
(2013) 03 DEL CK 0159
In the Delhi High Court
Case No : R.S.A. No. 18 of 2006

Sheela

APPELLANT

Vs

Chairman, DTC

RESPONDENT

Date of Decision : 21-03-2013

Acts Referred:

Citation : (2013) 03 DEL CK 0159

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.K. Shali, J.—This is a regular second appeal u/s 100 CPC against the judgment dated 16.8.2005 passed by the learned Additional Senior Civil Judge dismissing the appeal of the appellant bearing R.C.A. No. 76/2004. The learned counsel for the appellant has contended that a substantial question of law arising from the present appeal is with regard to the interpretation of Clause 9 of the Pension Scheme, Delhi Transport Corporation, applicable to the Central Government employees. The learned counsel has submitted that this court vide order dated 7.2.2011 had permitted the appellant to file a fresh representation in the light of Clause 9 of the aforesaid Scheme to the respondent and the latter was directed to consider the said representation sympathetically. It is contended that despite this direction, the representation has been rejected without considering the fact that the appellant is covered by Clause 9 and is entitled to Pension Scheme. It has now been urged that in terms of Clause 9, the appellant's husband, who was an employee of the respondent, having not been able to exercise the option in terms of the Scheme and admittedly having died, the appellant is prepared to refund the contribution given by the employer and she may be permitted to avail all the benefits of the Pension Scheme of the respondent.

2. This prayer has been opposed by the learned counsel for the respondent, who has contended that there is no question of law involved in the matter, much less substantial question of law. It is contended that the question of interpretation of

Clause 9 and various other provisions of the Pension Scheme have undergone judicial scrutiny right up to the Apex Court which has culminated into a judgment titled Commissioner of Wealth Tax Vs. Prince Muffakham Jah Bahadur Chamlijan, wherein a categorical observation has been passed by the Apex Court that so far as Clause 9 is concerned, it is applicable only to the existing employees, who were on the rolls when the Scheme was implemented.

3. I have carefully considered the submissions of the respective sides and have also gone through the record. In order to appreciate the contention of the learned counsel and to decide as to whether any substantial question of law arises from the appeal, it would be pertinent here to give the brief background of the case.

4. It is not in dispute that the husband of the appellant was an employee of the respondent and he had died on 24.7.1984. The Pension Scheme was notified by the respondent on 27.11.1992. Before the implementation of the Pension Scheme, the respondent's employees were covered by the Contributory Provident Fund Scheme. The Pension Scheme was brought into operation with effect from 3.8.1981. It was observed in Clause 4 that the scheme would be compulsory for all new employees joining DTC with effect from 23.11.1992, that is, the date of sanctioning of the Scheme. Clause 6 laid down that the employees, who have retired on or after 3.8.1981 and the existing employees, who have drawn the employer's share under the E.P.F. Act partly or wholly shall have to refund the same with interest in the event of their opting for the Pension Scheme. The total amount to be refunded by the retired employees/existing employees would be the amount that would have accrued, had they not withdrawn the employer's share. The relevant clause which is in issue is Clause 9 which reads as under:-

If any of the employee of DTC, who does not exercise any option within the prescribed period of 30 days or quit service or dies without exercising an option or whose option is incomplete or conditional or ambiguous, he shall be deemed to have opted the Pension Scheme benefits.....

5. The learned counsel for the respondent has drawn the attention of this court to paragraphs 5 and 13 of the judgment cited by her wherein the question of interpretation of Clause 9 as to whether it is applicable to the existing employees or the employees, who had died or who had retired before 27.11.1992 in harness, was considered. The relevant paragraphs reads as under:-

5. L.P.A. No. 33 of 1998 was an appeal filed before the Delhi High Court by DTC. Along with all other connected matters, the said L.P.A. was heard and a common judgment was passed on 16.3.2000 in all the matters, including those giving rise to the present appeals. Before the Division Bench of the High Court, various questions were raised by the parties. The DTC Retired Employees Association contended that DTC was not entitled to charge interest on the amount of employer's share of provident fund which is required to be refunded by the

retired employees while exercising option to avail the Pension Scheme. The Employees Association also contended that the excess amount of gratuity received by them was not liable to be returned and even if it is to be returned, they were not liable to pay interest on such gratuity. Some of the retired DTC employees had not exercised their option within the stipulated period. They contended that in view of Clause 9 of the Scheme even if they had not exercised their option, they would be deemed to have exercised their option in favour of the Scheme and thus they are entitled to get pension.

.....

13. Based on the above clause, it is contended by appellants' counsel that those employees who retired after 3.8.1981 shall be deemed to have exercised their option for the Scheme and the DTC should direct these retired employees to return the employer's share of provident fund with interest and that they should be brought on the roll of pensioners. Counsel for DTC, on the other hand, contended that Clause 9 has no application to the employees who had retired on or after 3.8.1981, but it is intended for employees who were on the rolls as on 27.11.1992 and were later retired or who quit the service without exercising an option.

6. A perusal of the aforesaid para 13 shows that the contention of the appellant in the said case regarding the applicability of Clause 9 was not accepted by the Apex Court and it held that the Clause 9 is intended for the employees, who were on the roll as on 27.11.1992 and who later retired or quit the service without exercising an option. Although the word "death" is not referred to in the said Clause but that will necessarily, by implication, will have to be read in the said paragraphs or the said words in Clause 9 will have to be interpreted ejusdem generis to the two contingencies visualized by the Supreme Court, otherwise the scheme would become an open-ended scheme. A plain reading of Clause 9 clearly lays down that those employees, who do not exercise any option within the prescribed period of 30 days (30 days will have to be reckoned from the date of implementation/notification of the Scheme, that is, 27.11.1992) or quit service or dies without exercising an option or gives incomplete, conditional or ambiguous option, they shall be deemed to have opted for the Pension Scheme. Obviously, the provision being benevolent sub-ordinate legislation, the benefit has been extended to the persons or to the families of those persons, who died or who on account of various reasons are able to give only conditional or ambiguous option to the department. If the interpretation given by the learned counsel for the respondent is accepted to be correct then even if a person failed to exercise option within the stipulated period of 30 days, yet his dependants, in the event of his unfortunate death, could contend that the deceased was not able to exercise the option earlier and therefore, they may be permitted to revert back to Pension Scheme after surrendering the contribution at any stage. To illustrate this, let us assume a situation where a person dies in the year 1996 or 1997 or 1998, then his widow or other legal heirs can come forward and say that

as the employee had not been able to exercise his option earlier within a stipulated period of 30 days from the date of implementation of the scheme, they are prepared to surrender their contribution in terms of Clause 6 and they may be permitted to revert back to the Pension Scheme. In the present case, if the appellant is permitted to give an interpretation as is sought to be urged by the learned counsel for the appellant then it will tantamount to opening a Pandora box because it has been stated that there are more than 2000 employees who are similarly placed as the unfortunate appellant and then these persons would come forward and claim parity under the Scheme by reverting back to the Pension Scheme. In the light of the judgment of the Apex Court in DTC Retired Employees" case (supra) and the reasons given hereinabove, I feel no substantial question of law arises from the present appeal. Accordingly, the appeal does not have any merit and the same is dismissed.