

(2014) 02 AP CK 0015
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 106 of 2010

The Regional Provident Fund Commissioner and Another	APPELLANT
Vs	
Battula Veeraswamy and Others	RESPONDENT

Date of Decision : 14-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 17
17(1)(c) 6A

Citation : (2014) 4 ALD 16 : (2014) 6 ALT 33

Hon'ble Judges : R. Subhash Reddy, J; A.V. Sessa Sai, J

Bench : Division Bench

Advocate : Jogram Tejavat, for the Appellant; Battula Veeraswamy for Respondent No. 1 and Party-in-Person, for the Respondent

Final Decision : Allowed

Judgement

R. Subhash Reddy, J.—This writ appeal under Clause 15 of Letters Patent, is filed by respondents 1 and 2 in writ petition in W.P. No. 3731 of 2009, aggrieved by order dated 11.09.2009, passed by the learned Single Judge in the said writ petition. The learned Single Judge, vide order dated 11.09.2009, allowed the writ petition filed by the 1st respondent herein, in which, directions are issued to the Central Provident Fund Commissioner to extend the benefits of Employees' Pension Scheme, 1995 to the writ petitioner and other Central Government Employees, who got absorbed in one public sector undertaking or the other like the writ petitioner.

2. The 1st respondent herein had joined in the Defence service in the Accounts Department, Government of India on 06.11.1959. While he was working as Section Officer (Accounts), he came on deputation to Mishra Dhathu Nigam Limited (MIDHANI), Hyderabad, a Government of India undertaking, on 27th January 1995. He came to be absorbed permanently in the service of MIDHANI, with effect from 01.08.1976. The Deputy Controller General of Defence Accounts

(AN) conveyed through his proceedings No. 29011(85)/74/AN/E, dated 18.01.1977 with the sanction of Hon'ble President of India, for permanent absorption of writ petitioner in MIDHANI. It was also made clear in such absorption orders that he is eligible for pro rata pension and death-cum-retirement gratuity based on the qualifying service rendered by him under Government of India, till the date of permanent absorption in MIDHANI as admissible to the officers of Central Civil Services in force at that time. It is also made clear that the pro rata pension and death-cum-retirement gratuity will be disbursable to the officer in addition to his pay in MIDHANI from the date of his absorption, provided he gives an undertaking that in the event of his services being terminated at the instance of either MIDHANI or on his own, within a period of two years from the date of retirement from Government of India service and permanent absorption in MIDHANI, the approval of Government of India will be obtained by the officer before he takes up any private employment. It was also indicated that the amount of subscriptions made towards the General Provident Fund account of the 1st respondent will be transferred if he desires, to his new provident fund account at MIDHANI. In view of his absorption permanently in MIDHANI from 01.08.1976, the relationship of employer and employee between Government of India and the 1st respondent has come to an end. After his absorption into service of MIDHANI, 1st respondent/writ petitioner has become member of Provident Fund Scheme, 1952, under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and he started making contributions to the said scheme with effect from 01.01.1977.

3. The Government of India, through Ministry of Personnel, Public Grievances and Pensions, issued Memorandum dated 22.01.1990, calling upon the employees to exercise options for either being governed by the Family Pension Scheme of Central Government or opt for continuing under the Employees' Family Pension Scheme of 1971 and issued directions accordingly to all the former employees of the Government who were absorbed in the service of public sector undertakings. The 1st respondent opted to be governed by the Family Pension Scheme of Central Government. In view of the option exercised by him to be governed by the Family Pension Scheme of the Central Government, MIDHANI has submitted applications of 26 applicants including that of the 1st respondent to the Central Provident Fund Commissioner for grant of exemption from the Employees' Family Pension Scheme of 1971, in terms of Section 17(1)(c) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Pursuant to such communication, the Central Provident Fund Commissioner issued proceedings, dated 30.09.1991, granting exemption to the individual employees of MIDHANI as mentioned in Schedule-I thereof. It is not in dispute that the 1st respondent is one among the employees for whom exemption is granted by the Central Provident Fund Commissioner. In view of the same, the 1st respondent seized to be the member of Employees' Family Pension Scheme of 1971 with effect from 30.09.1991. Accordingly, he also withdrew all the contributions made by him under the Employees' Family Pension Scheme of 1971, which accrued to his

account on the date of exemption. On attaining the age of superannuation, he also retired from service in MIDHANI on 01.08.1994.

