CIVIL RULE.

Before Richardson and B. B. Ghose JJ.

SECRETARY OF STATE FOR INDIA
v.
RAJ KUMAR MUKHERJEE.*

1922
June 15.

Railway Provident Fund—Attachment—Provident Funds Act (IX of 1897, as amended by Act IV of 1903), ss. 2 (4), 4 (1)—Compulsory deposit—State Railway Provident Fund, if attachable while in service, or on death or retirement—State Railway Open Line Code, Vol. II, App. I, rr. 10, 22, 30, of the General Fund Rules—Civil Procedure Code (Act V of 1908), s. 60 (1) (k).

The deposits of a Railway servant in the State Railway Provident Institution are compulsory deposits, and, therefore, they are not attachable while he is in service, or on his death, or on his retirement under s. 4 of the Provident Funds Act.

Similarly the subsequent accretions, such as, contributions, interest or increment to the original deposits are not attachable.

Veerchand v. *B. B. & C. I. Railway* (1) followed.

Hindley v. *Joy Narain Marwari* (2) referred to.

Miller v. *B. B. & C. I. Railway* (3) dissented from.

Per B. B. Ghose J. It cannot be said that the deposit was payable on demand by reason of the fact that it became payable under the rules on one of the events happening afterwards, and that the character of the deposit that it was not repayable on demand remains unaltered. Hence it is not excluded from the definition of "compulsory deposit."

Civil Rule obtained by the Secretary of State for India, the petitioner.

This was a Rule to show cause why the order of attachment passed on the 26th January, 1922 should not be discharged.

The previous Rule No. 515 of 1921 was obtained by Raj Kumar Mukherjee, the opposite party, for the

* Civil Rule No. 196 of 1922.

(1) (1904) I. L. R. 29 Bom. 259. (2) (1919) I. L. R. 46 Calc. 962.
(3) (1903) 5 Bom. L. R. 454.

1922

SECRETARY OF STATE FOR INDIA v. RAJ KUMAR MUKHERJEE.

attachment of the deposits of one W. J. Godfrey, a servant of the E. B. Railway, to the State Railway Provident Institution, in execution of a money decree obtained by him in the Court of Small Causes at Sealdah. The Judge of the Small Cause Court at first ordered for the attachment of the deposits, but subsequently recalled that order holding that the deposits were not attachable. Thereupon, the opposite party moved the High Court under s. 25 of the Provincial Small Causes Courts Act, 1887, and obtained a Rule for setting aside that order. The Rule was made absolute with liberty to the administrator of the fund to move for the discharge of the order. Accordingly the present petitioner obtained this Rule.

The Advocate-General (Mr. Gibbons), Babu Dwarka Nath Chuckerbutty and *Babu Surendra Nath Guha*, for the petitioner.

Babu Mahendra Nath Roy and *Babu Rupendra Kumar Mitter*, for the opposite party.

RICHARDSON J. By our order dated 26th January, 1922, Rule No. 515 of 1921 was made absolute on the footing that the amounts standing to the credit of W. J. Godfrey in the State Railway Provident Institution was attachable at the instance of the then petitioner Raj Kumar Mukherjee, in execution of a decree for money which he had obtained against Godfrey in the Sealdah Court of Small Causes. Inasmuch, however, as the Rule was unopposed, there being no appearance for Godfrey and the Administrator of the Fund, to whom no notice of the Rule had been given, not being represented, liberty was expressly reserved to the latter to come in and move to have the order discharged. In pursuance of the liberty so reserved, the present Rule was obtained on

behalf of the Secretary of State for India. At the hearing, the learned Advocate-General appeared for the present petitioner, the Secretary of State, and the learned Vakil, Mr. Mahendra Nath Roy, for the creditor.

There is no dispute that the amount standing in the fund to Godfrey's credit was not attachable so long as he was employed as a servant of a State Railway. The question is whether the amount became attachable on his retirement from such service.

It now appears that the Rules regulating the General Provident Fund to which we were referred on the former occasion, do not apply to the State Railway Provident Institution, which is governed by the Rules contained in the State Railway Open Line Code, Vol. II, App. I. Rule 10 of the General Fund Rules is, therefore, out of the way. The corresponding Rule 30 of the relevant Rules is otherwise framed and in the view we take gives rise to no difficulty. It is in these terms:—

"Neither compulsory deposits, nor bonuses, *i.e.*, "money added by Government to compulsory deposits, "nor the interest thereon standing at the credit of a "depositor, whether in actual service, discharged, or "deceased, can be attached by a Court of law, but "voluntary deposits and the interest thereon standing "at the credit of a depositor on any given date are "free to attachment on that date."

It is conceded that the amount at Godfrey's credit consists entirely of deposits, which, when they were made, were compulsory deposits within the meaning of this Rule and of the Provident Funds Act. There is no question of any voluntary deposits.

