

C.Govindasamy Vs. the Regional Provident Fund Commissioner and ors.

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Court : Chennai

Decided On : Jun-07-2011

Judge : K.Chandru, J.

Acts : Employees' Provident Funds and Miscellaneous Provisions Act, 1952;
[Employees' Provident Funds Scheme 1952](#)

Appeal No. : W.P.NO.6434 OF 2008 AND M.P.NO.1 OF 2008

Appellant : C.Govindasamy

Respondent : The Regional Provident Fund Commissioner and ors.

Advocate for Def. : Mr.K.Gunasekar; Mr.L.Dhamodaran, Adv.

Advocate for Pet/Ap. : Mr.K.Shanmugakani, Adv.

Judgement :

1. The petitioner who is a workman employed by the third respondent Madras Race Club has filed the present writ petition seeking to challenge the order dated 19.11.2007 as well as 11.01.2008 passed by the second respondent Assistant Provident Fund Commissioner, Chennai.

2.In the writ petition, notice of motion was ordered on 14.03.2008. Subsequently, when the matter came up on 26.11.2010, the same was admitted. But no interim order was granted despite the petitioner made an application for the same in M.P.No.1 of 2008. On notice from this Court, on behalf of the respondents 1 and 2,

initially a counter affidavit dated 02.02.2009 was filed and subsequently another counter affidavit dated 18.04.2011 was also filed. On behalf of the third respondent, a counter affidavit dated 20.04.2011 was filed by the Additional Secretary (Legal & PR), Madras Race Club, Chennai.

3.The contention of the petitioner is that he joined the third respondent Club on 07.04.1969 and also became a Member of the Employees' Provident Fund Scheme. He got superannuated on 30.04.2006 after rendering 37 years of service. When he became a Member of the Employees' Provident Fund Scheme in 1969, the third respondent deducted contributions from his wages and forwarded the same to the respondents 1 and 2.

4.Under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, three Schemes were framed to benefit the employees. They are (i) [Employees' Provident Funds Scheme 1952](#); (ii) Employees' Family Pension Scheme 1971 and (iii) Employees' Deposit Link Insurance Scheme. The Employees' Family Pension Scheme 1971 is applicable to all the employees, who are covered by the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 to become its Members. But however, it was optional for such of those persons, who were Members of the [Employees' Provident Funds Scheme 1952](#) as on 28.02.1971. Since the petitioner became a Member of the [Employees' Provident Funds Scheme 1952](#), the Employees' Family Pension Scheme 1971 should have been made applicable to the petitioner and the employer should have deducted 1.1/6% of his pay towards contribution. The Employees' Family Pension Scheme 1971 was replaced by the Employees' Pension Scheme 1995. The new Scheme automatically took contributions for the old Scheme which vests with the new Scheme. In case of default, the authorities are entitled to recover the said amount. But though the petitioner had retired after 37 years of service after attaining the age of superannuation, he was not paid pension. Hence, he caused a legal notice for grant of pension for the long years of service rendered by him.

5.By the impugned order dated 19.11.2007, the petitioner was informed that since he was not a Member of the Employees' Family Pension Scheme 1971 and also did not opt to exercise to become a Member of the Employees' Pension Scheme

1995 by remitting the amount payable from 01.03.1971 with interest up to the date, he is not eligible to get pension. His counsel was also informed that only by remitting the said amount, he can claim in Form 10-D. Reliance was placed upon in Paras 6(d), 7(3) and 17(3) of the Employees Pension Scheme 1995. The petitioner's counsel was informed that the petitioner should pay a sum of Rs.31,550/- which is the amount to be remitted upto 15.11.1995 and also interest at the rate of 8.5% from 11/1995 to 11/2007 which works out to Rs.31,957/-. The total sum payable by the petitioner before 30.11.2007 was Rs.63,507/-. When he sent a further notice dated 15.12.2007, by the second impugned order dated 11.01.2008, the petitioner was informed that unless he pays all past period contributions together with interest, he cannot be covered by the Employees Pension Scheme 1995.

