

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 15.04.2019

Delivered on: 24.04.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.Nos.10492 of 2019
W.M.P.NOs.11005 of 2019

1 A.Vijayan
S/o.Late T.R.Aravamuthan Srinivas Apartment
Foor No.19 Cenetoph I lane Alwarpet
Chennai-18.

versus

- 1 The Commissioner
Employment Provident Fund Organization
Bhavishya Nidhi Bhawan No.14 Bhikarji
Cama Place New Delhi- 110 066
- 2 The Regional Provident Fund
Commissioner(Pension) Regional Employment
Provident Fund Organization No.37
Royapettah High road chennai-14.
- 3 M/s.Shardlow India Ltd
Rep.by its Manager Huzur Gardens
Madhavaram High Road Sembiam chennai-11

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, to direct the 2nd respondent to pay the revised pension to the petitioner by extending the benefit of amended Clause 11(3) of Section 6A of the Employment Pension Scheme 1995 by considering the representations dated 21.11.2017 and 29.01.2019 within a time frame to be fixed by this Honourable Court.

For Petitioners : Mr.G.L.Ramshankar

For Respondents : Mr.T.R.Sundaram for R1&R2

ORDER

In a batch of Writ Petitions, similar to the present Writ Petitions, in W.P.No.14368 of 2018, etc., this Court passed detail directions in para 48 and allowed all the Writ Petitions in para 49, which are extracted as under:

"48. In the above mentioned circumstances, this Court consider the following directions as expedient to resolve the issues as projected in the Writ Petitions.

- i) Both the employees of the exempted and unexempted establishments are entitled to the benefit of enhanced pension on the basis of their contribution with reference to actual salary received by them to their Provident Fund accounts;
- ii) The cut off date as prescribed i.e. 01.12.2004 is invalid in law and therefore, the same is held to be illegal and invalid;
- iii) The employees, namely, the writ petitioners shall be permitted to exercise their option in terms of Proviso to Clause 11(3) of the Pension Scheme and while permitting so, the EPFO is at liberty to seek return of the higher Provident Fund contribution received by the respective employees with simple interest at the rate of 6% p.a. from the date of receipt of Provident Fund amount and till the date of payment;
- iv) The amounts to be refunded by the employees concerned shall be verified by the EPFO in consultation with the respective establishments in which the employees were employed;
- v) On refund of the verified amount with interest, the EPFO shall calculate and grant enhanced pension on the basis of

actual salaries received by the employees with arrears of pension from the date of their retirement and continue to pay their monthly enhanced pension through out their life time;

vi) In case where the refund of the amount by any employee with interest is higher than the enhanced pension with arrears payable to him, the refund shall be insisted upon and in case where the refund, after calculation, is lower than the arrears of pension payable to the employee, the same shall be adjusted while disbursing the arrears to the employees concerned;

vii) The respective Managements of the exempted establishments which maintained the Private Trust are directed to cooperate with the EPFO and render all assistance in quantifying the amount to be refunded by the respective employees with interest at 6% p.a. on such refund;

viii) The entire exercise shall be initiated and completed by the individual Managements and the EPFO within a period of six months from the date of receipt of a copy of the order.

49. In the result, all the Writ Petitions are allowed on the above terms. The orders of rejection which are impugned in the respective Writ Petitions, are hereby quashed and as regards the Writ Petitions pertaining to the grant of Writ of Mandamus to the authorities for grant of enhanced pension are concerned, the same are allowed as indicated above. No costs. Consequently, all connected WMPs are closed.

2. The reasons and the findings in their entirety as rendered in the batch of Writ Petitions are to be read as part and parcel of the present Writ Petition as well.

3. In the light of the above, this Court is of the view that the above directions and observation will hold good for the present Writ Petition also. Accordingly, the Writ Petition is allowed on the terms as mentioned above. Consequently, connected WMP is closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Suk

To

- 1 The Commissioner
Employment Provident Fund Organization
Bhavishya Nidhi Bhawan No.14 Bhikarji
Cama Place New Delhi- 110 066
- 2 The Regional Provident Fund Commissioner(Pension)
Regional Employment
Provident Fund Organization No.37
Royapettah High road chennai-14.

+1 cc to Mr.G.L.Ramshankar, Advocate, Sr.No. 38999

+2 cc to Mr.T.R.Sundaram, Advocate, Sr.No. 4059,37406

EV(CO)
CSL/04.06.2019

W.P.No.10492 of 2019

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