

**(2008) 10 KAR CK 0065**  
**In the Karnataka High Court**  
**Case No : Writ appeal No. 232 of 2006**

Sri M.S. Desai

APPELLANT

Vs

The Regional Provident Fund Commissioner and The  
Divisional Controller

RESPONDENT

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**Date of Decision :** 31-10-2008

**Acts Referred:**

Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 6

**Citation :** (2012) 4 KarLJ 331 : (2011) 4 KCCR 450 SN

**Hon'ble Judges :** Subhash B. Adi, J;D.V. Shylendra Kumar, J

**Bench :** Division Bench

**Advocate :** S.B. Mukkannappa, for the Appellant; Hari Krishna, S. Holla and P.S. Dinesh Kumar, for R1 and J.S. Shetty and L. Govindaraj, for R2, for the Respondent

**Final Decision :** Allowed

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## Judgement

D.V. Shylendra Kumar, J.—This writ appeal is by a former employee of the second Respondent - North West Karnataka Transport Corporation, Hubli Division, Hubli, who is aggrieved that his request for providing pension after superannuation from service with his employer, payable under the provisions of the Employees' Pension Scheme, 1995 [for short the scheme"] while was denied in terms of an endorsement dated 6.11.2003 [copy at Annexure-E to the writ petition], the writ petition questioning the legality of this order was also dismissed by the learned single Judge in terms of the order under appeal and therefore the present appeal.

2. The purpose of the appeal is, ultimately to get the pension payable under the scheme.

3. A few facts leading to the above appeal are that the Appellant/writ Petitioner had joined the services of the predecessor of the second Respondent - Bangalore Transport Services as a conductor way back in the year 1976 to be precise on 18.11.1976.

4. The employer had instituted a departmental domestic inquiry against the employee for certain misconduct and the employee came to be dismissed from service with effect from 14.11.1981. The employee had questioned the legality of the order of dismissal and the legal battle was pursued and ultimately the order came to be modified by this Court in writ petition No. 369 of 1999 as per order dated 21.6.1999 [copy at Annexure-D to the writ petition] in the following terms:

2. Petition is allowed. Impugned award is modified to the effect that, for proved misconduct of unauthorized absence, in lieu of punishment of dismissal from service, the only lesser punishment that is substituted is complete denial of back wages from the date of order of dismissal till the date of reinstatement. With this lesser punishment, the Petitioner would be entitled to be reinstated in service with the benefit of continuity of service and consequential benefits.

5. As a result, the Appellant - Petitioner came to be reinstated into service with effect from 1.2.1996. The Appellant also retired in the normal course on attaining the age of superannuation with effect from 31.7.1999. Thereafter, the Appellant it appears had sought for his retiral benefits and amongst them significant benefit which is denied and with which the Appellant - Petitioner is aggrieved is the denial of pension under the scheme in terms of the endorsement issued by the provident fund authorities. The endorsement which is crisp and short reads as under:

Your total service is less than 20 years, you are not eligible for pension under EPS 95.

6. It is aggrieved by this endorsement; the Appellant approached this Court by filing writ petition No. 16798 of 2005.

7. The learned single Judge on examining the merits of the petition and after noticing the facts which are already narrated above, accepted the contentions urged on behalf of the employer and the provident fund authorities to the effect that the writ Petitioner to become eligible for claiming pension under the scheme should have put in minimum of ten years eligible service; that eligible service means period during which payment of contribution under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 [for short the Act] for the period of ten years and more has been made; that it is a condition precedent for granting pension under the scheme and on actual calculations it having been found that the Petitioner had earned wages/salary for a period of 8 1/2 years only though it is to be taken that he was in service throughout from the year 1976 up to the year 1999; that the contributions had been made both by the employee and the employer only for this period of 8 1/2 years and was falling short of ten years, the Petitioner does not become eligible for claiming pension.

8. The learned single Judge was of the view that though as a consequence of the order passed by this Court permitting continuity of service in favor of the Petitioner notwithstanding he having been imposed with a punishment due to his misconduct and the Petitioner though had completed 23 years of service at the

time of superannuation, requirement under the scheme being contributions for the period of not less than ten years and that having not been satisfied by the Petitioner, particularly, with the Petitioner having been denied back wages for the period during which he had not worked and in this view of the matter, the provident fund authorities were justified in denying pension to the Petitioner and accordingly dismissed the writ petition.

9. It is aggrieved by the order of the learned single Judge, the present writ appeal.

10. We have perused the memorandum of appeal, grounds urged in support of the appeal, have examined the provisions of the scheme and heard Sri. J.S. Shetty, learned Counsel for the second Respondent - employer who at our request has also acted as amicus curiae for the court to assist us in the matter of understanding the provisions of the scheme.

