

PETITIONER:
STATE OF MADHYA PRADESH & ORS.

Vs.

RESPONDENT:
JOGINDER NATH MONGA

DATE OF JUDGMENT 20/11/1995

BENCH:
AGRAWAL, S.C. (J)
BENCH:
AGRAWAL, S.C. (J)
G.B. PATTANAIK (J)

CITATION:
1996 SCC (7) 8 1995 SCALE (6) 481

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S.C. AGRAWAL, J. :

This appeal raises a short question whether Dr. [Smt.] Satyawati Monga, wife of the respondent, was entitled to the benefit under the Madhya Pradesh Employees Group Insurance Scheme, 1985 [hereinafter referred to as 'the 1985 Scheme'].

Consequent to the recommendations of the Third Pay Commission, the Government of Madhya Pradesh introduced the Government Servants Family Benefit Fund Scheme in 1974 [hereinafter referred to as 'the 1974 Scheme'] which covered employees belonging to Classes I to IV. The employees falling in Class I were required to contribute Rs. 30/- per month as contribution towards the said scheme till retirement and on retirement or death they were entitled to the payment of Rs. 30,000/-. The 1974 Scheme was replaced by the 1985 Scheme with effect from June, 1985 by notification dated March 27, 1985. Under the 1985 Scheme the amount of contribution was raised for Class I employees from Rs. 30/- to Rs. 80/- and the benefit available under the scheme was increased from Rs. 30,000/- to Rs. 80,000/-. Dr. [Smt.] Satyawati Monga was employed as Professor of Pathology in G.R. Medical College at Gwalior. She was due to retire on attaining the age of superannuation on September 1, 1987 but before that date she died on December 14, 1986.

The respondent was paid the death-cum-retirement benefit as well as the arrears of pension on February 6, 1988 and the amount under the General Provident Fund on February 25, 1988. By way of Family Insurance benefit a sum of Rs. 30,000/- was paid to the respondent on February 25, 1988. He filed the writ petition [Misc. Petition No. 106/90] giving rise to this appeal in the High Court of Madhya Pradesh wherein he claimed interest on delayed payment of retrial benefits in respect of his deceased wife and also claimed that the deceased wife of the respondent was covered by the 1985 Scheme and a sum of Rs. 80,000/- was payable by way of Family Insurance benefit instead of Rs. 30,000/- that

was paid to him. The said writ petition was contested by the appellants who submitted that the 1985 Scheme was not applicable in the case of the deceased wife of the respondent because during her life time she had not opted for the 1985 scheme and she had not started making contribution at the enhanced rate of Rs. 80/- under the '85 Scheme and, therefore, a sum of Rs. 30,000/- alone was payable in accordance with the 1974 Scheme.

By the impugned judgment dated November 5, 1992, the High Court has allowed the writ petition filed by the respondent and has directed that interest was payable on the delayed payment of the retrial benefits. As regards the Family Insurance benefit the High Court has held that the respondent is entitled to receive benefit in terms of the 1985 Scheme. The High Court has placed reliance on para 3 (d) of the notification dated March 27, 1985 whereby the 1985 Scheme was introduced. The High Court has directed that additional amount of Rs. 50,000/- should be paid to the respondent and that interest should be paid @ 18% p.a. on the delayed payment computable from the expiry of two months from the date of death of the deceased wife of the respondent till the actual payment. Although no objection with regard to the jurisdiction of the High Court to entertain the writ petition for the reason that the State Administrative Tribunal had been constituted under the Administrative Tribunals Act, 1985, was raised by the appellants, the High Court has dealt with the said question and has held that the High Court had jurisdiction to entertain the writ petition because the respondent was not entitled to invoke the jurisdiction of the State Administrative Tribunal in terms of Section 19 of the Administrative Tribunals Act.

Ms. Kitty Kumarmangalam, the learned counsel appearing for the appellants, has confined her submissions to the question regarding applicability of the 1985 Scheme to the deceased wife of the respondent. We, therefore, do not propose to go into the question of jurisdiction of the High Court to entertain the writ petition.

