

MANU/MH/1061/1992

Equivalent Citation: 1992(3)SCT284(Bombay)

IN THE HIGH COURT OF BOMBAY

W.P. No. 3066 of 1986

Decided On: 15.01.1992

Appellants: **K.B. Sharma**

Vs.

Respondent: **R.M. Gandhi**

Hon'ble Judges/Coram:

A.C. Agarwal, J.

Counsel:

For Appellant/Petitioner/Plaintiff: S.C. Naidu, Advocate

For Respondents/Defendant: H.V. Mehta and R.C. Master, Advocates

JUDGMENT

A.C. Agarwal, J.

1. By this petition, the petitioner prays for a declaration that paragraph 34 of the Employees Family Pension Scheme, 1971 is ultra vires and void. He further prays for a direction against the first respondent, Regional Provident Fund Commissioner, to pay the difference of what has been paid under the scheme and what according to him is legitimately due to him. The petitioner joined the services of the third respondent-company as its Factory Manager in 1966. In November, 1970, the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act") was made applicable to the third respondent. At the same time, the petitioner was made a member of the Provident Fund Scheme and contribution at the rate of 8 per cent was being deducted from his salary and equivalent contribution was made by the third respondent-company and both the amounts were deposited with the first respondent. On 1st of March, 1971 the Employees Family Pension Scheme under the Employees' Family Pension Scheme, 1971 was introduced. Section 6-A came to be introduced in the Act by way of amendment whereby 1.17 per cent of the contribution paid by the petitioner under Section 6 of the Act was earmarked under the new head of Family Pension. In August, 1971 the petitioner was required to contribute under the Family Pension Scheme. On 31st December, 1981 the petitioner retired from the Family Pension Fund upon completing 60 years of age. On 14th September, 1983 the first respondent settled the family pension on payment of lump sum amount of Rs. 1160/-. The petitioner found that the said amount did not represent even his contribution and he, therefore, made representations. Correspondence ensued between the petitioner and respondent Nos. 1 and 2 leading to the filing of the present petition. The petitioner has attached to his petition a statement of contribution made under the Family Pension Scheme. It is as under :-

Statement of Contribution under Family Pension

Year Contribution of Pensioner Contribution of employer on petitioner

account.

-72 58.00 58.00

-73 64.00 64.00

-74 92.00 92.00

-75 116.75 116.75

-76 126.00 126.00

-77 153.00 153.00

-78 168.00 168.00

-79 146.00 146.00

-80 156.75 156.75

-81 141.00 141.00

-82 141.00 141.00

-83 25.50 25.50

Total 1386.25 1386.25

Total contribution deposited in Petitioner Family Pension Fund 2772.50

Less : Excess contributed for January 82 to April 1982 94.00 50

2. It is the grievance of the petitioner that payment of Rs. 116/- does not represent even his contribution to the scheme. According to him, the benefits under the Family Pension Scheme under section 6-A cannot be less than the benefits under section 6 of the Act. The petitioner is, therefore, entitled to receive the full benefits of the contribution to the scheme. Reliance is placed on paragraph 69 of the Provident Fund Scheme, Para 69, in so far as is relevant, is as under :-

"Circumstances in which accumulation in the Fund are payable to a member -

(1) A member may withdraw the full amount standing to his credit in the Fund -

(a) on retirement from service after attaining the age of 55 years."

3. According to the petitioner, he has retired from service after attaining the age of 55 years. He is, therefore, entitled to withdraw the full amount standing to his credit in the Fund.

4. Further reliance is placed on paragraph 32 of the Employees; Family Pension Scheme, 1971. Paragraph 32, is so far as is relevant, provides as under :-

"On attaining the age of 60 years, a member of the Family Pension Fund who has contributed to the Family Pension Fund for a period of not less than 2 years shall be paid a lump sum of Rs. 4000/- and, thereafter, he shall cease to be a member of the Family Pension Fund."