6.However, Mr.K.Shanmugakani, learned counsel for the petitioner contended that the employer (the third respondent herein) with an obligation to deduct contributions payable towards the Pension Scheme, neither asked the petitioner to opt to have served under Para 9(d) nor served with Form No.1 on the introduction of the said Scheme. Since the third respondent had failed to discharge the statutory obligation, the petitioner, being a worker cannot be punished. He also referred a case of one Ravikumar who was not an applicant in the year 1971. But subsequently, he was paid pension under the Employees' Pension Scheme 1995. It was further contended that para 6(d) read with para 7(3) and 17(3) are applicable only to exempted establishment.

7.The learned counsel for the petitioner took pains to take this Court through the Employees' Family Pension Scheme 1971. He referred to Form No.1 wherein it is mandated that the employer should circulate the offer of getting enlisted under the Scheme, which was not done in the case of the petitioner. Para 4(a) provides for option of joining the Scheme and para 4(a)(3) mandates the employees to get option referred to therein. But in the present case, the petitioner cannot escape by referring to an option not been shown by his employer. If that is the case that many employees could not have opted to become covered by the provisions of the Employees' Pension Scheme 1995.

8. In essence, while Employees' Family Pension Scheme 1971 gave option for the existing subscribers to join or not for the people who are employed before the date, which has made compulsory for the subsequent entrants and Employees' Family Pension Scheme 1971 was replaced by Employees' Pension Scheme 1995. Therefore, it is for the petitioner to have exercised the option and not make a complaint against the employer after a period of 40 years from the date of the introduction of the Employees' Family Pension Scheme 1971.

9. With reference to non-execution of such Scheme, in paragraphs 3 and 6 of the counter affidavit filed by the third respondent, it was averred as follows:

3..... The petitioner herein to hide-up his fault has made accusation that the third respondent club has failed to discharge their duty in explaining the details of the scheme to the employees of the club. In fact, the then officers have put on proper notice of the said scheme and also explained the details to the employees. The employees of the club who were interested of the scheme had opted for the scheme. The petitioner herein who was not interested about the scheme had not opted for the same. As such, the claim of the petitioner is improper.

4.....

5.....

6..... With regard to the allegation that the employer has to ascertain from the employee and inform to the respondent with regard to the Family Pension Scheme is concerned, this respondent submits that as stated in the earlier paragraph, the then officer of the club put on proper notice with regard to the said scheme. The then employees were not much interested in enrolling themselves as a member since the benefits under the said Scheme was for the limited purposes. Only in the year 1995, the benefits were enlarged and the members evinced interest in enrolling themselves as member of the scheme. The petitioner on its own took a decision not to opt for the scheme cannot blame the third respondent that too after a period of more than 41 years. Therefore, the petitioner's allegation in this regard must necessarily be fail.

10. With reference to the Pension Scheme being extended to one Ravikumar, in paragraph 8 of the counter affidavit filed by the third respondent, it was averred as follows:

8..... With regard to the ground (d) is concerned, this respondent calls upon the petitioner to prove the same. It is a known fact that without joining the scheme or making contribution no person will be entitled for the payment of the pension. There is absolutely no merit in the above petition. Except making vague allegations, the petitioner is unable to prove the said averment.

11. In the counter affidavit dated 18.04.2011 filed by the respondents 1 and 2, regarding application of Employees' Pension Scheme, 1995, in paragraphs 5 to 7, it was averred as follows:

5. It is further submitted that as contemplated in Paragraph 6(d) of the Employees Pension Scheme 1995, who has been a member of the Employees' Provident Fund or of Provident Funds of factories and other establishments, on 15 November, 1995 but not being a member of the ceased Employees' Family Pension Scheme, 1971 opts to exercise his option under Paragraph 7 (i.e. Option for joining the Scheme)

6. It is further submitted that under Paragraph 7(3) of The Employees' Pension Scheme, 1995 contemplates that 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.

