

(2004) 03 KAR CK 0028
In the Karnataka High Court
Case No : Writ Petition No. 32860 of 2000

Miss. Shibani Motha

APPELLANT

Vs

The Employees Provident Fund Organisation and Others

RESPONDENT

Date of Decision : 12-03-2004

Acts Referred:

Employees Provident Fund Scheme, 1952 — Paragraph 61 (1)

Citation : (2005) 104 FLR 630 : (2005) ILR (Kar) 117 : (2005) 3 KarLJ 381 : (2005) 2 KCCR 1540

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : T. Narayanaswamy, for the Appellant; Harikrishna S. Holla, for R1-2 and Kasturi Associates for R3, for the Respondent

Judgement

N. Kumar, J.—The petitioner is the sister of Mr. Gabriel Motha, an employee of the third respondent. He was a member of the Provident Fund and his Account No. was KN/45/5323. He was a bachelor. He was looked after by his sister, the petitioner. He nominated the petitioner on 21.1.1998 in the prescribed form to receive the pension under the Employees Pension Scheme, 1995. Annexure-A is the nomination and declaration form. He died on 31.1.1998. It appears that the third respondent forwarded the said nomination and declaration form to the respondents 1 and 2 only on 23.6.1998. After the death of her brother, the petitioner filed an application for grant of pension under the Employees Pension Scheme, 1995 as per Annexure-B. The request of the petitioner for pension has been rejected by respondents 1 and 2 on the ground that there was no valid nomination available in favour of the petitioner on the death of the member. As per Paragraph - 61(1) of the Employees Provident Funds Scheme, 1952, the nomination shall effect to the extent that it is valid on the date on which it is received by the Commissioner. In the case of the petitioner as it was received only on 23.6.1998, 4 months after the death of his brother, she is not entitled to the pension. Aggrieved by the said order rejecting her request for pension, the petitioner has preferred this Writ Petition seeking for quashing of Annexure-D

and directing the respondent to pay her family pension.

2. The respondents 1 and 2 have filed a statement of objections contending that the petitioner's brother has not nominated any person, much less the petitioner, to receive the family pension. The petitioner's brother expired on 31.1.1998. Consequent upon his death, the petitioner was paid a sum of Rs. 91, 748/- towards full and final settlement of the employees provident fund contribution. In respect of the family pension, the claim of the petitioner has been rejected. They have reiterated the stand made in the impugned order and therefore they contend that the petitioner is not entitled to the relief sought for.

3. Learned Counsel for the petitioner contends that as far as the deceased brother of the petitioner is concerned, he has nominated the petitioner as a nominee to receive the family pension before his death on 21.1.1998 as per Annexure-A. If there was a delay on the part of the 3rd respondent in forwarding the application form to respondents 1 and 2, that cannot be held against the petitioner and deprived her of the pension. All that the paragraph-61(6) of the Employees' Provident Funds Scheme, 1952, provide is that a nomination or its modification shall take effect to the extent that it is valid on the date on which it is received by the Commissioner. On the day which was received by the respondents 1 and 2 it was valid nomination and the petitioner is entitled to the benefit flowing under the said nomination.

4. Learned Counsel appearing for the respondents 1 and 2 contends that as the said nomination was received by the respondents 1 and 2 after the death of the brother of the petitioner, it cannot be said to be valid nomination. Therefore, the petitioner is not entitled to the pension sought for.

5. Learned Counsel appearing for the 3rd respondent-employer contends that the petitioner is the sister of the deceased workman and the deceased workman has nominated the petitioner as his nominee to receive the pension as per Annexure - A on 21.1.1998 much prior to the date of his death. It is true, there is some delay in forwarding the application of the petitioner, but it should not take away of legitimate claim of the petitioner being satisfied by the respondents 1 and 2. Therefore, he submits that the petitioner is entitled to the relief sought for.

