

(1993) 10 KL CK 0035**High Court Of Kerala****Case No:** O.P. No. 10124 of 1988

T. Lakshmikutty Amma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Oct. 13, 1993**Acts Referred:**

- Constitution of India, 1950 - Article 14
- Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 6A

Citation: (1994) 68 FLR 404 : (1994) 2 ILR (Ker) 40 : (1994) 1 LLJ 583**Hon'ble Judges:** M.M. Pareed Pillay, J**Bench:** Single Bench**Advocate:** K. Balakrishnan, for the Appellant; P.S. Krishna Pillai, to 3 and M. Pathrose Mathai, for the Respondent**Final Decision:** Allowed**Judgement**

M.M. Pareed Pillay, J.

The petitioner's husband was an employee of the fourth respondent. He joined the company on October 1, 1969, and was a member of the Employees' Provident Fund. When the Employees' Family Pension Fund Scheme came into force in 1971, he became a member of it and contributions towards the Employees' Provident Fund Scheme and the Employees' Family Pension Scheme were deducted from his salary. The petitioner's husband fell seriously ill and entered on leave on August 28, 1982. In July, 1983, he was paralysed and bedridden. He died on January 28, 1984. During the period of illness, he was out of employment for one year and five months, viz., from August 28, 1982, to January 28, 1984.

The petitioner applied to the third respondent for the grant of family pension on July 15, 1986. As per Exhibit P-1 communication, her request was rejected as no contributions were paid by her husband for more than one year immediately prior to his death.

The petitioner filed Exhibit P-5 representation before the third respondent. Grievance of the petitioner is that though her husband who had worked for nearly 15 years in the fourth respondent-company was a member of the Family Provident Fund for about 11 years and was drawing a basic pay of Rs. 621 per month, she was found ineligible to get the benefit of family pension relying on the definition of "reckonable service" contained in para 2(f) of the Employees" Family Pension Scheme, 1971, read with para 28 of the said Scheme.

2. The Employees" Family Pension Scheme was framed by the Central Government in exercise of the power conferred on it u/s 6-A of the Employees" Provident Funds and Miscellaneous Provisions Act, 1952. Schedule III of the said Act enumerates the matters for which provision may be made under the Scheme. In exercise of the power u/s 6-A, the Central Government framed the Employees" Family Pension Scheme, 1971. Para 2(f) defines "reckonable service". It reads:

""reckonable service" means service rendered by a member of the Family Pension Fund in respect of which contributions are payable under this Scheme and includes any period of service in respect of which no wages are drawn by such member on account of temporary closure of the establishment, strike, lock-out or leave without pay, or for any other reason, of a similar nature or otherwise, and in respect of which contributions (both the member's and employer's shares) are payable by diversion from his Provident Fund Account as provided in sub-paragraph (2-A) of paragraph 9 of this Scheme and also includes any period of service in respect of which wages are drawn but no contributions are payable in terms of sub-paragraph (4) of paragraph 9 and which shall be deemed to have been paid for purposes of paragraphs 28, 31 and 32 of this Scheme:

Provided that no period of service, in respect of which no wages are drawn by a member,-

- (i) after the name of the member has been struck off from the rolls of the employer of the member; or
- (ii) which is in excess of one year; or
- (iii) after there ceases to be any amount in the fund or in the provident fund of an exempted establishment, as the case may be, lying the credit of the member concerned, shall be treated as reckonable service."

3. Contention of the petitioner is that Sub-clause (ii) of the proviso to Clause (f) of para 2 and para 28 in so far as the eligibility to get family pension is made dependent on the condition that the member of the family pension fund should die during the period of reckonable service is ultra vires, unconstitutional and unenforceable. According to the petitioner, the condition stipulated in para 28 for the dependent of the employee to become eligible for the pension that the employee should die during the reckonable service is arbitrary and discriminatory. It

is pointed out that though the petitioner's husband was a member of the fund for 11 years and has duly paid all contributions in respect of that period she was declined the benefit on the ground that her husband died more than one year after the last payment of contribution. In view of proviso (ii) to para 2(f), the petitioner will not be entitled to family pension. Learned counsel for the petitioner pointed out that the aforesaid clauses are highly discriminatory as the eligibility of the pension has been made dependent on the date of death which is really uncertain. The petitioner contended that in a case where best medical aid was given, death could be averted for a long time and in such a case the benefit is denied whereas benefit is granted to a person to whom proper medical attention was not given and who died within one year of the last payment of contribution. There is considerable force in the contention of the petitioner that para 28 in so far as it specifies that the pension benefit is available only if the employee died during the reckonable service is made beyond the regulation making power conferred u/s 6-A of the Employees' Provident Funds and Miscellaneous Provisions Act. An uncertain and arbitrary ground such as the date of death of the employee has been provided in the scheme to decide the eligibility for pension. This is arbitrary and discriminatory and denies the guarantees contained in Article 14 of the Constitution of India.

4. The aforementioned provision divides the dependents of employees into two groups. One group consists of those whose bread winner died within one year of leave without pay and the second group consists of those where the employee died after one year of leave without pay. This classification is arbitrary and discriminatory as it does not disclose any rational nexus to the object sought to be achieved. There is no intelligible differentia between the two groups of dependents. In that view of the matter, Sub-clause (ii) of the proviso to Clause (f) of para 2 in so far as the eligibility to get family pension is made dependent on the condition that the member of the family pension fund should have died during the period of reckonable service is declared ultra vires, violative of Article 14 of the Constitution of India and unenforceable.

5. Exhibit P-1 order by the third respondent is quashed. Respondents Nos. 1 to 3 are directed not to enforce Sub-clause (ii) of the proviso to Clause (f) of para 2 and the condition contained in para 28 of the Employees' Family Pension Scheme, 1971, that family pension will be payable only if the member died during the period of reckonable service. Respondent Nos. 2 and 3 are directed to pay monthly family pension due to the petitioner.

Original petition is allowed as stated above.