

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.13587 OF 2017

**HIRALAL LAXMAN BHAVALE
VERSUS
THE COMMISSIONER EMPLOYEES PROVIDENT FUND ORGANIZATION
TOWN CENTRE AURANGABAD**

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Advocate for Petitioner : Mr. Vithal P. Kadam
Advocate for Respondent : Mr. Nitin K. Chaudhari h/f. Mr. K.B. Chaudhari

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**CORAM : MANGESH S. PATIL AND
SANDEEP V. MARNE, JJ.**

DATE : 20.09.2022

ORAL ORDER (SANDEEP V. MARNE, J.) :

By the present petition petitioner seeks the benefit of Employees' Pension Scheme, 1995 and Amended Employees' Pension(5th Amendment) Scheme, 2016. By communication dated 25.05.2017, the petitioner's request has been turned down.

2. We have gone through the provisions of the Employees' Pension Scheme, 1995 (herein after the Scheme) which came into effect from 16.11.1995. Admittedly, as on 16.11.1995, petitioner was in service and tendered his resignation only on 04.04.1996. Therefore, the Scheme became applicable to him. Under the provisions of Para 12(7) of the Scheme, a member of the Scheme is not permitted to draw monthly reduced pension unless he attains the age of 50 years. Para 12(7) reads as under :

“12. Monthly Member’s Pension :-

.....

(7) A Member if he so desires, may be allowed to draw a monthly reduced pension from a date earlier than 58 years of age, but not earlier than 50 years of age. In such cases, the amount of pension shall be reduced at the rate of four per cent for every year, the age falls short of 58 years.”

3. Admittedly, the age of the petitioner was 42 years at the time of tendering his resignation. Therefore, under the provision of Para 12 (7) of the Scheme, the petitioner did not become entitled to draw pension.

4. Learned advocate Mr. Kadam appearing for the petitioner placed reliance on the provision of Para 7(2) of the Scheme which reads thus :

“7. Option for joining the Scheme :

(1)

(2) Members referred to in sub-paragraph (d) 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.”

5. Since the Para No.7(2) refers to the provisions of paragraph 6(d), the same is also reproduced hereunder :

“6. Membership of the Employees’ Pension Scheme :

.....

d) Who has been a Member of the employees’ provident fund or of the 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 paragraphs 27 or 27A of the Employees’ Provident Funds 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 clear that only the employees who were members of employees' provident fund or of the provident fund of the factories and other establishments are covered by the provision of paragraph 6(d). Admittedly, before tendering his resignation the petitioner had already become member of the Employees' Pension Scheme, 1995. Therefore, the benefit of switching over to the Scheme available under paragraph 7(2) was not applicable to the petitioner.

7. We, therefore, do not find any merit in the present petition. The same is accordingly dismissed. No costs.

8. The learned advocate for the petitioner submits that the petitioner has deposited an amount of Rs.10,000/- with the respondent. Since, we have held that he would not be entitled to exercise an option for pension, the amount, if so deposited, will have to be refunded by the respondent to the petitioner. If indeed such amount stand deposited by the petitioner, the respondent is directed to refund the same, unless already refunded, within a period of four weeks.

(SANDEEP V. MARNE, J.)

(MANGESH S. PATIL, J.)