The following reason was given for denying the benefit under the 1985 Scheme in the letter dated July 7, 1988 from the Dean, G.R. Medical College, Gwalior to the respondent:

"Regarding family Benefit Fund, I have to inform you that vide Finance Department Memo No. 521-I/58/B/3-Four 85 Bhopal dated August 27, 1985, Late Dr. [Smt.] S. Monga being over 50 years of age, should have exercised an option for increasing her contribution of Family Insurance Fund from Rs. 30/- to Rs. 80/- unfortunately Dr. [Smt.] S.Monga did not think it wise to exercise this option. Instead she desired to continue an option of Rs. 30/-. Therefore, she was entitled to get Rs.30,000/- after her death".

The same stand was taken in the return to the writ petition that was filed on behalf of the appellants before the High Court and it is stated :

"d) All the employees who are members of the present Family Benefit Fund Scheme shall be members of the new Scheme compulsorily. However, present members of the Family Benefit Fund Scheme, who have completed 50 years of age, may opt to remain in the old scheme of Family

Benefit Fund. For this purpose they will have to give their options within the prescribed time limit and the options so given will be pasted in their service books to make the matter abundantly clear on a permanent basis."

In the said return reliance was also placed on para 3(d) of the notification dated March 27, 1985 which reads as under :

"This way it is clear that Dr. [Smt.] S. Monga did not wish to become the member of the New Scheme and therefore she did not take pains to submit the option, within due time, which was essential for the employees who were above 50 years. This is evident from the option form for Rs. 30/- which was submitted by her. A copy of the said option form is annexed herewith and marked as Annexure R/4. Hence the respondent No. 3 cannot be blamed for not including the name of petitioner's wife under new Scheme of Group Insurance Scheme. Therefore, the prayer for payment of Rs. 50,000/- of the petitioner is baseless and without substance, hence deserves to be dismissed."

The High Court has held that under para 3(d) of the notification dated March 27, 1985, it was not necessary to exercise an option to become member of the 1985 Scheme and that employees who were members of the 1974 Scheme were to become members of the 1985 Scheme compulsorily.. The said view of the High Court is based on the wordings of para 3(d) wherein it is clearly indicated that all the employees who are members of the present Family Benefit Fund Scheme shall be members of the 1985 Scheme compulsorily. It was, however, provided that the present members of Family Benefit Fund Scheme, who had completed 50 years of age may opt to remain in the 1974 Scheme of Family Benefit Fund and for that purpose they were required to give their options within the prescribed time limit. It is not the case of the appellants that Dr. [Smt.] Satyawati Monga had submitted her option to remain in the 1974 Scheme and that she did not want to be governed by the 1985 Scheme. The mere fact that she had not started contributing at the enhanced rate of Rs. 80/- as per the 1985 Scheme by itself cannot mean that she had exercised an option to remain in the 1974 Scheme and not to be governed by the 1985 Scheme.

Ms. Kitty Kumarmangalam has, however, put forward a different case, namely, that para 3(d) of the notification dated March 27, 1985 does not correctly reflect the position regarding the applicability of the 1985 Scheme to employees who had crossed 50 years of age on the date of coming into force of the 1985 Scheme. The submission of Ms. Kumarmangalam is that the 1985 Scheme has no application to employees who had crossed 50 years of age on the date of introduction of the 1985 Scheme, i.e., June 1, 1985, and in this connection she has placed reliance on para 3 of the 1985 Scheme. Shri S.K. Jain, the learned counsel appearing for the respondent, has, however contested this position and his submission is that para 3 of the 1985 Scheme, when read with para 4 (2) of the Scheme cannot be construed to mean that the 1985 Scheme does not apply to employees who had attained the age of 50 years on June 1, 1985. Since this question was not raised by the appellants before the High

Court and the stand taken by the appellants before the High Court was only that the deceased wife of the respondent was not governed by the 1985 Scheme as she had not exercised the option to be governed by that Scheme and that stand has been rightly negatived by the High Court on basis of the wording of para 3(d) of the notification, we are not going into the submission urged by Ms. Kumarmangalam for the first time in this Court that para 3(d) of the notification is not in consonance with para 3 of 1985 Scheme and that the 1985 Scheme does not apply to employees who had attained the age of 50 years on June 1, 1985. The said question is left open.

In the result, the appeal fails and it is accordingly dismissed. But there will be no order as to costs.

JUDIS