

(2011) 04 MAD CK 0238

In the Madras High Court

Case No : Writ Petition No. 29398 of 2008

Smt. Zubaida

APPELLANT

Vs

Assistant Provident Fund Commissioner (Pen.), Employees
Provident Fund Organisation

RESPONDENT

Date of Decision : 27-04-2011

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 2, 6

Citation : (2011) 04 MAD CK 0238

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : R. Rajaram, for the Appellant; V.J. Latha, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—The Petitioner has come forward to file the present writ petition seeking to challenge an order of the Respondent Assistant

Provident Fund Commissioner, Vellore, dated 24.4.2006. By the impugned order, the Petitioner was informed that she was not entitled for widow

pension under the Employees' Pension Scheme, 1995.

2. In the writ petition, notice was directed to be issued. Accordingly, Ms. V.J. Latha, learned Counsel appeared for the Respondent. But, no

counter affidavit was filed. The contention of the Petitioner was that her husband late Allah Basha was the member of the Family Pension Scheme,

1995. After his retirement, he was getting pension under the said scheme. He married the Petitioner on 26.08.2001 after he got retired from

service. She and her husband were living together happily. He was also drawing monthly pension. But, unfortunately he died.

3. The Union to which the Petitioner's husband was the member sent a further

representation stating that the Petitioner's husband was a regular member of the scheme and was eligible to be covered by the 1995 Pension Scheme. Even though membership ceased after the employment came to an end and was getting monthly pension, but after his death as a pensioner, his wife is entitled to get widow pension. The Petitioner was lawfully married to her husband. As per the scheme, she is eligible to get widow pension. When the Petitioner sent a letter for reconsideration, the Respondent had passed the impugned order, dated 24.4.2006 stating that she is not entitled for widow pension. Challenging the same, the present writ petition came to be filed.

4. The only question that arises for consideration is whether the impugned order non suiting the Petitioner on the ground that she was the widow of the deceased pensioner and not a widow of the deceased member of the Pension Scheme is legally correct?

5. The stand taken by the Respondent is hypertechnical. If it is accepted, then it will exclude the actual widow from getting family pension. The term "family" is defined under para 2(g) of the Employees Provident Funds Scheme, 1952, which reads as follows:

(g)"family" means-[(i) in the case of a male member, his wife, his children, whether married or unmarried, his dependent parents and his deceased son's widow and children:]

Provided that if a member proves that his wife has ceased, under the personal law governing him or the customary law of the community to which the spouses belong, to be entitled to maintenance she shall no longer be deemed to be a part of the members family for the purpose of this

Scheme, unless the member subsequently intimates by express notice in writing to the Commissioner that she shall continue to be so regarded; and

[(ii)in the case of a female member, her husband, her children, whether married or unmarried, her dependent parents, her husband's dependant parents, her deceased son's widow and children:]

Provided that if a member by notice in writing to the Commissioner expresses her desire to exclude her husband from the family, the husband and

his dependent parents shall no longer be deemed to be a part of the member's family for the purpose of this Scheme, unless the member

subsequently cancels in writing any such notice.

6. The term "member" is also defined u/s 2(j) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952. The term "member means any member of the Fund. The term "fund" is defined u/s 2(h) of the Act to mean the Provident Fund established under a Scheme. The term Pension Fund" is defined u/s 2(kA) to mean that the Employees' Pension Fund established u/s 6A(2). Therefore, once a person becomes a member of the fund, he is automatically covered not only for the purpose of the PF, but also for the purpose of the pension under the 1995 Pension Scheme.

7. Para 16(1) of the 1995 Pension Scheme reads as follows:

16. Benefits to the family on the death of a member.-(1) [Pension to the family] shall be admissible from the date following the date of death of the member if the member dies-

(a) while in service, provided that at least one month's contribution has been paid into the Employees' Pension Fund, or

(b) after the date of exit but before attaining the age of 58, from the employment having rendered service entitling him/her to monthly member's pension but [before the commencement of pension payment or]

(c) after commencement of payment of the monthly member's pension

8. Under para 16(2)(b), the monthly widow pension shall be payable upto the date of death of the widow or remarriage whichever is earlier. It is

not clear as to how the Respondent can deny the Petitioner payment of widow pension especially when she is squarely covered by the provisions

of the scheme. Neither the Act nor the Scheme prohibits the member of the fund contracting marriage either while in service or after getting

superannuated from service. On the other hand, para 16(1)(c) clearly mentioned about the admissibility of pension to the family after

commencement of payment of monthly member's pension. Para 16(2)(b) providing for widow pension is restricted upto the date of death of the

widow or her remarriage whichever is earlier. Therefore, the attempt of the Respondent narrating hypertechnical distinction between the deceased

member and deceased pensioner is not warranted in terms of the provisions of the Act.

9. In view of the above, the impugned order passed by the Respondent is clearly erroneous. Hence the impugned order stands set aside. The writ

petition will stand allowed. The Respondent is hereby directed to provide widow pension to the Petitioner from the date of the death of

Petitioner's husband. This exercise shall be carried out within a period of eight weeks from the date of receipt of copy of this order. However,

there will be no order as to costs.