4. Subsequent to the retirement of 1st respondent from service on 01.08.1994, in exercise of powers conferred u/s 6A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, other scheme, namely, The Employees' Pension Scheme, 1995 was introduced in the place of Employees' Family Pension Scheme of 1971. The relevant provisions in the Employees' Pension Scheme of 1995, namely, Clause 2(viii), (ix), Clause 6, 6-A and 7, read as under:

2(viii): "Pension" means "the pension payable under the Employees' Pension Scheme and also includes the family pension admissible and payable under the Employees' Family Pension Scheme, 1971 immediately preceding the commencement of the Employees' Pension Scheme, 1995 with effect from the 16th November, 1995;

2(ix): "Member" means an employee who becomes a member of the Employees' Pension Fund in accordance with the provisions of this Scheme.

Explanation:-An employee shall cease to be the member of Pension Fund from the date of attaining 58 years of age or from the date of vesting admissible benefits under the Scheme, whoever is earlier.

6. Membership of the Employees' Pension Scheme:-

Subject to sub-paragraph (3) of paragraph 1, the Scheme shall apply to every employee--

(a) who on or after the 16th November, 1995, becomes a member of the Employees' Provident Fund Scheme, 1952, or of the Provident Funds of the factories and other establishments exempted by the appropriate Government u/s 17 of the Act, or in whose case exemption has been granted under paragraph 27 or 27-A of the Employees' Provident Fund Scheme, 1952, from the date of such membership;

(b) who has been a member of the ceased Employees' Family Pension Scheme, 1971 before the commencement of this Scheme from 16th November, 1995;

(c) who ceased to be a member of the Employees' Family Pension Scheme, 1971 between 1st April, 1993 and 15th November, 1995 and opts to exercise his option under Paragraph 7;

(d) who has been a member of the Employees' Provident Fund or of Provident Funds of factories and other establishments exempted by the appropriate Government u/s 17 of the Act or in whose case exemption has been granted under Paragraph 27 or 27A of the Employees' Provident Fund Scheme, 1952, on 15th November, 1995 but not being a member of the ceased Employees' Family Pension Scheme, 1971 opts to exercise his option under paragraph 7.

Explanation: An employee shall cease to be the member of Pension Fund from

the date of attaining 58 years of age or from the date of vesting admissible benefits under the Scheme, whichever is earlier.

6-A. Retention of membership: A member of the Employees' Pension 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.

7. Option for joining the Scheme:-

(1) Members referred to under sub-para (c) of Paragraph 6 who have died between 1st April, 1993 and 15th November, 1995 shall be deemed to have exercised the option of joining the Scheme on the date of his death.

(2) Members referred to in sub-paragraph (c) of paragraph 6 who are alive shall have the option to join the Scheme as per the provisions of paragraph 17 from the date of exit from the employment.

(3) Members referred to in sub-paragraph (d) of paragraph 6 shall have the option to join the Scheme as per the provisions of Paragraph 17 from 16th November, 1995.

5. From a reading of various clauses referred above, it is clear that the aforesaid Employees' Pension Scheme of 1995 covers whoever becomes member of the said scheme after 16.11.1995 and who has been a member of the seized Employees' Family Pension Scheme of 1971 before the commencement of the 1995 scheme and who seized to be a member of such scheme between 01.04.1993 and 15.11.1995 and opts to exercise his option under paragraph 17.

6. After the introduction of Employees' Pension Scheme, 1995 which itself was introduced after the retirement of 1st respondent, he started claiming for benefits of such scheme. When he earlier approached this Court in W.P. No. 6527 of 2007, a learned Single Judge of this Court issued interim directions to consider the claim of 1st respondent under the Employees' Pension Scheme of 1995, pursuant to which, a detailed reasoned order was passed on 05.09.2007 in Letter No. AP/RO(HYD.) Pension. II/B. Veera Swamy/2007/03, refusing the claim of 1st respondent/writ petitioner. Consequently, the petition was disposed of with the following observations and directions:

A combined reading of clauses 6, 7 and 17 of the 1995 Scheme discloses that it applies only to those employees who were members of the 1971 Scheme as on 01.04.1993, or any subsequent date. In the instant case, the membership of the petitioners to the 1971 Scheme was brought to an end, on exercise of their option and on the exemption granted by the second respondent. Unless the said termination is set at naught, the petitioners cannot be extended the benefit under the 1995 Scheme.

