



W.P.No.2527 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

W.P.No.2527 of 2020

S.Swaminathan

... Petitioner

Vs.

1. The Central PF Commissioner
EPFO, 14, Bhikaji Cama Place,
New Delhi 110066.
- 2 The Regional PF Commissioner
EPFO, Bhavishya Nidhi Bhavan,
Dr.Balasundaram Road,
Coimbatore 641018.
- 3 The Assistant PF commissioner
EPFO, Bhavishya Nidhi Bhavan,
Dr.Balasundaram Road,
Coimbatore 641018.
- 4 The Managing Director
Green Tea Estate (Curzon) Kotagiri
Nilgiris 643217.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Mandamus, directing the respondents to grant enhanced pension to the petitioner.



W.P.No.2527 of 2020

For Petitioner : Mr.Yudhish Padman
For Respondents : Mr.R.Vishnu,
Standing counsel

ORDER

The petitioner was working for the company 'Curzon' for 23 years and retired from service on 10.10.2009. The petitioner has filed the present Writ Petition seeking enhancement of pension in view of the decision of the Hon'ble supreme Court in ***R.C.Gupta & Ors. Vs. Regional Provident Fund Commissioner, Employees Provident Fund organization & Ors.*** reported in ***(2018) 14 SCC 809***.

2. The respondents filed a counter stating that subsequent to the said decision, the Hon'ble Supreme Court in ***Employees Provident Fund Organization & anr. Vs. Sunil Kumar.B & Ors.*** reported in ***2022 LiveLaw (SC) 912*** has held as follows:

44(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



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W.P.No.2527 of 2020

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 20 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



W.P.No.2527 of 2020

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.”

3. On perusal of the records, it is seen that the petitioner retired from service on 10.10.2009 which is prior to 1st September 2014 and he had not exercised his option under paragraph 11(3) of the pre-amendment Scheme 95 and therefore, he is not entitled for grant of revised pension. Accordingly, this Writ Petition is dismissed. No costs.

06.10.2023

Index: Yes/No
Speaking/Non-Speaking order
vum

To

Page 4 of 6



W.P.No.2527 of 2020

WEB COPY

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R. HEMALATHA, J.



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W.P.No.2527 of 2020

vum

W.P.No.2527 of 2020

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