

(2012) 06 GUJ CK 0056

In the Gujarat High Court

Case No : Special Civil Application No. 14371 of 2004

Mahendrabhai Natwarlal Patel and 2

APPELLANT

Vs

Regional Provident Fund Commissioner and 2

RESPONDENT

Date of Decision : 11-06-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 06 GUJ CK 0056

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Advocate : B.K. Oza Petitioners 1 - 3, for the Appellant; P.J. Mehta, Respondents 1 - 2 and Mr. A.K. Clerk Respondent 3, for the Respondent

Final Decision : Dismissed

Judgement

1. Learned advocate Shri A.K.Clerk appearing for respondent no.3. None appears for respondent nos.1 and 2. Heard learned advocate appearing for the parties.

2. The petitioners, by way of this petition under Article 226 of the Constitution of India have approached this Court with the following prayers;

(A) This Hon''ble Court may be pleased to issue a writ of mandamus and appropriate writ, order or direction in the nature of mandamus directing the respondents to extend the benefits of the Employees'' Pension Scheme, 1995 from the date of their retirement and pay the arrears with interest;

(B) Pending admission, hearing and disposal of the present petition, this Hon''ble Court may be pleased to direct the respondents to supply Code Number to the petitioners and issue necessary forms for completing formality for getting benefits of the pension scheme and also direct to deposit the amount of pension of the petitioners till date, in this Hon''ble Court;

(C) Costs of this petition may be awarded;

(D) This Hon''ble Court may be pleased to pass such other and further order in

the interest of justice which may be deemed fit.

3. The petitioners have, thus sought direction and/or appropriate orders against respondents for paying them pension under the provision of Employees' Pension Scheme, 1995.

4. The petitioners were working for respondent no.3-organization since 1985 and on account of closure of the branch in the State of Gujarat they were sought to be transferred to the State of Maharashtra. They resigned in the year 2001. The petitioners were not getting any benefits like pension etc. they represented to the concerned authorities for receiving benefits of pension under the Scheme and ultimately filed the petition under Article 226 of the Constitution of India in the year 2004, which came to be admitted and now it is being decided finally.

5. Learned advocate for the petitioners has contended that the petitioners have been illegally denied the benefit of pension under the scheme, though they were entitled and illegible for pension.

6. Learned advocate for the petitioners has invited this Court's attention to the averment made in paragraph no.4.2 and submitted that the petitioners could not have been denied the benefit of pension under the scheme. The document referred to in paragraph no.2 collectively, are the document in nature of representation to the authorities and their employer wherein the averment is made that the deduction was made towards contribution for pension and the pension scheme also. Despite this, the pension is denied and hence the petition is required to be allowed.

7. Learned advocate for the petitioners has submitted that as the respondent no.3 has engaged the petitioners for a long period of 17 years and as the direction of amount of Rs.1251 to each of the petitioners is effected, the petitioners were entitled to receive pensionary benefit and pension from the concerned.

8. Learned advocate for the petitioners has further submitted that petitioners were compelled to resign as the petitioners were sought to be transferred from Gujarat to Maharashtra. Had the branch of the respondent no.3 continued in the State of Gujarat, the petitioners would have also continued and would not have resigned, therefore, resignation is in fact no factor which may weigh against the petitioners for denying the pensionary benefits. The petitioners are covered under the scheme and the act of provident fund.

9. Learned advocate for respondent no.3 has invited this Court's attention to the averments made on oath on behalf of respondent no.3 by way of affidavit-in-reply starting from page no.44 and laid specific emphasis upon two notifications produced at page nos.80 and 81 and contended that the Scheme and the Act in question have not been made applicable as this organization is exempted from operation thereof and the period of exemption is also from 1995 till 2005, as could be seen there from. The affidavit filed on behalf of respondent nos.1 and 2

merely indicates that the organization has put up claim for refund on the strength of the exemption granted.

10. Learned advocate for respondent no.3 has further contended that in fact resignation of an employee tendered would disentitle him from receiving pension, but this submission is not required to be elaborately made as the very fact that the petitioners could not point out as to how the petitioners are entitled for pension. The petition is required to be dismissed.

11. This Court has heard learned advocates appearing for the parties and perused the averments made in the petition as well as the affidavits. The fact remains to be noted that petitioners have not pointed out anywhere as to how the petitioners would be entitled for receiving pension especially when the factum of exemption has not been denied or controverted by the petitioners.

12. The exemption from the operation of the act and its provision, in my view would not require to retain this Court any longer so far as the contention of the petitioners are concerned. Suffice it to say that the petitioners were not entitled to receive pension and hence the same was not admissible to them. The petitioners have not indicated anywhere in the memo of petition, as to how and in what manner any amount was ever deducted towards contribution to the scheme for pension, nor have the petitioners indicated anywhere in the memo of petition or through their counsel as to when the exemption notifications are not under challenge and rather they are not disputed, then in what manner the petitioners can claim benefits of pension. The decision cited at the bar in case of "Otis Elevator employees" Unions Reg. And Others Vs. Union of India and Others reported in 2004-I-LLJ-217, by the learned advocate for the petitioners is of no avail, as nowhere the said decision contains any proposition of law which may even remotely help the petitioners in justifying their claim for pension from the respondent no.3. The petition being meritless deserves rejection and is accordingly rejected. However, there shall be no order as to costs. Rule is discharged.