Even assuming that there was any illegality in requiring the petitioners to

exercise option in the year 1990 or the resultant exemption granted by the second respondent, the entry of the petitioners into the 1995 Scheme is not automatic. An exercise needs to be undertaken to verify whether there existed a scheme, which is equally, or more beneficial to the concerned employees under the PSU"s, in which, they were employed, when compared with the 1971 Scheme, and whether after exercising the option to come out of the 1971 Scheme, the employees were extended any benefit under the alternative schemes.

Another aspect is that even after it is found that the petitioners are entitled to be brought under the fold of the 1995 Scheme, the amount of contribution to be made by them and interest, if any, needs to be calculated. This Court of the view that the claims of the petitioners need to be examined from the above angle by the second respondent. Inasmuch as the petitioners are retired employees, the matter needs to be attended to, as early as possible.

The writ petitions are disposed of, directing the second respondent i.e., the Central Provident Fund Commissioner, Hudco Vishila, New Delhi, to verify-

- a) whether there existed any scheme comparable to, or more beneficial than the one under the Employees Family Pension Scheme 1971 in the PSU"s, where the petitioners were working as on the date on which they were required to exercise their option under official memo, dated 22.01.1990, issued by the Government of India;
- b) whether the petitioners are entitled to revoke their options exercised by them and to come under the purview of the 1995 Scheme; and if so,
- c) the conditions subject to which the re-entry into the 1995 Scheme can be ordered.

This exercise shall be completed peremptorily within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.

7. Pursuant to final orders passed in W.P. No. 6527 of 2007, consequential orders are passed on 26.12.2008, in Proceedings No. AP/LC/HYD./1(2582)/2007/1329, declaring that the 1st respondent herein is not entitled for membership under the Employees" Pension Scheme of 1995, as he ceased to be the member of Employees" Family Pension Scheme of 1971 in view of the exemption granted with effect from 30.09.1991. Subsequent to passing of such order, again, the 1st respondent invoked the jurisdiction of this Court, assailing the very exemption notification dated 30.09.1991, issued by the Central Provident Fund Commissioner and also questioning the order dated 05.09.2007, passed in Letter No. AP/RO(HYD.) Pension. II/B. Veera Swamy/2007/03 and the further order dated 26.12.2008, passed in Proceedings No. AP/LC/HYD./1(2582)/2007/1329, rejecting his claim. The learned Single Judge, by mentioning the detailed provisions of the Employees" Family Pension Scheme of 1971 and the

Employees" Pension Scheme of 1995, held that the Central Provident Fund Commissioner could not have invoked the power u/s 17(1)(c) of the Employees" Provident Funds and Miscellaneous Provisions Act, 1952, for grant of exemption and by further observing that granting benefits under the 1995 scheme for the employees who joined in MIDHANI after 01.08.1976 while denying the same to the 1st respondent is a discrimination, held that denying the benefits of the scheme for all the employees who were absorbed in various public sector undertakings, is illegal and unjust. Learned Single Judge has issued general directions to extend the benefits of Employees Pension Scheme of 1995 to all the former Central Government employees, who were absorbed in one public sector undertaking or the other. Aggrieved by such order passed by the learned Single Judge, this writ appeal is filed by respondents 1 and 2 in the writ petition.

8. In this writ appeal, it is submitted by the learned counsel appearing for appellants that the directions issued by the learned Single Judge are beyond the scope of the scheme itself. It is contended that exemption was granted in favour of the 1st respondent u/s 17(1)(c) of the Employees" Provident Funds and Miscellaneous Provisions Act, 1952, as the family pension scheme under Central Civil Services (Pension) Rules, 1972 was more beneficial to him. It is submitted that having exercised the option and after grant of exemption by passing orders on 30.09.1991, it is not open for the 1st respondent/writ petitioner to claim the benefits of 1995 scheme. It is further contended that in the absence of any illegality in exemption order, which itself is passed on the application of the 1st respondent/writ petitioner, there is no reason to question such order. It is submitted by the learned counsel that by virtue of exemption granted on 30.09.1991, the 1st respondent is seized to be the member of the Employees" Family Pension Scheme of 1971, as such, he is not entitled to be a member of Employees" Pension Scheme of 1995. It is submitted that only the members, who seized to be the members of Employees" Family Pension Scheme of 1971 between 01.04.1993 and 15.11.1995, alone are entitled to opt under Paragraph 7 of the Employees" Pension Scheme of 1995 to come under the said scheme, as such, the 1st respondent/writ petitioner who was retired prior to the introduction of the Employees" Pension Scheme of 1995 and who seized to be the member of Employees" Family Pension Scheme of 1971 from 30.09.1991, is not entitled for the benefits of the scheme of 1995.