6. The undisputed facts which emerge from the material on record are that the deceased brother of the petitioner was a member of the Employees Provident Fund Scheme, 1995. He died on 31.1.1998. On a certification made by the third respondent, respondents 1 and 2 have paid a sum of Rs. 91,748/- to the petitioner, who is the sister of the deceased. Till today, no other person has put forth any claim on behalf of the deceased. Deceased was a bachelor. His parents had predeceased him. There are no other near relatives.

7. Annexure-A is the nomination form prescribed under the Act which is duly signed by the deceased nominating the petitioner as his nominee to receive the pension. It is dated 21.1.1998 i.e., ten days prior to the death of the deceased. It is a fact that the said nomination has been forwarded to the respondents 1 and

2 only on 20. 6.1998. There is a delay of more than 4 months. Sub-paragraph 5(a) of paragraph-16 of the Employees' Pension Scheme, 1995, reads as under:

"A member who is not married or who does not have any living spouse and/or an eligible child may nominate a person to receive the benefits as laid down hereinafter provided that in the event of his/her acquiring a family subsequently, the nomination so made shall become void. In the event of the death of the member such nominee shall be entitled to receive a monthly pension equal to the monthly widow pension, as admissible under Sub-clauses (i) and (ii) of Clause (a) of sub-paragraph (2)"

8. A reading of the aforesaid provision makes it very clear that a nominee is entitled to receive a monthly pension equal to the monthly widow pension. Therefore, if the petitioner is held to be nominee of the deceased member, in view of the aforesaid provision the petitioner is entitled to receive the monthly pension.

9. The argument of the learned Counsel for the organization is that the aforesaid provision is attracted only if it is valid in the eye of law and such a nomination received is valid in the eye of law. Elaborating the same, he contends that the said nomination is before the death of member. If the nomination is received after the death of the member it is not valid nomination. In support of his contention, he relies on paragraph - 61(6) of Employees' Provident Funds Scheme, 1952. Sub-paragraph (6) of paragraph -61 states that nomination or its modification shall take effect to the extent that it is valid on the date on which it is received by the Commissioner. Therefore, it is clear that a nomination shall take effect to the extent that it is valid on the date on which it is received by the Commissioner. It does not provide that a nomination made prior to the death, if it is received after the death, it becomes invalid. What is of essence is a valid nomination. If a valid nomination is made by a member before his death, merely because the said nomination is communicated by the employer to the organization, after the death of the member does not render the nomination invalid. The date of communication of a valid nomination to the employer is totally irrelevant to find out whether the nomination is valid or not. Under these circumstances, it is not possible to accept the contention, that merely because the prescribed form of nomination was sent to the employer after the death, it is ceased to be valid nomination. The whole object of this provision is to see that the person nominated by the member receives the benefit under the scheme to be entitled to such benefit the member has to contribute, it is not a gratuitous payment by the organisation. Merely because the said contribution is paid by the employer on behalf of the member, it cannot be said that the member has not contributed to the Organisation. What is contributed by the employer to the organization is a part of the wages of the member. Therefore, there is absolutely no justification on the part of the organization in not repaying the amount received on account of the death of the member to the persons to whom he has nominated which they are entitled to in law.

10. In fact in the instant case, the respondents 1 and 2 have paid a sum of Rs. 91,748/- to the petitioner towards provident fund contributions. Thus, the respondents 1 and 2 have recognised the petitioner as a person who is lawfully entitled to receive the amounts due to the deceased. Having acknowledged the status of the petitioner, her right and entitlement to the said amount, it is not open to the respondents 1 and 2 when it came to the payment of pension to contend that her nomination is not valid and she is not entitled to the said amount. I do not find any justification in the stand taken by the respondents 1 and 2. Under these circumstances, the petitioner is entitled to the relief sought for and the impugned endorsement is liable to be quashed. Hence, I pass the following order:-

- i) Rule is made absolute;
- ii) The impugned letter issued by the respondents denying the liability to pay the pension as per Annexure D is hereby quashed;
- iii) Respondents 1 and 2 are directed to pay the pension due to the petitioner under the Employees' Pension Scheme, 1995 in terms of paragraph -16(5) (a);
- iv) The pension shall be paid within three months from today.

No costs.