

D. Rani and ors. Vs. the Management of Indian Drugs and Pharmaceuticals Ltd., (Surgical Instruments Plants)

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Court : Chennai

Decided On : Mar-21-1990

Reported in : (1990)2MLJ1

Appellant : D. Rani and ors.

Respondent : The Management of Indian Drugs and Pharmaceuticals Ltd., (Surgical Instruments Plants)

Judgement :

A.S. Anand, C.J.

1. Appellants were the writ petitioners in writ petition No. 7557 of 1984. Appellants 1 to 7 are the legal representatives of some deceased employees of the respondent-management. They sought a writ of mandamus to direct the respondent-management to release and settle the withheld payments of death benefits due to them as dependents of the deceased employees, and to pay an amount of Rs. 10,000 each together with interest thereon at the rate of 12 per cent per annum calculated from the due date. The writ petition was resisted and by judgment dated 14th December, 1984, the learned single Judge dismissed the writ petition. Hence this appeal.

The facts are not in dispute. Seven employees viz.(1) Shanmugam. (2) G. Kulandaiswamy. (3) R. Selvanathan, (4) R. Mariappan, (5) Sambandam, (6) C. Chellappan and (7) Md. Usman died while in the service of the 'management-respondent' on 26.6.1977, 8.5.1982, 30.10.1983, 2.10.1983, 27.12.1983. 30.8.1983 and 1.10.1983 respectively. While the employees were in the service of the respondent-management which is a Government owned Undertaking, a scheme was introduced called 'The Group Life Insurance' in April, 1977. Under the scheme all employees of the management-respondent who contributed to the provident fund were to join the scheme and that was (SIC) employees also. Under the scheme each of the employees was assured for a sum of Rs. 10,000. Rules were framed for the Working of the Group Insurance Scheme. Some of the relevant clauses of the Rules require a notice at this stage.

4. Evidence of age:

The Company shall arrange to submit to the Corporation evidence of age in respect of each Member at the time of entry into the Scheme.

5. Premiums:
(a) The Company shall pay to the Corporation in respect of each member on the Entry date and the relevant Annual Renewal Dates such premiums as are required to secure the benefits under these Rules.

(b) If there is any default by the Company in Payment of the premium within the stipulated time, the Corporation will intimate that fact to the regional Provident Commissioner.

6. Assurances:

On the entry Date, an Assurance shall be effected on the life of each Member one year Renewable Group Term Insurance Plan for a sum Assured equal to Rs. 10,000.

7. Benefits of Death Whilst in service:
Upon the death of the Members whilst in service, the Sum Assured Under the Assurance shall become payable to the Company for the benefit of the Nominee.

8. Nomination: Upon the death of the member whilst in service, the sum assured under the Assurance on his life will become payable to the company for the benefit

of the Nominee or Nominees appointed by the Members under the Provident Fund. If no nomination subsists or if the nomination relates only to part of the benefits, then the whole sum assured or part thereof, as the case may be, shall become payable to the members of his family in equal shares as provided in the Employees Deposit Linked Insurance Scheme, 1976.

At the time when the scheme was introduced, the employees of the respondent-management were also covered by Deposit Linked Insurance Scheme, 1976, framed under Provident Fund and Family Pension Act, 1952, under which the employer had been cost with on obligation of making contribution to the scheme without any contribution from the employees and in the event of the death of the employee, the dependents as the beneficiaries were entitled to be paid the sum assured directly by the Provident Fund Commissioner. The said scheme had been put into operation somewhere in 1976. After the death of the employees of the respondent-management referred to above, some amounts were paid to the appellants under the Deposit Linked Scheme. Claims were preferred by the management in respect of the death of the employees to the Life Insurance Corporation and the Life Insurance Corporation settled those Claims in respect of each of the employees mentioned herein, as is apparent from the letter issued by the Life Insurance Corporation of India to appellant No. 8 on 25.2.1984. The amount at the rate of Rs. 10,000 for each of the deceased employees was received by the management. This position is not disputed in the counter affidavit filed by the respondent-management. On the nominees and legal representatives of the deceased employees demanding the payment of the assured sum of Rs. 10,000 under the Group Insurance Scheme each from the employer, they were informed that the payment would be made to them after deducting the benefit received by them under the Deposit Linked Scheme.

2. The appellants questioned the right of the respondent-management to make any deduction out of the amount of Rs. 10,000 which had been received by the management-respondent on account of the death of each of the seven employees from the L.I.C. on account of the benefits received by them under the Employees Deposit Linked Insurance Scheme, 1976.

3. Appearing on behalf of the appellants, the learned Counsel submitted that the Group Insurance Scheme introduced by the Life Insurance Corporation, as applied by the employer-management being a welfare scheme for the benefit of the employees could not be allowed to be defeated by the management particularly when it had received those amounts from the L.I.C. It is urged by the learned Counsel that since on the date of death of each of the employees, both the Deposit Linked Scheme and the Group Insurance Scheme were in force, the employees were entitled to receive benefit under both the schemes and that the learned single Judge fell in error in construing the benefits under the two schemes, as conferring 'double benefits'.

4. The learned Counsel for the respondent-management on the other hand submitted that it was not permissible for the dependents of the employees to get double benefit particularly when the employees had made no contribution to the Group Insurance Scheme. He argued that Section 17(2-A) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, provided that the Central Government could exempt any establishment from the operation of all or any of the provisions of the Deposit Linked Insurance Scheme, if was satisfied that the employees of such establishments were, without making any separate contribution or payment from time to time, in enjoyment of the benefits in the nature of life Insurance where such benefits were more favourable to the employees. The learned Counsel submitted that vide notification dated 23.10.1984 the Government had exempted the respondent-management from the operation of the Deposit Linked Insurance Scheme and that since the exemption had been granted, it was not permissible for the employees to get the benefit both under the Employees Deposit Linked Insurance Scheme as well as under the Life Insurance Scheme. We have given our careful consideration to the respective contentions raised at the Bar and have perused the record.

