined its activities within the State would stand 'de-covered', going outside the purview of the Act, once it widens its activities to a place outside the State. Based on the said verdict, it is said, that Circulars/intimations were sent by the authorities of the Employees Provident Fund from the Central Office to the Regional Offices for taking appropriate steps in this regard. However, the respondent Bank continued to effect the contributions and no claim was raised in this regard to opt out. As such, the benefits were being extended by the EPF organization to the employees/beneficiaries.

4. While so, the rate of contribution was enhanced giving effect to the orders passed by the Central Government in this regard. The respondent Bank was required to satisfy the due

amount vide letter dated 16.02.1985 issued to the Bank, also pointing out that the Bank had not remitted dues from 01.09.1983 onwards. This was replied as per Ext. P1 dated 02.03.1985 pointing out that the Bank, having operations in different States, was not liable to effect any further contributions under the Act, and that the Act was not applicable in their case any further. It was accordingly, that the EPF authorities were required to remove the Bank from the list of establishments covered under the Act. On receipt of the said communication, the appellant issued Ext. P2 dated 20.04.1985 informing the Bank that the matter had been referred to the Government of India for their considered opinion [presumably under Section 19A of the Act] and that the fate will be informed as and when reply was obtained from the Government. Section 19A of the Act stipulates that, if any difficulty arises in giving effect to the provisions of the Act and in particular, if any doubt arises as to various circumstances mentioned in Clauses (i) to (v), power is vested with the Central Government to pass orders, make provisions and give such direction not inconsistent with the provisions of the Act, as found to be necessary or expedient for the removal of the doubt or difficulty and the order of the Central

Government in such cases shall be final.

5. It is seen from the proceedings that the writ petitioner Bank had also approached the Central Government under Section 19A of the Act, praying *inter alia* to declare that the provisions of the Act were not applicable ever since 19.01.1971, when it opened branches in more than one State. The said claim was opposed from the part of the EPF authorities contending that; (i) *the petitioner opened a new branch outside the State, i.e., Tamilnadu on 19.01.1973; whereas at the time of extending coverage under the Act, the petitioner had no branch outside Kerala, which led to its coverage; (ii) the version of the Bank that the Act ceased to apply to the establishment with effect from 19.1.1973 is not correct, since there was no direction as per Para 78 from Government or any amendment to de-cover the Bank immediately on opening the branch outside the State; more so when Section 1 (5) of the Act stipulated that an establishment once covered, stands always covered; (iii) that the petitioner has been remitting contributions at the prevalent rate under the Act and only after enhancement of the rate of contribution as per the Notification dated 09.08.1983, had the petitioner raised the question of*

applicability of the provisions and hence that the petition was devoid of any merit and liable to be dismissed.

6. After considering the facts and figures, the Government passed Ext. P3 order dated 07.09.1992, virtually in favour of the Bank, also placing reliance on the verdict passed by Mumbai High Court in **United Western Bank Ltd. Vs. Central Provident Fund Commissioner [1984 Lab. I.C. 1504]**. It was held in the said verdict that the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 and the notification issued under Section 1 (3) (b) making the Act applicable to every Bank doing business only in one State and employing 20 or more persons, would clearly reveal that both the conditions are 'sine quo non' for continuance of applicability of the Act and that, if any one of the conditions ceased to exist, the Act would cease to apply. It was accordingly made clear, that a Bank which was initially covered having a branch only in one State or Union Territory, should be de-covered, after it opens a branch in another State or Union Territory. It was observed that the plea set forth, with reference to Section 1 (5) of Act, that the establishment already covered will continue to have coverage even if the strength of the employees gets reduced below

20 was not attracted. Accordingly, it was held that the Act had ceased to apply to the Bank and that the same would have effect from the date of objection raised by the Bank before the Regional Provident Fund Commissioner. This order has become final and as such, according to the Bank, there could not have been any coverage after Ext. P1 petition preferred by the Bank in March 1985.

