IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2023

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THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. Nos.1431, 1437, 1441 & 1444 of 2021

R.Venkataraman ... Petitioner in W.P.No.1431/2021
P.T.Lakshmanan ... Petitioner in W.P.No.1437/2021
N.Trinadhulu ... Petitioner in W.P.No.1441/2021
Shantha Kannan ... Petitioner in W.P.No.1444/2021

/vs/

1. Union of India,
   Represented by the Secretary,
   Department of C ommerce,
   Ministry of Commerce and Industry,
   Government of India,
   Udyog Bhavan,
   New Delhi – 110 107.

2. The Chairman / Additional Secretary,
   Export Inspection Council,
   Department of Commerce,
   Ministry of Commerce and Industry,
   Government of India,
   Room No.162-B, Udyog Bhavan,
   New Delhi 110 107.

3. Director (Inspection and Quality Control)
   Export Inspection Council,

Department of Commerce,
Ministry of Commerce and Industry,
Government of India,
2nd Floor, B-Plate, Block-1, Commercial Complex,
East Kidwai Nagar,
New Delhi 110 023.

4. Deputy Director In-charge,
Export Inspection Agency – Chennai,
6th Floor CMDA Tower II,
No.1 Gandhi Irwin Road,
Egmore, Chennai – 600 008. ... Respondents in all W.P's

Writ Petitions are filed under Article 226 of the Constitution of India to issue a writ of declaration declaring that the petitioners have come over to the Pension Scheme under the provisions of the Export Inspection Council, Pension and General Provident Fund Rules, 1981 both in terms of Gazette Notification No.S.O.2922 dated24.10.1981 and circular dated 02.07.1987 issued by the 3rd respondent adopting provisions contained in Government of India O.M.dated 01.05.1987 as the petitioners governed by the Central (Civil Services) Pension Rules, 1972 and the General Provident Fund (Central Services) Rules, 1960 and not by the Contributory Provident Fund Scheme and consequently direct the respondents to pay pension with all attendant and consequential benefits from June 2013 onwards as the petitioner had attained the age of superannuation on 31.05.2013, pay arrears after adjusting the Employees Contribution towards Contributory Provident Fund and continue to pay pension every month thereafter.

For Petitioner ... Mr.Balan Haridas
(in all W.P's.)

For Respondents ... No representation
(in all W.P's.)

COMMON ORDER

No representation for the respondent for consecutive two hearings even though the matter has been listed under the caption “For orders”. The learned counsel for the petitioners is present and advanced his argument.

2. The petitioners are the employees of an Export Inspection Agency which is a Government of India Corporation and comes under the Department of Ministry of Commerce and Industry. Originally the employees of the Corporation was having only Provident Fund Scheme. Subsequently, the Government of India issued notification dated 24.10.1981 and due to which the employees of the Export Inspection Council or Export Inspection Agency who were governed by Contributory Provident Fund were given with an option to continue to be governed by the said rules. This is in view of the Government's policy decision to extend the Old Pension Scheme to all the full time and regular employees of Export Inspection Agency.

3. A cut off date is given to exercise the option above mentioned i.e.

on or before 31.03.1982. So far as these petitioners are concerned, they did not exercise their option to be a part of the Contributory Pension Scheme and hence they are deemed to be part of the beneficiaries governed under the Central Civil Services Pension Rules. Subsequent to the fourth Central Pay Recommendations, the Government of India issued yet another official memorandum on 01.05.1987 which was extended to all the employees who were the beneficiaries under Contributory Provident Fund Scheme and continue to be in service on 01.01.1986. By virtue of the Official memorandum dated 01.05.1987, all the employees were brought under the fold of 'Government Pension' and accordingly the petitioners also covered under the scheme. However, on retirement of the employees who are covered under the Government Pension were not given with the pension.

4. It is made specific that the memorandum of Government of India with regard to pension coverage for the employees was adopted by the respondent corporation also from 02.07.1987 vide EIC/D (Q/C)/56/87/3383/3391 dated 02.07.1987. Without any doubt, these petitioners who were in service as on 01.01.1986 and even prior to that were covered under the pension scheme. Despite the same, the pension was

not paid to the employees and hence some of the employees have chosen to file a Writ Petition in W.P.No.1331 of 2017. before High Court of Bombay After thorough consideration of the employee's claim, the High Court of Bombay has allowed their claim and directed the Government to pay pension by holding as under:

> *" 17. Hence, the rule is made absolute in the following terms:*
>
> *i) It is held and declared that the petitioners would be entitled to be governed by the Central Civil Services (Pension) Scheme, 1972.*
>
> *ii) The petitioners would be paid Pension from the month of April-2019.*
>
> *iii) The arrears of pension shall be paid within a period of six months. However, the arrears will not carry any interest.*
>
> *iv) Respondent No.2 is entitled to recover the employer's contribution towards CPF along with simple interest @8% p.a. thereon, from the arrears of pension that would be payable to the respective petitioners."*

