

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

S.B.: HON'BLE MR. S. C. SHARMA, J

WRIT PETITION (S) NO. 12696 / 2010

SMT. BHAGWANTI BAI  
WD/O LATE GHANSHYAM KUSHWAHA

Vs.

THE DY. DIRECTOR (PROVIDENT FUND)  
& TWO OTHERS

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**ORDER**

( 30/9/2011)

The petitioner before this Court has filed this present writ petition claiming family pension. The contention of the petitioner is that her husband was an employee serving the M. P. Paschim Kshetra Vidyut Vitran Co. Ltd., and died on account of fatal accident on 10/6/85. The contention of the petitioner is that her husband started his service career on 1/6/79 and expired on 10/6/85 in an accident while on duty. Petitioner has further stated that her husband was a member of the Family Pension Scheme and was entitled to the benefit of Family Pension Scheme which came into force by virtue of an amendment in the Employees Provident Fund & Miscellaneous Provisions Act, 1956 (Act No. 16 of 1971).

The contention of the petitioner is that Sec. 6-A was added which provided for grant of family pension under the Family Pension Scheme and the MP State Electricity Board took a policy decision on 6/12/77 to incorporate family pension scheme for all its employees from the same date from which the provisions of Sec. 6-A came into force. The contention of the petitioner is that contributions were forwarded to the Regional, Provident Fund Commissioner in respect of eligible employees, however, inspite of the fact that the Electricity Board has forwarded the relevant papers to the Regional Provident Fund Commissioner, the pension has not been released.

A reply has been filed on behalf of the MP Electricity Board and the stand of the respondent Board is that it is the Regional, Provident Fund Commissioner who is liable to pay the family pension to the petitioner. Learned counsel for the respondent Board has also informed this Court that they have deposited the contributions in respect of the employees as well as the deceased employee in question and the Regional, Provident Fund Commissioner instead of

sanctioning the Scheme, has raised various queries in the matter and all those queries were satisfied by the answering respondent by submitting a reply to them. However, for the reasons best known to them, the pension has not been granted to the petitioner.

A reply has been filed on behalf of the Regional, Provident Fund Commissioner and it has been stated that they are not liable to pay family pension in absence of contributions deposited in the family pension fund by the employer. It has also been stated that letters were written to the Electricity Board to submit Form No. 7 / 8 EPF and to produce the deposit challans from the year 1971 to 1972 to 1986 – 87 to verify the entitlement of the petitioner. However, as the documents have not been produced by the Electricity Board, the question of payment of family pension to the petitioner, does not arise. The respondent Regional Provident Fund Commissioner has prayed for dismissal of the writ petition.

Heard learned counsel for the parties at length and perused the record.

In the present case, it is an admitted fact that the husband of the petitioner was an employee serving the MP Electricity Board and was appointed on 1/6/1979. The husband of the petitioner met with an accident while on duty and expired on 10/6/1985. The employer of the petitioner has taken a categorical stand before this Court that contributions towards the family pension scheme were deposited with the Employees Provident Fund Commissioner. In the present case, the Family Pension Scheme was introduced by amending the Employees Provident Fund & Misc. Provisions Act, 1952 and Section 6-A was inserted in the Act of 1952. The Family Pension Scheme was introduced by the employer of the petitioner also by issuing a Notification dt. 6/12/77 on the basis of a policy decision taken by the Board on 8/12/77. The respondent Board has categorically stated before this Court that they have deposited the contribution towards Family Pension Scheme with the Regional Provident Fund Commissioner. The Division Bench of this Court in the case of Anwari Begum Vs. The Employees Provident Fund

Commissioner Indore and another (LPA No. 133 of 1995)

while dealing with a similar controversy has taken care of the Notification issued by the MP State Electricity Board dt. 6/12/1977 and has allowed the Letters Patent Appeal preferred by the petitioner therein by granting family pension to the petitioner.

In the present case, the employer has categorically stated before this Court that contributions in respect of the petitioner were deposited and therefore there appears to be no justification in depriving the petitioner from the benefit of Family Pension Scheme. Section 6A of the Act of 1972 reads as under :

“6A. 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 life assurance benefits to the employees of any establishment or class of establishment 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;

(c) the net assets of the Employees' Family Pension Fund as on the date of the establishment of the Pension Fund;

(d) such sums as the Central Government may, after due appropriation by Parliament by law in this behalf, specify.

(3) On the establishment of the Pension Fund, the Family Pension Scheme (hereinafter referred to as the ceased scheme) shall cease to operate and all assets of the ceased scheme shall vest in and shall stand transferred to, and all liabilities under the ceased scheme shall be enforceable against the Pension Fund and the beneficiaries under the ceased scheme shall be entitled to draw the benefits, not less than the benefits they were entitled to under the ceased scheme, from the Pension Fund.

(4) The Pension Fund shall vest in and be administered by the Central Board in such manner as may be specified in the Pension Scheme.

(5) Subject to the provisions of this Act, the Pension Scheme may provide for all or any of the matters specified in Schedule III.

(6) The Pension Scheme may provide that all or any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in that behalf in that Scheme.

(7) A Pension Scheme, framed under sub section (1), shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and it, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the scheme or both Houses agree that the scheme should not be made, the scheme shall thereafter have effect only in such modified form or be of no effect, as the may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that Scheme.

As already stated earlier, a notification has been issued earlier on 6/12/1977 and the same reads as under :

“No. LWO/2137 Jabalpur dt. 6/12/77  
The M. P. Electricity Board has decided to incorporate Family Scheme as envisaged under the E. P. F. Act 1952 in its M.P. Electricity Board Contributory Provident Fund Scheme and to implement the same with effect from the date on which the Act No. 16 of 1971 amending the E.P.F. Act, 1952 came into force.”

Keeping in view the categoric stand of the Electricity Board that the contributions were forwarded from time to time to the Regional Provident Fund Commissioner, the Writ Petition is allowed. The respondent Provident Fund Commissioner is directed to finalise family pension case of the petitioner within 60 days from the date of receipt of the certified copy of this order.

This Court is of the considered opinion that merely because a dispute is existing between the Regional Provident Fund Commissioner and the Electricity Board, the widow cannot be made to suffer on account of non verification of accounts. It is made clear that the Regional Provident Fund Commissioner shall be free to recover the

amount in respect of dues, if the same has not been paid by the Electricity Board to the Regional Provident Fund Commissioner.

With the aforesaid, this petition stands allowed. No order as to costs. The petitioner shall also be entitled for all arrears of family pension also.

(S. C. SHARMA)  
J U D G E

*RR*