Tee Soon Kay v Attorney-General
[2006] SGHC 151

Case Number : OS 618/2006

Decision Date : 30 August 2006

Tribunal/Court : High Court

Coram : Tan Lee Meng J

Counsel Name(s) : Ramayah Vangatharaman (Wee, Ramayah & Partners) for the plaintiff; Jeffrey Chan Wah Teck, Owi Beng Ki and Goh Choon Hian, Leonard (Attorney-General's Chambers) for the defendant

Parties : Tee Soon Kay — Attorney-General

Statutory Interpretation – Construction of statute – Purposive approach – Public officers voluntarily opting irrevocably to convert from pension scheme to Central Provident Fund scheme and then attempting to revert to pension scheme after more than thirty years – Whether public officers having right to pension under s 9(d) Pensions Act such that condition of irrevocability governing conversion from pension scheme to CPF scheme ultra vires – Article 112 Constitution of the Republic of Singapore (1999 Rev Ed), ss 8(1), 9(d) Pensions Act (Cap 225, 2004 Rev Ed)

30 August 2006 *Judgment reserved.*

Tan Lee Meng J:

1 The plaintiff, Mr Tee Soon Kay, a public officer, together with and on behalf of a number of other public officers (collectively referred to as "the claimants"), who all voluntarily opted to convert from the pension scheme for public officers to the Central Provident Fund ("CPF") scheme in 1973, claimed to be entitled to revert to the pension scheme even though it had been made clear to them at the material time that their decision was irrevocable. The Attorney-General opposed the application on the ground that the claimants had irrevocably opted to transfer from the pension scheme to the CPF scheme 33 years ago.

Background

2 The claimants were appointed to the public service before 1 December 1972. When first employed, they were on the pension scheme, which was then governed by the Pensions Act (Cap 55, 1970 Rev Ed) and is now governed by the Pensions Act (Cap 225, 2004 Rev Ed) ("the Act").

3 On 14 May 1973, the Permanent Secretary (Finance) issued Finance Circular No 8 of 1973 ("FC No 8/73"). The main features of FC No 8/73 were as follows:

(a) All eligible officers were required to select one of two options with effect from 1 July 1973 ("the 1973 Option").

(b) Once exercised, the option was irrevocable.

(c) The first option was to remain on the existing pension scheme.

(d) The second option was to convert from the pension scheme to the CPF scheme which was then governed by the Central Provident Fund Act (Cap 121, 1970 Rev Ed) and is now governed by the Central Provident Fund Act (Cap 36, 2001 Rev Ed) ("the CPF Act"). Those who

chose the second option did not lose their accrued pension benefits, which were "frozen and [became] payable … as a lump sum upon … retirement under … pensionable circumstances". Furthermore, those who had already served at least ten years could opt to have their accrued pension benefits payable as "commuted gratuity and reduced [annual] pension" on retirement under pensionable circumstances.

4 Had the claimants remained on the pension scheme, they could have looked forward to the granting of a monthly pension and medical benefits upon their retirement under pensionable circumstances. While some pensionable officers opted to remain on the pension scheme, the claimants were among many public officers who opted to convert from the pension scheme to the CPF scheme in 1973.

5 Evidently, the claimants must have thought that the benefits under the CPF scheme were more attractive than those under the pension scheme. To begin with, under the CPF scheme, the Government contributes a percentage of the claimants' monthly salary to their CPF accounts. The Government's monthly contribution to a public servant's CPF account forms a part of that public servant's savings and cannot be recovered from him if he leaves the public service before reaching the pensionable age. As such, the CPF scheme gave the claimants more career flexibility than the pension scheme, under which the question of eligibility for pension benefits does not arise in the case of a public servant who leaves the public service before reaching the pensionable age. Furthermore, CPF contributions are tax deductible and may be withdrawn to purchase homes. An additional carrot to those who opted for the CPF scheme was that their frozen accrued pensions as at 30 June 1973 could be used for the purpose of purchasing a house or flat.

