

K. Chennakesavalu Vs. the Employees Provident Fund Organisation, Rep. by Its Commissioner and ors.

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Court : Karnataka

Decided On : Jun-11-2004

Reported in : [2004(102)FLR919]; ILR2004KAR2859; 2004(4)KarLJ568; (2004)IIILLJ958Kant

Judge : R. Gururajan, J.

Appeal No. : W.P. No. 21359/2000

Appellant : K. Chennakesavalu

Respondent : The Employees Provident Fund Organisation, Rep. by Its Commissioner and ors.

Advocate for Def. : Hari Krishna S. Holla, Adv.

Advocate for Pet/Ap. : Subba Rao & Co.

Disposition : Petition allowed

Judgement :

ORDER

R. Gururajan, J.

1. Petitioner is an employee of the HMT Limited w.e.f. 30.8.1968. He took voluntary retirement on 13.5.1998. He was a member of the Employees Family Pension Scheme 1971 from 28.5.1971 to 15.11.1995. He thereafter continued to be a member of the Employees' Pension Scheme 1995 from 16.11.1995 till the date of his retirement. It is stated that he received a letter dated 1.9.1998 (Annexure -A) from the second respondent informing him that his monthly pension would be Rs. 399/-. Aggrieved by the same, petitioner submitted a representation (Annexure-B) seeking for clarification in the matter. Reply was sent stating that the pension has rightly been fixed. He refers to several correspondence between the parties in this regard. In the absence of any, positive response, petitioner is before me challenging the endorsement Annexures C, D, F and G.

2. Respondents entered appearance and they have filed their statement of objections. They justify their action.

3. Heard the learned Counsel for the parties and perused the material placed on record.

4. Learned Counsel for the petitioner invites my attention to the material facts to contend that the facts of this case would show that he is entitled for much more than what is fixed by the respondents. Per contra, learned Counsel for the respondents supports the order.

5. Material facts would reveal that the petitioner is a member of the Employees' Provident Fund Scheme. He took VRS at the age of 55 years. Para 12(1) of the Employee's Provident Fund Scheme provides for monthly pension to its members. Para 12(1)(a) provides for superannuation pension if he has rendered eligible service of 20 years or more and retires on attaining the age of 58 years. Para 12(1)(b) provides for retirement pension if he has rendered eligible service of 20 years or more and retires or otherwise ceases to be in the employment before attaining the age of 58 years. Para 12(1)(c) provides for short service pension, if he has rendered eligible service of 10 years or more but less than 20 years. In case of a new entrant Para 12(2) provides that monthly superannuation pension or retiring pension as the case may be shall be computed in accordance with the following factors, namely;

Monthly Pensionable salary x pensionable service

Member's Pension= 70

Para 12(3) provides that in the case of an employee (who was a member of the cases Family Pension Scheme 1971) and who has not attained the age of 48 years on the 16th November 1995, superannuation/retirement/short service pension shall be equal to the aggregate of:-

(a) pension as determined under sub-paragraph (2) for the period of pensionable service rendered from 16th November 1995 or Rs. 635/- per month whichever is more:

(b) Past service pension benefit shall be as per the schedule given there under:

Para 12(4) provides that pension in the case of an employee who was a member of the ceased family pension scheme 1971 and has attained the age of 48 years but less than 53 years on 16th November, 1995, the superannuation/retirement pension shall be equal to the aggregate of :-

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

(b) Past service benefit as provided in sub-paragraph (3) subject to a minimum of Rs. 600/- per month provided the past service is 24 years. It further provided that if it is less than 24 years , the pension payable and the past service benefits taken together shall be proportionately less subject to the minimum of Rs. 325/- per month.'

Sub-paras 5, 6, 7, 8 provides for pension in certain circumstances.

6. A reading of para 12 of the Employees' Provident Fund Scheme would show that what is applicable to the petitioner is para 12(4). Para 12(4) is applicable to those who have attained the age of 48 years but less than 53 years. It is an

admitted fact that the petitioner retired on 16.11.1995. At that time, he had attained the age of 48 years but he was less than 53 years of age. In so far as past service in terms of para 12(4)(b) it provides for a minimum of Rs. 600/- per month. It cannot be forgotten that para 12 4(b) has to be read in light of the main provision i.e., 12(4) itself. Para 12(4) provides for retirement benefits being equal to an aggregate of pension of Rs. 438/- per month and past service benefit of Rs. 600/- per month. At this stage, I must also notice that Para 12(7) provides for revised pension from the date earlier than 58 years of age but not earlier than 50 years of age. In the case on hand, petitioner retired at 52 years. Petitioner was therefore short by three years and that is required to be given deduction. If 3% deduction i.e. Rs. 93/- is deducted from Rs. 600/- + Rs. 438/-, it works out to Rs. 945/-. Therefore the petitioner is right in his submission that his entitlement would be in terms of the law governing the pension. The contra argument of the respondents that the maximum payable is Rs. 600/- cannot be accepted for the reason that para 12 itself does not provide for any such meaning as argued by the respondents. The words 'quantum of Rs. 600/-' has to be for the purpose of consideration of past service benefits and that cannot be confused for the total figure in terms of Para 12 4(a) and (b). The intention is to pay a sum equal to pension + past service benefits.

7. Learned Counsel for the respondents relies on a clarification in terms of a circular dated 10.5.99. I have carefully perused the said circular. The circular reads as under:

2.2. Aggregate minimums prescribed under proviso para of para 12(3), 12(4) 12(5) i.e., Rs. 800/- Rs. 600/- or Rs. 500/- as the case may be are payable only if the following conditions are satisfied:

The member attains the age of 58 years.

Member has rendered 24 years of eligible service.

'Aggregate of (a) and (b) is less than the prescribed minimum of Rs. 800, Rs. 600 and Rs. 500 as the case may be.

If the eligible service is less than 24 years, the aggregate minimum of Rs. 800/- Rs. 600/- or Rs. 500/- as the case may be shall be reduced proportionately but not lesser than Rs. 450/- Rs. 325/- or Rs. 265/- per month respectively.'

8. Clarification cannot run against the provisions. I cannot forget that I am concerned with social welfare legislation meant for the weaker sections of the society namely the workmen. Any interpretation has to be a beneficial interpretation. Taking into consideration all aspects of the matter including the clear language, benefits and the object of the beneficial legislation, this petition has to be accepted and relief has to be granted to the petitioner.

9. However, I deem it proper to clarify that this judgment is only with regard to para 12(4) (a) and (b) and no opinion is expressed with regard to Paras 12(3) and 12(5).

10. In the result, this petition is allowed. Annexures - C, D, F and G are set aside. A direction is issued to the respondents to fix the pension of the petitioner quantifying at RS. 1038/- less 9% as prayed for by the petitioner. Petitioner is also entitled for interest for the delayed payment if permissible and in accordance with law. Time for compliance is eight weeks from the date of receipt of a copy of this order.

RGRJ:

11.6.2004

This Judgment is applicable to various workmen covered by the EPF and the scheme framed therein. Therefore, I deem it proper to direct the Commissioner, Respondent No. 1 to circulate this Judgment to other Commissioners for proper implementation of the Act.