As to the word "discharged" it does not necessarily mean "dismissed." It is wide enough to include the case of a servant who has been permitted to retire or take his discharge.

1922

SECRETARY OF STATE FOR INDIA v. RAJ KUMAR MUKHERJEE.

RICHARDSON J.

The question is whether Rule 30 is in accordance with the law on the subject.

The Civil Procedure Code, section 60 (*1*) (*k*), exempts from liability "all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act, 1897, for the time being applies in so far as they are declared by the said Act not to be liable to attachment."

That leaves the matter to be controlled by the Provident Funds Act and Rule 30 seems merely to express the draftsman's view of the result of sub-section (*1*) of section 4 of that Act (Act IX of 1897 as amended by Act IV of 1903). The question turns on that sub-section, the meaning of which, apart from any difficulty as to the term "compulsory deposits," is clear enough. "Compulsory deposits," it says, "in any Government or Railway Provident Fund shall not be liable to any attachment under any decree or order of a Court of Justice in respect of any debt or liability incurred by a subscriber to, or depositor in, any such fund, and neither the Official Assignee nor a Receiver appointed under Chapter XX of the Code of Civil Procedure shall be entitled to, or have any claim on any such compulsory deposit." The words are quite plain and general. No "compulsory deposits" are attachable.

But then it is argued that these deposits with which we are concerned, though they were compulsory deposits when they were made and so long as Godfrey continued in the railway service, ceased to be compulsory deposits when he retired. The argument is based on the definition in section 2 (*4*) of the Act and on Rule 22 of the Rules.

As defined in the Act "compulsory deposit" means "a subscription or deposit which is not repayable on "the demand, or at the option of the subscriber or

"depositor, and includes any contribution which may "have been credited in respect of, and any interest or "increment which may have accrued on, such subscrip- "tion or deposit under the Rules of the Fund."

Rule 22, so far as it is material, is as follows:—

"Saving with the particular sanction of the Government of India, no compulsory deposit or bonus shall be withdrawn excepting

(i) on the decease of the depositor,

(ii) on his leaving the public service."

The contention is that if the Act and Rule 22 be read together, Godfrey's deposits became repayable on his demand when he left the public service and thereupon were automatically removed from the category of compulsory deposits.

In my opinion that is a mistaken construction of the statutory definition. The definition speaks with reference to some fund in which the deposit is made, and, as it seems to me, it crystallizes the nature of the deposit at the time at which it is made. A compulsory deposit is a deposit which goes into the fund as a compulsory deposit and is at that date received and classified as such. It is conceivable that the rules of a Fund might subject the general right of withdrawal conferred by such a rule as Rule 22 to restriction or condition so that the whole amount at a depositor's credit might never become freely payable or repayable on his demand. But quite apart from that, a depositor presumably continues to make compulsory deposits till he dies in service or retires, and I can see no ground for a different classification of such deposits, or a different description being applied to them, after his death or retirement. In other words, as long as the deposits subsist in the fund, so long, at any rate, both as matter of legal construction and in the common and ordinary way of speaking, they are properly

1922

SECRETARY OF STATE FOR INDIA v. RAJ KUMAR MUKHERJEE

RICHARDSON J.

and correctly described as compulsory deposits. If that be so, under section 4 of the Act, they are not liable to attachment.

Though there is no decision binding on us, the question is not free from authority, and the view I have expressed is supported by the judgment of Sir Lawrence Jenkins C. J. in *Veerchand* v. *B. B. and C. I. Railway* (1), the facts of which are on all fours with the facts of the present case. The case of *Miller* v. *B. B. and C. I. Railway* (2), on which reliance has been placed for the creditor, was there cited but was not followed. I am content to adopt the brief statement of the learned Chief Justice. The "deposit," he said, "when it was made was not repayable on demand "and therefore at that time was a 'compulsory deposit' "and having once acquired that character with its "attendant consequences, it continued (in my opinion) "to retain it."

I have dealt with the case on the footing that no distinction exists between the deposits made by the depositor himself on the one hand and the contributions in respect of those deposits and the interest or increment accrued on them on the other. I have assumed that there is a sense in which these accretions to the original deposits can be said to be "repayable" or "not repayable" on the demand of the depositor. I do not forget, however, that Sir Lawrence Jenkins C. J. founds an argument on the frame of the statutory definition. If a word be interpreted as meaning one thing and including another and a different thing, the meaning of the word as first defined would seem to be enlarged so as to include the second thing. It is as if the Legislature had said the word shall mean and include (*i*) the first thing and (*ii*) the second thing. In the view suggested for the creditor, therefore, on

(1) (1904) I. L. R. 29 Bom. 259. (2) (1903) 5 Bom. L. R. 454.

