(2015) 03 KL CK 0178

In the High Court Of Kerala

Case No : Writ Petition (C) No. 33624 of 2009 (W)

Shyamala Devi P.T. — APPELLANT

Vs

The Assistant Provident Fund Commissioner (Pension) and Others — RESPONDENT

Date of Decision : 19-03-2015

Acts Referred:

Citation : (2015) 03 KL CK 0178

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : P. Ramakrishnan, for the Appellant; N.N. Sugunapalan, T.N. Girija and Thomas Mathew Nellimoottil, SCs, Advocates for the Respondent

Final Decision : Allowed

Judgement

K. Vinod Chandran, J.

1. The petitioner is aggrieved with the denial of interest for a certain period in which the petitioner alleges that she was illegally denied the pension due to her, as family pension. The brief facts to be noticed are that the petitioner''s husband was an employee of the Federal Bank who died while in service on 15.05.1986. The Federal Bank at that point of time, was enrolled under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and regular contributions were paid by the Bank to the Employees Provident Fund and Pension Scheme. On the death of the petitioner''s husband, the petitioner was sanctioned family pension and was also paid such pension on every month, till July 1995. The petitioner''s family pension was not disbursed from July 1995. The petitioner was before this Court with O.P. No. 19254/1996.

2. Before this Court in the earlier O.P., the respondent contended that on 07.09.1992 Government of India passed an order under Section 19A of the Act, holding that the Act would have no application to the Bank; but the Bank continued remittance till 30.04.1993. A dispute existed between the Bank and

the employees Provident Fund Organisation which was agitated before this Court in O.P. 8586/1993 which went in favour of the Bank and amounts paid as contribution to the Provident Fund Organisation was transferred back to the Bank. Even going by the statement dated 17.01.2008 filed in O.P. No. 8586/1993, the Employees Provident Fund contributions received for the period 10/92 to 5/93 alone was transferred on 20.10.1995. The date of retirement of the employees whose pension was the subject matter of the above writ petition, was noticed as 15.05.1986 and 08.02.1990, prior to the exemption made. On that reasoning, this Court found that there is no reason for the Provident Fund Organisation to deny pension and directed regular disbursement of pension as also payment of arrears with interest due.

3. The present dispute is with respect to the interest due. The Provident Fund Organisation admittedly paid 3.5% interest which according to them is the interest which accrued in the amount in their savings bank account with the State Bank of India. The direction in Ext. P1 is to the following effect.

"The interest which would have accrued on the amount will also be paid to the petitioners at the time of payment of the arrears."

4. Specifically this Court had directed that the interest accruing on the amounts will be paid to the petitioner along with arrears. The interpretation that can be placed on the said direction, is the issue this Court is concerned with in the present writ petition.

5. The learned counsel appearing for the petitioner would contend that the amounts which accrued in the PF contributions, at the rate as notified by the Central Government would have to be made applicable in the present case also. The learned Standing Counsel however, would refute such contention on the ground that such notification of interest rate is with respect to the contribution retained in the Provident Fund Account of an existing employee retained with the organisation. Herein on the employees death, the petitioner was paid the entire PF contribution. No interest accrues on the amounts apportioned to the EPF Pension Scheme and hence there can be no payment of interest beyond that what is already paid, is the contention.

6. It is to be noticed that the disbursement of pension to the petitioner was illegally denied by the respondent. The respondent Organisation has a contention that it was due to the order of the Government of India, granting exemption to the Bank that, the respondent organisation stopped paying pension. That would be a wrong interpretation of the Government order. If exemption has been granted from 1995, it does not mean that whatever amounts which were apportioned to the pension scheme out of the PF contribution, of an employee, would be rendered ineffective and the employee denied of pension or his dependants, family pension under the Scheme. The right to pension which crystallised on retirement or death of the employee, cannot be taken away on the basis of a subsequent order of exemption. There can be no retrospectivity to

the Government order of 1995.

7. In any event, the Organisations'' action has been found to be illegal by Ext. P1 judgment. Interest too, was directed to be paid. The Employees Provident Fund Act, by section 7Q prescribes for interest, in any delay in contributions to be at the rate of 12% per annum or at such higher rate as may be prescribed under the scheme. In the present case, it cannot be said that 12% can be granted adopting the principles of Section 7Q. Section 7Q definitely is compensatory in nature and it has also been held by the Hon''ble Supreme Court that it is automatic. The said principle is declared only in the context of the liability of the Organisation in satisfying the dues of the employees, even in the event of failure or default in payment of contributions. The petitioner cannot be given the benefit of such principle.

8. Even if the said rate is not applied; the petitioner definitely is entitled to more than that what has been granted, which is 3.5% which the Provident Fund Organisation claims to be the interest granted or accrued in its account with the SBI. It has to be noticed that as to the Provident Fund contributions, the Government of India prescribes a specific rate which is revised as per notifications. The period herein is July 1995 to June 2008. True no interest accrues on the contributions apportioned to the pension scheme. However, when there is an illegality and there is denial of pension, definitely, the person who was denied of such pension would be entitled to some compensation by way of interest. Since the amount was due every month, and the entitled person was denied of the same for a long distance of time, compensation can only be in the nature of interest and it has to be a reasonable compensation. In such circumstance, considering the fact that the Government issues notifications for accrual of interest in the Provident Fund accounts of employees covered under the Act, the same principles would be adopted in the case of the petitioner also. What ever interest was notified between 1995 to 2008 would be proportionately calculated as due to the petitioner from the due date of pension and paid within a period of two months from today. The petitioner shall be given a detailed statement of computation of interest along with the relevant details of the notifications issued and rate of interest specified.

Writ petition is allowed. No costs.