IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.9006 of 2015

C.Ponni ... Petitioner

-vs-

1.The Assistant Provident Fund Commissioner
Employees Provident Fund Organisation
Sub Regional Office, S-1,
TNHB, Phase III
Sathavachari,
Vellore - 632 009.

2.South East Tanning Company
Ambur - 635 802,
Vellore District. ... Respondents

Prayer:- This Writ petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the first respondent to sanction pension under Employees Pension Scheme 1995, Form - 10D and Employees Provident Fund Scheme 1952 Form - 19, of the petitioner and to order any other remedy.

For Petitioner : M/s.S.Thamizharasi

For R1 : Mrs.V.J.Latha

ORDER

This Writ Petition has been filed for a direction to the 1st Respondent to sanction pension under Employees Pension Scheme 1995 Form - 10D (EPS, 1995) and Employees Provident Fund Scheme 1952 Form - 19 (EPFS, 1952) of the petitioner.

2. The case of the petitioner is that she joined the services of South East Tanning Company, Ambur (in short 'the Company') on 01.03.1968 and her EPF Account Number is TN/3101/199/C. The subscription was paid upto 30.04.1990 and she continued to be a member upto August, 1997. The petitioner submitted Form 10D of the Employees Family Pension Scheme on 26.06.2005 and that she left the services on 01.06.2003, since she attained the age of superannuation. She submitted the Form 10D for availing Employees Family Pension Scheme 1995 on 24.04.2005 and the same was returned on 14.02.2012 without taking into account the relevant Clauses of the scheme, namely, 6, 6D, 7 and 17(3) of the EPS, 1995, which are extracted below.

> "Scheme 6, Membership of the Employees' Pension Scheme – Subject to subparagraph (3) of paragraph 1, this Scheme shall apply to every employee.
>
> (d) who has been a member of the employees' provident fund or of provident funds of factories and other establishments exempted by the appropriate Government under Section 17 of the Act or in whose case exemption has been granted under paragraph 27 or 27-A of the Employees' Provident Fund Scheme, 1952 on 15th November, 1995 but not being a member of the ceased Employees' Family Pension Scheme, 1971 opts to exercise his option under paragraph 7.
>
> Scheme 7, Option for joining the scheme:-
>
> (1) Members referred to under sub-paragraph (C) of paragraph 6 who have died between 1st April 1993 and 15th November 1995 shall be deemed to have exercised the option of joining the scheme on the date of his death.
>
> 2. Members referred to in sub-paragraph (c) of paragraph 6 who are alive shall have the option to join the scheme as per the provisions of paragraph 17 from the date of exit from the employment.
>
> (3) Members referred to in subparagraph (d) of paragraph 6 shall have the option to join the scheme as per the provisions of paragraph 17 from 16th November 1995.
>
> Scheme 17, Payments on exercise of option
>
> (3) Members referred to in sub-paragraph (2) of paragraph 7, shall be deemed to have joined the ceased Employees' Family Pension Scheme, 1971 with effect from 01.03.1971 on remittance of past period contribution with interest thereon. "

3. EPFO has sent a letter on 30.05.2014 that the petitioner cannot exercise option to join Family Pension Scheme and though she promptly replied to the said letter, there was no response from EPFO thereafter. According to the petitioner, she made an application under RTI Act and got certain details and subsequently, an Advocate notice dated 01.05.2014 was sent on behalf of the petitioner, in response to which, EPFO has stated in their letter 30.05.2014 as follows:

> "In addition to that, it is once again reiterated to you that Paragraph 6(d) expressly states that an employee who has been a member of the Employees' Provident Fund Scheme on 15.11.1995, but not being a member of the ceased Employees' Family Pension Scheme, 1971 can opt to exercise his option to join EPS 1995. The term 'employee' as found in Para 6(d) is of importance because a member of EPF, if not an employee on 15.11.1995, cannot exercise this option."

4. It is further case of the Petitioner that a member of the scheme means an employee, who becomes member of the Pension Fund Scheme in accordance with provisions of the scheme and that the employee would be ceased of the membership, on attaining the age of 58 or from the date of vesting admissible benefits under the Scheme, whichever is earlier. The petitioner has stated that she had already remitted the amount of Rs.3,568/- on 19.05.2010 in terms of the aforesaid Clauses extracted supra and that the benefits have been settled only in August, 1997. When the petitioner has exercised her option, the benefits have got to be necessarily extended to her, pursuant to her remittance of contribution together with interest. Hence, the petitioner is before this Court, seeking for a suitable Mandamus.

5. The 1st respondent has contended that the petitioner, who was an employee between 01.03.1968 and 30.04.1990 and the Company was closed on 01.05.1990. The Employees' Family Pension Scheme, 1971 was introduced on 01.03.1971 and in terms of Paragraph No.4 of the said scheme, it is bounden duty of the employers to get the formalities of option to join the Family Pension Scheme 1971. It is also contended by the 1st respondent that as per the Office Records, the petitioner had not opted to join the Family Pension Scheme 1971 and the petitioner has been duly settled with EPF benefits in August, 1997 to the tune of Rs.26,851/-. The newly introduced scheme of the year 1995 at paragraph No.7 reads as follows.