11. The Employees' Pension Scheme, 1995 is a supplement to the Employees' Provident Funds Scheme, 1952 and the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The object of the scheme as it proclaims is to provide for retiral benefits to an employee whose employer does not provide for" pension and even otherwise to ensure a measure of social security to all working class covered under the provisions of the Act and the scheme. The scheme also takes care of the needs of the dependent members of an employee who is a member of the scheme and who either dies during the service or even thereafter by providing for what is known as family pension".

12. In this appeal, we are mainly concerned with the mechanism regarding payment of pension to an employee under the scheme who retires from his service on attaining the age of superannuation.

13. The scheme provides for constitution of a fund known as "employees provident fund" which is a fund created from out of tire contributions payable by the employer in terms of Section 6 of the Act; that the fund is to be used for making payment of pension to the members who retire or cease to be in employment or to the dependent members of such employees and the scheme having come into existence. Subsequent to the Act and the Employees' Family Pension Scheme, 1971 and providing for additional benefit the employees were given an option during the transitory period to switch over from the family pension scheme to this scheme and as of now it is a compulsory scheme.

14. The salient feature of the scheme is to provide for eligibility of the members of the scheme to become entitled for payment of pension and the manner of computation. The quantum of pension payable is naturally made dependent on the salary drawn by the employee during the twelve months prior to the age of superannuation or cessation of employment and also the duration of service the longer the duration higher the pension.

15. Paragraphs - 9, 10, 11 and 12 of the scheme covers these aspects which

read as under:

#### 9. Determination of eligible service.

The eligible service shall be determined as follows:

(a) In the case of "new entrant" the "actual service" shall be treated as eligible service. The total actual service shall be rounded off to the nearest year. The fraction of service for six months or more shall be treated as one year and the service less than six months shall be ignored

Explanation - In the case of employees employed seasonally in any establishment the period of "actual service" in any year, notwithstanding that such service is less than a year shall be treated as a full year.

(b) In the case of the "existing member" the aggregate of actual service and the "past service" shall be treated as eligible service.

Provided that if there is any period in the "past service" for which the contributions towards the Family Pension Scheme, 1971 has not been received, the said period shall count as eligible service only if the contributions thereof have been received in the Employees' Pension Fund.

Explanation: For the purpose of this subparagraph the total past service for less than six months shall be ignored and the total past service for six months and above shall be rounded to a year.

#### 10. Determination of Pensionable Service

(1) The pensionable service of the member shall be determined with reference to the contributions 15[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.

#### 11. Determination of Pensionable Salary.

(I) Pensionable salary shall be average monthly pay drawn [in any manner including on piece-rate basis] during the contributory period of service in the span of 12 months preceding the date of exit from the membership of the Employees' Pension Fund.

Provided that if a member was not in receipt of full pay during the period of twelve months preceding the day he ceased to be the member of Pension Fund, the average of previous 12 months full pay drawn by him during the period for which contribution to the pension fund was recovered, shall be taken into account as pensionable salary for calculating pension.

(2) If during the said span of 12 months there are non-contributory periods of

service including cases where the member has drawn salary for a part of the month, the total wages during the 12 months span shall be divided by the actual number of days for which salary has been drawn and the amount so derived shall be multiplied by 30 to work out the average monthly pay.

(3) The maximum pensionable salary shall be limited to Rupees six thousand and five hundred /Rs. 6500/- per month.

Provided that if at the option of the employer and employee, contribution paid on salary exceeding Rupees six thousand and five hundred /Rs. 6500/- per month from the date of commencement of this Scheme or from the date salary exceeds Rupees six thousand and five hundred /Rs. 6500/- whichever is later, and 8.33 per cent share of the employers thereof is remitted into the Pension Fund, pensionable salary shall be based on such higher salary

## 12. Monthly Member's Pension.

(1) A member shall be entitled to:

(a) superannuation pension if he has rendered eligible service of 10 years or more and retires on attaining the age of 58 years;

(b) early pension, if he has rendered eligible service of 10 years or more and retires or otherwise ceases to be in the employment before attaining the age of 58 years;

(2) In the case of a new entrant the amount of monthly superannuation pension or early pension, as the case may be, shall be computed in accordance with the following factors, namely:

Monthly member's Pension = Pensionable salary X Pensionable service  
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(3) In the case of an existing member in respect of whom the date of commencement of pension is after 16th November, 2005:

(i) Superannuation/early pension shall be equal to the aggregate of:

(a) Pension as determined under Sub-paragraph (2) for the period of Pensionable service rendered from the 16th November, 1995 or Rs. 635/- per month whichever is more;

(b) Past service pension shall be as given below: -

The past service pension payable on completion of 58 years of age on 16.11.95

S.No.

