(2002) 04 MAD CK 0179

In the Madras High Court

Case No : Writ Petition No. 19928 of 2000

G. Kuppuswami APPELLANT

Vs

Regional Provident Fund Commissioner, Employees Provident Fund Organisation, Chennai and Neyveli Lignite Corpn. Ltd., Corporate Office/P and A Dept., Neyveli RESPONDENT

Date of Decision : 09-04-2002

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2002) 04 MAD CK 0179

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : M. Jayaraman, for the Appellant; K. Gunasekaran, ACGSC for R. 1 and N.A.K. Sarma Sathya for R. 2, for the Respondent

Judgement

V. Kanagaraj, J.—Petitioner has filed this writ petition praying to issue a Writ of Mandamus directing the first respondent herein to treat the

petitioner as a deemed member of Family Pension Scheme, 1971 and permit him to exercise his option to become a member of Employees''

Pension Scheme, 1995.

2. In the affidavit filed in support of the writ petition, the petitioner would submit that he was employed in the second respondent Corporation as a

Lower Division Clerk in the year 1957 and retired from the service on 30.4.1994; that at the time of retirement, he was holding the post of

Personnel Manager in P & A Department; that on the date of retirement, he received all his P.F. benefits under the Employees Provident Fund

Scheme; that there is no provision for payment of Pension under this scheme and only a lumpsum consisting of the contributions by the employees and the employer plus interest would be paid to the employees on the date of retirement; that the Employees'' Family Pension Scheme, 1971 came

into force with effects from 01.03.1971; that the Scheme was made applicable to the employees of all factories and establishments to which the

EPF & MP Act is applicable; that the employees, to whom the Act applies, have been given option to join the Scheme and that it is the duty of the

employer to get the option referred to above exercised by every member to whom the option is given within the specified time.

3. The petitioner would further submit that as per para. 4 of the Scheme, the employer is enjoined with the duty to get the formalities of option to

form the Scheme by the employees completed within six months from 1.3.1971; that the petitioner being the member of the Employees Provident

Fund Scheme, was eligible to exercise the option to join the Family Pension Scheme, 1971 as per para. 4 of the Scheme, but the second

respondent employer did nothing, though it was its statutory duty; that he was not informed by the Corporation thereby seeking to exercise option

to join the Family Pension Scheme, 1971; that the Family Pension Scheme, 1971 was more beneficial to him than the Employees Provident Fund

Scheme; that he was not at all aware of the introduction of the Family Pension Scheme, 1971 and because of the failure on the part of the

employer to comply with the statutory duty under the Family Pension Scheme, 1971, he lost the opportunity of becoming a member of the Family

Pension Scheme, 1971.

4. It is further submitted that the Central Government, in exercise of the powers conferred by Section 6(A) of the Act, framed a new Scheme

called the ""Employees'' Pension Scheme, 1995"", which came into force with effects from 16.11.1995 and that para. 6 of the said Scheme deals

with the eligibility of the employees who can become the member of the New Scheme; that as per para. 6(c) of the said Scheme, every employee

who ceased to be a member of Employees'' Family Pension Scheme, 1971 between 01.4.1993 and 15.11.1995, can exercise his option under

para.7 and join Employees'' Pension Scheme, 1995 by returning the amount of withdrawal benefit received together with interest at 8.5% p.a. from

the date of such withdrawal from the Fund and date of exercise of the option and hence he is eligible to receive the monthly pension as per the provisions of the Employees'' Pension Scheme, 1995; that in other words, the employees who were members of the Family Pension Scheme,

1971 and who have retired between 1.4.1993 and 15.11.1995 can become a member of the new Employees'' Pension Scheme, 1995 by

exercising option as aforesaid.

5. The further averments of the writ petition are that since he was not a member of the Family Pension Scheme, 1971, he was prevented from

exercising his option under para. 6(c) of the Employees'' Pension Scheme, 1995; that he was prevented from becoming a member of the Family

Pension Scheme, 1971 because of non-compliance of the statutory duty enjoined upon his employer to see that all its employees exercise their

option to become a member of the Family Pension Scheme, 1971; that the second respondent Corporation is a limb of the Central Government

and hence its failure should be construed as the failure on the part of the Central Government; that the petitioner sent a letter to the first respondent

regarding the above matter which was replied by the first respondent stating that the implementation of the provisions by the N.L.C. is pending in

the court; that thereafter, the petitioner sent a letter to the second respondent which was replied stating that the eligibility clause of the Employees''

Pension Scheme and the N.L.C. Group Contributory Superannuation Scheme are applicable only to the regular employees and not to the retired

employee like the petitioner; that the petitioner submitted his application under Employees'' Pension Scheme 1995 with a request to fill up the

relevant columns and forward the same to the first respondent, for which the second respondent replied stating that the matter relating to Pension is

pending before the Court and they are awaiting the decision of the court and hence returned the application with other connected documents.

