IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2023

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

W.P.No.14255 of 2022 &
W.M.P.No.13498 and 13500 of 2022

P.Djeassilane @ Jayaseelan ... Petitioner

Vs.

The Regional Provident Fund
Commissioner – II,
Regional Office, Puducherry,
101, 100 Feet road, Cholan Nagar,
Mudaliarpet, Puducherry – 605 004 ... Respondent

Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the records of the order dated 18.01.2021 bearing no.TN/RO-RDY/Pension/Revision/2020-21 passed by the respondent and quash the same and consequently, directing the respondent to pay monthly pension of Rs.9,050/- as per PPO No.TB/PDY/00064304 dated 28.07.2018 and pass further orders.

For Petitioner : Mr. Anil Relwani

For Respondent : Mr.R.Vishnu
Standing counsel

O R D E R

Seeking for an issuance of Writ of Certiorarified Mandamus by calling for the records of the order dated 18.01.2021 bearing no.TN/RO-RDY/Pension/Revision/2020-21 passed by the respondent and to quash the same and consequently to direct the respondent to pay monthly pension of Rs.9,050/- as per PPO No.TB/PDY/00064304 dated 28.07.2018, the petitioner has come up with the present Writ Petition.

2. The brief facts of the case are as follows:-

(i) The Petitioner was an employee of M/s. Swadeshee-Bharathee Textile Mills Limited and the petitioner retired on 31/07/2011. The Petitioner had opted the scheme of Employees Pension Scheme, 1995 (EPS, 1995),[for brevity, herein after referred to EPS]. Under the said scheme, the employees' contribution and the employer's contribution were being deducted by the employer and remitted into EPFO Account. Accordingly PPO No.TB/PDY/00058098 dated 11/10/2011 was issued by the respondent in favour of the Petitioner. The monthly pension was Rs.1,985/- on wage ceiling limit of Rs.6,500/- under the provisions of EPS, 1995. Pursuant to the orders passed by the Hon’ble Supreme Court of India in RC Gupta & Ors Vs Regional Provident Fund Commissioner Employees Provident Fund Organisation & Ors, the Additional Central PF

Commissioner, HQ (Pension), Employees Provident Fund Organisation issued Circular dated 23/03/2017 to all the Regional PF Commissioners, Regional Office/Sub-Regional Office directing the officers in charge to take necessary action in accordance with the order of the Hon'ble Supreme Court.

(ii) The circular stated that in a situation where the deposit of the employer's share at 12% has been on the actual salary and not the ceiling amount, the Provident Fund Commissioner could seek a return of all such amounts that the concerned employees may have taken or withdrawn from their Provident Fund Account before granting them benefits of the proviso to Clause 11(3) of the Pension Scheme. Once such a return is made in whichever cases such return is due, consequential benefits in terms of this order will be granted to the said employees. As per the circular, the Petitioner returned an amount of Rs. 6,04,663/- to the Respondent and the Respondent also paid a sum of Rs.5,89,928/ to the Petitioner towards the difference. The Respondent issued a new PPO vide PPO No. TB/PDY/00064304 dated 28/07/2018 fixing the revised monthly pension at Rs.9,050/-.

(iii) Subsequently, the Additional Central PF Commissioner (HQ), Pension issued a additional circular dated 22/01/2019 under Reference No. Pen1/12/33/96/Amendment/Vol.IV/16762 to all Regional PF Commissioners directing "However, if an employer and employee have contributed under the EPF Scheme, 1952 on wages higher than the statutory wage limit, without joint option of employee & employer, and the EPF Account of the concerned employee has been updated by EPFO on the basis of such contribution received, then by action of employee employer and EPFO, it can be inferred that joint option of employee and employer has been exercised and accepted by EPFO Therefore, in such cases, for implementing the issue vide Head Office Circular Penson 1/12/33/EPS Amendment/96/Vol.11/34007 dated 23/03/2017 formal joint option of employee and employer should not be insisted."

(iv) While that being so, the Respondent, by way of the impugned order dated 18/01/2021 bearing No. TN/RO-PDY/Pension/Revision/2020-21 held that the Petitioner's Application for revision of Pension has been reviewed in line of Head Office Legal Wing circular No. LC-E-file No. 15795/2/782 dated 16/09/2020 and observed that the Petitioner has not exercised option under proviso to para 11(3) of the EPS 1995 with the employer during the service and hence the Petitioner not eligible to claim for revision of pension on higher wages and consequently, the Respondent stopped the pension on high wages and released the original pension of Rs.1,985/- The Respondent stopped paying the enhanced pension from February, 2021 onwards. Hence this petition.

3. The learned counsel for the petitioner submits that the petitioner is a senior citizen and relies on the pension amount for day to day expenses. The respondent has passed the impugned order without following the due process of law. Therefore, unless and until the impugned order is set aside or stayed, grave prejudice will be caused to the petitioner. Further, various High Courts have come down heavily on the EPFO for unilaterally cancelling the revised PPO, thereby cancelling the revised enhanced pension without following the principles of natural justice.

4. The learned counsel for the petitioner submits that the application for revision of pension based on the circular dated 23.03.2017 was issued and the office verified the application on the basis of the documents. Admittedly, the petitioner has also submitted a joint declaration with the employer stating that his employer had deposited 12% of actual salary above the statutory wage ceiling limit as the employer's share of contribution on the basis of option exercised jointly by the petititioner and employer under the proviso of paragraph 26(6) of Employees Provident Funds scheme, 1952, thereby pleaded to pay the enhanced pension.