Years of Past Service

Salary upto Rs. 2500/- per month

Salary more than Rs. 2500/- per month

(1)

(2)

(3)

(i)

Upto 11 years

80

85

(ii)

More than 11

years but upto 15

years

95

103

(iii)

More than 15 years but less than 20 years

120

150

(iv)

Beyond 20 years

150

170

The amount under column (2) or column (3) above, as the case may be shall be multiplied by the factor given in Table B corresponding to the period between 16-11-95 and the date of exit to arrive at past service pension payable.

(ii) The aggregate of (a) and (b) calculated as above shall be subject to a minimum of Rs. 800/- per month provided the eligible service is 24 years.

Provided further if it is less than 24 years, the pension as computed above shall be reduced proportionately subject to a minimum of Rs. 450/- per month

(4) In the case of an existing member and in respect of whom the date of commencement of pension is between 16th November, 2000 and 16th November, 2005

(i) the superannuation/early pension shall be equal to the aggregate of:

(a) pension as determined under subparagraph (2) for the period of service rendered from the 16th November, 1995 or Rs. 438/- per month whichever is more;

(b) past service pension as provided in Sub-paragraph (3).

(ii) The aggregate of (a) and (b) calculated as above shall be subject to a minimum of Rs. 600/- per month provided the eligible service is 24 years,

Provided further that if it is less than 24 years the pension shall be proportionately less subject to the minimum of Rs. 325/- per month

(5) In the case of an existing member and in respect of whom the date of commencement of pension is before 16th November 2000

(i) the superannuation/early pension shall be equal to the aggregate of:

(a) pension as determined under subparagraph (2) for the period of service rendered from the 16th November, 1995 per month or Rs. 335/- per month whichever is more.

(b) past service pension as provided in Sub-paragraph (3)

(ii) The aggregate of (a) and (b) calculated as above shall be subject to the minimum of Rs. 500/- per month, provided the eligible service is 24 years. Provided further that if it is less than 24 years the pension shall be proportionately lesser but subject to the minimum of Rs. 265/- per month

(6) Except as otherwise expressly provided hereinafter the monthly members pension under Sub-paragraphs (2) to (5) mentioned herein above, as the case may be, shall be payable from a date immediately following the date of completion of 58 years of age notwithstanding that the member has retired or ceased to be in the employment before that date.

(7) A member, if he so desires, may be allowed to draw an early pension from a date earlier than 58 years of age but not earlier than 50 years of age. In such cases, the amount of pension shall be reduced at the rate of three per cent for every year the age falls short of 58 years.

(8) If a member ceases to be in the employment by way of retirement or otherwise earlier than the date of superannuation from which pension can be drawn, the member may, on his option, either be paid pension as admissible under this Scheme on attaining the age exceeding 50 years or he may be issued a scheme certificate by the Commissioner indicating the pensionable service, the pensionable salary and the amount of pension due on the date of exit from the employment. If he/she is subsequently employed in an establishment coverable under this Scheme, his/her earlier service as per the scheme certificate shall be reckoned for pension along with the fresh spell of pensionable service. The member postponing the commencement of payment of pension under this paragraph shall also be entitled to additional relief sanctioned under this Scheme

from time to time:

Provided that if the member does not take up an employment coverable under this Scheme, but dies before attaining the age of 58 years, the amount of contributions received in his case shall be converted into a monthly widow pension/ children pension. The widow pension in such cases shall be calculated at the scale laid down in Table "C and the children pension at 25 per cent thereof for each child (upto two). If there is no widow then the orphan pension shall be payable at the rate of 75 per cent of the amount which would have been payable as a widow pension subject to the provisions of the paragraph 16

16. The scheme also provides for an option for return of capital in paragraph-13 with which we may not be very concerned with in this appeal.

17. Paragraph-14 of the scheme which provides for benefits on leaving service before being eligible for pension in the sense who has not rendered the minimum eligible service in terms of paragraph-9 of the scheme, the benefit which the member can get is as provided in Table "D" to the scheme.

18. The only question that we are required to examine is as to whether in the light of the above provisions of the scheme, the employee who was member of the scheme on the day when he attained the age of superannuation and who was making contributions to the fund and the employer having recovered the amount and with a matching contribution remitting the amount to the credit of the account of the employee with the fund can be denied pension payable under the scheme if he has not made contribution to the fund for a minimum period of ten years or above.

19. In the present case, it cannot be disputed that the Appellant - Petitioner had put in more than ten years of eligible service.

20. The learned single Judge has taken the view that the eligible service is on par with the contributions during the period by the employer and the employee contributes to the fund.

