BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 12.08.2020
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)No.7047 of 2019
and
W.M.P.(MD)No.5645 of 2019

B.Dhanasekaran ... Petitioner

Vs.

1.The Additional Central Provident Fund Commissioner, (Pension)
Employees Provident Fund Organisation
(Ministry of Labour and Employment)
Government of India,
Bhavishya Nidhi Bhavan
14 Bhikaji Cama Place,
New Delhi 110 066.

2.The Provident Fund Commissioner,
Regional Employees Provident Fund Organisation,
Lady Doak College Road,
Madurai 625 002.

3.The President,
Q 1220 Pudupatti Primary
Agricultural Cooperative Credit Society,
Pudupatti,
Paramakudi Taluk,
Ramanathapuram District. ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarfied Mandamus, calling for the records pertaining to the impugned order issued by the second respondent in TN/MDU/RO/Legal Cell/W-996/2019, dated 12.03.2019 and quash the same and consequently, directing the second respondent to pay the higher pension to the petitioner in the light of the Judgment of the Hon'ble Supreme Court in S.P.L.No.10013 to 10014/2016 within the time stipulated by this Court.

For Petitioner : Mr.C.Jeganathan
for M/s.Veera Associates

For R1 & R2 : Mr.V.S.V.Venkateshwaran

For R3 : Mr.Ayiram K.Selvakumar

O R D E R

Heard the learned counsel appearing for the writ petitioner and the learned Standing Counsel appearing for R1 and R2.

2.The case of the petitioner is that he joined the third respondent Society as Secretary in the year 1978 and that he worked for about 34 years and that he retired on 31.12.2012. The petitioner would further contend that atleast from March 1992, the petitioner/ employer had been remitting the provident fund contribution on the entire salary and not based on the wage ceiling limit. In fact, deduction was made from the petitioner's salary without having regard to the ceiling limit. Of-course, after the petitioner retired in the year 2012, the said excess amount so deducted was refunded to the petitioner.

3.The petitioner's specific claim is that when similarly placed employees wanted enhancement of pension based on the actual provident fund contribution, the Division Bench of the Himachal Pradesh High Court rejected the claim. Questioning the same, the aggrieved employees filed Civil Appeal Nos.10013-10014 of 2016. The Hon'ble Supreme Court, by order dated 04.10.2016 set aside the order of the High Court and allowed the appeals in the following terms:-

> "7. Clause 11(3) of the Pension Scheme is in the following terms:
>
> 11.Determination of Pensionable Salary.
>
> ....
>
> (3) The maximum pensionable salary shall be limited to [rupees six thousand and five hundred / Rs.6,500/-] per month.
>
> Provided that if at the option of the employer and the employee, contribution paid on salary exceeding [rupees six thousand and five hundred / Rs.6,500/-] per month from the date of commencement of this Scheme or from the date salary exceeds [rupees six thousand and five hundred / Rs.6,500/-] per month whichever is later, and 8.33 per cent share of the employers thereof is remitted into the Pension Fund, pensionable salary shall be based on such higher salary.
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> 8.Reading the proviso, we find that the reference to the date of commencement of the Scheme or the date on which the salary exceeds the ceiling limit are dates from which the option exercised are to be reckoned with for calculation of pensionable salary. The said dates are not cut-off dates to determine the eligibility of the employer-employee to indicate their option under the proviso to Clause 11(3) of the Pension Scheme. A somewhat similar view that has been taken by this Court in a matter coming from the Kerala High Court, wherein, the Special Leave Petition (C)No.7074 of 2014 filed by the

Regional Provident Fund Commissioner was rejected by this Court by order dated 31.03.2016. A beneficial scheme, in our considered view, ought not to be allowed to be defeated by reference to a cut-off date, particularly, in a situation where (as in the present case) the employer had deposited 12% of the actual salary and not 12% of the ceiling limit of Rs.5,000/- or Rs.6,500/- per month, as the case may be.

