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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 10379/2019

AMIT MUKHARJEE & ORS. ..... Petitioners
Through: Mr. Naved Khan, Advocate

versus

UNION OF INDIA AND ORS .....Respondents
Through: Mr. Jitesh Srivastva, Mr. Chetan Shukla and Mr. Sarvan Kumar, Advocates for respondent No.1/UOI
Mr. Piyush Choudhary, Advocate for respondent No.2/EPFO
Mr. Ashish Rana and Mr. Harshit Garg, Advocates for respondents No.3 & 4/Central Electronics Limited

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE ASHA MENON

O R D E R

% **20.01.2020**

1. On 27.09.2019, when this petition was listed in court for the first time, the following order was passed: -

> *"1. Counsels for the parties jointly state the grievance raised by the petitioners herein is akin to the grievance raised by several other petitioners in pending writ petitions, including* ***W.P.(Civil) No.11755/2018*** *entitled Ripu Daman Singh Chhatwal vs. UOI and Anr., which were last listed on 29.09.2019 and have been adjourned to 16.12.2019 to await the decision of the Supreme Court on the same issue. A copy of the order dated 29.09.2019 passed in a batch of writ petitions is handed over by the counsel for the respondent No.2 and is*

taken on record.

2. In view of the submissions made hereinabove, list in the category of 'Directions' on 16.12.2019 alongwith the other connected petitions, to await the decision of the Supreme Court."

2. Vide orders dated 16.12.2019, **W.P.(C) 11755/2018** entitled Ripu Daman Singh Chhatwal vs. UOI and Anr. was disposed of by this Bench alongwith other similar matters. On 16.12.2019, this Court had noticed that the review petition filed by the Employees' Provident Fund Organisation (for short, 'EPFO') before the Division Bench in **W.P.(C) 5678/2018**, entitled Bhartiya Khadya Nigam Karamchari Sangh and Anr. v. Union of India and Ors., had been dismissed on 06.12.2019 and as a result, the judgment dated 22.05.2019, had attained finality. The Court was also informed that SLP(C) Nos.16721-16722 of 2019 filed by the Union of India against the judgment of the Kerala High Court in P. Sasikumar and Others v. Union of India and Others, **(2019) 1 LLJ 494** being W.P.(C) 602/2015 and W.P.(C) 13120/2015, is pending and SLP(C) Nos.8658-8659/2019 filed by the EPFO against the same judgment had been dismissed, though the EPFO has filed a review petition against the order of dismissal dated 01.04.2019 **[RP(C) 1430-1431 of 2019]**, which is pending consideration to be heard alongwith SLP(C) Nos.16721-16722 of 2019.

3. It was also brought to the notice of this Court that a Division Bench of the Rajasthan High Court in a batch of writ petitions, lead matter being **D.B.Special Appeal Writ No.436/2019**, has dealt with similar issues and vide order dated 28.08.2019, following the judgment of a co-ordinate Bench of this court dated 22.05.2019, passed in Bhartiya Khadya Nigam

Karamchari Sangh (supra), had passed the following order: -

> *"2. These appeals urge common questions with regard to applicability of the amended Employees Pension Scheme, 1995 (hereafter called "EPS, 1995"). Clause 11(3) of the Pension Scheme provided for maximum pensionable salary limited to Rs.5,000/-, which was later, with effect from 01.06.2001, enhanced to Rs.6,500/- per month and it was yet later enhanced to Rs.15,000/- per month. By virtue of further amendment, proviso was inserted to clause 11(3) of the Pension Scheme with effect from 16.03.1996, permitting the employer and the employee to opt for contribution on salary exceeding Rs.5,000/- (later enhanced to Rs.6,500/- per month). It is also stated that 8.33% share of the employer's contribution would be remitted to the Pension Fund (PF). By notification on 22.08.2014, clause 11(3) of the Pension Scheme was deleted with effect from 01.09.2014. The result was that the benefit of the proviso could not be extended to the employees after 01.09.2014, if they had not exercised the option earlier."*

4. Further, taking into consideration the fact that both, Union of India and the EPFO had approached the Supreme Court, the Division Bench of the Rajasthan High Court had observed that the directions issued in para No.40 of the judgment rendered by a co-ordinate Bench of this court in Bhartiya Khadya Nigam Karamchari Sangh (supra) ought to apply to the facts of the batch of cases before it and subjected its final decision to the judgment of the Supreme Court in the pending SLPs.

