14.11.2022.
Item No.28
Court No.550
Saswata

W.P.A. 12761 of 2021

Pijush Kanti Bera
Versus
Union of India & Ors.

Mr. Amit Baran Dash
Ms. Ankana Sarkar
...For the petitioner
Mr. Sourav Kumar Mukherjee
Ms. Falguni Jana
...For the respondent no.1
Mr. Anil Kumar Gupta
...For the P.F.Authorities
Mr. Akash Dutta
...For the respondent no.6

The present writ application has been filed, inter alia, praying for a direction upon the respondent authorities for release of appropriate monthly pension to the petitioner at higher rate, on the basis of the average salary on full wages, in compliance of the provisions of the Employees' Pension Scheme, 1995, as amended in the year 2014 (hereinafter referred to as the 'amended Scheme of 1995').

Mr. Dash learned advocate appearing in support of the instant writ application submits that the petitioner was appointed and joined the services on 12th September 2001, as a technical assistant at National Horticulture Board, Gurgaon. He was a member of the Employees' Pension fund scheme1995 since 1st January 2002 and post 2014 was covered by the amended Scheme of 1995. By drawing attention of this Court to a notice dated 7th November 2016 issued by the Additional Central Provident Fund Commissioner-I(pension), Employees' Provident Fund Organization, it is submitted that consequent upon the coming into force of the amended Scheme of 1995, all concerned, including the petitioner's employer were notified of such amendment and were advised to ensure compliance of paragraph 11(4) of the scheme, including filing of fresh option. The petitioner says that by a letter dated 16th January 2017, both the employer of the petitioner and the petitioner having become aware of the amended Scheme of 1995, the petitioner as existing members of the Employees' Pension Scheme, 1995 jointly with his employer, exercised the option in terms of paragraph 11(4) of the amended Scheme of 1995.

By relying on a letter dated 1st February 2017, issued by the petitioner's employer, Mr. Das submits that consequent upon exercise of such joint option under paragraph 11(4) of the amended Scheme of 1995, the petitioner's employer had confirmed the factum of exercise of such joint option to the Assistant Provident Fund Commissioner, Accounts Section, Employees' Provident Fund Organization. It is submitted that as per the amended Scheme of 1995, the petitioner had contributed at the rate of 1.16 per cent of salary, exceeding fifteen thousand rupees as an additional contribution from and out of the contributions payable by the petitioner for each subsequent month, in terms of the provisions of paragraph 11(4) as aforesaid.

It is submitted that the petitioner retired from his services on 31st January 2021 and on 25th February 2021, a Pension Payment Order (PPO) was issued. As per the PPO, a sum of Rs. 2033/- was released in favour of the petitioner. By referring to the (PPO) it is submitted since the petitioner had completed 17 years of service as on 19th January 2019, his pension has been computed with effect from 19th January 2019. Unfortunately, the authorities have computed the pension payable to the petitioner, by treating Rs. 15,000/- as the wages, payable to the petitioner on the date of his exit, although his gross salary was Rs 89,808/. It is the petitioner's contention that the petitioner's employer by communication dated 23rd April 2021, had also written to the Employees' Provident Fund authorities, to recalculate the petitioner's pension and to disburse pension at higher rate. The petitioner has also demanded justice by communication in writing dated 20th July 2021 and has inter alia claimed for disbursal of pension at higher rate. Unfortunately, the respondents have not taken any steps for redressal of petitioner's grievances. The representation remains unadhered to. In the given facts, the instant writ application has been filed.

Mr. Dash submits that the petitioner had exercised his option in terms of paragraph 11(4) of the amended Scheme of 1995 within a period of 6 months from the date of communication issued by the Employees' Provident Fund Organization. According to Mr. Dash, the petitioner having exercised his option and the respondents having accepted contribution at the rate of 1.16 per cent on the salary exceeding fifteen thousand rupees, as an additional contribution from the petitioner, is duty bound to act in terms of the amended Scheme of 1995 and release pension at higher rate, to the petitioner.

Mr. Dash, by relying on the Judgment delivered in the case of ***The Employees Provident Fund Organization & Anr. ETC*** *versus* ***Sunil Kumar B. & Ors. ETC.***, reported in 2022 SCC Online SC 1521, submits that that the Hon'ble Supreme Court by the aforesaid judgment delivered on 4th November 2022, has extended the time for exercise of option under paragraph 11(4) of the amended Scheme of 1995 by a further period of 4 months. He says admittedly, the petitioner had jointly exercised the option along with his employer, as per paragraph 11(4) of the amended Scheme of 1995 and has acted on the basis thereof by making additional contributions. As such, the benefit extended by order of the Hon'ble Supreme Court, should also be extended in the petitioner's case.

