(2010) 01 P&H CK 0055

In the Punjab And Haryana At Chandigarh

H.C. Gupta, Assistant General Manager (Retd.) and Others — APPELLANT

Vs

Punjab State Cooperative Bank Limited and Others — RESPONDENT

Date of Decision : 20-01-2010

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 17

Citation : (2010) 127 FLR 376 : (2011) LLR 302 : (2010) 159 PLR 218

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Kannan, J.—By the impugned proceedings, he competent authority under the Employees Provident Fund and Miscellaneous Provisions Act, 1952, determined an application u/s 17 of the said Act on a consideration of whether exemption could be granted from the applicability of the Act by giving effect to a Scheme proposed by the Bank after an approval by the Board of Directors in a meeting held on 01.02.1990. The basis of the application was the resolution of the Board and an approval, which was granted to the draft scheme of Pension Rules by the Registrar Cooperative Societies by his proceedings dated 12.10.1990. The contention of the petitioners was that all the employees of the Bank had given concurrence for the adoption of the new Rules and when the Bank ''had sent the Pension Rules to the 6th respondent for grant of exemption, the impugned order was passed, rejecting the plea for exemption.

2. The primary consideration that went into the decision making of the 6th respondent was that the Managing Director had reported to the Government that a fact finding Committee had been constituted and it revealed that it was unviable to work the new Pension Rules as proposed by them and that the Bank was not interested in pursuing the new Pension Rules. The 6th respondent, in his decision, observed that numerous objections had been raised by the EPF Corporation and the correspondence between the Bank and Regional Provident Fund Commissioner had prolonged unnecessarily for a number of years. At the

time when the order came to be passed, a new Pension Scheme had been stated to have been introduced w.e.f. 16.11.1995. The further observation of the Authority was that the entire set of employees had not opted for getting the benefits under the Pension Scheme and unless the establishment sought the permission as a whole, the exemption could not have been granted. The 6th respondent, therefore, held that the application of the petitioners ought to fail on the score of want of consent from amongst all employees.

3. The challenge mounted against the order rejecting the exemption sought by the Bank was on the basis that the Authority had himself not considered provision-wise the Pension Rules proposed and how it was more beneficial or not in comparison to the provisions as guaranteed under the EPF Act and the Scheme proposed under it namely the Employees Pension, Family Pension Scheme, 1971. The farther objection was that the Managing Director had no competence to make a representation on behalf of the Bank that they had decided to introduce a new Pension Rules in the year 1995 and that the Rules already proposed need not be given effect to. Even the fact finding Committee was not lawfully constituted under any authority of the Board and a decision already taken by the resolution of the Board and approved by the Registrar could not have been modified or annulled by the Managing Director without any specific authority in that regard.

4. At the time when the arguments were in progress, this Court had directed the 1st respondent-Bank to produce the basis for the constitution of the fact finding Committee, especially after a resolution had been passed by the Board of Directors on 01.02.1990 and when they had obtained also the sanction of the Registrar of the Cooperative Societies. The learned Counsel appearing for the 1st respondent was also directed to produce the details of any resolution that may have been passed regarding the decision communicated to the Government by the Managing Director to withdraw the Pension Scheme proposed through the Rules. The direction had been made on 08.01.2010 and when the matter is called today for hearing, the learned Counsel appearing for the 1st respondent states that there has been no specific authorization given to the Managing Director to submit to the Government to withdraw the Pension Rules proposed. He also submitted that there was again no specific sanction from the Board of Directors for the constitution of a fact finding Committee. Learned Counsel would submit that the Managing Director himself had under the Bye-Laws the power to represent the Board and the representations made before the Government, was his decision taken by the 6th respondent in bona fide exercise of such power.

5. In my view, the decision of the 6th respondent would require to be quashed and a fresh consideration shall be made on the only ground that the refusal to exemption was done principally on the references to the fact finding Committee and to the submission made on behalf of the Bank by the Managing Director that since a new Scheme had been introduced w.e.f. 16.11.1995 and since it had been decided not to give effect to the proposed Pension Rules, exemption could

not be granted. The other ground, which had been taken by the Authority in the impugned order was that the entire set of employees of the Bank had not opted for getting such benefits. Elsewhere in the same order, the Authority has also stated that the Punjab Government''s financial liability in capacity of the Bank to sustain the Scheme came to be ascertained but the Punjab Government was not in a position to furnish any grant to the petitioners or to stand any guarantee to it, to safeguard the interest of the retired employees.

6. The decision of the Authority should have been first undertaken with reference to the inherent merits of the proposals contained in the proposed Rules. It should be done on the touchstone of whether they give to them more benefit than what are secured under the Employees Family Pension Scheme of 1971 and 1995. If the terms of the Scheme and the amounts as guaranteed under such a scheme are more beneficial, then the next consideration would be whether the Scheme is viable and could be worked without any obstacle. The financial viability will be again tested with reference to the terms of the Scheme proposed and how the funding will be carried out for running of the Scheme. The profits of the affairs of the Bank will be definitely a relevant consideration and the issue of the support of the Government or the guarantee would be required to be examined only if there was a provision in the proposed Scheme itself requiring grants from the Government. It is not seen from the order as to why the Authority had sought for the views from the Government whether it was in a position to furnish any grant or stand any guarantee. Even if it would be a relevant consideration, it is again not seen from the order as to what was the basis of such observation that the Government was not prepared to furnish any grant to the Bank or stand guarantee. When a decision had been taken already by the Board and approved by the Registrar, the Managing Director himself shall have no Authority to state that the proposed Rules need not be given effect to and exemption need not given. The Authority is bound to examine the merits of the proposals without giving weight to unilateral decision of the Director to withdraw from the proposals. The impugned order also makes reference to the fact that the entire set of employees of the Bank had not opted for getting the benefits and it is again not a matter of record as to how the Authority came to elicit such information that there had been any objections from any body of employees.

7. Under the circumstances, the impugned order is set aside and the matter is remitted to the 6th respondent for a consideration of the viability of the Pension Scheme proposed through the Rules and take an objective decision of whether or not to grant an exemption u/s 17 of the EPF Act from the applicability of the Employees Family Pension Scheme 1971 and 1995. The proposals were made in the year 1990 and it would be only fair that a decision is taken as expeditiously as possible and preferably within a period of 12 weeks from the date of receipt of the copy of the order. The 6th respondent will be at liberty to obtain representations both from the petitioners as well from the official respondents to examine the merits of the proposals through the Scheme and also elicit the opinion of the employees through representations from recognized Employees

Unions. If any plea for personal representation is made, the same may be considered in the light of the exigencies that may prevail at the time of taking decision.

8. The impugned order is set aside and the writ petition is allowed on the above terms. There shall be however no direction as to costs.

