

RAJASTHAN STATE ROAD TRANSPORT CORPORATION

v.

PRESIDENT, RAJASTHAN ROADWAYS UNION &
ANOTHER

(Civil Appeal No. 6639 of 2012)

SEPTEMBER 18, 2012

[K.S. RADHAKRISHNAN AND DIPAK MISRA, JJ.]

EMPLOYEES FAMILY PENSION SCHEME, 1971:

Pension Scheme - Employee not exercising option under the Scheme - Held: Notification dated 9.4.1971 issued by Regional Provident Fund Commissioner was circulated by the employer-Corporation by letter dated 30.7.1971 - Resultantly, several employees opted for the Scheme and a few of them, including the deceased, did not opt for the same - There is no reason to assume that the employees were unaware of the Scheme and the Notifications - Further, the wife of the deceased had received the entire Provident Fund amount - The dispute raised by the Employees' Union after nine years is absolutely untenable - Employees Provident Fund and Family Pension Scheme, 1952 - Labour Laws.

An employee of the appellant-Corporation recruited in 1962 died in 1982 while in service. He had not exercised the option under the Employees Family Pension Scheme, 1971 and, therefore, his wife accepted the Contributory Provident Fund and did not raise any claim for family pension. However, after nine years, the respondent-Union took up the claim of the wife of the deceased-employee for family pension and ultimately the Industrial Tribunal allowed the same holding that the employee was not informed of his right to exercise the option under the Scheme. The writ petition of the Corporation before the Single Judge and its appeal

A before the Division Bench of the High Court remained unsuccessful.

B In the instant appeal filed by the Corporation, the question for consideration before the Court was : whether the wife of a deceased-employee was entitled to get family pension under the Employees Family-Pension Scheme, 1971 on the failure of the employee to exercise his option under the Scheme, especially when the claimant had already received the entire Provident Fund amount from the Fund maintained by the employer.

C Allowing the appeal, the Court

HELD: 1.1 A reading of the Notification dated 9.4.1971 issued by the Regional Provident Fund Commissioner along with the communication letter dated 30.7.1971 issued by the appellant-Corporation, makes it evident that the Regional Provident Fund Commissioner and the appellant-Corporation had informed all the departments/unions, as well as the employees working under the Corporation to exercise their necessary option if they wanted to get the benefit of the Family Pension. Facts would indicate that several employees at that time had opted and few of them did not opt for that, since they were interested to get provident fund under the CPF Scheme and not the family pension under the Scheme, after the death of the employee. There is no reason to assume that the employees were unaware of the notification issued by the Regional Provident Fund Commissioner as well as the Corporation. Facts would also indicate that the wife of the deceased-employee has already received the entire provident fund amount since the employee had not opted under the Scheme. However, after nine years, respondent Union is raising a dispute which is absolutely untenable. [Para 14] [1146-G-H; 1147-A-C]

H 1.2 The Tribunal as well as the Single Judge and the

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Division Bench of the High Court have committed a grave error in not properly appreciating the facts of the case and rendered a perverse finding which necessarily calls for interference. Accordingly, the award of the Tribunal as well as the judgments of the Single Judge and the Division Bench of the High Court are set aside. [Para 14-15] [1147-C-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6639 of 2012.

From the Judgment and Order dated 29.06.2011 of the High Court of Judicature for Rajasthan, Jaipur Bench, Jaipur in D.B. Civil Special Appeal (Writ) No. 960 of 2011 in S.B. Civil Writ Petition No. 2099 of 1999.

S.K. Bhattacharya for the Appellant.

B. Ramana Murthy for the Respondents.

The Judgment of the Court was delivered by

K.S. RADHAKRISHNAN, J. 1. Leave granted.

2. We are, in this case, concerned with the question whether the widow of an employee is entitled to get family pension under the Employees Family Pension Scheme, 1971 (for short 'Scheme'), on the failure of the employer to exercise his option under the scheme, especially when the claimant has already received the entire Provident Fund amount, from the Fund maintained by the Corporation.