1922

SECRETARY OF STATE FOR INDIA v. RAJ KUMAR MUKHERJEE.

RICHARDSON J.

the depositor's death or retirement, a distinction might have to be drawn between the deposits made by the depositor himself, then repayable on his demand, and the additions to those deposits, to which the limitation of not being repayable on his demand was never applicable and which must therefore be understood as coming otherwise within the meaning of the term "compulsory deposit." The learned Chief Justice concluded:—"I do not suppose it was ever intended that the fund should as to part be, and as to part not be, a "compulsory deposit."

As to the cases in this Court, in *Seth Manna Lal Parruck* v. *Gainsford* (1), the main question decided was that the fund there in question, which had been established by the Corporation of Calcutta, was subject to the Provident Funds Act. It is not clear whether the subscriber whose deposits it was sought to attach, was or was not at the time in the employ of the Corporation.

In *Hindley* v. *Joy Narain Marwari* (2), the Provident Fund was that of the East Indian Railway. The depositor had died and a decree for money had been obtained against his father as his legal representative. An attempt made in the course of executing the decree to attach the amount standing to the credit of the deceased in the fund, was frustrated by Rankin J. "Whether," said the learned Judge, "the employee is in the service or out of the service, whether he be alive or dead, his share is unattachable in the hands of the Institution." That decision is in point and the general observations which the learned Judge makes on the nature of these funds may also be usefully referred to. For if there be any doubt as to the meaning of the Act it is permissible to have regard to the state of things to which the Act was

(1) (1908) I. L. R. 35 Calc. 641. (2) (1919) I. L. R. 46 Calc. 962.

1922

SECRETARY OF STATE FOR INDIA v. RAJ KUMAR MUKHERJEE.

RICHARDSON J.

intended to apply, the conditions in which it would operate, and the class of persons which it was intended to benefit.

In the result this Rule must, in my opinion, be made absolute. Our order dated 26th January, 1922 in Civil Rule No. 515 of 1921 should be discharged, and if the amount standing to the credit of W. J. Godfrey in the Railway Provident Institution has been attached or re-attached by the Sealdah Court of Small Causes, the attachment should be withdrawn.

GHOSE J. I am of the same opinion. The Provident Funds Act seems to be an instance of fragmentary legislation as it does not provide for all the circumstances under which the sums standing to the credit of depositors are payable and complications have arisen in the decision of the case on account of the rules framed from time to time for the administration of the fund and the resolution of the 29th of July, 1919, to which our attention was drawn. Rule 10, with reference to which we had decided the case at the previous hearing, has now been shown to have been excluded in its operation as regards subscribers to the State Railways Provident Fund. Rule 30, which is applicable to servants employed on State Railways, has been relied on by the learned Advocate-General. Under this rule the money in deposit is not liable to attachment. It is contended on behalf of the creditor by Babu Mahendra Nath Roy that this rule is *ultra vires* of the Act. His main contention is that the money was not a compulsory deposit when it was sought to be attached and reference was made to rule 22 which provides, amongst other things, that no compulsory deposit or bonus shall be withdrawn except on the depositor leaving the public service. It is urged that when the money is payable on the

1922

SECRETARY OF STATE FOR INDIA *v.* RAJ KUMAR MUKHERJEE.

GHOSE J.

employee leaving the service, it is payable on his demand, and it therefore ceases to be a compulsory deposit within the definition in section 2 (*4*) of the Act and is consequently liable to attachment. The observations of Russel J. in *Miller* v. *B. B. and C. I. Railway Co.* (1) are relied on in support of this argument and it is contended that the case of *Veerchand* v. *B. B. and C. I. Railway Co.* (2), which is a decision on the question in controversy, was wrongly decided and ought not to be followed. It may be observed in passing, that there was an appeal from the decision of Russel J. but the Court of Appeal apparently refrained from expressing any opinion on this question (*see* I. L. R. 29 Bom. at p. 261).

It seems to me that the money in deposit is included within the definition of "compulsory deposit" in the Act. The deposit was not repayable on the demand or option of the subscriber, but was payable only under certain circumstances. In my opinion, it cannot be said that the deposit was payable on demand by reason of the fact that it became payable under the rules on one of the events happening afterwards, and that the character of the deposit that it was not repayable on demand remains unaltered. Hence it is not excluded from the definition of "compulsory deposit". The money, therefore, is not liable to attachment under the provisions of section 4 (*1*) of the Provident Funds Act. In this view I should follow the decision of Jenkins C. J. in *Veerchand* v. *B. B and C. I. Railway Co.* (2), and I need not refer further to the rules or to the policy of the Act on which arguments were addressed to us.

I agree in the order proposed by my learned brother.

B. M. S. *Rule absolute.*

(1) (1903) 5 Bom. L. R. 454, 458. (2) (1904) I. L. R. 29 Bom. 259.