6. The petitioner would end up saying that he has submitted petitions to the Public Grievance Cell, Chennai and also to Lok Adalat (PF), Chennai,

but no orders were passed on the same, and therefore, he caused a lawyer''s notice dated 28.4.2000 to the first respondent and even for this, no

reply was sent nor any action taken. Hence the writ petition seeking the relief extracted supra.

7. No counter would be filed on the part of any of the respondent, but the learned Additional Central Government Standing Counsel (ACGSC)

appearing for the first respondent and the standing counsel for the second respondent would argue the matter before the court on instructions.

8. So far as the arguments of the learned counsel for the petitioner is concerned, he would submit that the petitioner was employed in the second

respondent Corporation and he retired on 30.4.1994; that he was a member of the Employees Provident Fund Scheme and is entitled to the

lumpsum payment; that the Employees'' Family Pension Scheme was introduced in the year 1971; that he had not given his option to join the

Scheme, but however, ''the employer is enjoined with the duty to get the formalities of option to form the Scheme by the employees completed

within six months from March 1, 1971.''

9. The learned counsel, continuing to argue, would point out that the Scheme applies to the employees of factories and other establishments to

which the Employees'' Provident Fund Scheme and Act applies and no mention need be necessary that it applies to the second respondent

Corporation also. Going through the relevant provisions of the Employees Family Pension Scheme, 1971, especially, clause 4(iv), the learned

counsel would lay emphasis therein that ''.... it shall be the duty of every employer to get the option referred to above exercised by every member

to whom the option is given within the time specified.''; that a new Scheme, more beneficial was introduced in the year 1995, which came into

force on 16.11.1995; that the eligibility being the member of the Employees'' Pension Scheme, 1995 which is specified under Clause 6(c) wherein,

''subject to sub-paragraph (3) of paragraph 1, this Scheme shall apply to every employee,--

(a) who on or after the 16th November, 1995, becomes a member of the Employees'' Provident funds Scheme, 1952 ....

(b) who has been a member of the ceased Employees'' Family Pension Scheme, 1971 before the commencement of this Scheme from 16th

November, 1995.

(c) who ceased to be a member of the Employees'' Family Pension Scheme, 1971, between 1st April, 1993 and 15th November, 1995 and opts

to exercise his option under paragraph 7.''

Paragraph 7(1) of the Scheme, 1995 says that,

''members referred to under sub-paragraph (c) of Paragraph 6 who have died between 1st April, 1993 and 15th November, 1995, shall be

deemed to have exercised the option of joining the Scheme on the date of his death.''

10. Citing the above provisions of the Employees Pension Scheme, 1995, the learned counsel for the petitioner would conclude his arguments

saying that the petitioner has to be treated as a deemed member of the Employees'' Family Pension Scheme, 1971 and he may be permitted to

exercise his option to become the member of the Employees'' Pension Scheme, 1995 and would pray to pass an order to the said effect, thus

allowing the writ petition.

11. On the part of the learned A.C.G.S.C. appearing on behalf of the first respondent, he would point out that even for the 1971 Scheme, the

petitioner did not give any option while others gave the option and would site a judgment delivered in DTC Retired Employees'' Association Vs.

D.T.C. reported in (2001) 99 F.J.R. 103 wherein the Apex Court has held therein:

It is true that there was some delay in implementing the Scheme, but all the retired employees were given sufficient opportunity to exercise their

option. In paragraph 9 of the counter-affidavit filed on behalf of DTC it is stated that as far as the time to fill up pension option form is concerned,

the letter dated November 23, 1992, conveyed by the Government of India, Ministry of Surface Transport, contained that the DTC shall obtain

option from its employees within 30 days from the date of issue of circular. However, the DTC, in fact, extended the time twice, namely, firstly up

to January 15, 1993, and, secondly, up to February 1, 1993. Therefore, the retired employees had, in fact more than one month''s time to exercise

their option. We do not think that sufficient time was not given to the employees to exercise their option for the Pension Scheme. Those employees

who had received the benefit of the employer''s provident fund scheme failed to exercise their option and thus disentitled themselves from getting

the pension benefit. The Pension Scheme was implemented on the basis of certain guidelines; it is not for the court to interfere with the same. The

Division Bench has rightly taken the view that those who had not exercised their option are not entitled to get pension. The appeals and the writ

petition are without any merit and these are dismissed without, however, any order as to costs.

Citing the above judgment, the learned counsel would pray to dismiss the above writ petition.