Per contra, Mr. Gupta, learned advocate appearing for the Provident Fund authorities submits that the petitioner has not exercised the option within the time specified under the amended Scheme of 1995. Mr. Gupta submits that the petitioner has submitted the option only in the year 2017, which is beyond the time stipulated in the amended Scheme of 1995. It is for such reason, the petitioner's case for higher pension was not considered. The petitioner also has not clarified in the writ application as to whether he had contributed 1.16 per cent on his salary, exceeding fifteen thousand rupees as an additional contribution from and out of the contribution payable by him for each month under the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the 'said Act') and rules framed thereunder. Unless, the petitioner makes the aforesaid payment, even in terms of the direction passed by the Hon'ble Supreme Court, the petitioner is not entitled to enhanced pension. He submits that the judgment of the Hon'ble Supreme Court, relied upon by the petitioner, has been delivered only on 4th November 2022. Reasonable time should be given to the respondents to implement the same.

I have heard the learned advocates appearing for the respective parties and have considered the materials on record. I find that the petitioner had joined as a technical assistant at National Horticulture Board, Gurgaon. The petitioner, in the present writ application has claimed that at the time of retirement, his gross salary was Rs.89,808/-. From the document dated 16th January 2017, it would appear, that option has been exercised by the petitioner jointly with his employer and such option form, upon being verified by the employer has been forwarded to the Employees' Provident Fund Organization.

I notice that in paragraph 8 of the affidavit in opposition, the respondent no.3 and 4 have claimed that since the matter of pension on higher wages was subjudice, in all new cases pension have been settled taking into consideration wage limit of Rs. 15,000/-.

It may be true that by reason of the uncertainty, prevailing prior to delivery of the judgment of the Hon'ble Supreme Court in the case of ***Employees Provident Fund Organization & Ors. ETC. (supra)***, the respondents may not have extended benefit of higher pension to the petitioner, however, after delivery of the aforesaid judgment, the uncertainty on the aforesaid issue has been removed.

From a perusal of the aforesaid judgment, it would be apparent that the Hon'ble Supreme Court has extended the time to exercise option, under paragraph 11(4) of the amended Scheme of 1995 by a further period of 4 months. I find that the petitioner, along with his employer, the respondent no. 6, had jointly exercised the option under paragraph 11(4) of the amended Scheme of 1995. The issue as to whether such option was exercised within a period of one year from 1st September 2014, loses its significance in light of the judgment delivered by the Hon'ble Supreme Court in the case of ***The Employees Provident Fund Organization & Ors. ETC (supra)***. Although the petitioner has asserted in paragraph 4 of the writ application that the petitioner's last monthly contribution in the pension fund was Rs.9500/-, yet without going into such controversy, it would be prudent to direct the respondent no.3, to ascertain as to whether the petitioner had contributed at the rate of 1.16 per cent on salary exceeding fifteen thousand rupees as an additional contribution from and out of contribution payable by the petitioner for each month in term of paragraph 11(4) of the amended scheme of 1995 and in the event of shortfall to realize the same from the petitioner along with interest.

I find that the Hon'ble Supreme Court, despite declaring the requirement of the members to contribute at the rate of 1.16 per cent on their salary to the extent of salary exceeding fifteen thousand rupees as an additional contribution under the amended Scheme of 1995 to be ultra vires, has suspended operation of such order for period of 6 months so as to enable the authorities to make adjustments in the Scheme so that additional contribution can be generated. As such, as and when adjustments are made, it only natural that the petitioner would also get benefit thereof.

In light of the aforesaid, I direct the respondent no. 3 to recompute the petitioner's pensionary benefit by treating the petitioner to have exercised the option as per paragraph 11(4) of the amended Scheme of 1995 and release appropriate monthly pension in favour of the petitioner at higher rate along with arrears, as may be found due, by issuing revised (PPO).

The entire exercise must be completed within a period of 3 months from date.

With the above directions and observations, the writ petition being WPA 12761 of 2021 is allowed.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis upon completion of requisite formalities.

(*Raja Basu Chowdhury, J.*)