(2016) 08 KL CK 0065

In the High Court Of Kerala

Case No : WP(C). No. 18069 of 2008 (A)

M.N. Chellappan Pillai	APPELLANT
Vs	
State of Kerala	RESPONDENT

Date of Decision : 04-08-2016

Acts Referred:
Constitution of India, 1950 — Article 14, Article 226

Citation : (2017) 1 KerLJ 436

Hon'ble Judges : Smt. P.V. Asha, J.

Bench : Single Bench

Advocate : Sri. N. Ashok Kumar and Smt. Mariamma George Marangoly, Advocates, for the Petitioner; Sri. Arunkumar M.R. Karanavar, Advocate, for the Respondent No. 1; Sri. P.V. Mohanan and SC Sri. K.R. Sunil, Advocate, for the Respondent No. 2

Final Decision : Allowed

Judgement

P.V. Asha, J.—This writ petition was originally filed by deceased Chellappan Pillai (hereafter referred to as ''petitioner). On his death, his legal heirs got impleaded as additional petitioners. The question raised in this writ petition is as to the exclusion of a small group of persons retired from the services of the co-operative societies in the State from the purview of the Kerala Co-operative Societies Employees Self Financing Pension Scheme 1994 (''Pension Scheme'' for short).

2. The petitioner retired from service on 31.07.1995, while working as Secretary in charge in Kodukulanji Kared Service Cooperative Society Ltd. No.2640 (''society'' for short) after rendering 24 years of service commencing from 1.7.1971. The contributory provident fund scheme was implemented in the society on 1.1.1988 and petitioner joined the same with effect from 1.1.1988. In the year 1995 a pension scheme was introduced for the employees in cooperative societies in the State under the name of Kerala Co-operative Societies Employees Self Financing Pension Scheme 1994 (hereinafter referred to

as "the Scheme 1995"), which was notified as per G.O.(P) No.44/95/CO.OP dated 4.3.1995. The scheme was introduced by the Government in exercise of its powers conferred under section 80A of the Kerala Co-operative Societies Act, 1969 as a self financing pension scheme for establishment of pension fund for the purpose of payment of pension to the employees of co-operative societies.

3. The Scheme came into force with effect from 03.06.1993. Chapter III of this scheme provides for eligibility of pension. Clause 18 of the Scheme provides that every employee of the society to which this scheme applies shall be eligible for pension. The relevant portion of clause 18 of the Scheme reads as follows:

"(1) Every employee of a society to which this scheme applies shall, subject to the other provisions of the Scheme, be eligible pension under this Scheme:

Provided that an employee, who has received the contributory Provident Fund shall be eligible for pension only on the refund of that portion of the employees'' contribution in the Contributory Provident Fund together with interest thereon to Pension Fund before applying for pension.

Xxxx xxxxxxxx xxxxxxxxxxxxxxxxxxxxxx

(2) An employee who has been dismissed or removed for misconduct, insolvency or inefficiency shall not be eligible for pension.

Xxxxx xxxxx xxxxxxx:"

4. Thus it can be seen that employees of all the societies to which the scheme applies, are eligible for pension under the scheme. In the case of those who got Contributory Provident Fund ("CPF" for short), they would be eligible for pension, only on refund of the portion of their contribution in the CPF along with interest on it to the Pension Fund. Qualifying service for pension is dealt with in clause 19. The provisions in clause 19 which are relevant for the purpose of this case reads as follows :

"19. Qualifying Service. Qualifying service for granting pension under the Scheme shall be-

(1)(a) in the case of an employee who was in the service of a society on the date of application of this Scheme to that society the length of service commencing from the date of joining the Contributory Provident Fund:

3[Provided that the qualifying service shall be limited to the period for which the employer''s contribution towards the Provident Fund has been fully paid by the Society in respect of that employee.

Xxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxx

Provided further that where the employee was a Subscriber to any pre-existing Provident Fund Scheme implemented in that Society and contribution made thereon has been transferred to the Pension Fund, such period will also qualify for pension.

Xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.