7. By virtue of turn of events, once the establishment is excluded from the purview of the Act, the contribution, if any towards the PF account, Pension Fund, Deposit Link Insurance Scheme, etc. are to be returned. It was accordingly, that Ext. P4 request was made by the Bank on 08.01.1993, also forwarding a copy of the Deed [by which the Bank had constituted a Provident Fund Trust] and a copy of the clearance given by the Income Tax Authorities approving the said Trust for the purpose of Income Tax Act and the Rules thereunder. As per the very same letter, it was also made clear that, until Provident Fund, Family Pension, Deposit Linked Insurance amounts and full particulars of the amounts standing to the credit of each employee were transferred/furnished to the Bank, the EPF authorities will have to pay interest thereon

and meet payments/withdrawals/liabilities arising under each of them as and when they arise or they continue. On receipt of the said letter, the appellant issued Ext. P5 dated 26.03.1993 pointing out that the transfer of funds will be effected to the newly formed Trust as early as possible and that pending final decision on the modalities of transfer, the Bank was requested not to forward any more application from the employees from 01.04.1993. This was resisted by the Bank as per Ext. P6 dated 29.03.1993, pointing out that, so long as the EPF authorities retain the PF account of the employees and amounts due under different heads, they cannot stop dealing with the applications of employees and that the Bank cannot but forward the applications in the said circumstances. The appellant sent further communication by way of Ext. P7 deprecating the steps of the Bank in sending contributions even after Ext. P3 order and requesting to refrain from sending any further loan/settlement applications, as the Act itself was not in force in so far as the Bank was concerned. The stand of the Bank was reiterated as per Ext. P8 dated 24.08.1993, that the position will have to be continued till transfer of fund was effected as already sought for. Some other correspondence also had taken

place between the appellant and the Bank, as borne by Exts. P9 to P12. Finally, the appellant issued Ext. P13 dated 11.06.1993, as per which the stand of the Department was revealed in the following terms :

"1. Transfer of accumulations will be on the basis of credit as on 30.09.1992 since it was in 9/92 the Government of India has given the order of de-coverage.

2. Transfer will be to the Trust and not to the establishment.

3. Mode of transfer of EPF accumulations will be governed as per the relevant provisions which stipulate that it will be in cash as well as in Securities.

4. Contributions received under FPF and EDLI upto 9/92 (return month) will not be refunded to the establishment.

The retirement cum withdrawal benefit accrued up to the date (that is 30.09.1992) will be paid to the workers as per Para 32 of the EPF Scheme 1971 as already explained in this office letter No. KR/1883/Enf.I(2)/93 dated 11.05.1993.

8. Ext. P13 was sought to be challenged by the Bank by filing O.P. No. 8586 of 1993 with the following prayers :

"(i) To call for the records and proceedings relating to Ext. P13 and to quash or set aside Ext. P13 or a writ of certiorari or other appropriate writ or order.

(ii) To issue a writ of mandamus or other appropriate writ directing the Respondent to transfer forthwith the entire balance amount of accumulations with interest including employers and employees contributions and contributions to Family Pension Fund and amounts paid to Deposit - linked Insurance to the Federal Bank Employees Provident Fund Trust, C/o Federal Bank Ltd. , Aluva together with all particulars and details of Contributions, loans, etc. in the account of each Employee of the petitioner-bank.

iii) To issue a writ of mandamus or other appropriate writ or order directing the Respondent to transfer or refund the administrative charges paid from March 1985 till May 1993.

iii(a) To issue a writ of mandamus or other appropriate writ or order directing the Respondent to pay the amounts by way of interest and further compensation for deprivation and wrongful retention of the amount of contributions and interest thereon by way of compensation as claimed in Ext. P32.

iv. To grant such interim or other relief as may be deemed just and necessary.

