Supreme Court of India
Mafatlal Group Staff Association ... vs Regional Commissioner, ... on 29 March, 1994
Author: B J Reddy
Bench: Kuldip Singh Singh, B.P. Jeevan Reddy, S.P. Bharucha

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                CASE NO.:
Appeal (civil)  5158 of 1993

PETITIONER:
Mafatlal Group Staff Association and others etc. etc.

RESPONDENT:
Regional Commissioner, Provident Fund and others

DATE OF JUDGMENT: 29/03/1994

BENCH:
Kuldip Singh Singh & B.P. Jeevan Reddy & S.P. Bharucha

JUDGMENT:
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JUDGMENT ORDER B.P. Jeevan Reddy, J.

1. Leave granted in S.L.Ps.

2. For the sake of convenience, we shall take up the facts in Civil Appeal No. 5158 of 1993 as illustrative of the facts in all the matters since they are all practically similar.

3. Civil Appeal No. 5158 of 1993 :

In this appeal preferred against the judgment of the Bombay High Court, the validity of the Employees' Family Pension Scheme is called in question. The writ petition was initially allowed by a learned Single Judge of the Bombay High Court on the ground that the Scheme violates the equal protection clause in Article 14 of the Constitution of India. On appeal being preferred by the Regional Provident Fund Commissioner, however, the Division Bench took a contrary view. It upheld the validity of the Scheme.

4. With a view to provide certain terminal and other benefits to the employees engaged in factories and other establishments, the Parliament enacted the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. The Act provides inter alia for framing of "Employees Provident Fund Schemes". A certain percentage of the monthly wages of the workers is deducted and credited to the said Fund. The employer is also made liable to contribute an equal amount to the Fund. The employee- member of the Fund is entitled to withdraw the full amount to his credit in the Fund on his retirement or termination of service, as the case may be. He can also draw advances out of the Fund in certain situations like illness, marriage or education of children and so on. But there were many cases in which the amount payable, on the death of an employee, to his wife and minor children was too small to be of any help to them - particularly where an employee died within a few years of his employment. With a view to provide long-term payments (Pension) to the widow or

minor children in such cases, the Parliament thought of creating a Family Pension Fund Scheme. For this purpose, it introduced Section 6-A (read with Schedule-Ill) and certain other provisions in the Act, by the Amendment Act 16 of 1971. Section 6-A empowered the Central Government to frame a scheme called "the Employees' Family Pension Scheme" to provide family pension and life assurance benefits to the employees of any establishment or class of establishments to which the Act applied. The Statement of Objects and Reasons leading to the introduction of the Family Pension Fund Scheme throws light upon the objectives and purposes sought to be achieved by the new Scheme :

The Coal Mines Provident Fund and Bonus Scheme Act, 1948 and the Employee's Provident Fund Act, 1952 provides for the institution of provident funds for employees in coal mines, factories and other establishments. Provident Fund is an effective old age and survivorship benefit but when the employee happens to die prematurely, the accumulation to the Provident Fund are too small to render adequate and long-term protection to his family. With a view to providing long term financial security to the families of industries employees in the event of their premature death, it is proposed to introduce a Family Pension Fund for the employees covered under the two Acts, and to create a Family Pension Fund for this purpose by diverting a portion of the employer's and the employee's contribution to the Provident Fund, to which will be added a contribution by the Central Government. Out of the fund so set up, it is proposed to pay Family Pension at prescribed scales to the survivors of employees who die while in service before reaching the age of superannuation.

5. Sub-section (2) of Section 6-A provides for diversion of a portion of the contributions made by the employees and employers to the Provident Fund under Section 6 of the Act to the Pension Fund. It also provides for contribution by the government of an amount equal to the employee's contribution to the Pension Fund. The Fund thus has a new element - contribution by the State. The Family Pension Fund Scheme came into force on and from March 1, 1971.

