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SooperKanoon Citation : sooperkanoon.com/740510

Court : Gujarat

Decided On : Feb-17-1995

Reported in : (1995)IILLJ978Guj

Judge : Rajesh Balia, J.

Acts : Employees Provident Fund and Miscellaneous Provisions Act, 1952 - Sections 6 and 6A

Appeal No. : S.C.A. No. 9781/1994

Appellant : Gitaben Arvindkumar Sheth

Respondent : Regional Provident Fund Commissioner and ors.

Advocate for Def. : J.D. Ajmera, ASC. For Respondent Nos. 1 and 2

Advocate for Pet/Ap. : D.S. Vasavada, Adv.

Judgement :

Rajesh Balia, J.

1. A very short question is raised in this petition. The husband of the petitioner herein was serving with respondent No. 3, Anupam Fabrics Pvt. Ltd. By an order

dated May 31, 1990, the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, were made applicable to the establishment of respondent No. 3 with effect from April 1, 1990, and the provident fund contributions were required to be made on and from April 1, 1990. Arvind-kumar Jayantilal Shah, husband of the present petitioner, died on July 26, 1990. The heirs of the deceased, Arvindkumar, were given the benefits accruing to the deceased under the Employees' Provident Fund Scheme, 1952, but the benefits of the family pension under the Employees' Family Pension Scheme, 1971, (for short 'the FP Scheme'), and the Employees' Deposit-Linked Insurance Scheme, 1976 (for short 'the Insurance Scheme') were denied to the heirs of the deceased, Arvindkumar.

2. The benefits of the FP Scheme were denied on the ground that as per the circular of the Department, the deceased employee's membership for Family Pension Scheme was below three months at the time of the death of Arvindkumar. The contention of the respondent was based on the fact that the Employees' Family Pension Scheme, 1971, was made effective prospectively and para 28 of the FP Scheme provides that in order to become eligible for the grant of monthly family pension under the FP Scheme, it is necessary that the late member should have contributed to the family pension fund for a period of not less than three months. According to learned counsel for the respondents, since the FP Scheme was made applicable only by an order dated May 31, 1990, and the workman did not become member of the Family Fund prior to May 31, 1990, he could not have made such contributions for three months to the fund on the date of his death. The claim of the heirs of the deceased workman, for the benefit under the Employees' Deposit-Linked Insurance Scheme, 1976 (for short the 'Insurance Scheme'), was denied on the ground that the workman was not eligible in terms of para 22 of the Insurance Scheme.

3. To examine the first contention, it would be appropriate to reproduce the relevant provisions necessary for the present controversy. The relevant part of Section 6-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, reads as under:

'6-A. Employees' Family Pension Scheme. -

(1) The Central Government may, by notification in the Official Gazette, frame a scheme to be called the Employees' Family Pension Scheme for the purpose of providing family pension and the life assurance benefits to the employees of any establishment or class of establishments to which this Act applies.

(2) There shall be established, as soon as may be after the framing of the Family Pension Scheme, a Family Pension Fund into which shall be paid from time to time in respect of every such employee-

(a) such portion, not exceeding one-fourth, of the amount payable under Section 6 as contribution by the employer as well as the employee, as may be specified in the Family Pension Scheme.

(b) such sums as are payable by the employer of an exempted establishment under Sub-section (6) of Section 17, and

(c) such sums, being not less than the amount payable in pursuance of Clause (a) out of the employers' contribution under Section 6, as the Central Government may, after due appropriation made by Parliament by law in this behalf, specify.

(3) The Family Pension Fund shall vest in and be administered by the Central Board.

(4) The Family Pension Scheme may provide for all or any of the matters specified in Schedule III.

(5) The Family Pension Scheme may provide that any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in this behalf in the scheme.'

Relevant part of para 28 of the Employees' Family Pension Scheme, reads as under:

'28. Rate of Family Pension. - In the case of a member who, being a member of the Family Pension Fund dies during the period of reckonable service before

attaining the age of 60 years, family pension shall be paid at the rates specified in the table below subject to the condition that he has contributed to the Family Pension Fund for a period of not less than three months.

Table

Omitted

Explanation 1. - If at the time of death during the period for which contribution to the family pension fund was received of reckonable service a member was not in respect of full pay, the rate of full pay last drawn by him during that period shall be taken into account for the assessment. Explanation 2, - In the case of a part-time employee who was a member of the Family Pension fund while serving in more than one establishment covered under the Act, the rate of family pension shall be determined with reference to the aggregate of the full pay last drawn by him in such establishments on which contributions to the Family Pension Fund were recovered.'

Para 3 of the Employees' Family Pension Scheme, 1971, reads as under:

'3. Membership of the Family Pension Fund. - Subject to sub-paragraph (3) of paragraph 1, this scheme shall apply to every employee-

(a) who becomes a member of the Employees' Provident Fund or of Provident Funds of factories and other establishments exempted under Section 17 of the Act on or after May 1, 1971;

(b) who has been a member of the Employees' Provident Fund or Provident Fund of factories and other establishments exempted under Section 17 of the Act immediately before the commencement of this scheme and opts to exercise his option under paragraph 4:

Provided that an employee who attains the age of more than 59 years on the date on which he would, but for this proviso, have become eligible for membership or have been required to become a member of this scheme shall not be eligible for membership under this scheme.'

