

[Supreme Court of Pakistan]

Present: Syed Mansoor Ali Shah, Amin-ud-Din Khan and Jamal Khan Mandokhail, JJ**AMIR SULTAN and 2 others---Petitioners****Versus****ADJUDICATING AUTHORITY-III EOBI, ISLAMABAD and others---Respondents**

C.P. No.3531 of 2021, C.Ps. Nos. 408, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2468, 2469, 2470, 2471, 2472, 2473 of 2023 and C.P. No. 3495 of 2023, decided on 18th February, 2024.

(Against the judgment of Islamabad High Court, Islamabad dated 27.04.2021 passed in W.P. No. 2502 of 2020 etc.)

(a) Employees' Old-Age Benefits Act (XIV of 1976)---

----S. 22 & Preamble---Employees' Old-Age Benefits Act, 1976---Liberal interpretation---Employees' Old-Age Benefits Act, 1976 is a beneficial statute intended to provide security and old-age benefits to employees of industrial, commercial or other organizations covered by it and, therefore, its provisions have to be construed liberally in order to advance its objective.

Don Basco High School v. The Assistant Director EOBI, PLD 1989 SC 128 and Lahore Race Club v. Deputy Director EOBI, 1998 SCMR 1571 ref.

(b) Employees' Old-Age Benefits Act (XIV of 1976)---

----S. 22(2)---Old age pension---Exception under Section 22(2) of the Employees' Old-Age Benefits Act, 1976 ("the EOB Act, 1976)---Applicability---Stage when the exception under Section 22(2) of the EOB Act, 1976 becomes applicable---To avail the exception under Section 22(2) of the the EOB Act, 1976, the insured person must satisfy that he was in employment in the industry or establishment on the first day of July 1976 or on the day the Act became applicable to such an industry or establishment and was of the age mentioned in Section 22(2)(i) and (ii) of the Act.

Section 22(1) of the Employees' Old-Age Benefits Act, 1976 ("the Act") provides that an insured person is entitled to monthly old-age pension if (i) he is over sixty years of age, or over fifty-five years of age in the case of a woman, and (ii) the contribution in respect of such insured person was paid by the employer for not less than fifteen years. It is only when both these conditions are fulfilled that an insured person is entitled to monthly old-age pension under the said provision. An exception is provided under Section 22(2) of the Act whereby the number of years of contribution paid by the employer on behalf of the insured person is reduced to seven and five years, respectively instead of fifteen years under section 22(2) if on the first day of July, 1976 or on any day thereafter on which the Act becomes applicable to an industry or establishment; (i) the insured person is over forty years of age, or over thirty-five years of age in the case of a woman or (ii) the insured person is over forty-five years of age, or over forty years in the case of a woman.

The first cut-off date i.e., first day of July 1976 is the date when the Act was implemented. As per section 9 of the Act, the first contribution was paid by the employer on the said date. The second cut-off date is when the Act becomes applicable to an industry or establishment. Section 1(4) of the Act provides three different modes through which the Act becomes applicable to an industry or establishment. It is at these two points in time when the age of the insured person in terms of Section 22(2)(i) and (ii) becomes relevant for invoking the exception of reduced years of contribution under the said provision. The age of the insured person alone is not the determining factor for the case to fall within the exception under Section 22(2) but it is also that the age must be so at the relevant cut-off dates mentioned above. As such, an insured person cannot avail the exception under Section 22(2) if he was employed after the cut-off date, i.e., first day of July 1976 or after the date when the Act became applicable to the industry or establishment under Section 1(4) of the Act. Therefore, to avail the exception under Section 22(2) of the Act, the insured person must satisfy that he was in employment in the industry or establishment on the first day of July 1976 or on the day the Act became applicable to such an industry or establishment and was of the age mentioned in Section 22(2)(i) and (ii) of the Act.

For the Petitioner(s):

Haroon Irshad Janjua, Advocate Supreme Court.

Ch. Akhtar Ali (in C.P. No. 3531 of 2023).

Muhammad Tariq, Advocate Supreme Court (in C.P. No. 3495 of 2023).

Muhammad Umer Riaz, Advocate Supreme Court.

Khurram M. Qureshi, Advocate Supreme Court

Barrister Abu Bakar along with Muhammad Amin, Deputy Director General, EOBI and Abdul Ahad, Director (Law) EOBI.