9. A detailed counter affidavit was filed from the part of the appellant and various incidental proceedings also came to be filed from both the sides. The dispute raised by the appellant was mainly with regard to the inapplicability of 'Para 60' of the Employees Provident Fund Scheme 1952 ['Scheme' in short], which provided for payment of interest, to be added on to the account of the employees in the manner specified therein, to generate further interest on the due amount and also as to the fixation of the actual liability in relation to the amount payable under the compulsory bond/securities [15% of the total]. The liability to satisfy 'administration charges' for having operated the accounts during the period from 1985 to 1992 [between Ext. P1 and P3] and even thereafter was also a matter of dispute. It was also contended that no 'interest on interest' was liable to be paid under any circumstances and since the contributions being effected by the Bank were voluntary and further since it was only kept in a suspense account, without crediting to the general pool, it could not be reinvested elsewhere, to have generated funds. As such, if the claim as put forward by the Bank was to be honoured, it will result in drainage of public money and that the losers will only be the

other members of the fund who are continuing under the EPF Organization. It is also pointed out that, as an interim measure while working out the modalities of the Fund Transfer, the Bank was informed that the EPF organization was ready to transfer 50% immediately, which was refused to be accepted by the Bank, who wanted to have full satisfaction forthwith, which required much exercise and time.

10. When the Writ Petition came up for consideration before the learned single Judge, an interim order was passed on 20.08.1993 to cause transfer of 85% of the accumulated fund. The remaining 15% as per the RBI Guidelines/Norms was kept as Bonds/Government securities. After detailed deliberations with the involvement of experts/Chartered Accountant, the total Provident Fund Accumulation as on 30.09.1992 was accepted as Rs.20,56,34,994/- [agreed as per the minutes of understanding], out of which, a sum of Rs. 17,63,00,000/- was transferred to the Bank's Trust on 10.09.1993 towards 85% of the due amount covered by interim order dated 20.08.1993, with regard to which there is no dispute. Later, Bonds/securities covering the remaining 15%, having the face value of Rs.2,66,00,700/-, were also

transferred to the Banks' Trust on 19.02.1996. The Bank contended that a huge sum of Rs.39,93,06,383/- was still due towards interest and such other heads, whereas, according to the Department, there was already some excess payment and that nothing further was due. Para 60 of Scheme was stated not applicable to compute the figures, contending that the Bank was entitled to have only 'simple interest' and nothing more. After hearing both the sides, a learned Judge of this Court conducted a detailed analysis of the facts, figures and contentions and rendered a finding that the stand of the EPF organization was not liable to be accepted. Placing reliance on the figures given in the audited reports, the final liability was fixed as Rs. 43,35,74,751/- to be satisfied with future interest, giving such other directions. This forms the subject matter of challenge in this appeal.

11. Heard Mr. N.N. Sugunapalan, the learned senior counsel appearing on behalf of the EPF Organisation; Mr. Pathrose Mathai - Senior Advocate and Mr. Saji Varghese, the learned counsel appearing for the respondent Bank and the learned counsel appearing for the party respondents.

12. The crux of the submissions made by the learned senior

counsel for the appellant is that the respondent Bank was admittedly covered under the Scheme and was effecting contributions voluntarily, even after widening their activities beyond borders of the State in 1973. The refusal to effect the contributions from 01.09.1983 was expressed only after the rate of contribution was enhanced by the Central Government. It was thereafter, that the Bank sought to go outside the provisions of the Scheme, contending that the Act was not applicable, by submitting Ext. P1 in March, 1985; which was referred by the EPF organisation to the Government in terms of Section 19A of the Act, as disclosed from Ext. P2. It is also discernible from Ext. P3 order passed by the Government on 07.09.1992, that the writ petitioner Bank itself had taken up the matter before the Government under Section 19A [opening paragraph] and that the issue was pending consideration of the Government from 1985 till 1992; for which no liability or responsibility can be fixed on the shoulders of the EPF organisation, who was discharging the duties conferred under the Statute. By virtue of the beneficial nature of legislation, interest of the employees had to be protected, which is of paramount importance as far as the EPF organisation is concerned and accordingly, the

fund was being operated, also extending relief thereunder to the members concerned. By virtue of the retrospective exclusion given to the Bank from the date of Ext. P1 [dated 02.03.1985], much loss and prejudice have been caused to the organisation, who cannot extend undue benefits to the respondent Bank, at the cost of the surviving/continuing members, tapping the source from the general pool. The assertion made by the learned senior counsel is that, paragraph 60 of the Scheme is not at all applicable to the respondent Bank, as computation of interest in the manner as prescribed in paragraph 60 will arise only in respect of the establishments/members covered under the Act/Scheme. Since the Act itself is not applicable in the case of the respondent Bank, Para 60 of the Scheme, which is part of the benefit under the Act, cannot be pressed into service and that the Bank will be entitled to get only 'simple interest' and nothing more.

