

(1936) 04 CAL CK 0027

Calcutta High Court

Case No: Civil Rev. No. 245 of 1936

Rukmini Kumar Bhattacharji

APPELLANT

Vs

The Assam Bengal Loan Co., Ltd.

RESPONDENT

Date of Decision: April 22, 1936

Judgement

R.C. Mitter, J.

The Petitioner was the teacher of a Government-aided school named Nilmoni H. E. School. The Assam Government directed a provident fund to be opened in respect of the teachers of that school, under the rules framed by the said Government. The Petitioner was a contributor to the said fund. The monies contributed by him together with the contribution made by the school authority were, under the rules, sent to the Post Office where an account in his name was opened. The Petitioner ceased to be a teacher of the school and he became entitled to the money standing to his credit at the Post Office. The rule for withdrawal of deposits in the provident fund is r. 8 which is in the following terms:

Subject to the exceptions provided for in these rules the deposits and contribution with interest thereon at the credit of a depositor shall be withdrawn on his ceasing to be employed by the school authority and shall be paid by them to the depositor. The closure of an account or withdrawal from it shall be made on the presentation at the Post Office of an ordinary application for withdrawal signed by the depositor who shall name the school clerk or peon as his agent. The application shall be counter-signed by the school authority.

2. The depositor in the present case was the Petitioner in whose name the pass book stood. On the Petitioner ceasing to be a teacher, he signed a withdrawal application nominating the school clerk or peon as his agent. The application was countersigned by the Head Master, who was in this case the school authority. The money was withdrawn by the agent and was not handed over to him, but to the Head Master. While the money was with the Head Master, it was attached at the instance of the Opposite Party who got a decree against the Petitioner.

3. On that, the Petitioner made an application under sec. 47 of the CPC stating that the money in the hands of the Head Master was still the money of the provident fund and not liable to attachment under the Provident Funds Act.

4. The question now is whether the money still retained the character of a provident fund money, at the time when it was attached. In my judgment, it was not so. This is the view of this Court that as soon as the money de-positd in a provident fund reaches the hands of the depositor or employee on withdrawal, it can be attached in execution of a decree against him. The first paragraph of r. 8, in my judgment, only defines the liability. It makes quite clear that although the Assam Government is the controlling authority so far as the provident funds of aided schools are concerned, the liability to pay a teacher who has re-signed is not in the Assam Government, but in the school authority. That is the meaning of the first paragraph of r. 8. The second paragraph in r. 8 puts the matter out of controversy. The school clerk or peon who is to withdraw the money on the depositor ceasing to be a teacher is the agent of the teacher. He is not the agent of the Head Master or the school authority. On receiving the money he is bound to pay the money to his principal, viz., the teacher. There is nothing in the rules that the clerk or the peon must hand over the money to the school authority, and there is no rule that the money must be paid by the school authority to the teacher on proper receipt given to it after its withdrawal from the post office.

5. In my judgment, as soon as the clerk or peon as agent of the Petitioner received the money, in the eye of law it reached the hands of the Petitioner. It no longer was the money of the provident fund and it became the absolute property of the Petitioner, and was of the same class and nature as other moneys belonging to him. In this view of the matter, I think that the learned Small Causes Court Judge has passed the correct order in directing attachment of the said money. The Rule is accordingly discharged with costs hearing fee one gold mohur.