Ghulam Muhammad, Director (Operations), EOBI (in C.P. No. 408 of 2023, C.P's Nos. 2451-2458 of 2023 and C.P's Nos. 2469-2473 of 2023).

For the Respondent(s):

Mukhar Ahmed Maneri, Advocate Supreme Court (in C.P. No. 3531 of 2023 and C.P. No. 3495 of 2023).

Raja Muhammad Rafiq Janjua, Advocate High Court along with Private Respondents (in C.Ps. Nos. 408, 2451-2458 and 2469-2473 of 2023).

Date of hearing: 18th January, 2024.

JUDGMENT

SYED MANSOOR ALI SHAH, J.---Under Section 22(1) of the Employees' Old-Age Benefits Act, 1976¹ ("Act") an insured person² is entitled to monthly old-age pension at the rate specified in the Schedule to the Act; (i) if he is sixty years of age or fifty five years in case of a woman and (ii) contribution³ in respect of him were paid for not less than fifteen years. Section 22(2) of the Act provides an exception to the above to the effect that an insured person will also be entitled to an old-age pension if he on 1st July 1976 or on any day thereafter on which this Act becomes applicable to the industry or establishment was (i) over forty years of age or thirty five years in case of a woman, and contribution in respect of him was paid for not less than seven years or (ii) over forty five years of age or forty years in case of a woman, and contribution in respect of him was paid for not less than five years.

2. What requires determination by us is the stage when the exception under Section 22(2) of the Act becomes applicable. Whether the exception is based on the age of the insured person, as given under Section 22(2)(i) and (ii), whenever he enters insurable employment in an industry or establishment or whether the exception applies when the age of the insured person is as per Section 22(2)(i) and (ii) on the cut off dates i.e., first day of July 1976, or when the Act becomes applicable to the said industry or establishment.

3. This question arises before us out of two sets of judgments from different High Courts. Through judgments dated 27.04.2021⁴ and 19.06.2023⁵ passed by the Islamabad High Court and the Peshawar High Court, Peshawar, respectively, the matter was decided in favour of the Employees' Old-Age Benefits Institution ("EOBI") and against the insured persons ("respondents"). Through judgments dated 03.04.2023⁶ and 30.11.2022⁷ passed by the Islamabad High Court and the Sindh High Court, Karachi, respectively, the matter was decided against the EOBI and in favour of the respondents. Hence there have been conflicting opinions of the respective High Courts on the interpretation of Section 22(2) of the Act.

4. The learned counsel for EOBI submits that the exception in Section 22(2) of the Act has limited application and can only be availed by an insured person, who is of the age as mentioned in Section 22(2)(i) and (ii) at two cut off dates; (i) on the first day of July, 1976 or (ii) when thereafter the Act becomes applicable to an industry or establishment. As such, he submits that the exception is only a one-time concession granted on the above two cut- off dates.

5. On the other hand, the learned counsel for the respondents submit that exception under Section 22(2) of the Act is automatically attracted when a person enters insurable employment in an industry or establishment at the age mentioned in Section 22(2)(i) or (ii) irrespective of the cut-off dates mentioned above.

6. We have heard the learned counsel for the parties, have gone through the relevant provisions of the Act and have perused the record with their able assistance.

7. Under Article 38 of the Constitution⁸, it is the duty of the State to promote social and economic well-being of the people by, inter alia, providing for all persons employed in the service of Pakistan or otherwise, social security by compulsory social insurance or other means. It was in discharge of this responsibility that the Act was enacted by the Federal Legislature under entry 26 of the erstwhile Concurrent List of the Constitution and implemented on 1st July, 1976⁹ to provide old-age benefits to persons employed in industrial, commercial and other organizations.¹⁰ The Act is a beneficial statute intended to provide security and old-age benefits to employees of industrial, commercial or other organizations covered by it and, therefore, its provisions have to be construed liberally in order to advance its objective.¹¹ With this understanding, we move to decide the present case.

8. The Act applies to every industry or establishment as described in Section 1(4) of the Act. Further, as the matter relates to the applicability of Section 22(1) and (2) of the Act, these provisions are being reproduced hereunder for ready reference:

1. Short title, extent, commencement and application.---(1) This Act may be called the Employees' Old-Age Benefits Act, 1976.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

(4) It applies to every industry or establishment-

(i) wherein ten or more persons are employed by the employer, directly or through any other person, whether on behalf of himself or any other person, or were so employed on any day during the preceding twelve months, and shall continue to apply to every such industry or establishment even if the number of persons employed therein is, at any time after this Act becomes applicable to it, reduced to less than ten; or

(ia) wherein less than ten persons are employed if such industry or establishment voluntarily applies for application of this Act and this Act shall apply to such industry or establishment from the date of submission of an application by such industry or establishment; or

(ii) which the Federal Government may, by notification in the official Gazette, specify in this behalf.

