
(2009) 01 P&H CK 0176
In the Punjab And Haryana At Chandigarh

Regional Provident Fund Commissioner	APPELLANT
Vs	
Gurnam Singh and Others	RESPONDENT

Date of Decision : 21-01-2009

Acts Referred:

Citation : (2009) 3 LLJ 33 : (2009) 3 RCR(Civil) 554 : (2009) 7 SLR 463

Hon'ble Judges : Mahesh Grover, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mahesh Grover, J.—This regular second appeal which is barred by a delay of 21 days in filing and 22 days in re-filing is directed against the judgments of the learned trial Court dated June 7, 2006 and that of the learned first Appellate Court dated May 21,2008.

2. The plaintiff/respondent No. 1 filed a suit seeking declaration to the effect that he is entitled to all the benefits of monthly pension under Family Pension Scheme which has been withheld illegally by the appellant pertaining to his account No. HR- 5832/8. It was pleaded by him that the aforesaid benefits have to be granted to him for the period of service which he had rendered. The demand of the appellant for depositing a sum of Rs. 24,370/- was also assailed by him and prayed that the said demand be declared as illegal. A prayer for mandatory injunction was also made to direct the appellant to unconditionally release all the benefits due to him. The plaintiff/respondent No. 1 pleaded that he was appointed as General Attendant at Sainik Parivar Shiksha Kender Va Bal Bhawan, Chhachhrauli on December 14, 1973 and he rendered his services till January 31, 2002 as Chowkidar. Prior to the joining of his service with respondent No. 2, the plaintiff was in the Indian Army. He prayed for his entitlement of] monthly pension under the scheme.

3. The appellant and respondents No. 2 and 3 denied the claim of the plaintiff/respondent No. 1 and relied on para 10 of the Employees Pension Scheme, 1995

(hereinafter referred to as "the scheme"), which is reproduced hereinafter, to contend that the respondent/plaintiff was not covered in the scheme. It was pleaded that the scheme under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act") was taken up by the Regional Provident Fund Commissioner, Haryana in the year 1990, who informed that the scheme would be applicable from August 1, 1992. Respondents No. 2 and 3 deposited their share of the contribution w.e.f. August 1982 to March 1990. The employees including the plaintiff were asked to deposit their share of EPF for the same period but they expressed their inability to deposit it. The plaintiff/respondent, however, started contributing his share w.e.f. April 1990.

4. The learned trial Court framed the following issues:

1. Whether the plaintiff is entitled to all the benefits as prayed? OPP
2. Whether the family pension scheme is illegally withheld by the defendants as alleged? OPP
3. Whether the demand of the defendants from the plaintiff for depositing the sum of Rs. 24,370/- is illegal, null and void? OPP
4. Whether the plaintiff is entitled for the relief of mandatory injunction as prayed? OPP
5. Whether the present suit is not maintainable? OPD
6. Relief.

5. Upon appraisal of the evidence before it, the learned trial Court came to the conclusion that the plaintiff/respondent was entitled to the benefits of the scheme. While determining the findings on issues No. 1 to 4 it was noticed by the learned trial Court that vide letter Exhibit D-3 the appellant had made the scheme applicable from April 1, 1982 and vide letter Exhibit P-I the plaintiff/respondent and other employees who had expressed their inability to deposit the EPF w.e.f. 1982 onwards were informed about their EPF account and a request had been made to the appellant that the concerned department must deposit the share of the concerned employees in EPF account. It was also noticed that concededly the EPF had been released in favour of the plaintiff/respondent and the sole dispute was with regard to the family pension @ Rs. 330/- to which the entitlement was claimed from the date of superannuation, i.e. January 31, 2002.

6. The claim of the plaintiff/respondent was denied only on the ground that he had attained the age of 58 years in the year 2000 and on the said date he had not completed the eligible service of 10 years as per Rule 12-C of the scheme. The contribution made by the plaintiff/respondent w.e.f. 1990 was accepted by the appellant without any protest. He was given account number for the benefit of the Family Pension Scheme. At no point of time the plaintiff/respondent was informed that he was not entitled to become a member of the scheme. In fact, a

specific waiver had been made by the appellant regarding the share of the employees which was required to be deposited w.e.f. August 1982. In this view of the matter, the appellant is clearly precluded from depriving the plaintiff/respondent of his entitlement to the family pension.

7. Learned Counsel for the appellant has placed reliance on Para 10 of the scheme which reads as below:

10. Determination of pensionable service.:

(1) The pensionable service of the member shall be determined with reference to the contributions received or receivable on his behalf in the Employees' Pension Fund.

(2) In the case of the member who superannuates on attaining the age of 58 years, and/or who has rendered 20 years pensionable service or more, his pensionable service shall be increased by adding a weightage of 2 years.

It was contended by him that in accordance with the provisions of Para 10 since the plaintiff/respondent neither completed 20 years pensionable service nor did he complete the requisite 10 years to enable him to be entitled to the benefit of the scheme, the judgments of the Courts below are erroneous.

8. I am afraid the contention of the learned Counsel for the appellant is misplaced. Para 10 contemplates the grant of the benefit to a member who superannuates on attaining the age of 58 years, and/or who has rendered 20 years pensionable service or more, which shall be increased by adding a weightage of two years. Pensionable service has been defined in the scheme to mean as follows:

"Pensionable service" means the service rendered by the member for which contributions have been received or are receivable.

9. Concededly, as per the showing of the learned Counsel for the appellant if an employee had completed 10 years of service and contributed to the scheme, he was entitled to the benefit of the family pension. It is the case of the appellant that the plaintiff/respondent had contributed to the scheme for 9 years, therefore, if the benefit of Para 10 is awarded to the appellant by giving weightage of 2 years, he completes 11 years and becomes entitled to the benefit of the scheme. That apart, the appellant is estopped by its conduct on account of the fact that it had initially waived off the period from 1982 to 1990 enabling the employees to become members of the scheme without depositing the amount.

10. In view of the aforesaid discussion, the findings recorded by both the Courts below cannot be faulted with. The appeal is dismissed on merit as well as on the point of delay.