4. Para 9 of the FP Scheme which deals with Family Pension Fund reads as under:

'9. Family Pension Fund. - (1) From and out of the contributions payable by the employer and the employees in each month under Section 6 of the Act (or under the rules of the provident fund of the establishment which is exempted under either Section 17(1)(a) or 17(1)(b) of the Act or whose employees are exempted under either paragraph 27 or 27A of the Employees' Provident Funds Scheme, 1952) a part of the contribution, representing $1\frac{1}{6}$ per cent, of the employee's pay along with an equivalent by the employer to the family pension fund (within fifteen days of the close of every month) by a separate bank draft or cheque on the account of the family pension fund contribution in such manner as may be specified in this behalf by the Commissioner. The cost of the remittance, if any, shall be borne by the employer...'

5. Section 6-A(l) envisages framing of the Family Pension Scheme for establishment to which the Act applies. Section 6-A(2)(a) envisages a portion of contribution made under Section 6 of the Act, that is to say, contribution towards provident fund is to go to Family Pension Fund established under Section 6-A under para 3, an employee becomes member of the Family Pension Scheme who has become a member of Employees' Provident Fund. Para 9 of the FP Scheme clearly postulates that remittance of contribution to the FP Fund is to be 'from and out of contribution payable under Section 6 of the Act towards Provident Fund, whether of employer or employee. The applicability of the Act to any establishment is automatic when any establishment fulfils the eligibility criteria mentioned in Section 1(3) of the Act and that does not depend on the making of any order by the competent authority calling attention of the employer and making demand of contributions. That is why where the employer does not come forward by himself, or comes late, the competent authority can determine and raise the demand for contribution towards the provident fund with effect from the date the establishment comes within the provisions of Section 1(3). Therefore, after the framing of the Family Pension Scheme under Section 6-A, the applicability of the provisions to any establishment is co-extensive with the date on which it is covered under the Act for the purpose of Provident Fund Scheme. The contribution to provident fund

and family pension are also not separate, but is correlated and co-existing with the contributions made by the employee and the employer every month under Section 6 of the Act to the provident fund under the scheme of 1952.

The requirement of eligibility to benefits of family pension is that the employee must have 'contributed' to the Family Pension Fund for the period of three months.

Under Section 6 of the 1952 Act, contribution of the employer and employee is payable with effect from the date when the provisions of the Act are made applicable to any establishment. Section 6-A also, links Family Pension Fund for the purpose of implementing the Family Pension Scheme with the contributions made to the fund.

Therefore, a person becomes contributory to Family Pension Fund with effect from the date he becomes eligible to contribute to the provident fund under the scheme of 1971.

It is not disputed before me that the provisions of the Employees' Provident Fund and Miscellaneous Provision Act, 1952, were made applicable to the establishment with effect from April 1, 1990, by an order dated May 31, 1990. It is apparent that the deceased, Arvindkumar, became a member of the provident fund from April 1, 1990, and also had contributed for more than three months' towards the provident fund before his unfortunate death. Consequently, he becomes member and contributory to the Family Pension Scheme also with effect from April 1, 1990, and was contributor for a period of more than three months at the time of his death. Mere fact that the employer has not deposited the amount deducted from his salary by dividing the same between the amount payable to the provident fund and the Family Pension Fund separately but deposited in PF A/c only would not affect the benefits to which he or his nominee or heirs of the deceased employee had become entitled on his becoming contributory to the Family Pension Scheme. These benefits conferred under the scheme cannot be taken away by issuing executive directions for making the scheme operative with effect from the date of the order under Section 6-A of the Act, notwithstanding the fact that the provisions of Section 6 have been made applicable to the establishment with retrospective effect.

6. Therefore, in my opinion, there is no reason for the respondents to deny the petitioner the benefits of Family Pension Scheme, 1971, on the alleged ground of membership to the scheme for a period of less than three months. What is required is not a membership but minimum contribution for three months. As discussed above, contribution to Family Pension Fund is co-existent with the contribution to the provident fund.

7. However, so far as the other contention of the petitioner is concerned, I find that under para 22 of the Scheme of 1976, before the benefits of the insurance can be extended to members of the family of the deceased in terms of the scheme framed under Section 6-C, the pre-condition is that average balance in the account of the deceased during the 12 months preceding the death or during the period of his membership should not be less than Rs. 500. Average monthly balance in the deceased's account under the insurance scheme was undisputedly and undoubtedly less than Rs. 500. Hence, his heirs were not entitled to the benefits of the Insurance Scheme.

8. Accordingly, this petition partly succeeds. The respondents are directed to release in favour of the petitioner all the benefits of the Family Pension Scheme, 1971, if the other conditions are satisfied. The other part of the claim of the petitioner is rejected. Rule is made absolute to the aforesaid extent with no order as to costs.