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HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 2294 of 2017

Gangaram Dhobi S/o Mayaram Dhobi Aged About 58 Years R/o Village And Post-Jhalraunda Para, Kosampali, Tahsil- Jaijaipur, District- Janjgir- Champa, Chhattisgarh.

---- Petitioner

Versus

1. Union Of India Ministry Of Agriculture And Farmers Welfare Department Welfare, Department Of Agriculture, Corporation And Farmers Welfare Integrated Nutrient Management Division, Krishi Bhawan, New Delhi.
2. Food Corporation Of India, Through Its General Manager C P F, Food Corporation Of India, Zonal Office West Mumbai- 400066.
3. The Manager, C P F, Food Corporation Of India, Headquarter, New Delhi.
4. The Assistant General Manager C P F, Food Corporation Of India Regional Office, Mumbai.

----Respondents

For Petitioner	:	Mr. H.S. Patel, Advocate
For Respondent No.1	:	Mr. Rajkumar Gupta, Advocate
For Respondent No.2 to 4	:	Mr. B.P. Gupta, Advocate

Hon'ble Shri Justice P. Sam Koshy
Order on Board

29/11/2021

1. The present writ petition has been filed seeking for an appropriate direction to the respondents to provide pension to the petitioner under the Employees Pension Scheme.

2. The brief facts relevant for the disposal of the present writ petition is that the petitioner was appointed under the Food Corporation of India i.e. the respondents No.2 to 4 on 05.05.1973. The petitioner continued to serve with the respondents and took voluntary retirement in September, 2004.

3. During the period of his service, the petitioner was a member to the Contributory Provident Fund (CPF). When the Employees Pension Scheme (EPS) was enacted in 1995, an option were called from all interested employees of enabling them to get pension post retirement. The petitioner has not tendered his option for availing the pensionary benefits and thereby upon his getting retired from service, he received the entire contribution of CPF to the tune of more than Rs.60 lakhs i.e. 90% of the CPF contribution. The 10% of the contribution was retained by the Department.

4. Subsequently, after one year's statutory period, the balance of 10% of CPF amount was also paid to the petitioner after retaining an amount of Rs.53,148/-. The said amount was retained by the Department in order to process his claim for membership to the EPS. The petitioner had for the first time opted and filled the form for pension under the EPS on 05.05.2006. That is after an inordinate belated stage and by that time the last date for option under EPS was also over. That on his request so made on 05.05.2006 an amount of Rs.53,148/- was retained by the Department. However, by that time the contribution to be made by the petitioner enabling him to get the benefit of pension was much more than Rs.53,148/- retained by the Department. The petitioner thereafter did not make any further effort for grant of the pension under EPS and also for depositing the balance of amount enabling the Department to extend the pensionary benefits to the petitioner.

5. Subsequently, the petitioner seems to have made certain correspondences to the President of India, as also to the Prime Minister of the country in this regard. That the office of the Prime

Minister issued a correspondence to the respondents No.2 to 4 for settlement of the grievance of the petitioner. The respondents-Corporation immediately thereafter made the petitioner a member to the EPS and further directed the petitioner to make the balance of contribution after adjustment of Rs.53,148/- and the interest that has accrued on the said amount, which in the year 2017 was more than Rs. 4.5 lakh. The petitioner was directed to deposit the said amount of Rs.3,22,933/- the contribution of the petitioner till June, 2017. That subject to the petitioner making the said deposit/contribution, the respondents-Corporation had assured of processing the claim of the petitioner enabling him to get pension uninterruptedly henceforth. However, it appears that the petitioner has not made the balance of contribution of Rs.3,22,933/- instead he has thought of filing the present writ petition seeking for the aforesaid relief.

6. The respondents-Corporation has filed the detailed reply showing the entire factual matrix of the case particularly in respect of all the correspondences that were made by the petitioner with the Department. That from the departmental correspondences made to the petitioner, it reveals that it was repeatedly informed to the petitioner, that in order to get the benefit of pension under EPS, he will have to make certain contribution as is otherwise required to be made on the part of the employee and the amount of Rs.53,148/- which was initially deducted at his request is only part of the amount, which in itself cannot be sufficient for releasing the pension to the petitioner.

7. The respondents-Corporation has again filed another affidavit reassuring the fact that subject to the petitioner making all the requisite contribution after the adjustment of the amount already lying with the

Corporation of Rs.53,148/- and the interest that has accrued on the said amount, the petitioner's claim for pension can be processed and it shall be settled at the earliest.

