(2005) 06 BOM CK 0081

In the Bombay High Court

Case No : Writ Petition No. 1730 of 2002

Sunanda Dhote APPELLANT

Vs

Regional Provident Fund Commissioner and Another RESPONDENT

Date of Decision : 30-06-2005

Acts Referred:

Citation : (2005) 4 ALLMR 274 : (2006) 2 BomCR 289 : (2006) 1 LLJ 984 : (2005) 4 MhLj 525

Hon'ble Judges : D.D. Sinha, J;B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : L.A. Mohta, for the Appellant; R.S. Sundaram, for the Respondent

Final Decision : Allowed

Judgement

D.D. Sinha, J.—Heard Mr. Mohta, learned counsel for the petitioner and Mr. Sundaram, learned counsel for respondent No. 1.

2. Mr. Mohta, learned counsel for the petitioner, states that the husband of the petitioner - Shrikant Dhote was in the employment of respondent No. 2 and he was a member of the Provident Fund Scheme of 1952 framed under the Employees Provident Fund and Miscellaneous Provisions Act, 1952. It is submitted that Mr. Shrikant Dhote resigned from the post held by him in the employment of respondent No. 2 w.e.f. 31st May, 2000. Mr. Dhote, the husband of petitioner, applied to respondent No. 1 for withdrawal of Provident Fund benefits vide his application/communication, dated 9th August, 2000. It is submitted that when the above referred proposal of the husband of the petitioner was pending before respondent No. 1, the husband of the petitioner-Shrikant Dhote expired on 25th August, 2000. After the death of husband of the petitioner, the petitioner submitted an application, dated 12th December, 2000, through proper channel, to respondent No. 1, for release of provident fund dues as well as Family Pension. Mr. Mohta, learned Counsel for the petitioner, contended that the claim of the petitioner to get Family Pension is denied on the ground that prior to 25th August, 2000, i.e., the date on which the husband of

the petitioner expired, the respondent No. 1 had sanctioned the provident fund benefits to the husband of the petitioner pursuant to the application, dated 9th August, 2000, submitted by the husband of the petitioner for withdrawal of provident fund benefits on 24th August, 2000 and, therefore, according to respondents, the petitioner is not entitled for Family Pension.

3. Mr. Mohta, learned counsel, contended that the relevant provisions of the Employees Pension Scheme of 1995, which has been formulated under the Employees Provident Fund Act, contained in Paragraph 6A contemplate that a member of the Employees'' Provident Fund shall continue of be such member till he avails the withdrawal benefit to which he is entitled under Para 14 of the Scheme (other Clauses of Para 6 are not relevant for the controversy in issue). It is contended that in the instant case, the husband of the petitioner died before availing the benefits under the Provident Fund Scheme and, therefore, the defence raised by the respondents in this regard is not sustainable in law and the petitioner is entitled for a Family Pension under the Scheme.

4. Mr. Sundaram, learned Counsel for respondent No. 1, on the other hand, supported the decision of the respondent No. 1 in refusing to grant Family Pension to the petitioner. It is contended that in the instant case, the husband of the petitioner, vide application, dated 9th August, 2000, during his lifetime, applied for withdrawal of provident fund benefits and the said application was allowed on 24th August, 2000, whereby the provident fund benefits were sanctioned to the husband of the petitioner Mr. Shrikant Dhote. It is contented by learned counsel for respondent No. 1 that as soon as the benefits under the Provident Fund Scheme are sanctioned to the employee, such employee ceases to be the member of the Scheme in view Paragraph 6A of the Employees'' Pension Scheme of 1995. The husband of the petitioner died on 25th August, 2000 and before his death, his application for withdrawal of provident fund benefits was allowed on 24th August, 2000 and, therefore, at the time of death, the husband of the petitioner ceased to be the member of the Employees'' Pension Scheme of 1995. Consequently, the petitioner is not entitled for Family Pension.

5. We have given our anxious thought to the various contentions canvassed by the respective counsel.

6. It is, no doubt, true that in the instant case, the husband of the petitioner applied to the Authorities for withdrawal of Provident Fund benefits on 9th August, 2000 and the request of the husband of petitioner was allowed on 24th August, 2000 and he expired on 25th August, 2000. Before we consider the entitlement of the petitioner for family pension, it will be appropriate for us to consider the provisions of Para 6A of the Employees'' Pension Scheme of 1995. Para 6A reads thus :-

"6A. Retention of membership....

A member of the Employees'' Provident Fund shall continue to be such member till he attains the age of 58 years or he avails the withdrawal benefit to which he is entitled under para 14 of the Scheme, or dies, or the pension is vested in him in terms of para 12 of the Scheme whichever is earlier."

So far as the present controversy in issue is concerned, it is relevant to find out whether the husband of the petitioner has factually availed the benefits of the provident fund dues pursuant to his application, dated 9th August, 2000. It is, no doubt, true that since the petitioner''s husband made an application for withdrawal of provident fund dues during his lifetime, it is possible to hold that the intention of the husband of petitioner was to avail the benefits of provident fund dues during his lifetime. However, merely because the application of the husband of petitioner was allowed by respondent No. 1 on 24th August, 2000 by sanctioning the withdrawal of provident fund dues, whether such action of the respondent No. 1 would amount to availing the benefits of the provident fund dues by the husband of the petitioner, which would result in cessation of membership of the Scheme. It is not in dispute that the husband of the petitioner expired on the very next day, i.e. on 25th August, 2000, before the amount, which was due and payable in respect of the provident fund and sanctioned by respondent No. 1 on 24th August, 2000, was factually paid to the husband of the petitioner and, therefore, in view of the peculiar facts and circumstances of the present case, we are of the view that the husband of the petitioner did not factually avail the benefits of the provident fund dues and, therefore, the case of the husband of the petitioner does not fall within the ambit of Para 6A of the Employees'' Pension Scheme of 1995. Consequently, the contention raised by learned counsel for respondent No. 1 cannot be accepted. The observations made by us in the present Judgment are in view of the peculiar facts of the present case.

For the reasons stated hereinabove, the petition is allowed. We direct the respondent No. 1 to grant Family Pension to the petitioner as per Employees'' Pension Scheme of 1995, at its earliest. Rule is made absolute.