5. Clause 20 after amendment in 2001, which came into force with effect from 1.4.1998, provides for the following :

S. 20 : [Superannuation Pension.

(1) Every employee shall be eligible for superannuation pension on attaining the age of superannuation.

(2) The maximum qualifying service that shall be counted for superannuation pension shall be thirty years.

(3)The rate of superannuation pension shall be reduced in proportion to the length of service

(4) Provided that the minimum superannuation pension shall be five hundred rupees per annum

6. In this context it is relevant to note that prior to amendment effected in the rules as per SRO 271/2001 dated 14.3.2001, clause 20 read as follows:

" 20: [Superannuation Pension.

(1) Every employee who has a minimum of ten years'' of service shall be eligible for superannuation pension on retirement at the age of 58 yeards;

(2)The maximum qualifying service that shall be counted for superannuation pension shall be thirty years.

(3)The rate of superannuation pension shall be reduced proportion to the length of service provided that the minimum superannuation pension shall be three hundred rupees per annum"

7. The petitioner was in service when the scheme came into force and its date of enforcement i.e on 3.6.1993. Therefore his qualifying service would be the length of service commencing from the date of joining contributory provident fund. The date of joining the CPF, which is 01.01.1988. Therefore the qualifying service will be from 1.1.1988 to 31.07.1995, alone.

8. Clause 20 provides for superannuation pension, according to which every employee shall be eligible for superannuation pension on attaining the age of superannuation and maximum qualifying service shall be 30 years. As a result of the amendment effected in 2001, with effect from 1.4.1998, the minimum qualifying service for pension which was 10 years is taken away with effect from 1.4.1998. Therefore, petitioner who retired from service before 1.4.1998, is not benefited by this amendment which came into force from 1.4.1998 only. In the year 2003, clause 38A was inserted making those who retired from service from 1.1.1974 to 3.6.1993 eligible for pension and making application of clauses 19 to 21 subject to clause 38A of the Scheme. Clause 20 was amended again as per SRO 725/2010 dated 21.7.2010. Prior to this amendment the maximum service

was provided as 33 years for pension and minimum pension payable was Rs.300/- which is now enhanced to Rs.500/- under clause 21 retiral pension is admissible for an employee who retired voluntarily after completing a minimum of 20 years of qualifying service. Clause 23 provides for family pension to the family of employees who dies while in service and in other cases after retirement in cases where they were in receipt of superannuation pension. We are concerned with the amendments effected to clauses 19 and 20 and the respective dates from which the amendments came into force.

9. The petitioner is denied pension for want of requisite qualifying service just because he happened to retire from service on 31.05.2007 which falls between 3.6.1993 and 01.04.1998. The amendments effected in 2001 to clause 20 made the pensioners from 1.4.1998 eligible for pension irrespective of number of years. The amendment effected in 2010 inserting clause 38A in the Scheme made all those who retired from service upto 3.6.1993 also eligible for pension i.e upto, the date of enforcement of the scheme.

10. The petitioner retired from service on 31.7.1995. He had submitted an application for pension after remitting the provident fund contribution along with interest. The petitioner produced Ext.P1 statement as well as Ext.P2 pay in slip receipt from Alappuzha District Co-operative Bank in order to show that he had remitted the GPF contribution along with interest for the period from 1971-1995 to the 3rd respondent. Thereupon by Ext.P3 letter dated 11.9.1997, the Kerala State Employees'' Pension Board (''Board'' for short) informed the first petitioner that he was not eligible for pension since he had remitted payment to provident fund contribution only from 1.1.1988 and retired from service on 31.7.1995. Therefore he was having qualifying service for a period of 7 years and 7 months only and he was not eligible for pension since he did not have the minimum qualifying service of ten years. He received another letter also as per Ext.P4 on 24.3.2008 by which he was again informed that he was not eligible for pension for want of requisite qualifying service.

11. Seeing the injustice done to him despite amendment to clause 20 of the scheme as per Ext.P6- G.O.(P) No.53/2001/Co.op dated 7.3.2001, making all employees who retired before and after him eligible for superannuation pension on retirement on attaining the age of superannuation, petitioner filed this writ petition.