8. On the previous date of hearing, this Court had directed the petitioner to seek instructions as to whether he would be in a position to make the necessary requisite contribution, so that the Department can further process the claim of the petitioner. Learned counsel for the petitioner today makes a submission that as of now the petitioner is not in a position to make the contribution as he is facing certain financial stringency. He drew the attention of the certain correspondences made by the petitioner to the Department. In the event if the Department is not able to release the pension to the petitioner atleast the amount of Rs.53,148/- deducted by the Department and retained with them for the purpose of pension be refunded back to the petitioner with interest on the said amount up till date.

9. On a query being put to the learned counsel for the petitioner, he however accepts the fact that the petitioner, even as on date is interested in availing the pensionary benefits, but for his financial stringency he is not in a position to make the requisite contribution and therefore makes a request for the respondents-Corporation to consider releasing the pension to the petitioner after making all necessary adjustments and deductions in respect of the contribution that he is required to be made. To this request learned counsel for the Corporation submits that there is no such mechanism or a procedure prescribed, where the employee can be given the membership under

the pension scheme and his contribution could be adjusted from the future pension that the petitioner would be receiving.

10. Mr. Gupta, Advocate appearing for the Corporation even today submits that even now if the petitioner make the requisite contribution after adjusting of the amount, which is already lying with the respondents-Corporation and the interest thereon, the Department shall process his claim for pensionary benefits at the earliest. Learned counsel for the Corporation submits that in the event if the petitioner is unable to make the full contribution required for release of pension and pensionary benefits, the amount which is lying with the Corporation and interest thereon can be refunded back to the petitioner.

11. Having heard the contentions put forth on either side and on perusal of record, undoubtedly the petitioner was an employee of the respondents No.2 to 4-Corporation. The EPS was not in force when the petitioner was appointed with the respondents-Corporation in the year 1973. When the petitioner was in employment, it was the Family Pension Scheme, 1971 which was in force. In the said scheme also the petitioner was not a member as he had not opted for the same as the petitioner had opted for the benefits under the CPF (Contributory Provident Fund). The EPS was introduced in the year 1995 w.e.f. 01.04.1993. The existing employees were given the option form to be filled up before the expiry of the scheme and the same was to be forwarded to the Regional Provident Fund Commissioner (Pension). The petitioner even at that point of time did not opt for the benefits under the EPS 1995.

12. In the year 2004, the petitioner applied for voluntary retirement and stood retired from service on 16.09.2004. Even at that point of time,

the petitioner did not opt for the benefits under the EPS 1995. Thereafter upon his taking the voluntary retirement the entire amount lying deposited with the respondents under the CPF benefit scheme to the tune of more than Rs.16 lakhs, which was 90% of the contribution was released to the petitioner. The balance of 10% was retained in order to ascertain whether there are any recovery or any dues recoverable from the petitioner or not to be released after a period of 12 months from the date of retirement.

13. It is pertinent to mention that the last date for opting for the benefits under the EPS 1995 was extended up till 31.03.2004, by which time the petitioner had not submitted his option. The employee for the first time made a request for availing the benefits under the EPS 1995 vide his letter dated 05.05.2006. Pursuant to his request dated 05.05.2006, the respondents-Corporation in the process of releasing his balance of 10% of CPF has retained an amount of Rs. 53,148/- towards EPS 1995 contribution with a direction to the employee to make the balance of contribution enabling the Department to process his claim for pension. The petitioner did not act on the said request of the Department for long. Thereafter only in the year 2016-17, the petitioner made a complaint to the President of India as also to the office of the Prime Minister of the India. The complaint made to the office of the Prime Minister of India was forwarded to the respondents-Corporation for considering the claim of the petitioner as special case for grant of pension under the EPS 1995. The Department thereafter as a special case considered the case of the petitioner and decided to allot him EPS number on 07.04.2016 and directed the petitioner to deposit an amount of Rs.3,22,933/- as the balance of contribution payable on the

part of the petitioner enabling the Department to process his claim for pensionary benefits. The said intimation was followed by further reminders issued to the petitioner asking him to deposit the balance of contribution required for the benefits under the EPS 1995 to be extended to the petitioner. These reminders also were not acted upon by the petitioner and finally he has come to this Court by way of a present writ petition.

