

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2017

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.14652 of 2004

and

WP.MP.Nos.8518 and 10830 of 2006

R.Viswanathan

... Petitioner

Vs

The Assistant Provident

Fund Commissioner (Pension)

Employees Provident Funds Organisation,

Sub Regional Office,

No.10A/3, Saint Thomas Road,

Tirunelveli.

... Respondent

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records in No.TN/T1/Consumer Council/ENF I(6)/2000 dated 03.07.2000 and to quash the same and direct the respondent to pay the pension to the petitioner from March 2000 periodically.

For Petitioner : Dr.G.Krishnamurthy  
For Respondent : Mr.Vibhishanan

ORDER

This Writ Petition has been filed to call for the records relating to the order of the respondent dated 03.07.2000 and quash the same and consequently, direct the respondent to pay the pension to the petitioner from March 2000 onwards.

2. It is the case of the petitioner that he worked in M/s.Balarama Varma Textile Mills, Sengottai and retired from service on 31.12.1993. In the year 1995, he has opted for the Employees Pension Scheme, 1995. Accordingly, pension was sanctioned under the Scheme, 1995 and the same was continuously paid to the petitioner till 10.03.2000. However, without any prior notice, the pension payable to the petitioner was stopped by the respondent by the impugned order, on the ground that the proposal for permitting the employees under the Employees Pension Scheme, 1995 to opt for the Provident Fund Members, who were not the members of the Family Pension Scheme, 1971 and left service during the period between 01.04.1993 and 15.11.1995,

was rejected by the Government and that, since the petitioner did not opt for the Family Pension Scheme, 1971, which was introduced with effect from 01.03.1971 and he retired from service on 31.12.1993, he was sanctioned pension erroneously. Aggrieved over the said order, the petitioner has filed the present writ petition.

3. The respondent has filed a counter affidavit, wherein, it has been stated that the pension which was provisionally sanctioned to the petitioner was stopped subsequent to the clarification of the Government to the effect that allowing the members of the Employees' Provident Fund Scheme, 1952, who were not members under the Family Pension Scheme, 1971 and left employment during the period between 01.04.1993 and 15.11.1995 to opt for Employees' Pension Scheme, 1995, was not feasible. Therefore, the communication dated 03.07.2000 was issued to the petitioner. However, in para 11 of the said counter affidavit, it has been stated that W.P.Nos.225, 15887, 15895, 16018, 16019 and 16024 of 2004 filed on the same ground, were disposed of by this Court, by allowing the petitions and by directing the Assistant Provident Fund Commissioner to pass fresh orders after giving opportunity to the petitioners therein for being heard. Pursuant to the same, the petitioners therein were heard and fresh proceedings were issued to them.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

5. Admittedly, the order impugned herein, came to be passed, without any show cause notice and without affording an opportunity of personal hearing to the petitioner. On this score alone, the impugned order is liable to be set aside.

6. Accordingly, the writ petition is disposed of and the order dated 03.07.2000 passed by the respondent is set aside and the matter is remanded back to the respondent for fresh consideration. The respondent is directed to send notice to the petitioner and thereafter, pass orders on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-  
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Provident Fund Commissioner (Pension)  
Employees Provident Funds Organisation,  
Sub Regional Office,  
No.10A/3, Saint Thomas Road,  
Tirunelveli.

+ 1 cc to Dr.G. Kishnamurthy, Advocate sr.52573

W.P.No.14652 of 2004

VGI(CO)  
EU 4.09.17



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