3. Respondent Union raised a claim on behalf of the widow of late Hari Singh for family pension under the Scheme before the State Government. The State Government referred the matter to the Labour and Industrial Tribunal, Jaipur (for short 'Tribunal') for adjudication of the claim. The Tribunal, after examining the Scheme, took the view that the employee was not informed of his right to exercise the option under the

A Scheme, consequently, allowed the application and gave a direction to the appellant-Corporation to disburse family pension to the widow of Hari Singh, who was working as a Driver in the service of the Corporation.

B 4. The appellant-Corporation took up the matter before the High Court of Judicature of Rajasthan at Jaipur Bench by filing S.B. Civil Writ Petition No. 2099 of 1999, which was dismissed by the learned Single Judge and, later, confirmed by the Division Bench as well vide its judgment dated 29.6.2011 in D.B. Civil Special Appeal (Writ) No. 960 of 2011. Aggrieved by the same, appellant-Corporation has come up with this appeal.

C 5. Shri S. K. Bhattacharya, learned counsel appearing for the appellant-Corporation, submitted that the Tribunal as well as the Courts below have misunderstood the provisions of the Scheme and omitted to take note of all relevant and material facts for adjudication of the claim raised for family pension. Learned counsel submitted that there was a complete misreading of the facts which led to incorrect reasoning resulting into rendering a wrong judgment on facts as well as on law.

D 6. Shri B. Ramana Murthy, learned counsel appearing for the respondent Union, submitted that this Court shall not interfere with the concurrent findings rendered by all the authorities below and that no question of law has been raised for determination by this Court.

E 7. In order to examine the rival contentions raised by the parties, it is necessary to understand the facts of the case so that this Court can examine whether the Tribunal as well as the Courts below have rendered a perverse finding, which a reasonable person would not have arrived at under the facts and circumstances of a particular case.

F 8. The employee Hira Singh was appointed as a Driver in the service of the appellant-Corporation on 22.3.1962, and later,

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he was promoted to the post of Assistant Traffic Inspector. In the year 1971, the Central Government introduced a scheme relating to family pension by making suitable amendments in the Employees Provident Fund and Family Pension Fund Act, 1952 (for short 'P.F. Act'). Employees desirous of availing of the benefit of the Scheme had to exercise their option under the Scheme and the last date for submission of the application for the said purpose was 1.9.1971. According to the appellant-Corporation, Hari Singh did not exercise that option under the Scheme and, while in service, he died on 30.5.1982. Contributory Provident Fund, as per the rules, was disbursed to the widow of the employee and the same was received as well. No claim for family pension was raised since the employee had not opted for the benefit of the Scheme.

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9. Respondent Union, however, took up the claim of the widow after nine years by filing a petition before the State Government which, we have already indicated, was referred to the Tribunal and was decided in favour of the respondent Union.

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10. We are, in this case, concerned with the question whether Hari Singh had opted for the benefit of the Scheme which came into force in the year 1971 and whether there was failure on the part of appellant-Corporation in promptly informing the employees of the existence of such a Scheme and their right to exercise option for family pension.

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11. We find, on facts, that the Corporation had issued a notification on 30.7.1971 seeking necessary option from the employees. In pursuance of that notification, several employees had exercised their option for the Scheme and a few did not opt for that, since they were keen on getting the provident fund under the Central Provident Fund Scheme (for short 'CPF Scheme'). Hari Singh did not opt for the Scheme like several other employees, since he was keen on getting the provident fund under the CPF Scheme, rather than family pension under the Scheme.

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A 12. Appellant-Corporation has produced the notification issued by them on 9.4.1971, as Annexure P/1, the operative part of which reads as follows:

B "I am to forward herewith a copy of the employees' Family Pension Scheme, 1971 which has come into force with effect from 1st March, 1971 for your information and explaining the provisions of the Family Pension-cum-Life Assurance Scheme to all the members of the Employees' Provident Fund.

C 2. According to para 4 of this scheme every employee, who is a member of the Employees' Provident Fund or of Provident Funds of factories and other establishments exempted under section 17 of the Act as on 28.2.1971 have to exercise their option in Form 1 (copies attached) within a period of three months from the 1st March 1971, and furnish the same to this office immediately after the specified time.