6 In line with the claimants' decision to convert to the CPF scheme in 1973, the Government has made monthly contributions to their CPF accounts for 33 years and during this period, the claimants have enjoyed other benefits under this scheme. Presently, most of the claimants have attained or are nearing the age at which they may retire. They now wish to opt out of the CPF scheme to return to the pension scheme. When the Government did not agree that they could do so, they instituted the present proceedings and sought the following:

(a) a declaration that the purported condition of irrevocability in the 1973 Option was *ultra vires*, null and void and of no effect;

(b) a declaration that they are entitled to rejoin the pension scheme, and to have their full service in pensionable office counted for the purposes of the Act, pursuant to the terms of s 9(*d*) of the Act; and

(c) such other orders or relief as the court deems fit.

Whether or not the plaintiffs are entitled to the declarations sought

7 The thrust of the claimants' case is that the Permanent Secretary (Finance) had no legislative authority in 1973 to stipulate that their decision to opt for the CPF scheme was irrevocable because they have a right to a pension by virtue of s 9(*d*) of the Act and Art 112 of the Constitution of the Republic of Singapore (1999 Rev Ed) ("the Constitution"). In contrast, the Attorney-General asserted that while pensionable officers who retire in pensionable circumstances may be granted a pension, it is incorrect, in view of, *inter alia*, s 8 of the Act, to say that they have a right to a pension.

Section 9(d) of the Act

8 The claimants' arguments in relation to s 9(*d*) of the Act will first be considered. Section 9(*d*) of the Act provides as follows:

> No pension, gratuity or other allowance shall be granted under this Act to any officer —
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> (*d*) in respect of any service, including service deemed under any written law for the time being in force to be service with the Government for the purposes of this Act, during which the officer was —
>
> (i) a member of any fund mentioned in the Second Schedule, except upon the condition that there shall be first paid to the Government the total amount paid by the Government to that fund excluding the amount paid on account of the officer if he is on the pensionable establishment with respect to the service or an equivalent amount if he is not on the pensionable establishment with respect to such service, together with the interest, if any, thereon; or
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> (ii) eligible for any benefits on retirement under the Singapore City Council Superannuation Fund for Subordinate Employees Rules 1954 except upon the condition that he shall first relinquish all rights to the benefits under those Rules.

9 The claimants, relying on s 9(*d*) of the Act, asserted that they are entitled to revert to the pension scheme after repaying the Government the total amount that the latter has had to contribute to their CPF accounts since the 1973 Option, together with interest. They argued that the Permanent Secretary (Finance) had no right to, in their own words, "disapply" s 9(*d*) of the Act when he stipulated that their decision to convert from the pension scheme to the CPF scheme in the 1973 Option was irrevocable.

10 Contrary to what the claimants asserted, s 9(*d*) of the Act does not pave the way for their return to the pension scheme as it does not create any right to a pension. It merely bars the payment of a pension to anyone if the preconditions referred to therein for the payment of a pension are not met. Indeed, s 9(*d*) of the Act cannot have the effect suggested by the claimants because s 8(1) of the Act provides as follows:

> No officer shall have an absolute right to compensation for past services or to any pension, gratuity or other allowance under this Act, nor shall anything in this Act limit the right of the Government to dismiss any officer without compensation. [emphasis added]

11 Realising that s 8(1) of the Act places a formidable obstacle in their path, the claimants sought to restrict the meaning of this section. To begin with, they argued that it would be consistent with s 8(1) of the Act to hold that s 9(*d*) of the Act gives them a right to a pension that is contingent upon their retirement in pensionable circumstances. This argument cannot be countenanced. In *Nixon v Attorney General* [1931] AC 184 at 191, where the House of Lords considered the effect of s 30 of the Superannuation Act 1834 (c 24) (UK), Viscount Dunedin rightly noted:

> [Section 30] of the Act of [1834] says there is to be no absolute right. *My Lords, to get out of a provision that you are not to have an absolute right a positive provision that you are to have a right, is an argument which has only to be stated to be rejected*. [emphasis added]

12 Admittedly, there are differences between the English and Singapore pension schemes and in *Haji Wan Othman v Government of the Federation of Malaya* [1966] 2 MLJ 42 at 44–45, Thomson LP

warned against the wholesale adoption of English law on pensions when construing claims for pensions in Malaysia. However, apart from the fact that Thomson LP's comments in that case were *obiter dicta*, Viscount Dunedin's ruling that one cannot regard a provision that there is no absolute right as one that creates a right of some sort is a general rule that is relevant when construing s 9(*d*) of the Act.