13. With reference to the claim put up by the Bank for securing the 'market value' of the Bond/Securities, instead of 'face value', it is pointed out by the learned senior counsel that 15% of the due amount had been converted to bonds/Government securities in terms of the Government orders/Guide-lines issued by

the Central Government in this regard and that the maximum liability of the EPF organisation could only be to the extent of 'face value' and nothing more. It is stated that the claim put forward by the Bank with reference to the 'market value' (which was stated as much less on the relevant date and in turn giving set off only to such lesser extent] is not correct or sustainable. As to the administrative charges, it is pointed out that the members/employees could not have been left in vacuum and that the EPF organization was operating accounts, entertaining claims/applications all throughout, by virtue of which, they are justified in appropriating 'administration charges'. Similarly, in respect of the amount paid towards premium under the Employees Deposit Linked Insurance Scheme, it is pointed out that the members/employees concerned stood covered during the period in question and as such, no refund is obtainable from the Insurance Company, to be returned to the Bank under this head, nor is there any liability to the EPF organisation to meet such demands.

14. The above submissions were sought to be controverted by Mr. Saji Varghese - the learned counsel for the respondent Bank, pointing out that, even according to the EPF organisation,

there was no dispute with regard to the total accumulated fund as on 30.09.1992, which was to the tune of Rs. 20,56,34,994/-. Despite Ext. P3 order dated 07.09.1992 passed by the Government and the liability agreed as above, the funds were not transferred then and there, which otherwise would have generated much interest to be credited to the accounts of the employees of the Bank under the Bank's Trust. Admittedly, 85% of the said amount (Rs.17,63,00,000/-) was disbursed only on 10.09.1993, pursuant to the interim order dated 20.08.1993 passed by the learned single Judge. The balance amount lying at the hands of the EPF Organisation (not covered by Bonds/Securities) was liable to attract interest, which has not been calculated by the EPF organisation in the statement filed by them along with the affidavit dated 09.04.2011 in the O.P., simply stating that there is excess payment. It is stated that reference made by the learned single Judge to 'Para 60' of the Scheme could be considered only as a 'measure of fixation' of quantum of interest payable because of the illegal retention of the amount by the EPF organization and there is absolutely no justification for denying interest for the period during which such huge amounts belonging to the members/employees of

the Bank were retained at the hands of the EPF Organisation. Had it been disbursed then and there, it would have generated much interest in the Bank Trust's account, to be credited to the benefit of the members/employees concerned. The EPF organisation will never be justified in attempting to appropriate undue benefits, disregarding the rights and claims of the workers concerned, absolutely for no fault on the part of the latter. Claims in relation to the 'market value' of the Bonds/Government securities (15%) of the accumulated fund and the claim for refund of Administration Charges, Employees Deposit Linked Group Insurance Scheme Premium, etc. are also sought to be asserted with reference to the pleadings and proceedings as already put forth from their side.

15. During the course hearing, it was brought to the notice of this Court by the learned counsel appearing for the appellant that the provision for calculation of interest on 'monthly basis', to be added to the account of the members under the Scheme as envisaged under Para 60, as it now exists, was incorporated only w.e.f. from the amendment brought about on 01.04.1993. Prior to the said date, it was only to be worked out on 'yearly basis' and as such, calculation involved would undergo a drastic change which

will cut the root of the case of the respondent Bank and will reduce the actual amount payable by the EPF organisation to a substantial extent. Taking note of the said submission, a direction was given by this Court to both the sides, to effect appropriate calculation with reference to the relevant provisions of law, as existed for the period prior to 01.04.1993 and the position thereafter, pursuant to which a statement dated 07.08.2016 has been filed from the part of the respondent Bank. Similarly, a statement dated 22.08.2016 has been filed from the part of the appellant; in response to which, a reply statement dated 25.08.2016 has been filed by the Bank as well.