5. We have drawn the attention of the learned counsel for the parties to the fact that in the batch of matters, including **W.P.(C) 11755/2018** entitled Ripu Daman Singh Chhatwal vs. UOI and Anr., this Court had observed as below:-

> *"In view of the aforesaid position, being bound by the*

decision of a co-ordinate Bench of this Court in <u>Bhartiya Khadya Nigam Karamchari Sangh (supra),</u> the present petitions are disposed of with similar directions as issued in the penultimate paragraph No.40 of the judgment dated 22.05.2019. For the purpose of ready reference, the observations made by the Division Bench in the captioned case from paragraph No.37 onwards to 40, are extracted below:-

> *"37. We thus have no hesitation in holding that the petitioners also form a part of the homogenous group of pensioners with those who have worked in the unexempted establishments. Any attempt by the respondents to discriminate the petitioners would amount to unintelligible and unjust classification which cannot be countenanced in law. In view of this finding, we also are of the view that the impugned circular dated 31.05.2017 has made a class within a class and has without any legal justification deprived the employees of the Exempted Establishments from receiving higher salary despite their contributions to the Provident Fund on actual salaries above the ceiling limit. The circular seems to have been issued in a haste without any application of mind and is clearly discriminatory and violative of Article 14 of the Constitution of India. The said circular thus deserves to be quashed.*
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> *38. The question that now arises is the nature of relief that can be granted to the petitioners and also how to resolve the predicament and the dilemma of the respondents, in view of the fact that while the petitioners were contributing the requisite percentage towards the PF Fund on the actual salary, but insofar as the Pension Fund maintained by the EPFO is concerned, they were recipient only of 8.33% of the salary upto a ceiling limit. According to us, this dilemma can be easily resolved by directing the petitioners to return the higher Provident Fund*

benefits received by them with simple interest at the rate of 6% per annum from the date of receipt of the Provident Fund amount till the date of payment. The management of the FCI would then forward the contributions made by the petitioners as well as the employer towards the Pension Fund on actual salaries as a corpus to the Pension Fund of the EPFO, along with the accrued interest and other gains in these many years. Once this happens, the EPFO would have no difficulty in releasing the higher pensions and nor would there be any depletion of the Pension Fund, if any.

39. Petitioner no. 1 before us is a registered trade union which has espoused the cause of serving employees" of the Food Corporation of India. In view of the fact, that these are serving employees somewhat different directions would be required in their case. In our view, the cases of these serving employees do not pose much difficulty either. The Notification dated 22.08.2014 by which the proviso to clause 11(4) of the Pension scheme was deleted has been quashed by the Kerala High Court and has been upheld by the Apex Court. Even otherwise, the same could not have applied to the existing employees who are already members of the scheme. Thus, in so far as the petitioners in this petition are concerned, the matter can be simply resolved by directing respondent nos. 4 and 5 to transfer their 8.33% contribution on the actual salaries received by the petitioners to the corpus of the pension fund for the past period along with the gains and the interest accrued thereon and continue to contribute the requisite percentage on the actual salary.

40. We, thus, allow the present petitions and quash the circular dated 31.05.2017. We hold that the petitioners would be entitled to higher monthly pension on the basis of their contributions on the actual salary, without any cutoff date and de hors the ceiling limit.

We deem it fit to pass the following directions to resolve the issues as expeditiously as possible:

i. The petitioners being employees of the exempted establishment would be entitled to the benefit of enhanced pension on the basis of their contribution to the provident fund on the actual salaries received by them.

ii. The EPFO is at liberty to seek return of the higher provident fund contribution received by the petitioners with simple interest at the rate of 6% p.a. from the date of receipt of provident fund amount till the date of payment.

iii. The respondent Nos. 4 and 5 are directed to cooperate with the EPFO and render all assistance in quantifying the amount to be refunded by each of the petitioners, with interest @ 6% p.a. on such return. The Trust has already remitted 8.33% of the contribution of the petitioners on the ceiling amount. The balance corpus comprising of the remaining contributions on the actual salary @ 8.33% would be transferred by the Trust to the Pension Fund of the EPFO with all gains and the interest accrued so far.

iv. On refund of the above-mentioned amounts, the EPFO shall calculate and disburse enhanced pension to the petitioners on the basis of the actual salaries. The arrears of pension falling due to the petitioners from the date of their respective retirement will be cleared by the EPFO and the EPFO shall continue to pay the monthly pension henceforth at the enhanced rates.

v. The entire exercise shall be completed by respondent no.4 and 5 and the EPFO within a period of six months from the date of receipt of a copy of this order." "

6. Despite the above position, learned counsel for the respondent No.2/EPFO vehemently urges that none of the prayers sought by the

petitioners in this petition can be granted by this court, by submitting that the petitioners herein were employees of 'non-exempted establishment' and that they had not made any deposit on the basis of full salary.

