(2008) 10 MP CK 0022

In the Madhya Pradesh High Court

Nazar Mohammad APPELLANT

Vs

M.P. State Road Transport Corporation and Others RESPONDENT

Date of Decision : 16-10-2008

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 6, 6A

Citation : (2008) 119 FLR 1156 : (2009) 2 LLJ 235

Hon'ble Judges : S.C. Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.C. Sharma, J.—The petitioner before this Court who is retired from the services of Madhya Pradesh State Road Transport Corporation has filed this present petition claiming pension.

2. The contention of the petitioner is that he was appointed in the year 1963 as a Carpenter in Gwalior Engineering Works, Gwalior which was later on merged with the Madhya Pradesh State Road Transport Corporation in the year 1970. The petitioner has stated that thereafter he was continued as a Carpenter grade-I till his retirement i.e. till June 10,2000. The petitioner has categorically stated in the writ petition that deduction of provident fund contribution from the salary were made every month in his service Career and he was allotted the account No. MP/225/7845. The grievance of the petitioner is that under the provisions of Employees Provident Fund and Miscellaneous Provisions Act, 1952, a pension scheme has been framed known as Employees Family Pension Scheme, 1971 and thereafter another pension scheme has also been framed in the year 1995 which is in force with effect from November 16, 1995 and the respondents have not granted him pension as per the scheme of 1971 or under the scheme of 1995. The petitioner has further stated that he fulfills all the requisite conditions as per the scheme of 1971 as well as per the scheme of 1995 and therefore, he is entitled for pension along with arrears.

3. The respondent No. 1 and 2 - Corporation have filed a reply and it has been staled that the petitioner was not a member of the pension scheme of 1971 and the scheme of 1971 does not entitle a workman automatically for grant of pension. It is also averred that for grant of pension under the scheme of 1971, the existing employees were required to furnish option as per Rule 3 of the Scheme of 1971 and the petitioner has not submitted his option for becoming a member under the scheme of 1971 nor deductions have been made towards the Family Pension Scheme, 1971 and, therefore, the petitioner is not entitled for any relief of whatsoever kind and the writ petition deserves to be dismissed.

4. The respondent No. 3 - Provident Fund Commissioner has also filed a reply and it has been stated by the respondent No. 3 that the petitioner was in service prior to coming into force the Employees Family Pension Scheme, 1971 and he has not opted membership of the pension scheme of 1971. It has also been categorically stated that no contribution has been made towards the Employees Family Pension Scheme, 1971 nor under the Employees Family Pension Scheme. 1995 and, therefore, question of granting pension to the petitioner who was not a member of either of the scheme does not arise. It has also been stated by respondent No. 3 that an amount of Rs. 1,36,456/- towards provident fund dues has been paid to the petitioner on February 16, 2004.

5. Heard learned Counsel for the parties and perused the record

6. In the present case, it is not in dispute that the petitioner was appointed as a Carpenter in the year 1963 at Gwalior Engineering Works, Gwalior and the petitioner''s services were later on merged with the Madhya Pradesh State Road Transport Corporation and he has continued in service till his retirement i.e. upto June 10, 2000. The petitioner was certainly a member of the provident fund scheme as per provisions of Employees Provident Funds and Miscellaneous Provisions Act, 1952.

7. The Central Government in exercise of powers conferred by Section 6-A of the Act of 1952 has framed Employees Family Pension Scheme, 1971 for providing pension to the employees covered under the Act of 1952. Rule 3 of the aforesaid Section leads as under:

3. Membership of the Family Pension Fund- Subject to sub-paragraph (3) of Paragraph 1, this Scheme shall apply to every employee

(a) Who becomes a member of the Employees'' Provident Fund or Provident Funds of factories and other establishments exempted u/s 17 of the Act on or after the 1st day of March, 1971;

(b) who has been a member of the Employees'' Provident Fund or Provident Fund of factories and other establishments exempted u/s 17 of the Act immediately before the commencement of this Scheme and opts to exercise his option under Paragraph 4:

Provided that an employee who attains the age of more than 59 years on the date on which he would, but for this proviso, have become eligible for membership or have been required to become a member of this Scheme shall not be eligible for membership under this Scheme.

Rule 4 of the aforesaid Section also provides for exercising option by an employee and the same was introduced as stated earlier in the year 1971 and the petitioner did not exercise his option for joining the pension scheme of 1971. The scheme of 1971 also provides for contribution to the family pension fund of the employees. The employer is required for the first instance to pay both the contributions payable to the Family Pension Fund by himself and also on behalf of the member of the Family Pension Fund employed under him and in the instant case, as the petitioner did not submit any option at relevant point of time, no deduction till his retirement was made by the employer and deposited with the Provident Fund Commissioner. In the year 1995 again in exercise of power conferred by Section 6 of the Act of 1952, the Central Government has introduced Employees Pension Scheme, 1995 and the earlier pension scheme of 1971 ceased to operate with effect from November 16, 1995. Rule 6 of the Pension Scheme of 1995 reads as under:

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 November 16, 1995 becomes a member of the Employees'' Provident Fund Scheme, 1952 or of the Provident Funds of the factories and other establishment exempted by the appropriate Government u/s 17 of the Act, or in whose case exemption has been granted under paragraph 27 of 27-A to the Employees'' Provident Funds 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 this Scheme from November 16, 1995;

(c) who ceased to be a member of the Employees'' Family Pension Scheme, 1971 between April 1, 1993 and November 15, 1995 and opts to exercise his option under paragraph 7;

(d) who has been a member of the Employees'' Provident Funds or of Provident Funds of factories and other establishment exempted by the appropriate Government u/s 17 of the Act or in whose case exemption has been granted under paragraph 27 or 27-A of the Employees'' Provident Funds Scheme, 1952, on November 15, 1995 but not being a member of ceased Employees'' Family Pension Scheme, 1971 opts to exercise his option under paragraph 7.

The petitioner was not a member of the earlier scheme of 1971 nor any option at any point of time was submitted by the petitioner for becoming a member of the scheme. As stated earlier, deduction has also not been made towards pension funds in the case of petitioner.

8. Learned Counsel for the petitioner has relied upon a judgment delivered by

this Court in the case of Smt. Kamala Bai Vs. Secretary, Madhya Pradesh Electricity Board and Others, and submitted that the petitioner therein was entitled for pension even though he has not submitted his option at the time when the scheme was introduced. In the aforesaid case decided by Division Bench of this Court, deductions were made from the wages of the employee therein towards pension fund and, therefore, it was held by Division Bench of this Court that because the deductions were made from the wages of the employee, his contribution to the said fund would be deemed exercise by him his option to be a member of the said fund. However, in the present case, the petitioner did not submit any option at any point of time nor any deduction towards pension funds was made at any point of time from the salary of the petitioner. Therefore, judgment cited by the learned Counsel for the petitioner is distinguishable in the facts and circumstances of the present case.

9. Learned Counsel for the respondents has relied upon a judgment delivered by this Court in the case of Jugi Bai (Smt.) v. Municipal Corporation 1998 (2) MPWN 197, wherein, the claim of pension to a widow was turned down on the ground that her husband was not a member of the pension scheme and he did not make any contribution under the scheme at any point of time. Learned Counsel for the respondents has also relied upon a judgment of the Division Bench of the Bombay High Court in the case of Smt. Smita Vaidya Vs. The Regional Provident Fund Commissioner, Thane and Others, . In the aforesaid case, the Division Bench of the Bombay High Court has held that the scheme is applicable to those employees who have opted for the scheme and the same cannot be made applicable and no deduction can be made towards the said scheme unless or until the employee expressly exercises option to join the scheme. Paragraph 3 of the aforesaid judgment read as under at p. 1049 of LLJ:

4. We have considered the rival submissions. It is not possible to countenance that the petitioner''s husband continued to be governed by the family pension scheme of 1971, notwithstanding the said scheme having ceased to operate from July, 1987 in view of decision of this Court in Mafatlal Group Staff Association Bombay and Ors. v. Regional Commissioner. Provident Fund, Maharashtra and Goa and Ors. 1988 (56) FLR 280 this Court was called upon to consider the validity of paras 3(a) and (b) of the said scheme. This Court held that so much of the scheme that compels an employee to join the scheme was ultra vires. This Court went on to observe that para 3(b) will have to be read as "(b) who is a member of the Employees'' Provident Fund or of Provident Funds of factories and other establishments exempted u/s 17 of the Act and opts to exercise his option under paragraph 4." Besides taking this view, this Court further observed that "no deduction can be made for the Family Pension Scheme unless the employee opts to join the same. In other words, this Court authoritatively held that no deduction can be made towards the said scheme unless the employee concerned expressly exercise option to join the scheme. The consequences of such a direction is that the scheme would operate only in respect of those employees who have expressly consented and opted to join the scheme and not otherwise.

10. Keeping in view the aforesaid, as the petitioner has not opted at any point of time to become a member of the Family Pension Scheme, 1971 or the Scheme of 1995 nor deductions have been made from the salary of the petitioner at any point of time, the question for directing the respondents to grant pension to the petitioner does not arise. The petitioner has retired on attaining the age of superannuation on June 10, 2000 and for the first time he has submitted representation on July 21, 2003 claiming pension from the respondents. In his representation also, he has not stated that he has opted for Family Pension Scheme, 1971 and he simply stated that some of the employees who were serving with the petitioner are receiving pension and, therefore, he is also entitled for pension under the pension scheme framed under the provisions of Act of 1952. Merely because, some other employees who were working along with the petitioner are receiving pension, will not be entitled the petitioner to claim pension as the petitioner has not exercised option for grant of pension nor any deduction was made from the salary of the petitioner at any point of time while he was in service. Therefore, no case is made out for interference in the matter.

Resultantly, the writ petition is dismissed. No order as to costs. Certified copy as per rules.

