

[2017] NZSSAA 065

Reference No. SSA 39/17

IN THE MATTER of the Social Security Act
1964

AND

IN THE MATTER of an appeal by **XXXX** of
Kaiapoi against a decision
of a Benefits Review
Committee

BEFORE THE SOCIAL SECURITY APPEAL AUTHORITY

Mr G Pearson - Chairperson

Mr K Williams - Member

Mr C Joe - Member

Hearing at WELLINGTON on 5 September 2017

Appearances

The Appellant in person

For Chief Executive of the Ministry of Social Development: E Kirkman

DECISION

Background

- [1] The Appellant appeals a decision of the Chief Executive, upheld by a Benefits Review Committee, to deduct an amount of overseas pension from his entitlement to New Zealand Superannuation.
- [2] The issue is governed by s 70 of the Social Security Act 1964 (“the Act”).
- [3] The essential principle behind s 70 of the Act is that New Zealand taxpayers should not pay New Zealand Superannuation on a basis that puts a person who is entitled to an offshore pension into a better position

than a person who has remained in New Zealand through the whole of their working life.

- [4] Before applying s 70, it is necessary to establish, as a question of fact, the nature of the scheme from which the appellant receives an overseas pension. That question is a question of fact that must be decided in each case. Previous decisions can only determine questions of law. Of course, it is to be expected that the same factual conclusions as to the attributes of the scheme are likely to be reached in different cases concerning the same scheme.
- [5] In the present case, the pension scheme in issue is a pension that the Appellant receives from the Singapore Central Provident Fund (CPF). This pension scheme has previously been considered by the Authority and the High Court. On the face of it, the case *T v Chief Executive of the Ministry of Social Development*¹ concerned a similar or identical pension. The High Court upheld the view that the particular pension was affected by s 70 of the Act, and had to be offset against an entitlement to New Zealand Superannuation.

The issues and the facts

- [6] The attributes of the pension scheme in question in this case are not contentious. Nonetheless, it is important to set out what the parties agree those attributes are. The parties accept the appellant is fully entitled to receive New Zealand Superannuation. Accordingly, the only matter in issue is the technical question of whether the pension the appellant receives is affected by s 70.
- [7] The appellant established clearly that the pension he receives from the CPF is paid from payments funded by his own contributions. If the appellant exhausts the funds he contributed (including earnings on his contributions) he will receive no further pension payments. He also established that if he were to die before exhausting the fund, then the remainder of the funds would go to his nominated successors. Further emphasising the personal nature of the fund is the fact that participants are entitled to withdraw from their accumulated savings to purchase a

¹ *T v Chief Executive of the Ministry of Social Development* [2017] NZHC 711.

home, they may elect to have some of their fund invested in securities (of specified classes) on the Singapore stock exchange, and if they cease to be citizens of Singapore they may have all of their funds released.

[8] The appellant said that while the Singapore government did guarantee the funds, it was in the sense that the government of Singapore was the trustee of the fund and, accordingly, that did not in any sense derogate from the personal ownership of the accounts in the fund.

[9] The appellant successfully drew a number of parallels with the New Zealand KiwiSaver scheme. The appellant convincingly demonstrated that in many respects the fund in question was more like KiwiSaver than the New Zealand Superannuation scheme. In particular:

[9.1] The Singapore scheme was generally open to persons working in Singapore, whereas the New Zealand Superannuation scheme has eligibility criteria. A contributory scheme is less likely to exclude participants.

[9.2] The New Zealand Superannuation scheme does not make any advance payments, or disposition after death. The entitlements are purely based on a provision by the State rather than drawing on an individual's personal account into which they have contributed.

[9.3] The entitlement to New Zealand Superannuation is tied to qualifying criteria and entitlements may be lost, at which point there is no fund to be drawn on.

[10] The appellant did accept that contributing to the Singapore scheme was compulsory, and in that respect, there is a difference between the Singapore scheme and KiwiSaver.

[11] The appellant discussed the control of the Singapore scheme and accepted that it was administered by a statutory body. However, he pointed out that there was significant government control over KiwiSaver and drew attention to a New Zealand government website which stated:

KiwiSaver is a government initiative involving KiwiSaver providers, employers and several government agencies.

- [12] He pointed out several aspects of government involvement in KiwiSaver, including tax credits, KiwiSaver home start grants, some government contributions, regulation by the Financial Markets Authority and a degree of control through a process of authorising KiwiSaver providers to provide qualifying funds.
- [13] While not contesting the attributes identified by the appellant, the Ministry's position is that there are other elements of the Singapore scheme that require consideration when applying s 70 of the Act. In particular, the role the CPF plays in the provision of social welfare services in Singapore. The Ministry's position is that the CPF is part of Singapore's comprehensive social security system which provides for retirement, housing and health care needs. They say it is a mandatory social security savings scheme funded by contributions from employees and employers and the contributions go into three accounts:
- [13.1] Ordinary account – primarily for retirement and housing needs.
- [13.2] Special account – primarily for retirement needs.
- [13.3] Medisave account – primarily for health care needs.
- [14] The appellant did not contest the essence of what the Ministry said. While the information was not very clear, it emerged that it seems that there may be some very limited social support for persons who have not been in a position to contribute to the CPF, for example, if they had not worked during the course of their lives or done so only to a limited extent. The best information was that this support is intended only to alleviate the most extreme consequences of abject poverty.