6. Clause (3) of the Scheme framed by the Central Government under Section 6-A provides that every person who becomes a member of the Employees' Provident Fund Scheme on or after March 1, 1971 shall automatically become a member of the Family Pension Fund Scheme. So far as the existing members of the Employees' Provident Fund are concerned, the clause gave them an option to come under the Family Pension Scheme or to stay out. Such an option was not given to employees who became members of the Employees' Provident Fund on or after March 1, 1971 - and this distinction forms the basis for the complaint of discrimination made by the writ petitioners-appellants.

7. The Family Pension Scheme provides - broadly speaking - for three benefits to its members, viz.,

(a) Family pension (pension payable to widow or minor children on the death of employee before attaining the age of 60 years);

(b) Life assurance benefits [Clause (31) of the Scheme]; and

(c) Retirement-cum-withdrawal benefits [Clause (32) of the Scheme.]

8. Clause (34-D) of the Scheme provides for valuation of the Fund by a valuer appointed by the Central Government at intervals of three years. Basing on such valuation, the Central Government "may alter the rate of contributions payable under this Scheme or the scale of any benefit admissible under this Scheme or the period for which such benefit may be given". In other words, the clause provides for periodic review of the working of the Scheme and in case any surplus is found, its benefit is extended to the employees in one of the three ways mentioned in Clause [34- D(2)]. Sub-clause (2) of Clause (34-D) no doubt places the said matter in the discretion of the Central Government but it goes without saying that such discretion has to be exercised in a fair manner keeping in view all the relevant circumstances and contingencies. Before the Division Bench of the High Court, it was not disputed that the Scheme was being reviewed from time to time and additional benefits conferred upon its members pursuant to such review. The benefits so extended were referred to in detail in Para (9) of the affidavit-in-reply filed by the Commissioner on December 3, 1984. It was stated in the said affidavit that on the death of a member- employee, his widow gets a pension @ Rs. 400 per month for the first seven years and thereafter @ Rs. 200 per month for her life or until she re- marries, as the case may be.

9. The learned Single Judge allowed the writ petition holding the Pension Scheme to be discriminatory for the reason that it did not provide for an option to employees who became members of the Provident Fund after March 1,1971, while giving such an option to the employees who were members of the Provident Fund as on the said date. The learned Judge also made some observations regarding the meagerness of the return to the members of the Scheme as compared to their contribution. On appeal, however, the Division Bench, in an elaborate and well-considered judgment, disagreed with the learned Single Judge on both the points.

10. We are unable to see any substance in the complaint of discrimination. Rule 3 of the Pension Scheme reads :

Membership of the Family Pension Fund. - Subject to sub- paragraph (3) of Paragraph 1, this Scheme shall apply to every employee -

(a) who becomes a member of the Employees' Provident Fund or of Provident Funds of factories and other establishments exempted under Section 17 of the Act on or after the Ist day of March, 1971;

(b) who has been a member of the Employees' Provident Fund or Provident Fund of factories and other establishments exempted under Section 17 of the Act immediately before the commencement of this Scheme and opts to exercise his option under Para graph 4:

Provided that an employee who attains the age of more than 59 years on the date on which he would, but for this proviso, have become eligible for membership or have been required to become a member of this Scheme shall not be eligible for membership under this Scheme.

11. Merely because the employees who were the members of the Employees' Provident fund Scheme before March 1, 1971 were given an option to become or not to become members of the Family Pension Scheme, it does not follow that the employees who become members of the Provident Fund

