(2010) 12 MAD CK 0031

In the Madras High Court

Case No : Writ Petition No. 3450 of 2003

N. Sankaran APPELLANT

Vs

Sri Hari Mills (P) Ltd. and The Provident Fund Commissioner Employees' Provident Fund Organisation RESPONDENT

Date of Decision : 23-12-2010

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

Citation : (2011) 3 LLJ 291 : (2011) WritLR 289

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : N.P.K. Menon, for the Appellant; K. Gunasekar, for RR2 and 3 and M. Murugan, for R1, for the Respondent

Final Decision : Allowed

Judgement

S. Nagamuthu, J.—The Petitioner was an employee in the 1st Respondent mill and he retired from service on attaining the age of

superannuation on 31.12.1994. While in service, on 01.09.1959, he joined the Employees'' Provident Fund Scheme and his Account No. Was

TN/1040/43. On his retirement, a sum of Rs. 34,584/- had accumulated in his provident fund account and the same was paid to him. Indisputably,

the Employee''s Family Pension Scheme, 1971 had already come into force in the year 1971, when the Petitioner was in service. When the same

was introduced, an option was given to the employees either to continue to be a member of the Employees Provident Fund Scheme, 1952 [herein

after referred to as ""the EPF Scheme""] or to become a member of Employees'' Family Pension Scheme, 1972. The Petitioner had exercised his

option to continue to be a member of the EPF Scheme and that is how, on his retirement provident fund account was settled as per the EPF

Scheme.

2. While so, the Employees'' Pension Scheme, 1995 was introduced which came into force on 16.11.1995. As per paragraph 6 of the

Employees'' Pension Scheme, 1995, the membership of the said Scheme shall be subject to sub-paragraph (3) of paragraph 1 of the Scheme and

the same reads as follows:

6. Membership of the Employees'' Pension Scheme 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 Fund Scheme, 1952 or of Provident of of

Provident Funds of the Factories and other establishments exempted u/s 17 of the Act or in whose case exemption has been granted under

paragraph 27/27-A of the Employees'' Provident Fund Scheme, 1952; from the date of such membership.

(b) Who has been a member of the ceased Employees'' Family Pension Scheme, 1971 before the commencement of the Scheme from 16.11.95.

(c) Who ceased to be a member of Employees'' Family Pension Scheme, 1971 between 01.04.1993 and 15.11.1995 and opts to exercise his

option under paragraph 7.

(d) Who has been a member of the Employees'' Provident Fund or the Provident Funds of Factories and other establishments exempted by the

appropriate Government u/s 17 of the Act or in whose case exemption has been granted under paragraph 27 or 27A of the Employees'' Provident

fund Scheme, 1952 on 15.11.1995 but not being a member of the Family Pension Scheme opts to exercise his option under paragraph 7.

3. Paragraph 7 of the said Scheme reads as follows:

7. Option for joining the Scheme:

(1) Members referred to under sub-para (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.

(2) Members referred to in sub-paragraph (c) of paragraph 6 who are alive shall have the option to join the Scheme as per the provisions of

paragraph 17 from the date of exit from the employment.

(3) Members referred to in sub-paragraph (d) of paragraph 6 shall have the option to join the Scheme as per the provisions of Paragraph 17 from

16th November, 1995.

4. Now, it is worthwhile to extract paragraph 17 of the said Scheme which reads as follows:

17. Payment on exercise of option:

(1) Beneficiaries of the deceased members of Employees'' Family Pension Scheme, referred to in sub-para (i) of paragraph 7, shall receive higher

of the benefits available under the Employees'' Family Pension Scheme, 1971 and under the Scheme.

(2) Members referred to in sub-paragraph (2) of paragraph 7, shall have the option to join this Scheme by returning the amount of withdrawal

benefit received, if any, together with interest at the rate of 8.5 percent per annum from the date of payment of such withdrawal benefit and date of

exercise of the option, to receive monthly pension as per the provisions of this Scheme.

(3) Members referred to in sub-paragraph (3) of paragraph 7 shall be deemed to have joined the ceased Employees'' Pension Scheme, 1971, with

effect from 01.03.1971 on remittance of past period contribution with interest thereon.

5. After the introduction of the Employees'' Pension Scheme, 1995, the Petitioner wanted to become a member of the said Scheme though he had

already retired and the Provident Fund Account had already been settled in his favour. Considering his request, he was directed to remit the

withdrawal benefit of Rs. 34,584/-together with interest which he had received under the PF Account on 18.05.1995 as per the EPF Scheme.

Accordingly, the Petitioner remitted the entire amount on 13.05.1996. Thereafter, he was hoping that he would be paid the benefits of the

Employees'' Pension Scheme, 1995. But, the Provident Fund Commissioner, Coimbatore by his proceedings in TN/CB/Gr.I/1040/Accounts

dated 26.11.1998, negatived the request of the Petitioner and instead, permitted him to withdraw a sum of Rs. 34,584/-which he had already

remitted on 13.05.1996. Aggrieved over the same, the Petitioner is now before this Court with this writ petition.