> "7. It is stated that the membership under the newly introduced Employees' Pension Scheme was limited to the following class of employees. The Scheme shall apply to every employee.

(a) who on or after the 16th November 1995 becomes a member of the Employees' Provident Fund Scheme 1995.

(b) who has been a member of the ceased Employees' Family Pension Scheme 1971 before the commencement of this scheme from 16th November 1995.

(c) who ceased to be a member of the Employees' Family Pension Scheme 1971 between 1st April 1993 and 15th November 1995 and opts to exercise his/her option to join the new Employees' Pension Scheme 1995.

(d) who has been a member of the Employees' Provident Fund or of Provident Funds of factories or other establishments exempted by the appropriate Government under Section 17 of the Act or in whose case exemption has been granted under paragraph 27 or 27A of the Employees' Provident Fund Scheme 1952, on 15th November 1995 but not being a member of the ceased Employees' Family Pension Scheme, 1971 opts to exercise his option under paragraph 7".

6. It is further contended that the words 'every employee' mentioned in Paragraph No.6 of the EPS, 1995 is crucial here and the petitioner was not an employee as on 15.11.1995 and therefore, the question of the petitioner exercising option to join the EPS, 1995 as per Paragraph No.7 will not arise at all, as Paragraph No.7 of the EPS, 1995 will apply, only when anyone of the conditions stipulated in Sub-Paragraphs (a) to (d) of Paragraph No.6 is satisfied.

7. It is also brought to notice of this Court by the 1st Respondent that the petitioner left the services as early as on 30.04.1990 on the closure of the establishment and she has also got her final settlement in August 1997. To claim the benefits under the Scheme, she should have been in employment as on 15.11.1995 so as to exercise the option to join the EPS, 1995. The stand taken by the petitioner, that she continued to be in employment till August 1997, is not correct, as the Company itself was closed down as early as in May, 1990 and merely because the EPF benefits have been settled in August 1997, it does not mean that she was in employment till that date. In order to exercise option in Paragraph No.17 read with paragraph 7(2) and 6(D) as stated by the petitioner, there are two criterion to be fulfilled, viz., 1) she should be an employee as on 15.11.1995 and 2) she should be a member of the EPF Fund Scheme 1952 and non fulfillment of any of the above conditions make the employee ineligible for exercising option stated in Paragraph No.16 for membership under the EPS, 1995.

8. The 1st Respondent went on to add that the petitioner had reached the age of 60 years as on 01.03.1993 and that she becomes ineligible for membership under the Family Pension Scheme 1971 for Employees Pension Scheme 1995 from the date onwards. Hence, it was prayed that the Writ Petition ought to be dismissed.

9. Heard the learned counsel on either side and perused the material documents available on record.

10. Admittedly, the Petitioner joined the services of the Company on 01.03.1968 and she quit the job on 30.04.1990, consequent to the closure of the Company on 01.05.1990. The benefits under Employees Provident Fund have been settled in August 1997 itself. The petitioner has strenuously argued by producing relevant records in her support that she had opted to continue her membership, by remitting the amount of Rs.3,568/- on 19.05.2010. The remittance of the amount alone will not entitle the petitioner to get the retrospective benefit of the EPF Act and Pension Scheme, irrespective of other conditions stipulated therein and the argument advanced by the 1st Respondent in this regard holds good.

11. It is pertinent to state here that if any amount is remitted in the counter, it would be blindly accepted by the EPFO and the same procedure has been adopted by EPFO in the case of the Petitioner without realizing its future repercussion. After scrutiny of records, verification and realizing their mistakes of acceptance, the amount would be normally returned or refunded, which has exactly happened in the present case. The submission of the Petitioner that she has to be presumed to be in employment till August 1997, cannot be accepted, especially when the Company itself was wound up with effect from 01.05.1990. Moreover, there is a rejection order by the EPFO on 30.05.2014, passed in respect of the Advocate's Notice issued by the petitioner and she has not challenged the same. This Court cannot give any liberty to challenge the said order, at this distant point of time and unless otherwise, the petitioner was a member of the scheme prior to the cut off date stipulated supra, the benefits under EPS, 1995 cannot be extended to her.

12. In the result, finding no merits in the argument put forth by the Petitioner, this Writ Petition is dismissed as devoid of merits. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

dpq

To

The Assistant Provident Fund Commissioner
Employees Provident Fund Organisation
Sub Regional Office, S-1, TNHB, Phase III,
Sathavachari, Vellore - 632 009.

+1cc to M/s.V.J.Latha, Advocate Sr No.33500
+1cc to M/s.S.Tamizharasi, Advocate Sr No.33700

W.P.No.9006 of 2015

RP (CO)
PR (26/11/2021)