IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2023

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THE HON'BLE MR.JUSTICE R.MAHADEVAN
and
THE HON'BLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.A.Nos.572 & 574 of 2021
and
C.M.P.Nos.2367 & 2371 of 2021

Regional Provident Fund Commissioner,
O/o Employees Provident Fund Organization,
37, Royapetah High Road,
Chennai 600 014. ...Appellant in both appeals

Vs

R.Baskaran ... Respondent in W.A.No.572 of 2021

V.Anbalangan ... Respondent in W.A.No.574 of 2021

COMMON PRAYER: Writ Appeals filed under Clause 15 of Letters Patent praying to set aside the orders of the learned Judge passed in W.P.Nos.16675 & 16679 of 2019 dated 21.06.2019.

For Appellant : Mr.Kunjithapatam Ramu

For Respondents : Mr.S.Sathia Chandran

COMMON JUDGMENT

[Judgment of the Court was made by R.MAHADEVAN,J.]

These Writ Appeals have been filed by the Employees Provident Fund Organisation to set aside the separate orders dated 21.06.2019 passed in W.P.Nos.16675 & 16679 of 2019.

2.By the orders impugned herein, the learned Judge allowed the aforesaid Writ Petitions in line with the directions given in the earlier order dated 27.03.2019 passed in W.P.No.14368 of 2018, etc. batch. For better appreciation, the relevant portion is extracted below:

"......

> *"48.In the above mentioned circumstances, this Court consider the following directions as expedient to resolve the issues as projected in the Writ Petitions.*
>
> *i)Both the employees of the exempted and unexempted establishments are entitled to the benefit of enhanced pension on the basis of their contribution with reference to actual salary received by them to their Provident Fund accounts;*
>
> *ii)The cut off date as prescribed i.e. 01.12.2004 is invalid in law and therefore, the same is held to be illegal and invalid;*

iii)The employees, namely, the writ petitioners shall be permitted to exercise their option in terms of Proviso to Clause 11(3) of the Pension Scheme and while permitting so, the EPFO is at liberty to seek return of the higher Provident Fund contribution received by the respective employees with simple interest at the rate of 6% p.a. from the date of receipt of Provident Fund amount and till the date of payment;

iv)The amounts to be refunded by the employees concerned shall be verified by the EPFO in consultation with the respective establishments in which the employees were employed;

v)On refund of the verified amount with interest, the EPFO shall calculate and grant enhanced pension on the basis of actual salaries received by the employees with arrears of pension from the date of their retirement and continue to pay their monthly enhanced pension through out their life time;

vi)In case where the refund of the amount by any employee with interest is higher than the enhanced pension with arrears payable to him, the refund shall be insisted upon and in case where the refund, after calculation, is lower than the arrears of pension payable to the employee, the same shall be adjusted while disbursing the arrears to the employees concerned;

vii) The respective Managements of the exempted establishments which maintained the Private Trust are directed to cooperate with the EPFO and render all assistance in quantifying the amount to be refunded by the respective employees with interest at 6% p.a.on such refund;

viii) The entire exercise shall be initiated and completed by the individual Managements and the EPFO within a period of six months from the date of receipt of a copy of the order.

49. In the result, all the Writ Petitions are allowed on the above terms. The orders of rejection which are impugned in the respective Writ Petitions, are hereby quashed and as regards the Writ Petitions pertaining to the grant of Writ of Mandamus to the authorities for grant of enhanced pension are concerned, the same are allowed as indicated above. No costs. Consequently, all connected WMPs are closed."

2. The reasons and the findings in their entirety as rendered in the batch of Writ Petitions are to be read as part and parcel of the present Writ Petition as well.

3. In the light of the above, this Court is of the view that the above directions and observation will hold good for the present Writ Petition also. Accordingly, the Writ Petition is allowed on the terms as mentioned above. No costs."

3.When the matters were taken up for consideration, the learned counsel for the appellant submitted that the subject matter in issue was subsequently challenged and it reached finality before the Hon'ble Supreme Court, by Judgment dated 04.11.2022 in Civil Appeals arising out of the Special Leave Petition Nos.8658-8659 of 2019 etc., batch [***2022 SCC Online SC 1521].*** The operative portion of the said judgment is extracted below for ready reference:

"46. We accordingly hold and direct:—

(i) The provisions contained in the notification no. G.S.R. 609(E) dated 22 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 22 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 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 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 September 2014 did not provide for any cutoff date and thus those members shall be entitled to exercise option in terms of paragraph11(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 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 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.

47. All the appeals which we have heard simultaneously are allowed in the above terms and the judgments impugned are modified accordingly. The writ petitions brought by employees or their representatives shall also stand disposed of in the same terms."

Thus, the learned counsel sought to dispose of these appeals in the light of the aforesaid judgment of the Hon'ble Supreme Court.

4.The learned counsel appearing for the respondents has fairly conceded the aforesaid submission made on the side of the appellant.

5.Therefore, both the Writ Appeals stand disposed of in terms of the judgment of the Hon'ble Supreme Court referred to above. No costs. Consequently, the connected Miscellaneous Petitions are closed.

(R.M.D.,J.) (J.S.N.P.,J.)
06.01.2023

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Index:Yes / No

Speaking Order / Non-speaking Order

Neutral Citation: Yes / No

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