IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3106 OF 1997

M/s Garware Polyesters Limited,
L-6, Chikalthana IA, Aurangabad.
Through the Vice President.

...Petitioner No.1

Shri Mahadeorao Narayanrao Sanap,
Aged : 54 years, Occupation : Labourer,
Shabunagar, YB Chavan Marg,
Beed.

...Petitioner No.2

-versus-

The Officer-in-Charge,
Employees Provident Fund Organisation,
Sub-Regional Office, "Bhavishya Nidhi Bhavan",
Plot No.2, Town Centre, Commercial Area,
Cidco, New Aurangabad.
Through the Standing Counsel for
Union of India, High Court of Judicature of
Bombay, at Aurangabad.

...Respondent

...

Advocate for Petitioner : Shri T.K.Prabhakaran.
Advocate for Respondent : Shri Chaudhary K.B..

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 02nd February, 2017

Oral Judgment :

1 The Petitioners are aggrieved by the proforma order dated

31.10.996 by which the claim of Petitioner No.2 for Family Pension Scheme, has been rejected.

2 I have considered the submissions of the learned Advocates for the respective sides and I have gone through the grounds raised and the affidavit in reply filed by the Assistant Provident Fund Commissioner dated 01.02.2017. Considering the same, I find that undisputed factors are as under:-

(a) Petitioner No.2 is the father of the deceased employee Ambadas.

(b) The deceased employee was working under the contractor, namely, M/s Ravichandra Enterprises and was deployed with Petitioner No.1/ Establishment.

(c) He has worked from 07.08.1990 till 09.12.1995.

(d) He has contributed to the provident fund and the family pension scheme of 1971.

(e) His account number was MH-AB-19122-1021.

(f) Petitioner No.2, father of the deceased, had received the provident fund benefits on behalf of the deceased since the deceased was unmarried and was residing with Petitioner No.2/father.

(g) The impugned order is cryptic in nature and without assigning any reason which reads thus:-

"*The claimant is not entitled for pension benefits*".

(h) Under clause 2(g) of the Employees Provident Fund Scheme, 1952, "family" is defined to mean, in case of a male member, his wife, his children, whether married or unmarried, his dependent parents, his deceased son's widow and children.

(i) The same definition was carried forward in the Employees Pension Scheme of 1971.

(j) The definition of "family" underwent a change in the Employees Pension Scheme, 1995 by which the wife of a male member was considered to be family and the option of nominating the survivor was introduced under the said scheme. Sons and daughters as well as husband of the female member were included.

3 Having considered the affidavit in reply filed by the concerned officer, it appears that the only objection in refusing to extend the benefits of the family pension scheme to Petitioner No.2, is that the deceased, who was unmarried, did not fill in the Form-2 under the 1995 Scheme which was introduced on 16.11.1995. As a consequence, since no nomination form was entered and since the father and mother are not included in the definition of the "family" under clause 2(vii), Petitioner

No.2 would not be entitled to the said benefits.

4 Ex-facie, I do not find that the Respondent Authorities could be faulted for the reason that there was no nomination form filled in by the deceased by which his father and/or mother could have been nominated as his heirs. However, though the relaxation was not within the powers of the Respondent Authority, I find that this case, in judicial review, needs to be looked at and dealt with differently.

5 There is no dispute that the deceased was contributing to the then existing Employees Pension Scheme of 1971. A class-IV labourer, unless is educated by the employer as regards his rights and various forms that are to be filled in under various schemes which float statutory benefits, cannot be said to be aware of the newly introduced scheme. It is not palatable that the deceased, in this case, may not have filled in the nomination form with a purpose.

6 The scheme of 1971 does not deviate from the definition of the family as is found under clause 2(g) of the 1952 scheme. It is given to understand that till the 1995 scheme was introduced, the family included even the dependent parents. It is also informed that Petitioner No.2, father of the deceased, was a labourer and was not in any such employment

which could be termed as being an employment which gave financial and physical independence to Petitioner No.2 and as such, he was not dependent on the deceased. The deceased was living along with his parents, being a 22 years old unmarried adult.

7 In the above backdrop, it needs to be scrutinized as to whether, with the introduction of the new scheme on 16.11.1995, the deceased had any opportunity of filling in the nomination form so as to nominate his parents as his nominees. The time span is very short in the sense that the 1995 scheme was introduced on 16.11.1995 and the deceased passed away in an accident on 09.12.1995, out of and in the course of his employment. In my view, it can be reasonably assessed that during this period of about 24 days between the introduction of the new scheme and the passing away of the deceased, even the nomination form may not have been readily available for the deceased to nominate his parents. Moreover, compliance was expected within 90 days from the introduction of the new scheme.

8 In the above backdrop, until the period for filling in the new form within 90 days has not expired, it cannot be said that the deceased purposefully did not nominate his father. Consequentially, in this backdrop, the earlier definition of the family would continue to apply,

keeping in view that 90 days period was allowed to the employees to fill in their nomination forms.

9 Considering the above, this Writ Petition is allowed. The impugned order dated 31.10.1996 is quashed and set aside. Petitioner No.2 is held entitled for the pension which was payable after the demise of the deceased.

10 Considering this aspect, the Respondent is directed to calculate the entire pensionary dues payable to Petitioner No.2 under the scheme of 1995 from the date it would become applicable to the legal heirs of the deceased and grant interest at the rate of 7% per annum on the said amount from the date it became applicable. This amount shall be calculated and paid to Petitioner No.2 and the Respondent shall resort to regular payments as per the scheme, within a period of TWELVE WEEKS from today.

11 Rule is made absolute in the above terms.

kps (**RAVINDRA V. GHUGE, J.**)