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- [15] Given the recent decision of the High Court in *T v Chief Executive of the Ministry of Social Development*, which concerned a Singaporean pension, it is appropriate to consider that case as a preliminary matter. Unsurprisingly, there are significant elements of commonality in *T* and the present case. The key element featuring in both the appellant's argument, and the *T* case is the personal nature of the CPF scheme. The

sums of money compulsorily deducted from a participant's income are paid into her or his pension account, and they belonged to that participant (including the employer's contributions).

[16] Accordingly, in both the *T* case and this case, the appellants contended that the payments were simply disbursements of their own money and that could not affect their entitlement to New Zealand Superannuation. One of the appellant's arguments in the *T* case was that if he renounced his Singapore citizenship, drew his funds out of his account and ceased to receive a pension then he would be entitled to receive New Zealand Superannuation without abatement.

[17] The first point considered by the High Court was a contention that the CPF scheme is similar to KiwiSaver. The High Court concluded, at [14] to [15], that regardless of elements of commonality with KiwiSaver, section 70 does apply:

The Authority considered Mr T's arguments. It examined the CPF and concluded that it is a programme put in place by the government of Singapore for the support of its citizens. It provides for one or more of the contingencies in the New Zealand income support programme, including for retirement or old age. It is administered by or on behalf of the government of Singapore.

With respect those conclusions are inescapable.

[18] The judgment went on to note that the CPF is different from KiwiSaver in that the former is a compulsory scheme and the latter a voluntary scheme. However, the Court did not conclude that the compulsory nature of the scheme was in itself critical.

[19] The judgment went on to consider a further argument, which has been advanced in this present case: whether or not the monthly payments received from the CPF by the appellant were "a benefit, pension, or periodical allowance". In that case, this Authority had concluded that the payments were of that character and the High Court agreed, observing that the monthly payments were determined by regulations. The Court took the view that the payments were a pension, notwithstanding the fact that the appellant in that case had an individual account.

[20] In short, the High Court had little difficulty in reaching the view that s 70 applied. While the CPF is based on individual accounts, where funds were effectively the personal property of the account holder, the scheme is the Singapore government's regime for providing for the contingency of retirement or old age and met the other attributes to bring it within s 70.

Discussion

[21] Section 70 of the Act has a plain and obvious objective. It ensures that where persons qualify for a pension in another jurisdiction, and the pension is that jurisdiction's way of providing for the same contingencies as New Zealand Superannuation, the offshore entitlement will be deducted from any entitlement in New Zealand.

[22] The policy reasons are obvious. The New Zealand taxpayer is not expected to expend money to provide a retirement superannuation that is greater than what a New Zealand taxpayer would receive when they lived and worked all their life in New Zealand.

[23] Inevitably, there are a myriad number of ways in which different jurisdictions may manage the same issue. Within New Zealand, the approach has changed over time, and whether it should change further has been an ongoing topic of public debate. For that reason, it is unsurprising that features, such as having an individual account, are not determinative.

[24] In terms of whether there ought to be a deduction from New Zealand Superannuation in economic terms, it would not be justified to distinguish between:

[24.1] a regime where the social bargain is that tax rates are lower due to not having a broad entitlement to taxpayer funded superannuation, but where individuals are required to contribute to personal pension funds by compulsion; and

[24.2] the regime in New Zealand where general taxation funds a broad entitlement to New Zealand Superannuation based on residence and a qualifying age.

[25] Against those considerations, the policy underlying s 70 becomes more obvious. The key provision in s 70 is contained in s 70(1)(b) which materially provides:

the benefit, pension or periodical allowance or any part of it, is in the nature of a payment which, in the opinion of the chief executive, forms part of a programme providing benefits, pensions, or periodical allowances for any of the contingencies for which benefits, pensions, or allowances may be paid under ... the New Zealand Superannuation and Retirement Income Act 2001 ... which is administered by or on behalf of the government of the country from which the benefit, pension, or periodical allowance is received ...

[26] Coming within the scope of those words is sufficient to require that the receipts in this case must be deducted from the Appellant's New Zealand Superannuation entitlement. The key issues are whether the payments are for "the contingencies" for which New Zealand Superannuation is paid, and whether the payments are administered by or made on behalf of the government of the country in question.

[27] While we have no difficulty accepting the evidence relating to the individual nature of the account held by the appellant, it does not alter our view that s 70(1)(b) covers the pension he receives from the CPF. None of the material facts were different from those before the High Court in the *T* case. We have been left in no doubt that the CPF is administered by the government of Singapore. The pension in issue is paid as part of Singapore's programme for meeting retirement needs and, accordingly, it corresponds with the contingencies for which New Zealand Superannuation is paid under the New Zealand Superannuation and Retirement Income Act 2001.

[28] It is not important that many parallels can be drawn with KiwiSaver. The one distinction that the High Court did identify between KiwiSaver and the CPF was the element of compulsion. The High Court did not elaborate on why that may be important; however, it would appear that it is because without compulsion, it is more difficult to establish that a fund does cover the contingencies for which pensions are provided under the New Zealand Superannuation and Retirement Income Act 2001. However, in a particular set of facts, it may or may not be a determinative consideration. In different cases "compulsion" can take various forms, and compulsion can apply to a greater or lesser range of persons. It is not necessary to

explore the issue further in the present case. The *T* case provides sufficient guidance in this instance, given the similarity of the facts.

Decision

[29] We are satisfied that the appeal must be dismissed as s 70 of the Act applies to the pension the appellant receives from the CPF. The Chief Executive was correct in deducting the Appellant's CPF pension payments from his entitlement to New Zealand Superannuation.

[30] Appeal dismissed.

Dated at Wellington this 17th day of November 2017

G Pearson
Chairperson

K Williams
Member

C Joe JP
Member