9. On the other hand, it is submitted by the 1st respondent/Sri B. Veeraswamy, who appeared in person, that in view of the elaborate reasons given by the learned Single Judge, there are no grounds to interfere with the said directions. It is submitted that several persons, who were absorbed in various public sector undertakings, were extended the benefit of the Employees" Pension Scheme of 1995 and there is no reason for not extending such scheme to him. It is further submitted that there is no rationale or any intelligent differentia for making discrimination for those who have joined in MIDHANI after 01.08.1976 and the Government employees who were absorbed in MIDHANI. In view of the clear discrimination and as the Scheme of 1995 is more beneficial to the employees,

he is entitled for the benefits of such scheme. Further, it is submitted that he is ready to repay the contributions which were withdrawn by him, to have the benefits of the scheme. Strong reliance is placed on an unreported Division Bench judgment of Karnataka High Court in D. Gopalan Vs. The Regional Provident Fund Commissioner & others¹

10. Having heard both sides, we have carefully perused the material on record, as the matter relates to the claim of a senior citizen for pension. We have also gone through the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the objects behind it and various provisions under the Employees' Family Pension Scheme of 1971 and the Employees' Pension Scheme of 1995 and the Central Civil Services (Pension) Rules, 1972.

11. In this case, it is not in dispute that the 1st respondent was working in the accounts department and he was initially joined as such on 06.11.1959 and he came on deputation to MIDHANI and ultimately came to be absorbed permanently in the service of MIDHANI with effect from 01.08.1976. From a perusal of the proceedings dated 18.01.1977, it is clear that the Deputy Controller General of Defence Accounts conveyed the sanction of Hon'ble President for his absorption in MIDHANI and also it is stated that he is entitled for pro rata pension and death-cum-retirement gratuity based on the length of qualifying service rendered by him under Government of India till the date of permanent absorption in MIDHANI. Pursuant to memorandum dated 22.01.1990, issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Pensions and Pensioners' Welfare, directing all the former employees of Central Government who were absorbed in public sector undertakings to opt for either being governed by the Family Pension Scheme of the Central Government or to opt for continuing in the Employees' Family Pension Scheme of 1971, which was notified under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the 1st respondent/writ petitioner opted to be governed by the Family Pension Scheme of Central Government and in view of the option exercised by him, MIDHANI has forwarded his application along with 27 other employees for grant of exemption under the Employees' Family Pension Scheme of 1971 in terms of Section 17(1)(c) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, and accordingly, the Central Provident Fund Commissioner, through his notification dated 30.09.1991, granted exemption, by exercising power u/s 17(1)(c) of the Act. Name of 1st respondent figured at serial No. 9 out of the total 28 employees whose names were mentioned in the schedule. It is also to be noticed that in view of the exemption granted, the 1st respondent has also withdrawn all the amounts accrued under the Employees' Family Pension Scheme of 1971, and ultimately, he retired from the service of MIDHANI on attaining the age of superannuation, on 01.08.1994, whereas the Employees' Family Pension Scheme of 1971 has been replaced by the Employees' Pension Scheme of 1995 with effect from 16.11.1995. It is true that under the Employees' Pension Scheme of 1995, an option is given under Clause 7 of the

