(2010) 11 SHI CK 0395

In the High Court Of Himachal Pradesh

Case No : CWP (T) No.3853 of 2008

Saroj Kumari APPELLANT

Vs

H.P. State Electricity Board and Others RESPONDENT

Date of Decision : 15-11-2010

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 16, 16(2)

Citation : (2010) 11 SHI CK 0395

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.K. Sharma, J.

CMP(T) No. 463 of 2010

1. Reply not filed.

2. Heard.

3. Allowed. Consequently, the documents mentioned in the application being Annexures RA-4/A and RA-4/B are ordered to be taken on record.

4. The application stands disposed of. CWP(T) No. 3853 of 2008

5. The petition has been filed for grant of the following substantive reliefs vide para 7(i) and (ii):

7(i) That the impugned order dated August 29, 1996 and June 22, 1987 may be quashed and set aside and the Respondents directed to pay to the applicant Family Pension from the due date along with all arrears within a reasonable time.

(ii) That the interest at the rate of some Nationalised Bank may be paid to the applicant on the delayed payment of the Family Pension.

6. In reply, the following stand has been taken by Respondents No. 1 to 3 vide preliminary objection No. (v) and para 6(ii) on merits:

(v)In context, the replying Respondents submit with utmost respect that the husband of the applicant herein (Sh. Ramesh Chand) was employed as Mixer Operator with the replying Respondents. The said Sh. Ramesh Chand was the member of Employee''s Provident Fund Scheme 1971. the deceased namely Sh. Ramesh Chand defaulted in the payment of membership of the fund on and w.e.f. 10.1.84 to 24.1.85 in as much as the deceased had absented himself from duty. However, the said period was regularised by the competent authority by sanctioning extra ordinary leave (leave without pay) vide order dated 5.6.85, a copy of which is placed on record as Annexure RA-I. On 25.1.85 the said Sh. Ramesh Chand died. The family pension case of the deceased workman was recommended and sent to the Provident Fund Commissioner, Shimla vide letter dated 6.6.87, a copy of which is annexed hereto as Annexure RA-2. The Asstt. Provident Fund Commissioner Shimla vide his letter dated 22.6.87, a copy of which is annexed hereto as Annexure RA-3, observed "that non contribution period of late Sh. Ramesh Chand exceeds one year. This non-contribution period is a break in reckonable service of family pension and cannot be regularised in any circumstances. So the member was entitled to withdrawal benefit which has been settled for Rs. 795/-on dated 2.6.87." since the competent authority to consider and grant the family pension has since rejected the claim for family pension being not covered under the Employees Family Pension Scheme, 1971, therefore, the O.A. Is not maintainable and deserved only dismissal.

6(ii)It is correct that the husband of the applicant late Shri Ramesh Chand was serving in HPSEB. The deceased was appointed as workcharged Helper w.e.f. 26.10.1968 and Mixer Operator w.e.f. 23.8.78 after prolonged illness. The matter for release of family pension was taken up with the Assistant Provident Fund Commissioner, Shimla by the Accounts Officer (Fund) HPSEB, Shimla vide his letter No. HPSEB/F&A/Family Pension-Ramesh Chand/86-4598-4602 dated 8.8.86, a copy of which is placed as Annexure RA-5, but the same was rejected on the grounds that the last break of non contribution period exceeding on e year cannot be regularised in any circumstances since the deceased remained absent from duty w.e.f. 10.1.84 to 24.1.85. The absence period w.e.f. 10.1.84 to 17.1.84 was although regularised by sanctioning leave of kind due to him, but the remaining period was regularised by sanctioning of E.O.L. As no other kind of leave was there in his credit (copy annexed as RA-I).

7. In reply, the following stand has been taken by Respondents No. 4 and 5 vide paras 8 and 10:

8. In reply to para 6(iv) and (v) it is humbly submitted that the averments made therein which do not relate to the replying Respondents are denied for want of knowledge. Further letter dated 6.6.87, having been written to Assistant Provident Fund Commissioner by the Chief Accounts Office being a matter of record need no reply. It is further submitted that it has been averred in letter

dated 6.8.96 written by the regional Provident Fund Commissioner to Accounts Officer that in terms of the record available with the Employees Provident Fund Organization, Electrical Division Binwa Project Utrala Nurpur was issued EPF Code No. HL-43 by Regional Provident Fund commissioner Chandigarh. The management of said project was not making compliance of Employees Provident Fund and Misc. Provision Act, 1952. It was further submitted that the management of Electrical Division Binwa Project Utrala Nurpur has neither deposited any money of EPF and FPF in this office or in any individual or nor submitted any returns in respect of the staff from the date of coverage. It was also submitted that n o money exists standing against the above mentioned Code No. of electrical Division Binwa Project Utrala Nurpur. The Regional Provident Fund Commissioner asked the Respondents 1 to 3 to settle the claim of the Petitioner at their own level without counting any past EPF accumulation. It is further submitted tht also in terms of Section 16 especially Section 16(2) of the EPF and MP Act, 1952, HPSEB is an excluded establishment and in view of the said fact also pension is to be paid to the Petitioner by Respondents 1 to 3. Rest of the averments are denied.

