

(1997) 01 KAR CK 0040
In the Karnataka High Court
Case No : Writ Petition No. 25668 of 1996

Rahamat Be (Smt.)

APPELLANT

Vs

Office of the Regional Provident Fund Commissioner,
Bangalore and Another

RESPONDENT

Date of Decision : 02-01-1997

Acts Referred:

Citation : (1997) 01 KAR CK 0040

Hon'ble Judges : V.P. Mohan Kumar, J

Bench : Single Bench

Advocate : Sri S.B. Mukkanappa, for the Appellant; Sri D.V. Shailendra Kumar and Sri Basavaraj V. Sabarad, for the Respondent

Judgement

V.P. Mohan Kumar, J.—The husband of the petitioner herein late Abdul Sattar was employed by the K.S.R.T.C. He joined service on 6-7-1962. With effect from 1-3-1971 the Employees' Provident Fund Pension Scheme was made applicable to the Corporation as well. It is the case of the petitioner that her husband had joined this Scheme and deduction from his salary were being made for the purpose of contribution to the Fund ever since September, 1971. Her husband died on 4-7-1973. It is seen that in 1995 the petitioner applied to the first respondent to settle the family pension due to the family of the deceased Abdul Sattar. By Annexure-C order the same was rejected with the following endorsement :

"14.A. The claimant is not eligible to monthly pension since the deceased member has not completed the qualifying service (Minimum reckonable service of two years)".

She repeated another representation Annexure-D followed with a representation Annexure-E to the employer of her late husband namely the K.S.R.T.C. Finding that these representations have not been acted upon, the petitioner has moved this Court for appropriate relief.

2. The grievance of the petitioner in short is that despite the collection of contribution to Family Pension Fund from March, 1971, the pensionary benefit is illegally being withheld by the respondents.

3. The employee in question was a member of the exempted Pension Fund Scheme operated by the employer K.S.R.T.C. By virtue of paragraph 3 of Family Pension Scheme, 1971, the said scheme applied to the deceased with effect from 1-3-1971. Under Para 4 thereof the employee was given option to join the Scheme. Sub-para (2) of Para 4 grants a period of six months from 1-3-1971 to exercise the option. It means a person who desires to be a member of the Scheme as on 1-3-1971 need exercise his option before 1-9-1971. Para 4(3) casts a duty on the employer to collect the option within the period specified in Para 4(2) and forward the same before the period stipulated under Para 4(2). In other words, an option exercised by a person even if on 1-3-1971 need be forwarded by the employer before 1-9-1971. Para 15 casts further duty on the employer to "send within fifteen days of the commencement of the Scheme to the Commissioner a consolidated return of the employees entitled to become members of the Pension Scheme. A Scheme is said to commence with respect to an employee only when he joins the same. A conjoint reading of Paras 4(2), 4(3) and 15 would show that when the Scheme is introduced for the first time on 1-3-1971 and thereafter it will enable the employer to send the contemplated statement by 15-9-1971. If the statement is sent by that time it has to be reckoned as valid and it could be deemed to be so with effect from 1-3-1971 the date of introduction of the Scheme. Para 28 deals with the entitlement for family pension. It states that if a member dies within the period of reckonable service but before attaining 60 years family pension shall be paid provided there has been contribution for not less than 2 years (as the paragraph stood at the relevant time). The reckonable service is held to be two years at the relevant time.

4. Now para 2(f) defines reckonable service. It means service rendered by a member in respect of which contributions are payable under the Scheme. Now, if a member has opted to join the Scheme with effect from 1-3-1971 the Scheme itself indicates that the option statement need be submitted within six months thereof and read with Para 15 thereof the period stands extended upto 15-9-1971. Therefore the fact that the employer had not submitted the statement then and there at the commencement of the Scheme i.e., 1-3-1971 will not have any penal consequence as far the right of the employee is concerned. We may advert to Para 10 of the Scheme as well. Para 10 reads thus :

"10. Payment of contribution - (1) The employer shall, in the first instance, pay both the contribution payable to the Family Pension Fund by himself and also, on behalf of the member of the Family Pension Fund employed by him directly or by or through a contractor, the contribution payable to the Family Pension Fund by such member.