4. Per contra, the learned standing counsel for the respondent submits that after 2014 amendment came into effect, the option of the members to further opt to remain in the scheme beyond the ceiling limit has

been taken away. But the existing option members who had chosen to contribute beyond the salary limit has been permitted to exercise fresh option to continue beyond the salary limit has been permitted to exercise fresh option to continue with such contribution upon payment of an additional 1.16 per cent of their salary beyond the said ceiling, thereby pleaded that to dismiss the present petition. In support of his contention, the learned counsel relied on the Judgment of the **Hon'ble Supreme Court reported in 2022 SCC Online S 1521 [Employees Provident Fund Organisation and Another Vs. Sunil Kumar.B & Others]**

5. Heard the learned counsel on either side and perused the documents placed on record.

6. The Point now arises for consideration before this Court is 'Whether the petitioner is eligible for higher pension?'

7. It is well settled that the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (in short referred to as EPF Act) was enacted to provide provident funds, pension fund and deposit-linked insurance fund for employees in factories and other establishments, however, the said act did not contain any provision for pension, hence the Employees' Pension Scheme, 1995 (EPS) brought into effect through an

amendment to Section 6A of the EPF Act, for governing the terms of employees' pension. The employees and employers contribute 12% of their basic salary and dearness allowance to the EPF of the employer's 12% contribution, 8.33% goes to the Employees' Pension Scheme (EPS)and the remaining 3.67% to the EPF. The pensionable salary was altered vide various amendments to the EPS.

8. At this juncture, it is pertinent to point out that prior to the year 2014 Amendment, the maximum pensionable salary was INR 5,000/- per month, which was later increased to Rs 6,500/-. However, the EPFO granted six months for the employees to file a joint option form for higher pension contributions to the EPS. Thereafter, through an amendment to the EPS which was effective from September 1, 2014, the EPS contribution of 8.33% was given at the maximum pensionable salary of INR 15,000 per month, even when the employee draws a higher salary. The same was challenged before the **Hon'ble Supreme Court of India in RC Gupta & Ors Vs.Regional Provident Fund Commissioner Employees Provident Fund Organisation & Ors,** and the Hon'ble Apex Court has held that the reference to the date of commencement of the Scheme or the date on which the salary exceeds the ceiling limit in the proviso are dates from which the option exercised are to be reckoned with for calculation of pensionable salary and are not cut-off dates to determine the eligibility of

the employer-employee to indicate their option under the proviso. Further, the Hon'ble Apex Court had taken a view that a beneficial Scheme ought not to be allowed to be defeated by reference to a cut-off date, particularly, in a situation where the employers had deposited 12% of the actual salary and not 12% of the ceiling limit of Rs.5,000/- or Rs.6,500/-per month.

9. Pursuant to the aforesaid order of the Hon’ble Supreme Court of India, the Additional Central PF Commissioner, HQ (Pension), Employees Provident Fund Organisation issued Circular dated 23/03/2017, the Petitioner submitted his Application for revision of his pension based on the circular dated 23/03/2017 issued by the Head Office, EPF department. As a sequal, the Respondent also paid a sum of Rs.5,89,928/ to the Petitioner towards the difference. The Respondent issued a new PPO vide PPO No. TB/PDY/00064304 dated 28/07/2018 fixing the revised monthly pension at Rs.9,050/- Subsequently, by way of the impugned order dated 18/01/2021 bearing No. TN/RO-PDY/Pension/Revision/2020-21 it was held that the Petitioner’s Application for revision of Pension has been reviewed in line of Head Office Legal Wing circular No. LC-E-file No.15795/2/782 dated 16/09/2020 and observed that the Petitioner has not exercised option under proviso to para 11(3) of the EPS 1995 with the employer during the service and hence the petitioner not eligible to claim for revision of pension on higher wages and consequently, the respondent is constrained to stop pension on high wages and release the original pension of Rs.1,985/-.

10. In fact, in a recent ruling of the **Hon’ble Supreme Court of India in the matter of Employees’ Provident Fund Organisation & Another V. Sunil Kumar B. and Others,** the Apex Court examined the legality of certain amendments made to the pension scheme by the Central Government in 2014, while hearing appeals from different judgments of High Courts of Kerala, Rajasthan and Delhi, which quashed most of the said amendments by order dated 04.11.2022. The Hon'ble Apex Court had upheld the provisions of the Employees' Pension (Amendment) Scheme, 2014 as legal and valid and also held that the Employees who had retired before 1st September 2014 without exercising the option under the pre-amendment scheme would not be entitled to the benefit of this judgement, as they have already exited the scheme. The employees who retired before September 1, 2014 and who exercised the option shall be covered by 11(3) of Pension scheme, as it stood prior to the 2014 Amendment and the relevant portion is as follows:

> *“44. We accordingly hold and direct:-*
>
> *…..*
>
> *(v) The employees who had retired prior to 1st 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 1st 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.”

11. In the present case on hand, it is clear that the petitioner has not excersied his option during his period of service i.e prior to 01.09.2014. The petitioner has submitted his joint option only in the year 2017 and claims for a higher pension. Applying the ruling of the Hon'ble Apex court mentioned supra to the present case on hand it is crystal clear that the petitioner will not be entitled for higher pension, as claimed.

In view of the above, the present Writ Petition is dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

27.07.2023

Index:Yes/No
Internet:Yes/No
Speaking / Nonspeaking order

ssd

To

The Regional Provident Fund
Commissioner – II,
Regional Office, Puducherry,
101, 100 Feet road, Cholan Nagar,
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V.BHAVANI SUBBAROYAN J.

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