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W.P.Nos.708, 1170, 1202, 1765, 3029 & 7103 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.Nos.708, 1170, 1202, 1765, 3029 & 7103 of 2020

In W.P.No.708 of 2020

Chandran

...Petitioner

-Vs-

The State represented by its:

1.The Regional Provident Fund Commissioner,
O/o. Employees Provident Fund Organization,
Swarnapuri,
Salem - 636 004.

2.The Assistant Commissioner, (Pension),
O/o. Employees Provident Fund Organization,
S.J.Plaza,
Swarnapuri,
Salem - 636 004.

3.The Managing Director,
S-672, Attur Agricultural Producers Co-Op,
Marketing Society Ltd.,
No.563, Kamarajanar Road,
Pudupet (PO),
Attur Taluk,
Salem District - 639 141.

...Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the respondents to grant enhanced pension on the basis of actual salary received by the petitioner with arrears of pension from the date of the petitioner's retirement and continue to pay monthly enhanced pension throughout the petitioner's lifetime paying retrospectively monthly pensionable salary from as per the verdict of the Supreme Court dated 04.10.2016 made in SLP.Nos.33032-33033 of 2015.

For Petitioner : Mr.S.Lakshmi

For Respondents 1 & 2 : Mr.B.Vishnu,
Standing Counsel

For Respondent 3 : Mr.L.P.Shanmugasundaram

COMMON ORDER

Heard, learned counsel for the petitioner, learned Standing counsel appearing for the respondents 1 and 2 and the learned counsel appearing for the third respondent.

2. All these writ petitions are filed seeking to issue a writ of mandamus directing the respondents to grant enhanced pension on the basis of actual salary received by them with arrears of pension from the date of petitioner's retirement and continue to pay monthly enhanced pension throughout their



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lifetime paying retrospectively monthly pensionable salary as per the judgment of the Hon'ble Apex Court dated 04.10.2016 in S.L.P.Nos.33032 - 33033 of 2015.

3. Learned Standing Counsel appearing for the respondents 1 and 2 submits that to consider the request of the petitioners to grant enhanced pension, they have to submit an option in terms of the directions issued by the Apex Court in the case of the ***Employees Provident Fund Organisation & Another Etc., vs. Sunil Kumar B. & Others*** reported in ***2022 LiveLaw (SC) 912***.

4. This Court carefully gone through the copy of the Judgment of the Hon'ble Apex Court placed by the learned Standing Counsel. The relevant portion of the judgment is extracted herein under for proper adjudication of this case:

"44. We accordingly hold and direct:-

(i) The provisions contained in the notification no. G.S.R. 609(E) dated 22nd August 2014 are legal and valid. So far as present members of the fund are concerned, we have read down certain provisions of the scheme as applicable in their



cases and we shall give our findings and directions on these provisions in the subsequent sub-paragraphs.

(ii) Amendment to the pension scheme brought about by the notification no. G.S.R. 609(E) dated 22nd August 2014 shall apply to the employees of the exempted establishments in the same manner as the employees of the regular establishments. Transfer of funds from the exempted establishments shall be in the manner as we have already directed.

(iii) The employees who had exercised option under the proviso to paragraph 11(3) of the 1995 scheme and continued to be in service as on 1 st September 2014, will be guided by the amended provisions of paragraph 11(4) of the pension scheme.

(iv) The members of the scheme, who did not exercise option, as contemplated in the proviso to paragraph 11(3) of the pension scheme (as it was before the 2014 Amendment) would be entitled to exercise option under paragraph 11(4) of the post amendment scheme. Their right to exercise option before 1 st September 2014 stands crystalised in the judgment of this Court in the case of R.C. Gupta (supra). The scheme as it stood before 1 st September 2014 did not provide for any cutoff date and thus those members shall be entitled to exercise option in terms of paragraph 11(4) of the scheme, as it stands at present. Their exercise of option shall



be in the nature of joint options covering pre-amended paragraph 11(3) as also the amended paragraph 11(4) of the pension scheme.

There was uncertainty as regards validity of the post amendment scheme, which was quashed by the aforesaid judgments of the three High Courts. Thus, all the employees who did not exercise option but were entitled to do so but could not due to the interpretation on cut-off date by the authorities, ought to be given a further chance to exercise their option. Time to exercise option under paragraph 11(4) of the scheme, under these circumstances, shall stand extended by a further period of four months. We are giving this direction in exercise of our jurisdiction under Article 142 of the Constitution of India. Rest of the requirements as per the amended provision shall be complied with.

(v) The employees who had retired prior to 1 st September 2014 without exercising any option under paragraph 11(3) of the pre-amendment scheme have already exited from the membership thereof. They would not be entitled to the benefit of this judgment.

(vi) The employees who have retired before 1 st September 2014 upon exercising option under paragraph 11(3) of the 1995 scheme shall be covered by the provisions of the paragraph 11(3) of the pension scheme as it stood prior to the amendment of 2014.



(vii) *The requirement of the members to contribute at the rate of 1.16 per cent of their salary to the extent such salary exceeds Rs.15000/- per month as an additional contribution under the amended scheme is held to be ultra vires the provisions of the 1952 Act. But for the reasons already explained above, we suspend operation of this part of our order for a period of six months. We do so to enable the authorities to make adjustments in the scheme so that the additional contribution can be generated from some other legitimate source within the scope of the Act, which could include enhancing the rate of contribution of the employers. We are not speculating on what steps the authorities will take as it would be for the legislature or the framers of the scheme to make necessary amendment. For the aforesaid period of six months or till such time any amendment is made, whichever is earlier, the employees' contribution shall be as stop gap measure. The said sum shall be adjustable on the basis of alteration to the scheme that may be made.*

(viii) *We do not find any flaw in altering the basis for computation of pensionable salary.*

(ix) *We agree with the view taken by the Division Bench in the case of R.C. Gupta (supra) so far as interpretation of the proviso to paragraph 11(3) (pre-amendment) pension scheme is concerned. The fund authorities shall implement*



the directives contained in the said judgment within a period of eight weeks, subject to our directions contained earlier in this paragraph.

(x) The Contempt Petition (C) Nos.1917-1918 of 2018 and Contempt Petition (C) Nos. 619-620 of 2019 in Civil Appeal Nos. 10013-10014 of 2016 are disposed of in the above terms."

5. In the light of the directions issued by the Hon'ble Apex Court, the petitioners have to exercise option under paragraph 11.4 of the Scheme.

6. Learned Standing Counsel appearing for the respondents 1 and 2 submits that the last date to exercise option of the petitioners is extended till today ie., on 26.06.2023. If the petitioners exercise their option by today, the petitioners will get the benefit, they sought in these writ petitions.

7. Learned counsel for the petitioners submits that all the petitioners have already exercised their option and uploaded the relevant documents and informations required for this purpose.



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8. In view of the submissions of the learned counsel for the petitioners that all the petitioners have already exercised their option, now it is for the respondents 1 and 2 to take further steps in compliance of the directions of the Hon'ble Apex Court in the Judgment stated supra.

9. In view of the above factual position, these writ petitions are disposed of with a direction to the respondents 1 and 2 to grant enhanced pension to the petitioners within a period of three months from the date of uploading the informations by the petitioners, if they are entitled to in accordance with law.

10. There shall be no order as to costs.

11. Consequently, connected miscellaneous petition is closed, if any.

26.06.2023

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Note: Issue order copy on 28.06.2023.

Index: Yes/No

Neutral Citation: Yes/No



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BATTU DEVANAND, J.

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