11.The above apart in a situation where the deposit of the employer's share at 12% has been on the actual salary and not the ceiling amount, we do not see how the Provident Fund Commissioner could have been aggrieved to file the L.P.A. before the Division Bench of the High Court. All that the Provident Fund Commissioner is required to do in the case in an adjustment of accounts which in turn would have benefitted some of the employees. At best what the Provident Commissioner could do and which we permit him to do under the present order is to seek a return of all such amounts that the concerned employees may have taken or withdrawn from their Provident Fund Account before granting them the benefit of the proviso to Clause 11(3) of the Pension Scheme. Once such a return is made in whichever cases such return is due, consequential benefits in terms of this order will be granted to the said employees."

4.The petitioner's case is that the case on hand is squarely covered by the aforesaid order of the Hon'ble Supreme Court. Since the respondents declined to grant the very same benefit to the petitioner also, the petitioner is constrained to question the impugned order dated 12.03.2019 by filing this writ petition.

5.The respondents have filed a detailed counter affidavit and the learned Standing Counsel reiterated all the contentions set out therein.

6.The learned Standing Counsel would further contend that some of the cases are still pending before the Hon'ble Supreme Court in SLP (C)No.016721-016722 of 2019 and that, this Court can defer adjudication of this writ petition till they are also decided. The Standing Counsel also would claim that the petitioner had retired way back in 2012 and that he had woken up like a Rip van Winkle after the Hon'ble Supreme Court allowed the R.C. Gupta's case.

7.I carefully considered the rival contentions and went through the materials on record. After the Hon'ble Supreme Court allowed the R.C. Gupta's case by setting aside the order of Himachal Pradesh High Court, the petitioner submitted a representation before the respondents. He also filed W.P.(MD)No.12760 of 2018. By order dated 14.06.2018, the said writ petition was disposed of with a direction to the second respondent to consider the said representation in the light of the Judgment of the Hon'ble Supreme Court in R.C. Gupta's case. In response to the petitioner's representation, the second respondent, vide Communication dated

16.04.2018, called upon the petitioner to submit a Joint Declaration in the prescribed format. In fact, the Communication dated 16.04.2018 reads that the respondent had admitted that the petitioner is eligible for revision of pension on higher wages. The petitioner, thereupon, submitted a Joint Declaration.

8.I am not able to appreciate the stand now taken. The order dated 14.06.2018 made in W.P.(MD)No.12760 of 2018 has become final. It has not been questioned. In the said order, this Court had not merely because called upon the respondents to dispose of the petitioner's representation. In fact, there is a rider. The respondents have been directed to consider the petitioner's case in the light of R.C. Gupta's case. Therefore, the only question that arises for consideration is whether R.C. Gupta's case applies to the petitioner or not.

9.I have no doubt whatsoever in my mind. The petitioner's case is similar in all respects to the factual matrix that obtained in R.C.Gupta's case. The petitioner also belongs to an un-exempted establishment. Deduction from the petitioner's entire salary without regard to the ceiling limit was also made right from 1992 to 2012. Therefore, the very same exercise directed to be undertaken in R.C.Gupta's case will have to be undertaken in the case on hand also. It is not open to the respondents to cite the pendency of some more cases before the Hon'ble Supreme Court to defer adjudication of the issue on hand.

10.In this view of the matter, the order impugned in this Writ Petition is quashed and the respondents 1 and 2 are directed to undertake the very same exercise directed to be made vide Para No.11 of R.C.Gupta's case. The petitioner also agrees to refund whatever amount was received by him with interest. Based on the petitioner complying with the said undertaking, the petitioner's pension also will be accordingly and proportionately enhanced. The entire exercise will be completed within a period of twelve weeks from the date of receipt of a copy of this order.

11. The Writ Petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1. The Additional Central Provident
Fund Commissioner, (Pension)
Employees Provident Fund Organisation
(Ministry of Labour and Employment)
Government of India,
Bhavishya Nidhi Bhavan
14 Bhikaji Cama Place,
New Delhi 110 066.

2. The Provident Fund Commissioner,
Regional Employees Provident Fund Organisation,
Lady Doak College Road,
Madurai 625 002.

+1 CC to Mr.C.JEGANATHAN, Advocate SR-14033.

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