$~10 and 17.

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

\+ W.P.(C) 9836/2016 and CM APPL. 39182/2016

SURINDER SINGH GUMAR & ORS. ..... Petitioners

Through: Ms. Kavita Rawat, Advocate for Dr. Ashwani Bhardwaj, Advocate

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Ravi Prakash, CGSC with Mr. Farman Ali and Mr. Mohd. Shahanulla, Advocates for R-1/UOI.
Mr. Keshav Mohan and Mr. Piyush Vatsa, Advocates for EPFO.
Ms. Anjana Gosain, Ms. Shalini Nair and Ms. Himanshi, Advocates for R-3/AAI.

\+ W.P.(C) 11459/2019

ANIL KUMAR NIGAM & ORS. ..... Petitioners

Through: Mr. Naved Khan, Advocate

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Shankar Kumar Jha, Senior Panel Counsel for R-1/UOI.
Mr. Keshav Mohan and Mr. Piyush Vatsa, Advocates for R-2/EPFO.
Mr. Ashish Rana and Mr. Anurag K. Singh, Advocates for R-3 and R-4/CEL.

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

<u>O R D E R</u>

% **14.02.2020**

1. The petitioners in W.P.(C) 9836/2016 have filed the present petition praying *inter alia* for issuance of a writ of certiorari for quashing the provisions of Employee's Pension (Amendment) Scheme, 2014, on the ground that it has been made applicable to them retrospectively. We may note that the respondent No.3/employer in the said petition is Airports Authority of India, which is an exempted organisation. The petitioners in W.P.(C) 11459/2019 have also sought similar relief and prayed for quashing and setting aside Office Orders dated 29.08.2014, 22.08.2014 and 31.05.2017. The respondents No.3/employer in the instant case is Central Electronics Limited.

2. Counsel for the parties state in unison that the facts of the present petitions are covered by the judgment dated 16.12.2019, of this Court in a batch of petitions, lead matter registered as W.P.(C) 3130/2016 entitled <u>Airports Authority Employees Union vs UOI and Ors</u>. Incidentally, the said judgment covers cases of organizations that are exempted as also unexempted. In the captioned case, this Court had observed that it was bound by the judgment dated 22.05.2019 delivered by a Coordinate Bench of this Court in <u>Bhartiya Khadya Nigam Karamchari Sangh and Anr. v. Union of India and Ors.</u> in W.P.(C) 5678/2018. The relevant observations made in the captioned case 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.

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."

3. Considering that the facts of the present petitions are similar to the petitions decided by this Bench on 16.12.2019, they are allowed on the same terms with a condition that since respondent No.1/UOI and respondent No.2/EPFO have both approached the Supreme Court, being aggrieved by the judgment in Bhartiya Khadya Nigam Karamchari Sangh (supra) and the judgment of the Kerala High Court in P. Sasikumar and Others v. Union

of India and Others reported as **(2019) 1 LLJ 494**, it is clarified that the parties herein shall be governed by the final judgment of the Supreme Court in the pending SLPs.

4. The writ petitions are disposed of alongwith the pending applications while leaving the parties to bear their own costs.

HIMA KOHLI, J

ASHA MENON, J

FEBRUARY 14, 2020
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