IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.725 of 2018

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Anil Kumar S/o Late Basudeo Narayan Singh @ Basudeo Singh, resident of Village- Narsinghpur, P.O. Gilani, P.S. Jairampur, District- Sheikhpura.

... ... Petitioner/s

Versus

1. The Union Of India through the Chief Provident Fund Commissioner, provident fund organisation, CAMA House, New Delhi.
2. The Regional Provident Fund Commissioner, Employees Provident Fund Organization Adampur, Bhagalpur.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Jai Prabhat Kishore
For the Respondent/s	:	Mr. S.D Sanjay Addl. Soc. Gen.

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CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL ORDER

4 08-04-2019 Heard learned counsel for the petitioner, learned counsel for the Union of India and learned counsel appearing on behalf of the Regional Provident Fund Commissioner, Employees Provident Fund Organization Adampur, Bhagalpur.

Petitioner in the present writ application has sought a writ in the nature of mandamus to enhance his monthly pension from Rs. 795/- to Rs. 1000/- w.e.f. 19.08.2014 in the light of Government Notification No. GSR593 (E) dated 19.08.2014 whereby a decision has been taken to fix minimum pension of the pensioner @ Rs. 1000/- per month but it has been stated that the petitioner is getting monthly pension @ Rs. 795/- per month and not Rs. 1000/-.

A counter affidavit has been filed on behalf of the respondent-Employees Provident Fund Organization wherein from para-6 to 10 it has been stated as follows:

> *"6. That prior to giving reply on the point of law, the relevant fact relating to the Petitioner is being brought into notice of this Hon'ble Court. The Petitioner joined the establishment on 01.01.1984 and left service on 25.08.2005. His date of birth as per IDS received from Regional Office, Patna is 05.11.1097. On scrutiny, it has been found that he opted for reduced pension w.e.f. 24.11.2009 much prior to attaining the age of 58 years. He would have completed the age of 58 years on 04.11.2015. His pension was calculated in terms of paragraph-12 of the Employees Pension Scheme, 1995 and in terms of the formula given therein, his pension came to Rs. 635/-. Upon this amount, the past service benefit under the Family Pension Scheme, 1971 (ceased) was also calculated in terms of paragraph-12 (3) (b) of the Employees Pension Scheme, 1995, which came to Rs. 371/-. Upon addition of both the amounts, i.e., Rs. 635/- and Rs. 371/-, the total amount comes to Rs. 1016/- but since the Petitioner had opted for early*

pension, his pension was reduced @ 4% for every the age falling short of 58 years in terms of paragraph-12 (7) of the Employees Pension Scheme, 1995 and after such calculation, his monthly pension comes to Rs. 795/-, which is being paid to the Petitioner.

7. That it is again reiterated that paragraph-12 (7) of the Employees Pension Scheme, 1995 provides that a member if he so desires may be allowed to draw an early pension from a date earlier than 58 years of age but not earlier than 50 years of age. In such cases, the amount of pension shall be reduced @ 4% for every year of age falling short of 58 years.

8. That admittedly the Govt. of India vide its Notification bearing GSR 593 (E) dated 19.08.2014 amended the Employees Pension Scheme, 1995 w.e.f. 01.09.2014 and the minimum pension was revised to Rs. 1000/- but the provision contained in paragraph-12(7) is still continuing, which provides for deduction of 4% per year for every year falling short of 58 years. Further, by GSR No. 603 (E) dated 16.06.2015, a proviso has been added to paragraph-12 (7A), which stipulates that from

01.09.2014, the minimum pension of Rs. 1000/- payable under this sub-paragraph shall be subject to deductions on account of benefit of commutation and return of capital taken by the Members under the extant provisions of this scheme prior to 26.09.2008 and deductions on account of early pension under sub-paragraph-7.

9. That, thus, by addition of the proviso to paragraph-12 (7A) in the Employees Pension Scheme, 1995, it has been made clear that the minimum pension of Rs. 1000/- is also subject to deduction on account of early pension under sub-paragraph (7).

10. That in the facts and circumstances, the Petitioner is not entitled for revision of his pension upto Rs. 1000/- and he is being paid with the pension in accordance with the Employees Pension Scheme, 1995."

Learned counsel for the petitioner, however, filed a rejoinder stating therein that minimum monthly pension cannot be reduced and cannot be less than Rs. 1000/- as the petitioner has completed more than 61 years of age. He submits that Clause-7A of the Employees Pension Scheme, 1995 is not applicable to the petitioner as para-12 (7B) of the said scheme is applicable to the petitioner as after the age of 58 years 4% is added for every completed year. Petitioner retired on 04.11.2015 and admits that he applied for pension before his retirement at the age of 52 years. From the plain reading of paragraph-12 (7) and (7A) of the said scheme, it is evident that the said notification dated 19.08.2014 had been taken notice while inserting Clause-7A in paragraph-12 of the said scheme and 4% deduction on account of early pension taken by the petitioner had been kept intact.

Considering the statement made in the counter affidavit as noted hereinabove and as per paragraph-12 (7) and (7A) of the Employees Pension Scheme, 1995, petitioner is not entitled to any relief.

Writ application is dismissed.

(Nilu Agrawal, J)

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