5. Section 17(2-A) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, provided as follows:

The Central Government may, if requested so to do by the employer, by notification in the Official Gazette and subject to such conditions as may be

specified in the notification, exempt any establishment from the operation of all or any of the provisions of the Insurance Scheme, if it is satisfied that the employees of such establishment are, without making any separate contribution or payment of premium, in enjoyment of benefits in the nature of life Insurance, whether linked to their deposits in provident fund or not, and such benefits are more favourable to such employees than the benefits admissible under the Insurance scheme.

A reading of the above provision shows that the Central Government may exempt, at the request of the employer, any establishment from the operation of the insurance scheme by a notification published in the Official Gazette. The notification which has been published in the Official Gazette and which has been brought to our notice by learned Counsel for the respondent is dated 23.10.1984. That notification in paragraph 3 itself records that exemption has been granted to the establishment for a period of three years. Since the claims of the appellants related to a period prior to the date of the unification, learned Counsel for the respondent deferred to a communication dated 18.5.1987, from the Regional Commissioner, Employees Provident fund, to the respondent-management, to submit that the establishment had been exempted from the scheme with effect from the date when the Group Insurance Scheme had been implemented, i.e., with effect from 1.4.1977. For facility of reference, that communication dated 18.5.1987 is extracted hereunder:

C1/TN/5573/Exm/Regl/87 Dated 18.5.87 To The Personnel Manager, Indian Drugs & Pharmaceuticals; Ltd. Nandambakkam, Madras-89. Sir, Sub: EPT & M.P. ACT 52 - Grant of EDLI Exemption under Section 17(2A) - reg. Ref:-Your letter No. IDPI-MS/Per/398(1)/87 dt. 12.3.87. Please refer to the letter cited. You are informed that though the Notification granting exemption under Section 17(2A) was issued on 23.10.84. Your establishment has been exempted from the Employees Deposit Linked Insurance Scheme 76 From the date of implementation of Group Insurance scheme i.e., from 1.4.77. But the Exemption granted to you is tentative and will be effective upto 3 years from the date of issue of Notification i.e., from 23.10.84 to 22.10.87. The extension of exemption for the further period after 22.10.87 will be decided on your compliance of conditions for grant of exemption under Section 17(2A).

Your request for a permanent exemption under SCC. 17(2A) cannot be considered as it is the policy of the Government of India to grant exemption from the Employees Deposit Linked Insurance Scheme only for three Years. Please acknowledge the receipt.

yours faithfully,

Sd. T.M. Adiga,

Asst. Provident Fund Commissioner.

(Emphasis ours)

The communication thus shows that though in the first part it records that the exemption would be treated to be with effect from 1.4.77 but then it hastens to add that 'But the exemption granted to yours is tentative and will be effective upto 3 Years from the date of issue of Notification i.e., from 23.10.84 to 22.10.87'

6. This expression unmistakably shows that there was no exemption granted to the respondent from the deposit Linked Scheme prior to 23.10.84. This communication on the face of it cannot be treated to imply that the notification dated 23.10.84, which was published in the Official Gazette was given retrospective effect by this communication.

7. Even otherwise, the communication dated 18.5.87 cannot be treated as a notification granting exemption in favour of the respondent-management with effect from 1.4.1977, because under Section 17(2A) of the Act, it is only a notification published in the official Gazette by which exemption can be granted and admittedly this communication is not a notification published in the Government Gazette. It is only the notification dated 23.10.84, which can have any force and no communication can make that notification as retrospective in character, without being published in the Official Gazette, which it is not disputed that the communication was not so published. The communication, therefore, cannot advance the case of the respondent-management and since there was no exemption granted to the respondent prior to 23.10.84, it could not defeat the claims of the appellant which had accrued prior to that date.

8. As a result of the aforesaid discussion it is obvious that the employees of the respondent-management were entitled to the benefits both under the Employees Deposit Linked Insurance Scheme, 1976, as well as under the Group Insurance Scheme, after the enforcement of the Group Insurance Scheme for the period during which no exemption had been granted under Section 17(2A) of the Act in favour of the management. The denial of benefit to the dependents of the employees of the welfare legislation defeats the intendment of the Act and the scheme. The dependents of the employees, appellants 1 to 7 herein, therefore, could not be denied the benefit of the amount of Rs. 10,000 each which had been received by the employer-management on account of the death of the employees while in service from the Life Insurance Corporation under the Group Insurance Scheme and was being held by it under trust under the rules. There was no justification to deduct any amount as benefit received by the appellants under the Employees Deposit Linked Insurance Scheme from the amounts received from the L.I.C. The learned single Judge ignored these aspects and for that reason we are unable to uphold the judgment under appeal. The appeal consequently succeeds. The judgment is set aside. As a result, the writ petition would stand allowed and by a writ of mandamus we command the respondents to pay to appellants 1 to 7 the amount of Rs. 10,000 each as received by it from the L.I.C. on account of the assured amount in respect of the deceased employees. No deduction shall be made out of that amount of any benefit that may have been received by the dependents of the deceased employees under the Employees Deposit Linked Insurance Scheme, 1976. In the event any amount out of Rs. 10,000 has been paid after making certain deductions, the balance amount shall be paid to the dependents of the employees within six weeks from the date of service of a copy of this order. There shall, however, be no order as to costs in so far as these petitioners are concerned.