16. The respondent Bank asserts that there is absolutely no merit in the submission made from the part of the EPF organisation that interest was calculated on a 'monthly basis' giving effect to the provisions of the amended Scheme as on 01.04.1993. It is stated that interest was calculated only as per the unamended provision, by virtue of which, there would not be any substantial change in the figures. The version as given in Paragraph 1 of the statement dated 07.08.2016 filed by the respondent Bank [pursuant to the interim order dated 11.07.2016] is relevant, which is reproduced

below :

"1. It is submitted that the respondent Bank had come within the purview of EPF Act during the year 1966. The PF Organization was keeping subscriber's ledger card in respect of each employee of the bank who was a member of the Fund right from the date of his enrolment, wherein the contribution made by each employee and the employer every year, right from the inception, is entered. The interest was calculated and entered in the ledge card every year based on the Paragraph 60 of the Scheme as it stood then on the contributions made and the same was added every year and the total amount was brought forward to the next year. Thus if an employee has become a member of the Fund in the year 1966, from that year the interest is calculated and applied every year and entered in the ledger card which is brought forward to the subsequent year and this procedure continued in each year till his retirement and the entire details is reflected in his ledger card till he ceases to be a member including the total amount arrived at by adding the interest every year. The amount of Rs.20,56,34,994/- was arrived at by adding the final figures thus arrived at in the ledger card of each employee maintained by the PF organization. In other

words the interest calculation and accumulation is made each year from the date of enrollment which is entered in the ledge card then and there and it is impossible to have any calculation of interest based on the amendment since the actual amendment came into force only on 1.4.93."

17. The above categoric assertion has not been rebutted by the appellant in their statement dated 22.08.2016, though a dispute has been raised with regard to some other aspects. The position has been sought to be asserted by the Bank by filing a reply affidavit as well. In the course of further hearing held before this Court, the learned senior counsel appearing on behalf of the EPF organisation fairly conceded that the submission made across the Bar earlier, that the amended provision under Para 60 was given effect to for working out the quantum of liability, was a misconceived one and that the liability as on 30.01.1992 was worked out based on the relevant provision of law as it existed at the relevant time, i.e., prior to the amendment. As mentioned already, as per the unamended provision, interest was to be worked out only on 'yearly basis' and was to be added to the account of the members every year, which has undergone change

only w.e.f. 01.04.1993, by virtue of which, the said exercise was mandatorily to be done, adding interest on 'monthly basis'. In so far as the transactions are mainly covered by the unamended provisions and further since interest has actually been computed only on 'yearly basis', we are of the view that, there is no much pith or substance in the challenge raised from the part of the appellant Organization in this regard. The position stands answered in favour of the respondent Bank.

18. Yet, there remains the contention mooted by the appellant Organisation that Para 60 of the Scheme, as such, is not applicable to the case in hand. It is true that the provision quoted by the learned single Judge in paragraph 30 of the judgment under challenge is the amended provision, i.e., provision which came into existence after 01.01.1993. But that does not tilt the balance in any manner, as the amount worked out and certified as correct in the audit report referring to the agreed liability as on 30.09.1992 [showing the figure as Rs.20,56,34,994/-] is based on interest calculated only on 'yearly basis', as per the provision under Para 60 of the Scheme, as it existed then. Such a challenge was raised by the appellant Organization presumably under the impression that