22. Old-age pension.- (1) An insured person shall be entitled to a monthly old-age pension at the rate specified in the Schedule:

Provided that-

(a) he is over sixty years of age, or fifty-five years in the case of a woman; and

(b) contribution in respect of him were paid for not less than fifteen years.

...

(2) If an insured person was on the first day of July, 1976 or is on any day thereafter on which this Act becomes applicable to an industry or establishment,-

(i) over forty years of age, or thirty-five years in the case of a woman, clause (b) of subsection (1) shall have effect as if for the word "fifteen" therein the word "seven" were substituted; or

(ii) over forty-five years of age, or forty years in the case of a woman, clause (b) of subsection (1) shall have effect as if for the word "fifteen" therein the word "five" were substituted.

9. Section 22(1) provides that an insured person is entitled to monthly old-age pension if (a) he is over sixty years of age, or over fifty-five years of age in the case of a woman, and (b) the contribution in respect of such insured person was paid by the employer for not less than fifteen years. It is only when both these conditions are fulfilled that an insured person is entitled to monthly old-age pension under the said provision. An exception is provided under Section 22(2) of the Act whereby the number of years of contribution paid by the employer on behalf of the insured person is reduced to seven and five years, respectively instead of fifteen years under section 22(1) if on the first day of July, 1976 or on any day thereafter on which the Act becomes

applicable to an industry or establishment; (i) the insured person is over forty years of age, or over thirty-five years of age in the case of a woman or (ii) the insured person is over forty-five years of age, or over forty years in the case of a woman.

10. The first cut-off date i.e., first day of July 1976 is the date when the Act was implemented. As per section 9 of the Act, the first contribution was paid by the employer on the said date. The second cut-off date is when the Act becomes applicable to an industry or establishment. Section 1(4) of the Act provides three different modes through which the Act becomes applicable to an industry or establishment. It is at these two points in time when the age of the insured person in terms of Section 22(2)(i) and (ii) becomes relevant for invoking the exception of reduced years of contribution under the said provision. The age of the insured person alone is not the determining factor for the case to fall within the exception under Section 22(2) but it is also that the age must be so at the relevant cut-off dates mentioned above. As such, an insured person cannot avail the exception under Section 22(2) if he was employed after the cut-off date, i.e., first day of July 1976 or after the date when the Act became applicable to the industry or establishment under Section 1(4) of the Act.

Therefore, to avail the exception under Section 22 (2) of the Act, the insured person must satisfy that he was in employment in the industry or establishment on the first day of July 1976 or on the day the Act became applicable to such an industry or establishment and was of the age mentioned in Section 22(2)(i) and (ii) of the Act.

11. For the above reasons, the petitions filed by the EOBI are converted into appeals and allowed, whereas the petitions filed by the respondents (insured persons) are dismissed and leave to appeal therein refused. However, if any of the respondents can establish that they were entitled to the exception provided in Section 22(2) of the Act in view of what has been held above, he or she may move an appropriate application before the EOBI seeking such an exception, and the EOBI shall decide the said application in terms of this judgment through a speaking order.

MWA/A-8/SC

Order accordingly.

¹ The Act was implemented from 1st day of July 1976, this is because as per Section 9 of the Act the contribution was payable from 1st July 1976.

² means an employee who is or was in "insurable employment" see Section 2(i) of the Act.

³ means the sum of money payable to the institution by the employer or by the Federal Government in respect of an insured person under the provisions of the Act.

⁴ Writ Petition No. 2502/2020.

⁵ Writ Petition No. 2746-P/2021.

⁶ Writ Petition No. 3570/2022.

⁷ Constitution Petition No. D-2788/2020.

⁸ The Constitution of the Islamic Republic of Pakistan, 1973.

⁹ See footnote 1

¹⁰ See the Preamble to the EOB Act and also Employees Old-Age Benefits Institution v. National Industrial Relations Commission, 1988 SCMR 765.

¹¹ Don Basco High School v. The Assistant Director EOBI, PLD 1989 SC 128 and Lahore Race Club v. Deputy Director EOBI 1998 SCMR 1571.