21. The question is does this inference follow on an examination of the provisions of the scheme.

22. We find that while paragraph-9 of the scheme does provide for determination of eligible service, "eligible service" by itself is not defined under the scheme. On the other hand, "eligible member" is defined in paragraph - 2[v] of the scheme as an employee who is eligible to join the Employees" Pension Scheme. "Existing Member" means an existing employee who is a member of the Employees" Family Pension Scheme, 1971 as per definition in paragraph - 2 [vi] of the scheme. The Appellant - Petitioner satisfies both these conditions. The Appellant is also a member of the Employees" Pension Fund as defined in paragraph 2[ix] of the scheme. "Non-contributory service" is defined in paragraph-2[x] of the scheme as period of "actual service" rendered by a member for which no contribution to the Employees" Pension Fund" has been received or are

receivable. "Past service" is defined as service rendered by an existing member from the date of joining Employees' Family Pension Fund till 15.11.1995 as defined in paragraph - 2 [xii] of the scheme.

23. With such definitions in the background, when looked into paragraph-9 of the scheme for the period of eligible service to be computed in respect of seasonal workers, part of the year is taken to be full year and service rendered for more than six months in any part of the year is also taken to be a full year. For making up ten years eligible service past service and the actual service are all to be aggregated. Pensionable service is to be determined in terms of paragraph-10 of the scheme and it is here it is made with reference to the contribution received or receivable on his behalf in the Employees' Pension Fund. While pensionable service has significance in the matter of computation of the actual pension payable to an employee on retirement, it does not necessarily regulate payment or non-payment of pension.

24. A perusal of paragraphs 10, 11 and 12 make it very clear that a minimum period of ten years "eligible service" rendered by an employee or more on attaining the age of 58 years, such persons become eligible and are entitled to receive pension. The scheme does not expressly say that "eligible service" means only the period during which a member has contributed, on the other hand, a clear distinction is maintained in terms of paragraphs - 9 and 10 of the scheme to indicate as to what is the "eligible service" and as to how eligible service is to be determined and as to how pensionable service is to be determined.

25. While paragraph-14 of the scheme which reads as under

14. Benefits on leaving service before being eligible for monthly member's pension -

If a member has not rendered the eligible service prescribed in paragraph 27[9] on the date of exit, or on attaining 58 years of age whichever is earlier, he/she shall be entitled to a withdrawal benefit as laid down in Table "D" or may opt to receive the scheme certificate provided on the date he/she has not attained the 58 years of age.

Provided that an existing member shall receive additional return of contributions for his/her past service under the Employees' Family Pension Scheme, 1971 computed as withdrawal-cum-retirement benefits as per Table "A" multiplied by the factor given in Table "B".

does indicate that, an employee who leaves service even before being eligible for monthly members pension by having not rendered the eligible service in terms of paragraph - 9, he becomes entitled for withdrawal benefit in terms of Table "D", here again, it is linked to eligible service and not to the period of actual contributions.

26. Paragraph-16 of the scheme while provides for benefits to the family on the

death of a member, it also throws light that if an employee who has become a member of the scheme should die even immediately thereafter the only requirement for the member of the family to receive pension is that at least a month's contribution should have been made to the fund.

27. A perusal of all these provisions while leaves us with no doubt that the eligibility for claiming pension under the scheme is a minimum service of ten years, it does not further stipulate that for the entire ten years contribution should have been necessarily made. In fact, the scheme provides for making up the periods during which contribution had not been made either by the members or by the employer for any reason, by providing for such contributions to be made up even later.

28. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the Employees' Provident Funds Scheme, 1952 and the Employees' Pension Scheme, 1995 are all provisions in the nature of social welfare measures and for providing succor to an employee after cessation of employment. It is a beneficial scheme for the benefit of the workers and the employees. An understanding and interpretation of the provisions of the scheme should be to advance the object of the scheme and to provide for payment of pension. Even if two views are possible, we are of the definite opinion that a view that advances the object of the scheme should be preferred.

29. In the absence of any embargo placed on an employee to claim pension under the scheme in the event of tire member not having contributed to the fund for a minimum period of ten years eligible service and the writ Petitioner - Appellant having in fact completed more than ten years eligible service even in terms of the order passed by this Court, particularly with this Court directing that the Appellant - Petitioner should get continuity of service and what was being denied was only back wages, there cannot be any two opinions that the Appellant - writ Petitioner has rendered more than ten years of eligible service being continuously in the service of the second Respondent -organization from the year 1973 up to year 1999.

30. If such is the factual matrix of the case, there is no way of an employee and a member of the scheme being denied payment of pension though the member may not earn much pension but definitely is entitled for minimum pension payable in terms of paragraph-12 of the scheme.

31. Accordingly, we allow this appeal, set aside the order of the learned single Judge, quash the impugned endorsement at Annexure-E to the writ petition particularly as contained in paragraph-15 and consequently direct the first Respondent to grant pension to the Appellant - Petitioner in terms of the provisions of the scheme on and after superannuation.

32. Writ appeal allowed. No costs.