13 The claimants next argued that the first part of s 8(1) of the Act, which provides that there is no absolute right to a pension, must be read in relation to the second part, which provides that nothing in the Act shall "limit the right of the Government to dismiss any officer without compensation". Read in this manner, s 8(1) of the Act is only intended to safeguard the Government's right to dismiss an officer without payment of compensation. Such a contorted interpretation of s 8(1) of the Act is clearly unacceptable. Surely, the first part of s 8(1) of the Act makes it clear that there is no absolute right to a pension while the second part, which is independent of the first part, ensures that the right of the Government to dismiss any officer without compensation is not limited in any way.

14 That there is no right to a pension was stressed in the context of the pension scheme under the Singapore Armed Forces Act 1972 (Act 7 of 1972) and the Singapore Armed Forces Pensions Regulations 1978 (GN No S 17/1978) in *Low Yoke Ying v Sim Kok Lee* [1990] SLR 1258. In this case, which sheds much light on the pension scheme for public officers as well, Yong Pung How CJ, who held that a serviceman has no right to a pension, explained as follows at 1270, [30] and 1271, [32]:

> Pensions are in fact the creations of statute, and in considering a claim for loss of pension, regard must first be had to the particular statute governing the award or grant of the pension.
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> …
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> On a[n] officer qualifying for a pension by his retirement after the successful completion of his service, it is entirely in the discretion of the Armed Forces Council to grant to him a pension, … The Council's powers are very extensive, and the Council may for good cause cancel, withhold or reduce a grant, or subsequently restore it in whole or in part. This being so, there would have been in my opinion *no right* or entitlement *to a pension or gratuity* vested in the deceased …
>
> [emphasis added]

15 A purposive interpretation of s 9(*d*) of the Act in accordance with s 9A(1) of the Interpretation Act (Cap 1, 2002 Rev Ed) will also lead to the conclusion that this statutory provision does not pave the way for the claimants' return to the pension scheme. That the ordinary meaning of s 9(*d*) of the Act is quite clear for reasons already stated does not prevent the adoption of a purposive approach for interpreting this statutory provision. In *Planmarine AG v Maritime and Port Authority of Singapore* [1999] 2 SLR 1, Karthigesu JA, who delivered the judgment of the Court of Appeal, explained at [22]:

> Section 9A(1) of the Interpretation Act sets out a clear direction that in the interpretation of a provision of a written law, the court should take into consideration the purpose of a provision, and to adopt an interpretation which promotes the purpose of a provision as against one that would not. Furthermore, s 9A(2)(a) of the Interpretation Act expressly allows the court to take into consideration materials such as parliamentary debates to confirm that the meaning of the provision is the ordinary meaning conveyed by the text taking into account the purpose underlying the written law. Following the clear wording of s 9A of the Interpretation Act, there is no blanket rule that a provision must be ambiguous or inconsistent before a purposive approach

to statutory interpretation can be taken.

16 The roots of s 9(*d*) of the Act may be traced to the legislation of the Federation of Malaya ("the Federation"). A similar provision was included in the Federation's Pensions (Amendment) Regulations, 1952 and this was incorporated into the principal legislation of the Federation by means of the Pensions (Amendment) Ordinance, 1955. The reasons for that amendment were stated in the explanatory note on its objects as follows:

> In accordance with the *principle that the Government shall not be liable both for superannuation benefits and for contributions to the Employees' Provident Fund*, it is proposed that no pension, gratuity or other allowance shall be granted in respect of any period of service during which the officer was liable to contribute to the Fund except upon condition that a sum equivalent to the amount of the Government's contributions, plus the interest thereon, is refunded to the Government out of the money standing to the officer's credit in the Fund. [emphasis added]

17 The amendment in question was thus intended to ensure that the Government of the Federation did not pay twice for retirement benefits and that it did not create any right to a pension for a public officer.