E 3. The employees who opt or who are entitled to become a member of the Family Pension Fund subsequently after 1st March, 1971 be asked to furnish the particulars concerning themselves and their family in Form 2 (copies attached) and the same may also be sent (along with option Form No. 1) where-ever necessary.

F 4. The option forms and Nomination forms may please be sent duly supported with the following statement:-

No. of members (Subscribers) <u>as on 28.2.1971</u>	No. of members opted for Family <u>Pension Scheme</u>	No. of members opted to continue existing P.F. <u>benefit</u>
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G 5. Further requirement of Forms No. 1 and 2 may be had either directly from this office or the Provident Fund Inspectors at Jaipur, Jodhpur & Ajmer.

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6. The instructions regarding submission of other information and returns will follow:" A

13. We notice that the above notification was sent to all the employees of the appellant-Corporation for information with a request that they should give wide publicity to the scheme and the notification was issued from the Office of the Regional Provident Fund Commissioner. Following the above notification, the Corporation also sent a communication dated 30.7.1971 to the Regional Manager/Administrative Officer/Depot Manager/Assistant Depot Manager, RSRTC and all the offices informing about the notification issued by the Regional Provident Fund Commissioner stating as follows: B
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"All the employees of the Raj. State Road Transport Corporation who are contributing towards the Provident Fund are eligible to become the members of family pension scheme 1971 and it is obligatory on the part of the employer to get the option referred to in sub-section (i) of para 1 exercised by every members to whom the option is given to become the member of this scheme before 31st August, 1971. I am, therefore, sending herewith one copy of Employees Family Pension Scheme, 1971 along with declaration forms and Option forms which are required to be explained to each subscriber of the Provident Fund and get the same signed by each employee contributing to the Provident Fund as on 1st March, 1971. D
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It shall be your duty under clause 4(3) of the scheme to see that the option from each subscriber of opted is a list of optees in the following proforma may also be prepared and the same may be sent along with declaration forms and option forms executed by the subscriber with special messenger by 31st August, 1971 positively. G

List of optees of Family Pension Scheme 1971.

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A Name of Depot/Region/Office....

B	S.No.	Name of the employee along with Father's name	C.P.F. A/c No.	Pay including D.A.	P.F. amount @ 6 of pay including D.A.
	1	2	3	4	5
C		Family pension amount 11 of pay including D.A.	Total 5 + 6	P.F. subscription being deducted at present	Remarks
D		6	7	8	9

Signature of Head of Office with seal

E It is also requested that the scheme may kindly be explained to go through carefully and the relevant benefits be explained to all the subscribers while taking declarations and options form them so that they may consider to join the scheme and opt for the same in good numbers, and I shall also request you to kindly give the publicity of this scheme through the notice Board also.

F Kindly acknowledge."

G 14. When we read the notification dated 9.4.1971 issued by the Regional Provident Fund Commissioner along with the communication letter dated 30.7.1971 issued by the appellant-Corporation, it is evident that the Regional Provident Fund Commissioner as well as appellant-Corporation had informed all the departments/unions, as well as employees working under the Corporation to exercise their necessary option if they wanted H to get the benefit of the Family Pension. Facts would indicate

that several employees at that time had opted and few of them did not opt for that, since they were interested to get provident fund under the CPF Scheme and not the family pension under the Scheme, after the death of the employee. We have no reason to think that the employees were unaware of the notification issued by the Regional Provident Fund Commissioner as well as the Corporation. Facts would also indicate that the wife of Hari Singh had already received the entire provident fund amount and, since Hari Singh had not opted under the Scheme. However, after nine years, respondent Union is raising a dispute which, in our view, is absolutely untenable. The Tribunal as well as Courts below have committed a grave error in not properly appreciating the facts of the case and rendered a perverse finding which necessarily calls for interference.

15. Accordingly, we are inclined to allow this appeal and set aside the award of the Tribunal as well as the judgments of the learned single Judge and the Division Bench of the High Court. However, there will be no order as to costs.

R.P.

Appeal allowed.