12. There was another amendment effected in 2003 also as per SRO 265/2003 published in Gazette dated 25.3.2003 by which clause 38A was inserted making all the employees who retired from service between 1.1.1974 and 3.6.1993, eligible for pension. Clause 38A provides as follows:

Clause 38A: (1) Every person who has retired from the service of a society during the period between 1st January 1974 and 3rd June 1993, and are alive on the date of commencement of the Kerala Co-operative Societies Employees Self Financing Pension Amendment) Scheme 2003, shall be paid monthly pension subject to the following conditions and restrictions, namely:-

(a) any person who opts for pension shall, within six months, remit to the pension fund an amount equal to such portion of the contributory provident fund as may constitute the employer''s contribution.

(b) pension shall be payable with effect from 4.5.2002.

(c) The amount of pension shall be determined in the manner provided in clause 22.

(d) No family pension shall be payable on the death of the recipient of pension.

(2) The provisions of clauses 19, 20, 22A, 26 and 27 shall, Mutatis Mundadis apply to the payment of pension under sub clause (1).

13. Therefore, it can be seen that all those who retired from January 1974 to 3.6.1993, are entitled to receive pension under the scheme. The only condition under clause 38A is that he should remit to the pension fund an amount equal to such portion of contributory Provident fund within a period of six months and pension shall be payable with effect from 4.5.2002.

14. Thus the amendments effected in 2001 and 2003 make those who retired from service with effect from 1.4.1998 as well as those who retired during the period from 1.1.1974 to 3.6.1993, eligible for pension irrespective of their qualifying service while those who retired from service during the period from 4.6.1993 to 31.3.1998 continues to be ineligible for pension on prescription of qualifying service.

15. The Government has filed a counter affidavit explaining the provisions contained in the scheme and the amendments effected thereafter in the year 2001, and 2003. The Government also says that the petitioner was not eligible for pension for want of requisite qualifying service. However there is no answer to the contention of petitioner as to the discrimination pointed out by the petitioner in the case of persons who retired from service during the period from 4.6.1993 to 31.3.1998.

16. I heard Sri. N. Asok kumar, the learned counsel appearing for the petitioners, Sri.K.R.Sunil, the learned Standing Counsel appearing for the Pension Board and Sri.Arun kumar, the learned Government Pleader.

17. The petitioner was denied pension on the ground that he did not have the requisite qualifying service of 10 years with reference to the date of joining the contributory provident fund in the society. Since PF scheme was implemented in that society only with effect from 1988, the contributions to it could be made by the Society as well as petitioner only from 1.1.1988. He has produced Exts.P1 and P2 receipts to show that he had remitted the amount equal to the provident fund contribution for the relevant period from the date of his joining to the date of implementation of the contributory provident fund scheme in his society. He had also remitted the entire contribution from 1971 to 1995, the Government do

not have any answer for the contention that one set of employees are left out from the benefit of the scheme without any justification.

18. There is no justifiable reason for exclusion of persons like petitioner, while extending the benefit of pension scheme to all those who retired from service except during the period from 4.6.1993 to 31.3.1998. Such exclusion can only be one in violation of the fundamental rights of persons like petitioner guaranteed under Article 14 of the Constitution of India for equality before law. Equals are treated unequally by carving out a section of employees for no reason. The objects and reasons as well as the explanatory note to the amendments only indicate that the intention was only to extend more benefits.

19. No reason is stated why unequal treatment is meted out in the case of the persons like the petitioner or for the classification of a small group of persons for the purpose of insisting minimum qualifying service for the purpose of pension. It is settled law such classification is arbitrary, discriminatory and violative of Article 14 of the constitution. In the celebrated decision of the apex court in D.S. Nakara and others v. Union of India [AIR 1983 SC 130: (1983) 1 SCC 305] it was held as follows :

15. Thus the fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question.

xxx:

a discriminatory action of the Government is liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.

