



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:21.02.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P (MD) No.10294 of 2018

Muthuraj

... Petitioner

Vs.

1. The Commissioner,
Employees Provident Fund Organization (EPF),
Bhavishya Nidhi Bhawan,
No.14, Bhikaiji Cama Place,
New Delhi 66.

2. The Assistant Commissioner (Pension),
Employees Provident Fund Organization,
Lady Doak College Road,
Madurai -2.

3. The Secretary,
M.D.Spl.49, Koduvilarpatti Primary
Agricultural Cooperative Credit Society,
Koduvilarpatti,
Theni District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the second respondent to dispose the petitioner's representation, dated 15.12.2017 given in person to him and further directing him to revise the petitioner's monthly pension for the reason that the third respondent contributed 12% of his actual salary to the second respondent when he was employed under the third respondent, as per the judgment of the Supreme Court, dated 04.10.2016, in Civil Appeal Nos.10013-10014 of 2016.

For Petitioner : Mr.V.Sankara Narayanan
For R1 & R2 : Mr.Murali Shankar
For R3 : Mrs.J.Padmavathi Devi
Special Government Pleader

O R D E R

The writ petition has been filed for issuance of a Writ of Mandamus directing the second respondent to dispose the petitioner's representation, dated 15.12.2017 and to revise the



petitioner's monthly pension for the reason that the third respondent contributed 12% of his actual salary to the second respondent, when he was employed under the third respondent, as per the judgment of the Hon'ble Supreme Court, dated 04.10.2016, in Civil Appeal Nos.10013-10014.

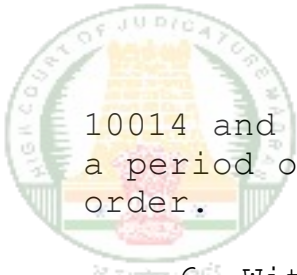
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2. The case of the petitioner is that he joined the service of the third respondent Society on 01.01.1978 and promoted as Secretary in the year 1981 and retired on 30.06.2012. His name has been included in the EPF Scheme which was framed to give effect to Section 6(A) of the Act. Under clause 11(3) of the said scheme, the maximum pensionable salary was limited to Rs.5,000/- which was subsequently enhanced to Rs.6,500/- with effect from 08.10.2001. In the year 2005, some retired employees in the State of Himachalpradesh took up the plea that employees, who do not have the knowledge of the proviso of Clause 11(3) may be given the effect of proviso, in case the employers contribution under the Act has been an actual salary and not on the basis of ceiling limit of either Rs.5,000/- or Rs.6,500/- per month as the case may be. The Hon'ble Apex Court, in the case of **R.C.Gupta and others vs. R.P.F. Commissioner Employees Provident Fund Organization and others** in Civil Appeal Nos.10013 and 10014 of 2016, while discussing the proviso to clause 11(3) and clause 26(6) of employees pension scheme held on 04.10.2016, that where the deposit of the employers share at 12% has been the actual salary and not the ceiling amount, then the Regional Commissioners should revise the salary of the retired employees. Accordingly, the first respondent, vide his communication dated 21.06.2017, as per Circular No.Pension1/12/33/EPS/Amendment/96/Vol.II informed that the members of EPF Scheme, 1995, could avail the benefit of actual salary in the pension fund exceeding the wage limit of Rs.5000/- or Rs.6,500/- per month from the date respectively, as per the above judgment of the Hon'ble Apex Court. Hence, the petitioner has given a representation to the second respondent on 15.12.2017, praying to revise the pension. But, till date the said representation has not been considered by the second respondent. Therefore, he has come forward to file the present writ petition with the aforesaid prayer.

3. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

4. The learned counsel appearing for the respondents sought eight weeks time to consider the representation of the petitioner and pass orders.

5. In view of the above said submission, this Court, directs the second respondent to consider the representation of the petitioner, dated 15.12.2017, as per the judgment of the Hon'ble Supreme Court, dated 04.10.2016, in Civil Appeal Nos.10013 and



10014 and pass orders on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order.

6. With the above direction, the Writ Petition stands disposed of. No costs.

Sd/-

Assistant Registrar (W)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Commissioner,
Employees Provident Fund Organization (EPF),
Bhavishya Nidhi Bhawan,
No.14, Bhikaiji Cama Place,
New Delhi 66.
2. The Assistant Commissioner (Pension),
Employees Provident Fund Organization,
Lady Doak College Road,
Madurai -2.
3. The Secretary,
M.D.Spl.49, Koduvilarpatti Primary
Agricultural Cooperative Credit Society,
Koduvilarpatti,
Theni District.

+1 cc to Mr.V.Sankara Narayanan , Advocate SR.No.49402

+1 cc to The Special Government Pleader Sr.No.49050

akv

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