14. The requirement under the EPS 1995 is to make necessary contributions after exercising the option available under the scheme. The requirement of law is that the employee concerned has to first opt and then make the necessary contribution. If the employee was still in service, the Department could have made the necessary deduction towards the pension scheme from the monthly salary payable to the petitioner, but so far as the employees who has retired in the intervening period and had not opted for the benefits under EPS, the requirement under the scheme is for making the necessary contribution to the Corporation which shall in turn deposit the amount with the Employees Provident Fund Department, who in turn shall process and release the pension to the concerned employee. In the absence of any contribution made, only by virtue of his option alone a retired employee cannot expect getting pensionary benefits, more particularly when upon his retirement, petitioner has received the entire retiral dues including the amount payable to the employee under the benefits of CPF, which in the instant case in the year 2004 itself was more than Rs.16 lakhs.

15. Another aspect which needs to be considered is that as was reflected the validity for opting under the EPS 1995 was till 31.03.2004. The

petitioner has not availed the said benefit during the said period and it was only under extraordinary special circumstances that the petitioner was considered being made member of the pension scheme, and for which he had to make certain contributions. Inability of the petitioner or concerned employee at this juncture in making the contribution cannot be accepted as a ground for issuance of a mandamus to the respondents so far as grant of pensionary benefit is concerned.

16. The petitioner or for that matter any employee cannot be permitted to have his entire Provident Fund contribution received at the first instance and thereafter without making any further contribution through the pension fund, the petitioner cannot be permitted to have the benefit of pension also. For the purpose of getting pension, the employee concerned has to make certain contribution. The respondents-Corporation as also the learned counsel for the Corporation have again reiterated the fact that subject to the petitioner making the requisite contribution which is payable for pension as on date, the claim of the petitioner can still be processed for grant of pension.

17. Learned counsel for the Corporation further undertakes that whatever amount that is lying with the corporation, the petitioner would be entitled for interest on the said amount and the contribution that the employee has to make would be after adjustment of the said amount lying with the Corporation and the interest that has accrued on the said amount.

18. A similar writ petition had also been recently filed by another petitioner namely S.N. Ansari seeking a similar relief vide WPS No. 6178/2016. The Coordinate Bench of this Court while disposing the writ petition

made the following observations and directions, which for ready reference is being reproduced hereinunder:

> **"(1) Learned counsel for respondents No. 1 to 4, on instructions, would submit that the petitioner has not deposited the contribution towards Employees Pension Scheme from 01.03.1971 to 01.11.1995, the date on which the Employees Pension Scheme was introduced and, therefore, if the petitioner deposits the contribution towards said scheme for the period from 01.03.1971 to 01.11.1995, he would be granted benefit of Employees Pension Scheme.**
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> **(2) At this stage, learned counsel for the petitioner would submit that the said amount of contribution will be deposited with the department within one month from today.**
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> **(3) I have heard learned counsel appearing for the parties.**
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> **(4) Be that as it may, if the petitioner deposits the amount of contribution as stated above and which is finally calculated by the Food Corporation of India, within one month from today, FCI shall proceed to grant benefit of Employees Pension Scheme to the petitioner strictly in accordance with law expeditiously. The amount to be deposited will be informed by the Food Corporation of India to the petitioner within 10 days from today."**

19. Given the said submissions by the learned counsel for the Corporation, this Court is of the opinion that the petitioner in order to avail the benefit of pension under the Pension Scheme of 1995 shall have to make the balance of contribution that he is otherwise required to make in addition to the amount which is already lying with the Corporation and the interest that has accrued thereon.

20. Accordingly, the petitioner is granted 6 weeks time from the date of receipt of the copy of this order enabling him to make prerequisite contribution up till date payable by the petitioner for availing the benefit of pension and which if made the respondents shall thereafter immediately process his claim and shall send his case along with the amount that he would be making as contribution to the Provident Fund

Department for further necessary processing of his claim for grant of pension.

21. Considering the age of the petitioner, the authorities are expected to take prompt action in the case of the petitioner. It is further made clear that in the event if the petitioner fails to make the balance the contribution within a period of 6 weeks from the date of receipt of the copy of this order, the claim of the petitioner for grant of pension would loose its efficacy. Thereafter the respondents-Corporation should ensure that whatever amount is lying with the Corporation is refunded back to the employee forthwith with interest that has accrued till the date of payment being made to the petitioner.

22. With the aforesaid observations, the present writ petition stands disposed of.

Sd/-
(P. Sam Koshy)
Judge

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