18 In Singapore, a similar provision was enacted in 1956 in the Pensions Ordinance (Ord 22 of 1956) ("the Ordinance"). Section 6(*d*) of the Ordinance provided that no pension, gratuity or other allowance shall be granted to any officer:

> … in respect of any service during which the officer was liable to contribute to the Central Provident Fund … except upon condition that there shall be first paid to the Government a sum equal to the total amount of the contributions paid by the Government to the said Fund on account of the officer in respect of such service, together with the interest thereon.

19 In 1963, s 6(*d*) of the Ordinance was repealed and re-enacted to provide that no pension, gratuity or allowance shall be granted under the Ordinance to any officer:

> (*d*) in respect of any service, including service deemed under any written law for the time being in force to be service with the Government for the purposes of this Ordinance, during which the officer was –
>
> > (i) a member of any of the funds mentioned in Part I of the Third Schedule to this Ordinance except upon the condition that there shall be first paid to the Government the total amount paid by the Government and any of the authorities mentioned in Part II of the said Schedule to any of the said funds on account of the officer in respect of such service, together with the interest, if any, thereon; and
> >
> > (ii) eligible for any benefits on retirement under the Singapore City Council Superannuation Fund for Subordinate Employees Rules, 1954, except upon condition that he shall first relinquish all rights to such benefits under the said Rules.

20 The funds listed in Part I of the Third Schedule of the Ordinance were the CPF and the Municipal Provident Fund. The Explanatory Statement of the amendment Bill noted that the amendment was intended to provide:

> … that a pension, gratuity or allowance may only be paid under the Pensions Ordinance, 1956, on the retirement of an officer transferred from the service of another authority as mentioned above

after the officer has first repaid the sums contributed by his employers to any superannuation scheme in which he has continued his membership.

The rationale for this rule was elucidated by the then Minister for Finance, Dr Goh Keng Swee, during the Second Reading of the Pensions (Amendment) Bill as follows (*Singapore Parliamentary Debates, Official Report* (15 June 1963) vol 20 at cols 1393–1394):

> This Bill seeks to amend the Pensions Ordinance, 1956, to provide for the pensions and other retirement benefits of persons transferred to the service of the Government from the City Council, the Singapore Improvement Trust and the Tan Tock Seng's Hospital.
>
> The superannuation schemes to which they belonged prior to the transfer generally allowed them to continue membership in their respective schemes. They could also count on their service before transfer as service reckonable for pension on their eventual retirement. As matters stand, such a person would be eligible on his retirement to benefits on his own superannuation scheme as well as retirement benefits under the Government Pensions Scheme. This is clearly contrary to the principle of superannuation. It is, therefore, necessary for provision to be made to enable employees transferred from the City Council, the Trust and the Tan Tock Seng's Hospital to choose to receive benefits either from their own previous superannuation schemes or those under the Government pensions scheme.

21 It is thus evident that the 1963 amendment to the Ordinance was intended to deal with the problem arising from the transfer of employees of the said three authorities to the Government. Unlike those transferred employees, the claimants in the present case do not enjoy double pension benefits from separate government organisations.

22 On 1 April 1972, s 6(*d*) was amended again. The amended statutory provision provided that no pension, gratuity or allowances shall be granted to any officer in respect of:

> … any of the funds mentioned in Part I of the *Second* Schedule to this *Act*, except upon the condition that there shall be first paid to the Government the total amount paid by the Government and any of the authorities mentioned in Part II of the said Schedule to any of the said funds *excluding the amount paid* on account of the officer *if he is on the pensionable establishment with* respect to *such service or an equivalent amount if he is not on the pensionable establishment with respect to* such service, together with the interest, if any, thereon; …. [amendments in italics]

23 The funds and public authorities listed in the relevant schedule were unchanged.

24 The 1972 amendments were required because of issues that arose after public officers started to contribute 2% of their salaries to the CPF for the first time and the Government started contributing the employer's share of 2% to their CPF accounts. During the Second Reading of the Bill, the then Minister for Finance, Mr Hon Sui Sen, explained (*Singapore Parliamentary Debates, Official Report* (22 November 1972) vol 32 at cols 365–366):

> At the same time, because of the increase in the CPF rate from 10 per cent to 12 per cent, all pensionable employees in the Government service were required to make a two per cent CPF contribution with effect from April 1972 on their monthly emoluments, with a matching contribution from the Government. These contributions to the CPF are intended as additional benefits over and above the pension benefits.