Scheme only for those who seized to be the members of Employees" Family Pension Scheme of 1971 between 01.04.1993 and 15.11.1995. In the present case, it is to be noticed that the claim of 1st respondent will not fall in any of the clauses under Clause 6 of the Employees" Pension Scheme of 1995 either to opt for such scheme or to be a member under the scheme. It is to be noticed that the 1st respondent/writ petitioner was seized to be the member of Employees" Family Pension Scheme of 1971 from the date of exemption i.e. 30.09.1991. The learned Single Judge has observed that the Central Provident Fund Commissioner could not have invoked the power u/s 17(1)(c) of the Act. We do not see any valid reason for such a finding. As per the provision u/s 17(1)(c), which stood at that point of time, the only obligation of the competent authority was to see whether the scheme opted by the employee was more beneficial for him or not. As on the date of passing of orders i.e. on 30.09.1991, the Family Pension Scheme of Central Government was more beneficial to him, the 1st respondent opted to come under the said scheme and sought for exemption, which itself is based on the option exercised by the 1st respondent at that point of time, and thus, there is no reason to invalidate the exemption notification dated 30.09.1991. It is true that subsequently, the Employees" Family Pension Scheme of 1971 was replaced by the Employees" Pension Scheme of 1995, but it came into effect on 16.11.1995, by which date, the 1st respondent had already retired from service on 01.08.1994 and he had also withdrawn all the amounts accrued as on the date of his exemption. When the Employees" Pension Scheme of 1995 permits only the persons who seized to be the members of Employees" Family Pension Scheme of 1971 between 01.04.1993 to 15.11.1995, as the 1st respondent was seized to be the member of Employees" Family Pension Scheme of 1971 in terms of the exemption proceedings dated 30.09.1991, he is not entitled to have the benefits of the Family Pension Scheme of 1995. It is always open to notify the schemes by the competent authority under the Employees" Provident Funds and Miscellaneous Provisions Act, 1952, to improve the benefits to the employees, but at the same time, the employees, who do not fit into such scheme, cannot claim, as a matter of right, for the benefits of such scheme which was not in force when such employees were in service. In this case, the Employees" Pension Scheme of 1995 was notified on 16.11.1995, which itself was subsequent to 01.08.1994, on which date, the 1st respondent had retired from service on attaining the age of superannuation, by opting the scheme which was beneficial to him while he was in service and after grant of exemption orders by the competent authority u/s 17(1)(c) of the Employees" Provident Funds and Miscellaneous Provisions Act, 1952 as per the provision stood at that point of time, there is no reason or justification on the part of 1st respondent for seeking directions to come under the Employees" Family Pension Scheme of 1995, for which, he is not entitled. In that view of the matter, we do not find any discrimination as such, as recorded by the learned Single Judge. Those who retired from service before introduction of new scheme, namely, the Employees" Pension Scheme, 1995, and who are covered by the various provisions of the said scheme, would constitute a separate class by themselves, as such, they

cannot seek any directions pleading discrimination. It is always open for the Government and Governmental authorities to make different classifications in implementation of statutory schemes under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, which is a beneficial legislation to improve the benefits under such schemes and the same is to be treated to be reasonable classification. Therefore, we are of the view that there is no discrimination as recorded by the learned Single Judge. In any event, there cannot be a general direction in a petition filed by the 1st respondent singularly, as it depends on various factors like options exercised by the individual employees as to who will fall and who do not fall under the scheme, therefore, we are of the view that no general direction could have been issued by the learned Single Judge to extend the benefits of the Employees' Pension Scheme of 1995 for all those absorbed in various public sector undertakings.

12. Though the 1st respondent Sri B. Veeraswamy has relied on the Division Bench judgment of Karnataka High Court in D. Gopalan's case 1 (supra), the learned Single Judge himself, in the impugned order, has held that the said judgment is based on amendment of Section 17(1)(c) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. But a reading of the provision as stood earlier, shows that the only obligation on the part of competent authority was to grant exemption basing on the option exercised by the Government servant with regard to the Scheme which was more beneficial to him. As on the date of passing of the exemption orders on 30.09.1991, Family Pension Scheme of Central Government was more beneficial to him, the 1st respondent had rightly opted for the same, basing on which, exemption orders were issued. When exemption orders were passed basing on the option exercised by the employee, he cannot be permitted to turn around and question the very notification granting exemption, at this point of time. Although it is submitted that the directions issued by the Karnataka High Court to extend the Family Pension Scheme of 1995 in D. Gopalan's case 1 (supra) were implemented, as we are of the view that the said judgment itself is based on the amendments to Section 17(1)(c) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, and further, in the present case, as the 1st respondent/writ petitioner had already withdrawn the contributions made by him under the Employees' Family Pension Scheme of 1971 and as the very exemption is granted on the application filed by the 1st respondent/writ petitioner, the said judgment would not render any assistance in support of his claim. In the facts and circumstances of the case, we are of the view that if the directions as issued by the learned Single Judge are allowed to stand, the same would amount to extending the scope of the scheme itself, which is not permissible in a petition filed under Article 226 of the Constitution of India.

For the aforesaid reasons, this writ appeal is allowed and the order dated 11.09.2009, passed by the learned Single Judge in W.P. No. 3731 of 2009, is set aside. Consequently, the said writ petition stands dismissed. No order as to costs.

Miscellaneous applications pending, if any, shall stand cancelled.

1. W.A.No.4673 of 2004, dated 21.04.2006