7. It is further submitted that under Paragraph 17(3) of the Employees' Pension Scheme, 1995 refers that the Members referred to in sub-Paragraph (3) of Paragraph 7 shall be deemed to have joined the ceased Employees' Family Pension Scheme, 1971, with effect from 01.03.1971 to 15.11.1995 on remittance of past period contribution with interest @8.5% thereon which in this case works out to a sum of Rs.63,507/-. Accordingly, the petitioner and his Advocate were informed of the material facts but there is no reply from the petitioner/Advocate. The petitioner is luxuriously making such false allegation before this Hon'ble Court.

12. Therefore, it is for the petitioner to decide whether he wants to have the benefit of Pension and in such case, necessarily he has to make contributions in terms of the Employees' Pension Scheme, 1995. He cannot be here to complain that the employer has not made aware of the Employees' Pension Scheme, 1995, in which event, he would have joined the Scheme that time itself and would not have faced the liability and on the other hand, the employer third respondent is correct in stating that at the relevant time, the employees, who had option, did not want to join the Employees' Family Pension Scheme 1971, as it was not attractive and only when the Employees' Pension Scheme, 1995 was made more attractive, the question of joining the Scheme arose. But however, as rightly contended by the respondents 1 and 2, it is tied up with the conditionalities prescribed therein.

13. It must also be noted that the Pension Scheme contemplated under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, is in addition to the provident fund payable and it is in contributory nature. May be in cases where it is non-contributory and were given a pension as a matter of right, the question of payment of any amount to opt to go under the new Scheme may not arise, as held by the Supreme Court in the case of Poonamal vs. Union of India, reported in 1985 (3) SCC 345. In such cases, the question of making contributions to come under the Pension Scheme may not arise. In para 7 of the said judgment, it was observed as follows: 7. It is not necessary to examine the concept of pension. As already held by this Court in numerous judgments pension is a right not a bounty or gratuitous payment. The payment of pension does not depend upon the discretion of the Government but is governed by the relevant rules and anyone entitled to the pension under the rules can claim it as a matter of right. (Deoki Nandan Prasad v. State of Bihar, State of Punjab v. Iqbal Singh and D.S. Nakara v. Union of India¹.) Where the Government servant rendered service, to compensate which a family pension scheme is devised, the widow and the dependent minors would equally be entitled to family pension as a matter of right. In fact we look upon pension not merely as a statutory right but as the fulfilment of a constitutional promise inasmuch as it partakes the character of public assistance in cases of unemployment, old-age, disablement or similar other cases of undeserved want. Relevant rules merely make effective the constitutional mandate. That is how pension has been looked upon in D.S. Nakara judgment. At

the hearing of this group of matters we pointed out that since the family pension scheme has become non-contributory effective from September 22, 1977 any attempt at denying its benefit to widows and dependents of Government servants who had not taken advantage of the 1964 liberalisation scheme by making or agreeing to make necessary contribution would be denial of equality to persons similarly situated and hence violative of Article 14. If widows and dependents of deceased Government servants since after September 22, 1977 would be entitled to benefits of family pension scheme without the obligation of making contribution, those widows who were denied the benefits on the ground that the Government servants having not agreed to make the contribution, could not be differently treated because that would be introducing an invidious classification among those who would be entitled to similar treatment. When this glaring dissimilar treatment emerged in the course of hearing in the Court, Mr B. Dutta learned counsel appearing for the Union of India requested for a short adjournment to take further instructions.

14. Since it is admittedly a contributory pension scheme, the petitioner is bound by the terms of the Scheme and he cannot escape his liability to make out the amount payable by pointing out the alleged lapse of the employer. The writ petition is misconceived and bereft of any legal reasons and hence, the same stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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