10. In reply to Paras 6(vii) A to G, it is humbly submitted that as has been averred in reply to Para (iv and v) supra, that at no point of time any contribution as per the EPF and MP Act, 1952 was made by the Electrical Division Binwa Project Utrala Nurpur as the same was communicated to Accounts Officer of Respondents 1 to 3 on 6.8.1996. Further also the HPSEB is an excluded establishment u/s 16(2) of the EPF and MP Act 1952 and Respondent No. 1 to 3 are liable to the payment of pension to the Petitioner. The Respondents 1 to 3 cannot shift their liability upon Respondents 4 and 5. The Respondent No. 4 and 5 have to function with in the frame work of EPF and MP Act 1952 and EPF Scheme. It is further submitted that the petition against the Respondents 4 and 5 are neither competent nor maintainable which ought to be dismissed outrightly.

8. The husband of the Petitioner, late Shri Ramesh Chand, was working as Mixer Operator on work charged basis on the establishment of Respondents No. 1 to 3, particularly Respondent No. 3. Unfortunately, he died during harness on 25.01.1985. He was covered under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (in short ''the EPF and MP Act, 1952''). Thus, on his death the Petitioner was entitled for the amount of employees'' provident fund, besides family pension. Though as per communication dated 27th March, 1987, Annexure A-5, a sum of ` 8281/-was remitted to her by Respondents No. 1 to 3 on account of final payment of CPF balance alongwith Board''s (HPSEB''s) matching contribution and interest thereon, yet regarding family pension it was stated that the case was sent to Assistant Provident Fund Commissioner, Shimla, who had requested to supply the information for the period 10.01.1984 to 25.01.1985, during which the said Shri Ramesh Chand remained ill.

9. It is apparent from the above coupled with copy of letter dated 22nd June, 1987, Annexure RA-3, addressed by the Assistant Provident Fund Commissioner,

Shimla, to the Chief Accounts Officer, HPSEB, Shimla, that family pension in favour of the Petitioner was denied by Respondents No. 4 and 5 solely on the following ground:

The non-contribution period of late Sh. Ramesh Chand exceeds one year as this is evident from 7 FPF and in your letter No. DNR/Pen-Ramesh Chand/87-4266-70 dated 28-4-87. this non-contribution period is a break on reckonable service of family pension. The last break of exceeding one year can not be regularised in any circumstances. So, member was entitled to withdrawal benefit which has been settled for Rs. 795/-on dated 2-6-87.

10. However, when the authenticity of the aforesaid communication dated 22nd June, 1987, Annexure RA-3, was disputed on behalf of Respondents No. 3 and 4, the following order was passed by this Court on 18.10.2010:

In compliance to order dated 05.10.2010, passed by this Court, Mr. P.K. Aggarwal, Commissioner, Provident Fund, H.P. Shimla and Mr. M.P. Sood, Secretary, HPSEB Limited are present in person. Before the matter is ordered to be taken up for final hearing, Respondent No. 1, H.P. State Electricity Board Limited and Respondent No. 5 Assistant Provident Fund Commissioner, Kasumpti, Shimla are directed to produce the original letter No. FPF:Cell/HL-43/1211-12, dated 22.06.1987 (Annexure RA-3), sent by the Assistant Provident Fund Commissioner to the Chief Accounts Officer, H.P. State Electricity Board and office copy thereof respectively in the Court within two weeks from today. Rest of the record pertaining to the family pension case of Late Shri Ramesh Chand, husband of the Petitioner be also produced on that day. List on 15.11.2010.

11. Today, whereas, the file containing the aforesaid communication dated 22nd June, 1987, Annexure RA-3, has been produced for perusal of this Court by the learned Counsel for Respondents No. 1 to 3, Respondents No. 4 and 5 have failed to produce office copy thereof on the pretext that the same is not traceable in the office.

12. Now, before the Court Respondents No. 4 and 5 have come up with two fold defences. Firstly, that the husband of the Petitioner, late Shri Ramesh Chand, was belonging to an excluded establishment within the meaning of Section 16 of the EPF and MP Act, 1952, as HPSEB fell within the definition of an excluded establishment. Secondly, it is submitted that no contribution in respect of late Shri Ramesh Chand was ever received in the office of the Provident Fund Commissioner.

13. Thus, it is manifest from the above that contradictory defences have been raised on behalf of Respondents No. 4 and 5, which are self-destructive. To be explicit, firstly, they raised the defence that there was break in service in respect of late Shri Ramesh Chand during the period 10.1.1984 to 25.1.1985, which was exceeding one year and thereby dis-entitling the Petitioner for family pension. However, when this aspect was clarified by Respondents No. 1 to 3, vide communication dated 08.08.1986, Annexure RA-5, on the basis of Office Order

dated 05.06.1985, Annexure RA-1, that late Shri Ramesh Chand was on duly sanctioned leave and there was no break in service, two fold defence, as above, to the effect that firstly he belonged to an excluded establishment and secondly that no contribution towards EPF entitling the Petitioner for family pension was received in respect of late Shri Ramesh chand appears to have been coined. It being so, none of the contentions raised on behalf of Respondents No. 4 and 5 deserves any favourable consideration.

14. In view of the above, the petition is allowed. Consequently, it is directed that Respondents No. 4 and 5 shall pay due and admissible family pension to the Petitioner from the due date within three months from the date of production of copy of this judgment by the Petitioner within one month alongwith interest @ 9% per annum, failing which higher interest @ 12% per annum shall be payable.

15. The petition stands disposed of in the above terms so also the pending CMP(s), if any.