huge liability would come to be mulcted upon the Organisation, on calculating interest on 'monthly basis', which now stands conceded as not correct. When the appellant EPF Organisation itself concedes its liability to satisfy 'simple interest' over the amount due, it cannot but be said that the statement filed by the EPF Organization earlier, along with the affidavit dated 09.04.2011 in O.P. No. 8586 of 1993, showing that there was an 'excess payment' is not correct as it does not reflect interest payable for the short payment during the period from 30.09.1992 till 02.09.1993 [when 85 % of the amount due was disbursed pursuant to the interim order passed by this Court on 20.08.1993] and for such other grounds. Since the legal position was made clear by a Division Bench of the Mumbai High Court in **1984 Lab. I.C 1504** [cited supra] and further since instructions/circulars were issued from the Head Quarters to the various Regional offices of the EPF Organisation, it was obligatory for the EPF Organisation to have acted upon Ext. P1 immediately doing the needful; in view of the statutory position to effect 'de-coverage', if necessary, by conducting enquiry to an appropriate extent. There was no point in making further reference under Section 19A of the Act, once the issue was answered by a Court of

law as made clear by the Apex Court in the decision reported in **(1971) 2 SCC 678 [Union of India and Ors. Vs. Ogale Glass Works]**. This is obviously for the reason that, the law having been declared, no doubt could have arisen in giving effect to the provisions of the Act, regarding the matters mentioned in Clause (i) to (v) of Section 19A. As such, this Court cannot but hold that there was an unauthorised retention of the amount at the hands of the appellant Organisation, for which they are liable to pay interest.

19. By virtue of the mandate under Para 60 of the Scheme, as it was then in existence, interest had to be worked out on 'yearly basis' and as such, it is never a question of compound interest worked out and added every month, as envisaged under the amended provision which came into effect from 01.04.1993. At the end of every year, 'yearly interest' so worked out and added to the account of the members will naturally form part of the principal amount lying to the credit of the employees and it will assume the colour, characteristics and fragrance of the 'principal amount', to attract interest every year. This being the position, there cannot be any further dispute with regard to the liability as on 30.09.1992, which was agreed/accepted/fixed by both the sides. Since the

entire liability was not discharged then and there and it took nearly 'one year' for satisfying 85% of the due amount [which in fact was effected only pursuant to the interim order passed by this Court on 20.08.1993], the appellant EPF Organization is liable to satisfy interest on the said amount at the rate fixed by the Central Government on similar payments. As it stands so, no interference is warranted in this regard and it stands answered in favour of the respondent Bank.

20. The next point to be considered is with regard to the contention raised by the Bank as to the extent of liability to be satisfied in respect of Bond/Government securities (to an extent of 15%). According to the Bank, the amount of Rs. 2,66,00,700/- transferred on 19.01.1996 on the 'face value' of the securities [15% of the total accumulation] was in fact against the low-yielding securities. According to the writ petitioner Bank, only 'market value' of the security could be taken into account; and since 'the market value' of the above securities as on 19.02.1996 – date of transfer, was only of Rs.1,76,37,027/-, this figure alone could be accounted/set off under such head. This according to the learned senior counsel for the appellant is per se wrong and misconceived,

as the maximum liability of the EPF Organisation under the Bonds/Government Securities could only be the 'face value'. If anything accrued over and above the 'face value', it naturally goes to the beneficiaries concerned and if there occurs any deficit, because of the fluctuations in the 'market value', the deficit with respect to the 'face value' had to be replenished and the 'face value' had to be honoured by the EPF Organisation. After hearing both the sides, this Court finds that there is considerable force in the submission made by the learned senior counsel for the appellant . No binding contract/agreement or any other law or judicial precedent to hold it otherwise [that such payment has to be effected with reference to the 'market value'] is brought to the notice of this Court by the respondent Bank. As it stands so, we accept the version of the appellant and hold that the amount transferred on 19.02.1996 towards 15% of the Bond/Securities has to be reckoned as **Rs.2,66,00,700/- itself** and the calculation effected to the contrary requires to be intercepted and corrected. This stands answered in favour of the appellant and against the respondent Bank.