> As the Pensions Act stands, any period of service during which a Government employee was a member of the Central Provident Fund cannot be reckoned for benefits under the Pensions Act, unless he first pays back to the Government any CPF contributions made by the Government on his behalf. … In view of the changed circumstances since April 1972, when pensionable employees were required to contribute two per cent of their emoluments to the Central Provident Fund in respect of their pensionable service, it is necessary to amend section 6 of the Pensions Act. This amendment will allow a pensionable employee to retain the two per cent CPF contribution paid by Government on his account when he eventually retires from the service.

25 The 1972 amendments were in force when FC No 8/73 was issued and they remained in force until 2003 when the Act was amended to delete the Municipal Provident Fund from Part I of the Second Schedule. On 1 January 2004, a revised edition of the Act was introduced and s 6 was renumbered s 9 and the CPF is currently the only fund named in the Second Schedule.

26 It is thus apparent from the legislative history of the Act that s 9(*d*) of the Act has nothing to do a pensionable officer's right to return to the pension scheme by paying back the amounts paid by the Government into their CPF accounts. As such, the claimants' assertion that the Permanent Secretary (Finance) "disapplied" this statutory provision by stipulating that the claimants' decision to convert to the CPF scheme in 1973 was irrevocable lacks substance.

Section 6 of the Act

27 Reference must next be made to the claimants' argument that the introduction in 1986 of s 6(3) of the Act (numbered s 3(1A) at the material time) and the promulgation of reg 3 of the Pensions (Conversion to the Central Provident Fund Scheme) (Amendment) Regulations 1986 (the "1986 amendments") evidenced the Government's recognition that it did not have the power in 1973 to stipulate that their decision to convert to the CPF scheme was irrevocable. Section 6(3) provides as follows:

> The President may, in making regulations under this section, provide for any officer or class of officers holding pensionable offices to opt for the provident fund scheme applicable to non-pensionable employees of the Government under the Central Provident Fund Act (Cap. 36) and for the terms and conditions of such option.

28 Regulation 3 of the Pensions (Conversion to the Central Provident Fund Scheme) Regulations provides as follows:

> (1) An officer to whom these Regulations apply may be given an option to convert to the provident fund scheme applicable to non-pensionable employees of the Government under the Central Provident Fund Act.
>
> (2) The option exercised by the officer shall be irrevocable except that he may be required to revert to the pensionable service if he is appointed or transferred to a scheme of service which is excluded from these Regulations.

29 Whether the Permanent Secretary (Finance) lacked the power to stipulate that a decision under the 1973 Option was irrevocable depends on the law as it stood at the material time. It cannot, without more, be said that the Permanent Secretary (Finance) lacked the said power merely because the position regarding conversion to the CPF scheme was subsequently put on a statutory footing in 1986. Principal Senior State Counsel Jeffrey Chan explained that the 1986 amendments were introduced to achieve greater transparency with respect to the choice offered to all serving senior

public officers to opt for full CPF contributions from the Government or reduced CPF contributions coupled with eligibility for pension benefits upon retirement from the public service under pensionable circumstances. He pointed out that prior to the 1986 amendments, the exercise by senior public officers of this option had been implemented through internal directions and it was thought that as a matter of good governance, issues affecting public officers should be made absolutely transparent by the 1986 amendments. In short, the 1986 amendments do not advance the claimants' case in any way.

Article 112 of the Constitution

30 The claimants' reliance on Art 112 of the Constitution to augment their argument that they have a right to a pension will next be considered. Article 112(1) provides as follows:

> The law applicable to any pension, gratuity or other like allowance (referred to in this Article as an award) granted to any public officer or to his widow, children, dependants or personal representatives shall be that in force on the relevant day or any later law not less favourable to the person concerned.

31 The reliance by the claimants on Art 112(1) of the Constitution is misplaced because this constitutional provision merely directs the mind of the pension-awarding authority to the law that is to be applied should a pension be granted to a public servant. When construing the effect of Art 112 of the Constitution, it cannot be overlooked that Art 112(3) of the Constitution envisages that a public servant may opt for different forms of retirement benefits under the law. That is why it provides as follows:

> For the purposes of this Article, where the law applicable to an award depends on the option of the person to whom it is made, the law for which he opts shall be taken to be more favourable to him than any other law for which he might have opted.