(2) In respect of employees employed by or through a contractor, the contractor

shall recover the contribution payable to the Family Pension Fund by such employees and shall pay to the principal employer the said amount together with an equal amount of contribution payable to the Family Pension Fund by the Employer.

(3) It shall be the responsibility of the principal employer to pay both the contribution payable to the Family Pension Fund by himself in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor."

Hence if the employee has exercised the option some time after 1-3-1971 the employer is bound to pay both the contribution for himself and for and on behalf of the employee in the first instance. It is immaterial whether the employee has made his contribution in this behalf or not. The responsibility is that of the employer to contribute to the fund. It may further be seen that as per Para 12 of the Scheme the employer is entitled to recover the member's share of contribution by deducting the same from his wages. This provision clearly indicates that an employee is to be protected if once he has joined the scheme and the duty is on the employer to remit the contribution. It also indicates that there is no penal consequence if the option exercised is not forwarded to the Commissioner as soon as it is done by the employee.

5. Thus in a given, it has therefore to be held that it is shown that the employee has exercised his option to join the Family Pension Scheme after its coming into force, the employer should exercise the right conferred on him under Para 10 cited above and thereafter the employer should submit the return to the Competent Authority as contemplated under Para 15 before the due date. And if he has done so, it has to be treated as if it is made by him from the date the employee exercised the option. The fact that it did not reach the Corporation forthwith is of no consequence as far as the right of the employee is concerned. This is the reason why Para 10 provided that the employer shall pay the contribution of the employee as well at the first instance. If we are to hold that the period of reckonable service will commence only after such actual receipt of the amount of contribution by the Corporation it would amount to rendering Paras 4, 10 and 15 futile and otiose.

6. Now in the instant case, it is seen that the employer has remitted the Family Pension Fund after recovering the same from the month of October, 1971. As can be seen from Para 10 of the Schemes the recovery and remittance of the contribution is the responsibility of the employer. If there is a default on the part of the employer, the employee cannot be visited with any penal consequence. If the worker has opted the Scheme the employer ought to have commenced the contribution. It is seen from the facts which were made available to me, the deceased employee is seen admitted to the Scheme on 31-8-1971. As stated the employer himself has a grace period of six months under Para 4(2) and fifteen days under Para 15 to remit the amount. Therefore any shortage to this extent is reckoning the reckonable service has to be condoned. In the instant case, the

employee died on 4-7-1973. It means reckoning the above said period the employee should have deemed to have completed the reckonable service of two years. The stand taken by the first respondent to the contrary is hence not sustainable.

7. The consequential result would be that it should be held that the family of the deceased employee is entitled to receive the pension as quantified under Para 28 of the Scheme.

8. Mr. Shailendrakumar, learned Counsel for the first respondent submitted that the entire contribution made by the employer on behalf of the deceased employee were refunded to the employer under Para 33 of the Scheme on 16-1-1996. Besides, it is seen that the K.S.R.T.C. the employer submitted the Statutory Contribution Card contemplated under Para 14 of the Scheme only on 4-9-1995 showing the break up of the contribution on behalf of the employee. The whole complication in settling the claim of the family arose solely due to the negligence and criminal laches on the part of the employer. No doubt the petitioner has also delayed in approaching this Court, but it does not mean that the employer can flout the statutory obligation casts upon him under the Family Pension Scheme, 1971. If the first respondent is called upon to pay the pension as quantified under Para 28, after it having refunded the amount to the employer it will not be wholly just. All the same it is seen from the records that it has released only the share of contribution of the deceased worker which is Rs. 198/-. The employer's contribution is still with the first respondent. Taking into all circumstances I direct that the employer shall remit the amount refunded to it by the first respondent namely the single share contribution of the deceased employee at Rs. 198/- by 31.1.1997. The petitioner shall be entitled to receive the family pension as quantified in Para 28 of the Scheme in accordance with law. The petitioner shall be entitled to recover the cost of the proceedings from the 2nd respondent. Advocate fee is Rs. 1,000/-. The writ petition stands disposed of as above.