7. On instructions, the counsel for the petitioners submits that the respondents No.3 & 4/Central Electronics Limited was an 'exempted establishment' till the year 1999 and thereafter, the entire fund had been transferred by Central Electronics Limited to the EPFO. It is also submitted on instructions that deductions had been made on full salary.

8. The prayers in the writ are reproduced hereinbelow for ready reference: -

> *"1. Issue a writ of mandamus or any other writ/order/direction on Respondent No.1, & 2 to quash/set aside the impugned Office Order No.Actuarial/18(2)2008/Vol.-III/7738 Dt.29.08.2014.*
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> *2. Issue a writ of mandamus or any other writ/ order/ direction on Respondent No.1, & 2 to quash/ set aside the impugned anti-employee provisions of impugned Notification No.G.S.R.609(E), Dt.22.08.2014 vide Office Order No.Co-ord./3(6)2011/ Amendment Scheme/13637, Dt.28.08.2014.*
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> *3. Issue a writ of mandamus or any other writ/ order/ direction on Respondent No.1, & 2 to quash/ set aside the impugned Office Order No.Pension-I/12/33/EPS Amendment/96/Vol.-II/4432, Dt.31.05.2017.*
>
> *4. Issue a writ of mandamus or any other writ/ order/ direction on Respondent No.1, & 2 to quash/ set aside the impugned Letter No.Pension-I/12/33/96/Amendment/Vol-I/20989, Dt.12.12.2017.*
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> *5. Issue a writ of mandamus on Respondent No.1, & 2 to direct/order them to extend the option to be exercised by the instant petitioners being the existing members of EPS'95,*

for availing the benefit of pension on full salary on their superannuation beyond 01.09.2014.

6. Issue a writ of mandamus on Respondent No.3 & 4 to direct/order them to urgently send the data pertaining to the past salary (since 1995) of the instant petitioners along with the duly signed option forms for enhanced pension which are already submitted by the instant petitioners herein, to EPFO, so that their pension may be calculated.

7. Issue any other such writ, order or direction, as this Hon'ble court may deem fit in the present facts and circumstances of the case."

9. Learned counsel for the respondent No.2/EPFO concedes that the Office Order No.Actuarial/18(2)2008/Vol.-III/7738 dated 29.08.2014 is applicable to both, exempted as well as unexempted establishments. Furthermore, he concedes that prayer No.2 above stands covered by the decision of the Kerala High Court, which was in the first instance, upheld by the Supreme Court, though, as noted hereinabove, a review petition filed by the EPFO is pending before the Supreme Court. Learned counsel also does not deny that prayer No.3 is covered by the decision of a co-ordinate Bench of this court in Bhartiya Khadya Nigam Karamchari Sangh (supra), and prayers No. 4, 5 & 6 would merge with the decision in the captioned case. In these circumstances, we do not find any force in the contentions and objections raised by learned counsel for the respondent No.2/EPFO for opposing the petition.

10. Being bound by the decision of a co-ordinate Bench of this Court in Bhartiya Khadya Nigam Karamchari Sangh (supra), we dispose of the present petition in terms of para 40 of the said judgment, as extracted hereinabove. However, since it has been already noted by us in the order

dated 16.12.2019, passed in similar matters that as both, Union of India and the EPFO being aggrieved by the decision of the Kerala High Court as also by the decision of a co-ordinate Bench of this Court in Bhartiya Khadya Nigam Karamchari Sangh (supra), have filed review petitions/propose to file appeals before the Supreme Court, it is clarified that the parties herein shall be governed by the final judgment of the Supreme Court in the SLPs that are pending/proposed to be filed by the Union of India/EPFO.

11. The present petition is disposed of with no orders as to costs.

ASHA MENON, J

HIMA KOHLI, J

JANUARY 20, 2020

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