12. In consideration of the pleadings by parties, having regard to the materials placed on record and upon hearing the learned counsel for both,

what is assessed is that the petitioner, who retired from service on 30.4.1994 as Personnel Manager in P & A Department of the second

respondent Corporation and having received his Provident Fund benefits on the date of retirement under the Employees Provident Fund Scheme

stating that since there was no provision for payment of pension under the existing Scheme, only a lumpsum consisting of the contributions by the

employees and the employer plus interest had been paid to the employee on the date of his retirement; that the Employees Family Pension Scheme,

1971 was made applicable to the employees of all factories and establishments, to which the Employees'' Provident Fund and Miscellaneous

Provisions Act is applicable; that to those whom the Act applied have given option to join the Scheme and the employer is duty bound to get the

option referred to above exercised by every member to whom the option is given, within a period of six months from 1.3.1971.

13. It would further be urged by the petitioner in the arguments that petitioner being the member of the Employees'' Provident Fund Scheme was

eligible to exercise his option to join the Family Pension Scheme, 1971, but the second respondent employer did nothing, though it was its statutory

duty; that he was not informed by the Corporation seeking to exercise his option to join the Family Pension Scheme, 1971 which was more

beneficial to him than the Employees'' Provident Fund Scheme and stating that because of such failures on the part of the employer to comply with

its statutory duty under the Family Pension Scheme, 1971, the petitioner lost his opportunity for becoming the member of the same and on such

arguments, the learned counsel would pray for the relief extracted supra.

14. In the Apex Court''s judgment cited on the part of the respondents in their defence, a Scheme had been launched in November 1992 by the

Transport Corporation which is the respondent therein, wherein under clause 3 of the Scheme, all existing employees as on that date as well as

those who had retired on or after 3.8.1981, had to exercise their option for the Pension Scheme or the employees'' contributory provident fund within 30 days and Clause 9 provides, inter alia, that an employee who did not exercise the option within the prescribed period of 30 days shall be

deemed to have opted for the pension Scheme benefits.

15. In these circumstances, the Apex Court has arrived at the conclusion to hold that the employees, who retired on and after 3.8.1981, but before

27.11.1992, had not exercised their option within the stipulated period, are not entitled to pension under the Scheme. However, there does not

seem to be a clause as it is in the Employees Family Pension Scheme, 1971 and the newly introduced Employees Pension Scheme, 1995, wherein

such conditional clauses under para. 4 of the Scheme 1971 says that ''the employer is enjoined with the duty to get the formalities of option to form

the Scheme by the employees completed within six months from March 1, 1971'', which seems to exist in the Scheme, all concerned with the

Transport Corporation have been dealt with by the Apex Court, and therefore, the subject matter in hand cannot be treated on par with the

subject dealt with by the Apex Court in the judgment cited by the learned counsel for the respondents. Therefore, the case in hand, has to be dealt

with based on the facts and circumstances concerned with the above writ petition and the position of law concerned with the law and on such

parameters being applied, it cannot be said that the non-becoming of a member of the Scheme, 1971 is wholly a fault committed on the part of the

petitioner, but the employer, as a whole, and more so, a duty is cast on the employer by the legal provision to see that prior to the expiry of time

stipulated therein, the employees'' options are obtained so as to bring them within the fold of the Scheme, which is mandatorily provided for under

the Scheme and therefore, this Court is of the view that the respondents should consider the request of the petitioner in the light of para. 4 of

Scheme, 1971 and the other relevant provisions of the newly introduced Scheme, 1995.

16. It further comes to be known that the petitioner has already submitted an application under the Employees'' Pension Scheme, 1995 with a

request to fill up the relevant columns and forward the same to the first respondent, for which the second respondent replied stating that the matter

relating to pension is pending before the Court and they are awaiting the decision of the Court and hence returned the application with other connected documents. Further, it comes to be seen that he has also submitted petitions to the Public Grievance Cell, Chennai and also to Lok

Adalat, but no orders were passed on the same. Therefore, causing lawyer''s notice dated 28.4.2000 to the first respondent and with no reply sent

and left with no other option, he has filed the above writ petition.

17. Therefore, in the above circumstances, it is fitting to direct the respondents to consider the representation of the petitioner on the subject

covered by the writ petition and hence the following directions:

(i) The petitioner is directed to make a fresh representation to the respondents, containing all his grievances regarding the subject matter covered

by the writ petition, within thirty days from the date of receipt of a copy of this order;

(ii) the respondents, in receipt of such representation, shall consider the same in the light of para. 4 of the Employees'' Family Pension Scheme,

1971 and the relevant provisions of the newly introduced Scheme, 1995 and pass orders on the same within forty days from the date such

representation.

18. The writ petition is disposed of in the above manner. No costs.