21. Coming to the claim for refund of 'administrative charges', there is no dispute that the Bank, even after starting the branches outside the State in the year 1973, did not choose to opt out of the Act/Scheme and was continuing to effect contributions in respect of the members/employees for quite long. Dispute was aired for the first time by Ext. P1 dated 02.03.1985, on serving a letter by the appellant referring to the non satisfaction of the contribution from 01.09.1983 and demanding such contribution at the enhanced rate, pursuant to the rate enhancement ordered by the Government. It is also evident from the opening paragraph of Ext. P3 order passed by the Government, that the Bank itself had approached the Government by filing a petition (presumably under Section 19A of the Act) to intervene and to clear the doubts/difficulties in giving effect to the provisions of the Act, which however came to be answered by the Government as per Ext. P3 order, passed only after about 'seven' years. All throughout, contributions were being effected by the Bank and claims were being processed and honoured by the appellant Organization, catering to the needs of the employees of the Bank. There is no case for the respondent Bank that they were having any alternate

mechanism in this regard and their only case was that, since the funds were not transferred by the appellant to the Bank's Trust, it was not possible for them to have had it operated. But here again, it is to be noted that clearance was given by the Government only as per Ext. P3 order dated 07.09.1992 and the Deed of Constitution of Bank's Trust and approval given by the Income Tax Authorities were forwarded to the appellant EPF Organization only along with Ext. P4 dated 08.01.1993. The employees of the Bank who were members of the Scheme could not have been left in the dark and as such, operation of the Fund done by the appellant Organisation, dealing with the claims/applications put in till 30.09.1992 and even thereafter, could not have been regarded as an "act of trespasser seeking for compensation for the improvements effected by him" [to quote the words of the learned counsel for the Bank]. This is more so, since the requests made by the appellant Organization, not to forward any further applications of the employees during the period of working out the modalities of the transfer pursuant to Ext.P3, were dealt with by the respondent Bank and declined, alerting the statutory duty of the appellant Organisation to process the claims/applications until the entire funds were transferred to

the Bank's Trust. This being the position, the exercise done by the appellant Organization cannot be left as a matter of charity and they are necessarily to be paid for the job of administration done by them. Accordingly, this Court holds that the appellant is entitled to have the administration charges in respect of the transaction for the relevant period and the verdict passed by the learned single Judge to effect refund of the said amount to the Bank requires interference. It is ordered accordingly.

22. The next point is with regard to the claim for refund of Employees' Deposit Linked Insurance Premium. There cannot be any dispute that the employees concerned were covered under the said Scheme, for which payment of requisite premium was necessary. As it stands so, in respect of the members/employees who had retired from the service stood covered under the said Scheme. No premium is liable to be refunded as it has worked its own course. But in respect of the continuing employees, pro rata premium in respect of the left over period after 30.09.1992 is liable to be refunded; to be taken care of by the Bank by way of appropriate measures stated as provided by them. This point is answered partly in favour of the appellant and partly in favour of

the respondent Bank.

23. In view of the above discussions, this Court finds that the major challenge raised by the appellant with reference to the applicability of 'Para 60' of the Scheme and the liability to satisfy interest on the due amount fails. However, by virtue of answering the position in favour of the appellant in respect of the actual amount reckonable towards 15% of the Bond/Securities with reference to its 'face value' [Rs.2,76,00,700] and as to the eligibility declared to have 'administration charges' and also part of the premium under the Employees Deposit Linked Scheme to the extent as mentioned above, it requires a further calculation of the actual figures under these heads. Accordingly, the appellant is directed to rework the figures as above, strictly confining the said exercise to the above extent and the outstanding liability shall be payable to the respondent Bank with interest [at the rate as prescribed by the Central Government for similar payments] from the due date, till satisfaction. It shall be disbursed at the earliest, at any rate, within 'one month' from the date of receipt of a copy of this judgment. No interference is made with regard to the verdict passed by the learned single Judge, except to the extent it has

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been modified as mentioned above. If any other dispute/grievance remains to the first respondent Bank, they will be free to have it agitated further, by way of separate/appropriate proceedings in accordance with law.

Appeal stands partly allowed. No cost.

sd/-

**P. R. RAMACHANDRA MENON,
JUDGE**

sd/-

**ANIL K. NARENDRAN,
JUDGE**

kmd

/True copy/

P.A. to Judge