5. According to the petitioner a payment of Rs. 1160/- does not represent the above amount of Rs. 4000/-.

6. In order to justify the short payment, the respondents have placed, reliance on paragraph 34 of the Employees' Family Pension Scheme, 1971. The petitioner joined the scheme at his age of 50. Hence under Table I of the schedule the petitioner is entitled to 0.89 per cent of his contribution. The petitioner has rejoined by stating that the provision contained in paragraph 34 is ultra vires as it abrogates the rights vested in the petitioner under the Act and under paragraph 69 of the Scheme framed under the Act. The said provision is unconscionable and unreasonable as it has the effect of confiscating the rights which are sought to be conferred under the Act. The Act is a social beneficial legislation for the welfare of the employees. If the provisions of paragraph 34 instead of conferring benefits deprive even the contribution made by the petitioner to the fund, the said provision is liable to be struck down.

7. Shri Mehta, the learned counsel appearing on behalf of the respondent Nos. 1, 2 and 4 had placed on record an affidavit dated 8th October, 1991 of Shri A. Anil, Assistant Regional Provident Fund Commissioner filed in Appeal No. 669 of 1989 in Writ Petition No. 451 of 1980. The said affidavit shows that during the year 1989-90 a sum of Rs. 371.92 crores was received by way of contribution towards family pension. During the said period an amount of Rs. 980.22 lakhs was paid to the employees under the Family Pension Scheme. It would thus appear that there is a vast difference between the contributions received and the amounts expended. Whereas a sum of Rs. 317.92 crores was received, merely a sum of Rs. 980.22 lakhs was expended. The affidavit further goes to state that the total balance in the public account as on 31st March, 1990 is in the range of Rs. 3687.67 crores. If one has regard to the aforesaid figures it must be held that the provisions of the Act and the Scheme are being utilised for making capital out of the contributions made under the Act and the Scheme. The amounts collected are by way of contribution for the benefit of the employees. They cannot be usurped tax. These contributions cannot be treated as a revenue to the Government. The legislation which is a social beneficial legislation for the benefit of the welfare of the employees cannot be utilised for making revenue to the Government. It may be that the Scheme contemplated by the Act may be to ensure the welfare of the dependents of employees who may face untimely death. The benefits, which a particular employee receives, may therefore, have no direct co-relation with the contribution made by him or by his employer. Therefore, the principle of quid pro quo will not strictly apply to such contribution. However, if one has regard to the figures reflected in the aforesaid affidavit in regard to the amount which has accumulated in the fund, it must be held that the Scheme has not been functioning for the benefit of the employees as it should have been but has been utilised for filling up the confer of the Government. In my judgment, I see no reason why the benefits of the family pension should be limited to the percentages provided under schedule read with paragraph 34 of the Family Pension Scheme, 1971. I find no justification in depriving the employees of the full benefits of the contribution to the family pension especially when there is a large reserve as 3687.67 crores. The provisions of paragraph 34 inasmuch as it curtails the benefits conferred by section 32 is, therefore, liable to be struck down. The contribution to the Employees' Family Pension Scheme are out of the contributions made under Section 6 of the Act. Under paragraph 69 of the Employees' Provident Fund Scheme, 1952 an employee entitled to the full amount standing to his credit in the fund. If the Employees' Family Pension Scheme under Section 6-A of the act is a portion of the contributions made under Section 6 of the Act, I see no reason why the employees should not be entitled to the full amount standing to the credit of the Family Pension

Fund. Since the provisions of paragraph 34 of the Employees Family Pension Scheme, 1971, curtail or abridge the right to receive the full amount in the fund the same are ultra vires and are liable to be struck down as null and void. Once the provisions of paragraph 34 are ignored, the petitioner will become entitled to receive the benefits provided under paragraph 32 of the Employees' Family Pension Scheme, 1971. The petitioner under the said provision will be entitled to receive a sum of Rs. 4000/-. He has already received a sum of Rs. 1160/-. He will, therefore, be entitled to the difference of Rs. 4000/- and Rs. 1160/- i.e. Rs. 2840/-. The said amount was payable to the petitioner soon after his retirement. The petitioner retired on 31st December, 1981. The aforesaid amount will, therefore, carry interest from 1st March, 1981 at the rate of 9 per cent annum till payment.

8. In the result, the provisions of paragraph 34 of the Employees Family Pension Scheme, 1971 are struck down as null and void and ultra vires and Respondent Nos. 1 and 2 are directed to pay the petitioner an amount of Rs. 2840/- along with interest thereon at the value of 9% per annum from 1st March, 1981 till payment.

9. The said payment be made within a period of three months.

10. Rule is made absolute. The petitioner will be entitled to the costs of this petition. Expedite the issue of certified copy.

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