

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2019

CORAM :

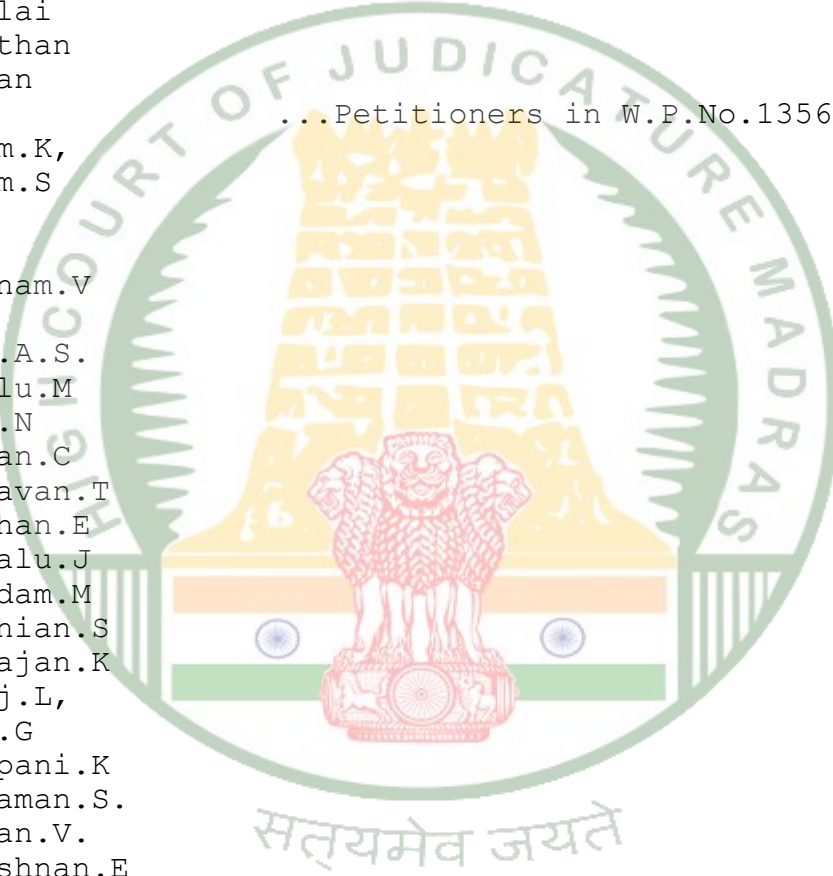
THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos.13564 & 13581 of 2019
& WMP.No.13647, 13650, 13672 & 13673 of 2019

- 1.A.Abdur Rahim Basha
- 2.G.Annamalai
- 3.K.Inbanathan
- 4.G.Sankaran

...Petitioners in W.P.No.13564 of 2019

- 1.Santhanam.K,
- 2.Ekambaram.S
- 3.Mohan.P
- 4.Raman.G
- 5.Janarthanam.V
- 6.Palani.M
- 7.Jayavelu.A.S.
- 8.Thangavelu.M
- 9.Chandran.N
- 10.Natarajan.C
- 11.Adhikesavan.T
- 12.Loganathan.E
- 13.Munirajalu.J
- 14.Yoganandam.M
- 15.Subramanian.S
- 16.Varadarajan.K
- 17.Selvaraj.L,
- 18.Bhoopal.G
- 19.Chakarapani.K
- 20.Janakiraman.S.
- 21.Kothandan.V.
- 22.Balakrishnan.E
- 23.Karunanithi.G
- 24.Rajagopal.K
- 25.Parthiban.R
- 26.Muthuappan.K
- 27.Umapathy.P
- 28.Devaraj T
- 29.Kanniyappan.P
- 30.Sathiyakumar.V
- 31.Sambasivam.T.K.R.
- 32.Murugesan.K
- 33.Gnanasambandam.V.
- 34.Bhupathi.A



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35.Sundaresan.M
36.Mani.A
37.Mani.N, S/o.Natesa Mudaliar
38.Mani.N, S/o.Narayanan
39.Shanmugam.T
40.Mahalingam.S.A.
41.Balakrishnan.D
42.Tamilarasan.T
43.Vijayarangam.M
44.Mani.A

...Petitioners in W.P.No.13581 of 2019

Vs.

1. Union of India
Rep.by Secretary to Government of India
Ministry of Labour and Employment,
Shram Shakti Bhawan, Rafi Marg
New Delhi-110 001
 2. Central Provident Fund Commissssioner,
Employees Provident Fund Organisation,
Ministry of Labour & Employment,
14, Bhikaji Cama Place
New Delhi-110 066
 3. Addl.Central Provident Fund Commissioner, HQ(Pension)
Employees Provident Fund Organisation,
Bhavishya Nidhi Bhawan+
14, Bhikaji Cama Place,
New Delhi-110 066
 4. Regional Provident Fund Commissioner-I (Pension)
Employees Provident Fund Organization
Bhavishya Nidhi Bhawan
14, Bhikaji Cama Place,
New Delhi-110 066
 5. Addl.Central Provident Fund Commissioner
Employees Provident Fund Organization
37, Royapettah High Road,
Chennai-600 014
 6. Regional Provident Fund Commissioner
Employees Provident Fund Organization
37, Royapettah High Road,
Chennai-600 014
- ... Respondents 1 to 6 in both WPs
7. The Managing Director,
The Vellore District Central Cooperative Bank Ltd.
3, Anna Salai,
Vellore 632001
- ..7th Respondent in WP No.13581 of 2019
8. The Chairman,
Board of Trustees of the Vellore District Central Cooperative
Bank Employees Provident Fund Trust
3, Anna Salai, Vellore 632001
- ..8th Respondent in WP No.13581 of 2019