Scheme after March 1, 1971, and who are not given such option are discriminated against. Here is a beneficial social legislation conceived with the intention of providing a safety net to the families of deceased employees - a safety net to prevent such families from sinking into the depths of poverty and misery. Instead of welcoming it, we find it rather curious that it is being attacked by the very employees for whose benefit it is devised. We certainly agree that any oddities and crudities in the working of the Scheme should be attacked and exposed with a view to set them right, but to attack the very scheme, in our opinion, is not called for. Be that as it may, we find no substance in the said attack. Here is a Scheme newly being introduced. Those who come after the introduction of the Scheme do become members but those who were already the members of the Provident Fund are free to become members of the Pension Fund or not. This is not an uncommon feature. Both of them represent two distinct categories. The reliance on the decision of this Court in D.S. Nakara v. Union of India : (1983) ILLJ104SC is misplaced. That was a case where a class of retired employees was sought to be deprived of the benefit of liberalised Pension Rules on the only ground that they had retired prior to a particular date. Here, in this case, no one is being deprived of the benefit of the new Scheme. All that the option means is that if any employee who is already a member of the Provident Fund Scheme thinks that, having regard to the number of years of service put in by him and/or for other reasons, it is not beneficial for him to join the Family Pension Scheme, he can stay out. While judging the validity of such Schemes one should not pick out an individual instance - not representing the generality of the situation - and make it the basis. One has to take an overall view, i.e., whether it is beneficial to the class concerned as a whole or not. The Scheme, as already stated, is in the nature of an Insurance Scheme. An employee who dies early in service, his family stands to gain on a long-term basis while another member who serves out his full service tenure may not stand to gain that much. But one thing is clear, no one may get back less than what he has contributed. As we shall presently point out, that is precisely the case of the respondents and we are making necessary directions to ensure that. It must be remembered that the monies meant for Family Pension Scheme are diverted from the Provident Fund Scheme, which represents equal contributions of employees and employers, to which amount is added an equal contribution by the government. The government contributes because the Scheme serves a social purpose. No one can say that each and every employee must get back not only what he contributes but also the contributions of the employer and the government put together. This is just not possible. Who is to care for the widows or minor children of the deceased employees (employees dying before retirement or before attaining the age of 60 years) and wherefrom that money is to come if each employee insists upon receiving the total of his, the employer's and the government's contribution. We are, therefore, of the opinion that if one keeps in mind the aforesaid basic features of the Scheme, all objections to its desirability and validity appear groundless. It may also be mentioned that the decision in D.S. Nakara has been explained in a later Constitution Bench decision in Krishena Kumar v. Union of India : (1991)ILLJ191SC as also by a Division Bench in State of West Bengal v. Raton Behari Dey, : (1993)IILLJ741SC . We, therefore, agree with the Division Bench of the Bombay High Court that the complaint of discrimination by the appellants-petitioners is wholly unsustanable.

12. Now coming to the other question, which happens to be the main contention urged before us, the reasoning of the counsel for the appellants runs thus : The manner in which the Family Pension Scheme is being operated is in effect prejudicial to the employees-members The amount collected

from the employees is far more than the benefit provided to them. The deductions are being made on the basis of the present emoluments of the industrial employees while, for the purpose of calculating the pension and other benefits, the emoluments in force in 1971 are taken as the basis, with the result that while the contribution of the employees is substantially high, the return to them and their families is negligible. Certain facts and particulars from the judgment of the learned Single Judge are brought to our notice and on that basis it is contended that while the total contributions (employer's, employee's and government) to the Pension Fund was Rs. 142 crores in the year 1983-84 upon which interest of Rupees sixty crores was earned during that year, the disbursements on account of the three benefits provided for by the said Scheme totalled to Rupees seven crores only. Certain statements are placed before us to show how much an employee drawing a monthly salary of Rs. 1000 would contribute to the Fund over a period of forty years and how much does he get out of it by way of several benefits on his retirement or death. From these figures, it is sought to be established that the return is too low and bears no relation to the amount contributed by the employees. In short, the argument is that the scheme is not really to the benefit of the employees but has operated as a deprivation. The appellants rely upon a report made by the Pension and Provident Fund Manager of the Grindlay's Bank - who, it is stated, was appointed by the respondents to examine the working of the Pension Fund - in 1985, wherein it is stated inter alia: "currently, contribution is paid at a rate of three and a half percent of pay. Accordingly, actual contribution exceeds actuarial by 0.44% of pay...although the contribution income has increased, corresponding increase in pension payable has not taken place....This would partially explain the huge accumulation of fund". The Report opined that "the amount of contribution paid to the fund by a member should at all times be regarded as members' property. At least this would be returned on exit of a member whether it is by way of death benefit or by survival benefit. We have already ensured bigger benefits on death by way of widow pension and life assurance benefit that contribution warrants. Therefore, survival benefit would be an amount equal to return of contribution with a realistic rate of interest". Certain other recommendations are also made.