20. The aforesaid position is followed and reiterated in R.L. Marwaha v. Union of India and others (1987 (4) SCC 31), while considering the cases of counting past service on joining autonomous bodies, Subrata Sen v. Union of India, (2001) 8 SCC 71, while considering the claim of pre December 1994 retires of Indian Oil Corporation to get their pension computed on par with the post 1994 retirees, in Union of India v. SPS Vains, (2008) 9 SCC 125, while considering the disparity in pension of the major Generals in the Army on the basis of date of retirement in implementing pay revision orders, in Dakshin Haryana Bijli Vitran Nigam v. Bachan Singh, (2009) 14 SCC 793, while considering the claim for counting of service rendered by the workers in the work-charged capacity towards pensionary benefit scheme, in K.J.S. Buttar v. Union of India, (2011) 11 SCC 429 : (2011) 2 SCC (L&S) 224, while considering the claim for war injury pension to pre-1996 retirees; in Kallakkurichi Taluk Retired Officials Assn. v. State of T.N., (2013) 2 SCC 772, while considering the case as to the differentiation in the

grant of dearness allowance to those who retired from service prior to 1.6.1988, in K.C. Bajaj v. Union of India, (2014) 3 SCC 777 while considering the claim for inclusion of non-practising allowance as part of pay in the case of those retired from service before 1.1.1986, where the classification of pensioners on the basis of date of retirement were held unreasonable.

21. In the present case the classification suffers from invidious discrimination and arbitrariness in as much as there is a mini classification carved out from the midst of employees retired before and after two particular dates, which cannot in any manner be justified. There cannot be any micro or mini classification among equals to insist minimum qualifying service on one set of persons from out of those who do not require such qualifying service for a the purpose of grant of pension. In the absence of any justifiable reason to support such a classification, the amendments effected to the extent it sets apart the group of persons like petitioner is liable to be declared unconstitutional.

22. Even though the petitioner had raised the contention that persons like petitioner had been excluded from the purview of pension scheme without any rationale, the respondents have not stated anything to support the discriminatory treatment meted out to the persons like petitioner. The petitioner is a person who retired from service just like others who retired from service from the society and other co-operative societies on various dates subsequent to his date of retirement or like those who retired before 1993. All those who retired prior to 1993 were allowed to remit the contribution and avail the benefit irrespective of their joining the CPF, while in the case of petitioner, he had joined the CPF in the year 1988, as soon as it was implemented in his society. Denial of pension only to a very few employees insisting a different yardstick in their case in the matter of qualifying service is discrimination. In case pensionary benefits are allowed on the basis of requisite number of years of qualifying service that should be made applicable in the case of all those who retied from service. In case the minimum qualifying service is taken away, that also should be made applicable to all those who retired from service, especially, rather than excluding those who happened to retire from service in a 5 year span of 4.6.1993 to 31.3.1998.

23. In the above circumstances, it is declared that Ext P3, P5 and the ''Kerala Co-operative Societies Employees Self Financing Pension Scheme 1994'' to the extent those insist minimum qualifying service for eligibility for pension in the case of those employees of cooperative societies who retired from service during the period from 4.6.1993 to 31.3.1998, alone while there is no such minimum qualifying service for others who retired prior to 4.6.1993 and subsequent to 31.3.1998 are unconstitutional, arbitrary and discriminatory. Therefore there shall be a direction to Government to take appropriate action to see that the benefit of pension scheme is extended to the class of persons like petitioner who retired from service from 4.6.1993 to 31.3.1998 without insisting minimum qualifying service.

24. Accordingly it is declared that the additional petitioners-the legal heirs of 1st

petitioner will be entitled to the benefits under the scheme irrespective of the number of years of qualifying service as in the case of those who retired from service before 4.6.1993 and after 31.3.1998. It will be open for the pension board to collect contribution from the society in which the deceased first petitioner was working, in case there is any deficiency towards the fund for the purpose of payment of pension to the second petitioner. Effective steps shall be taken to disburse the pension due to the petitioners within a period of three months from the date of receipt of a copy of the judgment.

25. The writ petition is allowed accordingly.