9. Food Corporation of India (FCI)
Rep.by Chairman & MD,
16-20, Barakhamba Lane,
New Delhi-110 001 ...R7 in WP No.13564 of 2019
10. The Executive Director (South)
Food Corporation of India,
No.3, Haddows Road,
Chennai-600 006 ...R8 in WP No.13564 of 2019
11. FCI Provident Fund Trust,
Rep. by its Secretary,
Food Corporation of India (FCI),
16-20, Barakhamba Lane
New Delhi-110 001 ...R9 in WP No.13564 of 2019

COMMON PRAYER:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned letter issued by the 4th respondent in No:Pension/I/12/33/EPS Amendent/96 Vol-II, dated 31.05.2017 and quash the same and consequently, direct the respondents 1 to 6 to grant pension on higher wages under EPS, 1995.

For Petitioner : Mr.A.Jenasenan

For Respondents : Mr.T.R.Sundaram
Standing Counsel for R2 to R6

COMMON ORDER

The sole issue for consideration in these writ petitions is whether the petitioners are entitled to provident fund on the basis of the actual salary earned by them or on the basis of the upper limit of salary fixed by the Provident Fund Commissioner.

2. Mr.T.R.Sundaram, learned Standing Counsel appearing for the R2 to R6, the contesting respondents, fairly concedes that this issue is covered by a decision of a learned Single Judge of this Court passed in WP.No. 14368 of 2018 and back dated 27.03.2019. He further states that the respondents are yet to take a decision on whether the aforesaid decision is to be accepted or not.

3. The relevant portion of the judgment is as follow:

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.

4. In the light of the admitted position that the issue in question is covered by the aforesaid decision, the impugned order is quashed and the writ petitions are allowed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government of India,
Union of India
Ministry of Labour and Employment,
Shram Shakti Bhawan, Rafi Marg
New Delhi-110 001
2. Central Provident Fund Commissioner,
Employees Provident Fund Organisation,
Ministry of Labour & Employment,
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3. Addl. Central Provident Fund Commissioner, HQ (Pension)
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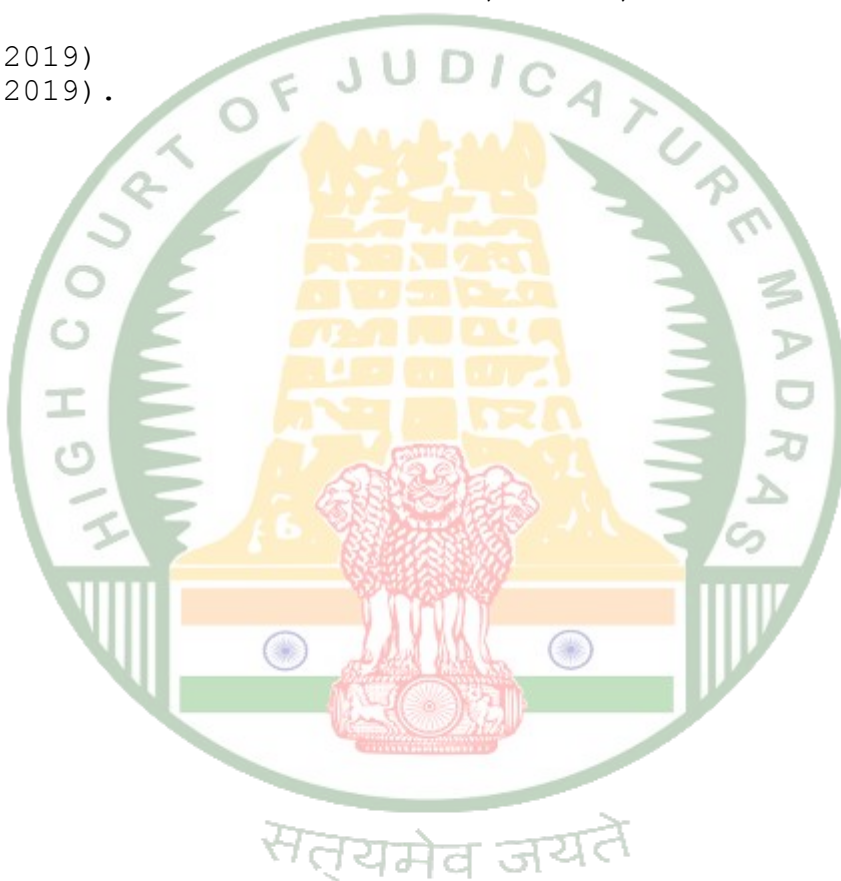
6. Regional Provident Fund Commissioner
Employees Provident Fund Organization
37, Royapettah High Road,
Chennai-600 014

+2 ccs to Mr.A.Jenasenan, Advocate, S.R.No.42262, 42263

+2 ccs to Mr.T.R.Sundaram, Advocate, S.R.No.42585, 42584

W.P. Nos.13564 & 13581 of 2019
& WMP.No.13647, 13650, 13672 & 13673 of 2019

NRL (CO)
SSM(19/06/2019)
SSM(15/07/2019).



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