32 The CPF scheme is governed by the CPF Act. As the claimants opted for the CPF scheme in 1973, it must be taken that the law, as laid down by the then CPF Act, is more favourable to them than the law governing the pension scheme.

33 Principal Senior State Counsel Jeffrey Chan also argued that it ought to be borne in mind that Art 2 of the Constitution defines "law" as including written law as well as the common law in so far as it is in operation in Singapore. As such, the term "law" in Art 112(3) of the Constitution includes the common law and the claimants must fulfil the terms of the contractual bargain that they made with the government in 1973. They are thus estopped from resiling from their decision to convert to the CPF scheme because the Government had acted for 33 years on the basis of their decision. The claimants, relying on the decision of the Privy Council in *Kok Hoong v Leong Cheong Kweng Mines Ltd* [1964] AC 993, countered that estoppel does not arise in the face of a statutory and a constitutional right to a pension but, as has been pointed out earlier on, the claimants' reliance on s 9(*d*) of the Act and Art 112 of the Constitution lacks substance. The claimants also asserted that the question of estoppel does not arise because it is, in the words of their counsel, "highly artificial to say that the Claimants knew the impact and effect of section 9(d) [of the Act because] they were Division III & IV officers" and the Permanent Secretary was the "dominant party in the picture". It is important to note that none of the claimants had asserted that they had been forced to opt out of the pension scheme. For more than three decades, they had enjoyed the benefits under the CPF scheme and had not complained about their conversion to this scheme. In these circumstances, the fact that the claimants were Division III and IV officers is no reason for excluding the question of estoppel. Based on the claimants' decision to convert from the pension scheme to the CPF scheme in 1973, the

Government has made the requisite contributions to their CPF accounts for 33 years and has not made any financial provision for their pension benefits. It is far too late to set the clock back and the claimants are in no position to insist that they have a right to revert back to the pension scheme.

34 Finally, reference ought to be made to the claimants' reliance on the following extract from a speech made by the then Prime Minister, Mr Lee Kuan Yew, in the Legislative Assembly during the debate on the Yang di-Pertuan Negara's address on 21 July 1959 to support their assertion that they have a constitutional right to a pension (*Singapore Parliamentary Debates, Official Report* (21 July 1959) vol 11 at col 367):

> And for that reason, we agreed to allow the Constitution to protect the pension rights of our civil service. When they join the service, it is necessary for them to know that, if they devote their whole life to the administration of the State, at the end of it they can go out to pasture with reasonable comfort.

35 Apart from the fact that the then Prime Minister's speech was not made on the occasion of the second reading of a Bill, his speech should not be taken out of context. The thrust of his speech was that pensionable officers who devote their whole life to the administration of the State should be in a position to retire "with reasonable comfort". No one has deprived the claimants of their opportunity to "go out to pasture with reasonable comfort". They could have remained with the pension scheme but they obviously thought in 1973 that the CPF scheme gave them more "pasture land" than the pension scheme. Like the pension scheme, the CPF scheme is also intended to take care of the financial needs of retirees. When describing the aim of the CPF scheme in Parliament on 25 July 1973, the then Minister of Labour, Mr Ong Pang Boon said (*Singapore Parliamentary Debates, Official Report* (25 July 1973) vol 32 at col 1175):

> [T]he Central Provident Fund Act was enacted in 1955 to provide employees in Singapore with a compulsory savings scheme so that they will have some savings when they retire from active work. … The Fund is also fulfilling … important social functions. … [U]nder its approved housing scheme introduced in 1968, members are permitted to use their CPF credits to purchase Housing and Development Board flats.

Conclusion

36 The claimants failed to establish that the Permanent Secretary (Finance) had, in their own words, "disapplied" s 9(*d*) (then s 6(*d*)) of the Act in 1973, or that he was not entitled at the material time to stipulate that a decision by a pensionable officer to opt for the CPF scheme in place of the pension scheme was irrevocable. As such, they are not entitled to the declarations sought and their application is dismissed with costs.

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