13. The facts and figures and particulars furnished by the petitioners are disputed by the learned Counsel for the respondents. The respondents have furnished a statement (Annexure-A) showing the number of subscribers and the number of pensioners from the year 1971-72 to 1991-92. The said statement shows that while in 1971-72, when the Family Pension Fund Scheme originated, the total number of subscribers was 9.34 lakhs and there were no pensioners, the situation has changed dramatically by 1991-92 - while the number of subscribers has gone upto 136.68 lakhs, the number of pensioners has risen to 1,29,362. It is pointed out that the widows get the pension for whole of their life or until they re-marry, as the case may be. The respondents have also filed a chart to show that, under the Scheme, an employee gets more than what he really contributes. By way of illustration, the case of an employee is taken whose salary is Rs. 1000 per month for a period of eleven years and Rs. 1600 per month for the next three years and so on. In the course of twenty one years, it is pointed out, his share of contribution would be Rs. 4803, to which is added an equal amount being the employer's contribution, making a total of Rs. 9606. The interest on the said amounts for the period of twenty one years is calculated at Rs. 6868 on each of the employer's and employee's contribution thus making a total of Rs. 23,342. As against this, his withdrawal benefit, according to the rates applicable from April 1, 1992, it is stated, would be Rs. 18,235 which is far more than the contribution made by him, namely, Rs. 4,803 + Rs. 6,868 = Rs. 11,671. It is submitted

that since several benefits are provided including a long-term benefit like Pension Fund to a large number of widows/minor children, the employees cannot insist upon the entire amount contributed by them, their employers and the Government being paid to them as the withdrawal benefit. It is just not possible, say the respondents. Another statement brought to our notice is the one made in the reply-affidavit filed in Civil Appeal No. 5159 of 1993. It is stated therein:

The rates are so designed as to ensure that the employee gets back the amount of his own contribution with certain additional amount of interest. The amount of contribution by the employer and the Central Government and interest of employees' contribution is retained and utilised to provide for payment of other two benefits, namely, monthly Family Pension Fund and Life Assurance benefit, to the widows or minor sons or unmarried daughters of those unfortunate members who die prematurely during employment. Thus the entire amount of contributions to the Family Pension Fund is utilised for giving benefits to the member of the fund himself or to his destitute surviving family members in case of his death in one of the aforesaid four ways and no part of it is utilised for any other purpose.

14. Annexure-IV to the said affidavit gives certain particulars in support of the said averment. With respect to the Report of the Manager of the Grindlay's Bank, it is submitted by the respondents that it was a report made in 1985 and that since then the government has revised the benefits to the employees. It is submitted that according to the rates of 1992, the benefits to the employees are larger than their contribution.

15. While it is not possible for us to embark upon an enquiry into the correctness or otherwise of the rival statements and particulars furnished by the parties, the fact remains - which we should emphasise - that there should be a broad correspondence between what the employees contribute and what they get in return. We have already expressed ourselves on this aspect while dealing with the plea of discrimination, which we do not think it necessary to repeat here. The benefits to be provided to them under the several schemes should broadly approximate to and be commensurate with what they contribute. This is what Clause (34-D) of Pension Scheme provides, in particular Sub-clause (2) thereof. Though, worded as an enabling provision, it contains a salutary and an obligatory principle - which the government should always keep in view. We agree, as already emphasised hereinbefore, that no conclusions should be drawn by taking any single instance and that the matter must be decided taking an overall view, yet the inescapable test remains, viz., there must be a broad correspondence between what the employees pay and what they and their families get ultimately. It cannot be that while the Fund accumulates, the employees - and their families - decay. The scheme is one conceived in their interest and for their benefit and it should prove so in practice. It is the statutory duty of the respondents to ensure that both the contributions by employees and the benefits flowing to them must be broadly commensurate. Since actuarial appraisal is done every three years, as provided by the statutory scheme itself, we are sure that the observations made herein will be kept in mind and necessary adjustments made.

16. The appeals and the writ petition are dismissed with the above observations. No order as to costs.