6. In the counter affidavit it is stated that as per paragraph 6 of the Employees''

Pension Scheme, 1995, the Petitioner is not eligible to become a

member of the said Pension Scheme. However, by mistake, the Petitioner was asked to remit a sum of of Rs. 34,584/- which was settled in his

favour as per EPF Scheme, 1952. The Central Office gave a clarification in this regard stating that as per paragraph 6 (d) r/w paragraph 7 (3) of

the Employees'' Pension Scheme, 1995, those who were members of the EPF Scheme, 1952 on 15.11.1995 alone are eligible to become a

member of the Employees'' Pension Scheme, 1995. Since the Petitioner ceased to be a member of the Employees'' Provident Fund Scheme, 1952

even on 18.05.1995 itself, he is not eligible to become a member of the Employees'' Pension Scheme, 1995.

7. The learned Counsel appearing for the Petitioner would, however, submit that as per paragraph 6 (d) of the Pension Scheme, 1995, the

Petitioner is eligible to become a member of the said Scheme. The learned Counsel would take me through paragraph 6 (d), 7(3) and 17(3) of the

said Scheme, 1995 to substantiate his contention that the original direction issued to the Petitioner to deposit the withdrawal benefits which he had

received under the EPF Scheme,1952 was right and the impugned order is not correct.

8. But, the learned Counsel for the Respondents, while reiterating the grounds stated in the counter affidavit, would submit that as per paragraph 6

(d) of the Employees'' Pension Scheme, since the Petitioner was not a member of the EPF Scheme, 1952 on 15.11.1995, he is not eligible to

become a member. Therefore, he would pray for dismissal of the writ petition.

9. I have considered the above rival submission.

10. A glance through paragraph 6 (3) would make it abundantly clear that to become a member of the Employees'' Pension Scheme, 1995, the

Petitioner should have been a member of the EPF Scheme, 1952 as on 15.11.1995. But, the Petitioner ceased to be a member long before. Now,

coming to paragraph 17 (3) of the Employees'' Pension Scheme, 1995, it states that in the event of the remittance of past period contribution with

interest thereon, a member referred to in paragraph 6 (d) shall be deemed to be a member of the Employees'' Family Pension Scheme, 1971.

Here, it is sought to be interpreted by the Petitioner that such repayment of contribution together with interest thereon will arise only in the case of retired employees. Therefore, according to him, paragraph 6 (3) of the Employees'' Pension Scheme, 1995 cannot be interpreted in such a way to

say that it will be applicable only to those who were in service on 15.11.1995. This argument does persuade me.

11. A close analysis of the entire Pension Scheme of the year 1995 would go to show that those employees who were members of the erstwhile

Employees'' Family Pension Scheme, 1971 would automatically become members of the Employees'' Pension Scheme, 1995. The Employees

who were members of the Employees'' Provident Fund Scheme, 1952 and who were not the members of the Employees'' Family Pension

Scheme, 1971 and who had already retired from service on 15.11.1995 shall also be eligible for becoming a member of 1995 Scheme by

remitting the entire amount received by him with interest as per the Employees'' Provident Fund Scheme, 1952. For doing so, he has to first of all

become a member of the Family Pension Scheme, 1971 and by becoming such member of Family Pension Scheme, 1971, he will automatically

become a member of the Employees Pension Scheme, 1995 in view of paragraph 44 of the said Scheme. As per paragraph 17 (3), a retired

employee who was not a member of Employees'' Family Pension Scheme , 1971 can become a member of the said Scheme after remitting the

past period contribution with interest thereon which he had received under the EPF Scheme, 1952. In the instant case, the Petitioner, by making

such remittance of the past period contribution together with interest thereon, is deemed to have become a member of the Employees'' Family

Pension Scheme, 1971 with effect from 01.03.1971. Now, as per paragraph 44 of the Employees'' Pension Scheme, 1995, the erstwhile

Employees'' Family Pension Scheme, 1971 ceased to be in force from 16.11.1995. However, as per paragraph 6 (b) and paragraph 44(2) of the

Employees'' Pension Scheme, 1995, the members of the erstwhile Employees'' Family Pension Scheme, 1971 shall automatically become the

members of the Employees'' Pension Scheme, 1995 and, therefore, they are eligible for the benefits of the said Scheme. In this case, by operation

of paragraph 6(b), 7(3) and 17(3) of the Employees'' Pension Scheme, 1995, since the Petitioner is deemed to have become a member of the

Employees'' Family Pension Scheme, 1971 with effect from 01.03.1971, he has automatically become a member of the Employees'' Pension

Scheme, 1995. So, he is eligible for the benefits of the said scheme. In such view of the matter, the impugned order is liable to be quashed and the

writ petition accordingly succeeds.

12. In the result, the writ petition is allowed; and the impugned order is set aside. No costs.