5. The above order of High Court of Bombay was confirmed by the Hon'ble Supreme Court in S.L.P. (Civil) Diary No.16882 of 2019. Similar such order has also been passed by this Court in ***Union of India rep. by the Secretary to Government, Department of Atomic Energy Anushakthi and others Vs. S.Subbiah and others in W.P.No.28092 of 2015 & batch***

dated 05.01.2017. For the sake of clarity, the relevant paragraphs of the said judgment is extracted hereunder:

> *" 13. From the above, it could be seen that even the employees who have originally opted to remain in CPF Scheme and switched over to Pension Scheme because the same was being more beneficial to them, the Court has held that non-grant of better benefits by way of pension and denying the same to one set of employees per se discriminatory notwithstanding the option exercised by the employees to remain in CPF scheme which was given during the extended period of time, are entitled to seek pension under the Pension Scheme. The Delhi High Court has adverted to several decisions of the Hon'ble Supreme Court and other High Courts and passed a detailed judgment in a batch of appeals. The issues raised before the Delhi High Court were identical and the Court has answered the issues in favour of the employees.*
>
> *"14. This Court, after hearing the arguments on either side, gave its anxious consideration with reference to the pleadings and the decisions of the Hon'ble Supreme Court and the decision of the Delhi High Court. The natural conclusion emanated from our anxious consideration will only lead to hold that the respondent employees despite their option to remain in CPF Scheme which was given during the extended period of time, are entitled to seek pension under the Pension Scheme. Firstly, the said option given during the time of extended period has no sanctity in law. Secondly, such option given by the employees cannot be held against them in view of the fact that several similarly placed employees of the Central Government were allowed to switch over to the CPF Scheme, meaning that no seriousness*

attached to the cut of date prescribed originally by the Official Memorandum dated 1.5.1987. If these employees were denied pension in the facts and circumstances, it would certainly amount to discrimination, which per se constitutionally impermissible. Moreover, the decision of the Delhi High Court cited supra and the contentions which were extracted above, would unequivocally supported the claim of the respondent employees notwithstanding the fact that whether they exercised their option or not.

15. In the above circumstances, the order passed by the Tribunal allowing the claim of the respondent employees cannot be faulted with, although the learned Tribunal did not elaborate reasons in support of its conclusion. The conclusion reached by the Tribunal, in our opinion, would not suffer from any infirmity or irregularity warranting interference of this Court."

6. As on today, the position is well settled and all those employees who have been governed under the Government Pension by virtue of the Government of India Official Memorandum dated 01.05.1987 and which has been adopted by the respondent corporation 02.07.1987 are entitled to get pension as per the Central Civil Services Pension Rules, 1973.

7. These petitioners were in service when the schemes were adopted

and they have retired from service between the year 2005-2013. Since the lawful entitlement of pension was not disbursed to the petitioners, they have filed these writ petitions seeking the relief of declaration to declare that they are also covered under the Central Civil Services Pension Rule along with a direction to sanction and pay the same.

8. Since the petitioners did not exercise any option to come out of the benefit of pension scheme implemented by the Government, the respondents ought to have sanctioned the pension due to them subsequent to their retirement. The petitioners have made out their case on the basis of the Government of India Memorandum dated 01.05.1987 and also the notification of the respondents dated 02.07.1987. The petitioners have also produced documents to show that they have been in service at the time when the scheme was implemented and hence the petitioners are entitled to the relief as sought.

9. In the result, these Writ Petitions are allowed by declaring that the petitioners are entitled to the Pension Scheme under the provisions of the

Export Inspection Council, Pension and General Provident Fund Rules, 1981 both in terms of Gazette Notification No.S.O.2922 dated 24.10.1981 and circular dated 02.07.1987 issued by the 3rd respondent and not by the Contributory Provident Fund Scheme and the respondents are directed to pay pension with all attendant and consequential benefits to the petitioners from the date of their superannuation along with pay arrears after adjusting the Employees Contribution towards Contributory Provident Fund within a period of eight weeks from the date of receipt of a copy of this order and continue to pay pension every month thereafter. No costs.

13.12.2023

Index: Yes / No
Speaking order / Non-speaking order
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R.N.MANJULA ,J.

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To:

1. The Secretary,
   Union of India, Department of Commerce,
   Ministry of Commerce and Industry,
   Government of India,
   Udyog Bhavan,
   New Delhi – 110 107.

2. The Chairman / Additional Secretary,
   Export Inspection Council,
   Department of Commerce, Ministry of Commerce and Industry,
   Government of India,
   Room No.162-B, Udyog Bhavan, New Delhi 110 107.

3. Director (Inspection and Quality Control)
   Export Inspection Council,
   Department of Commerce, Ministry of Commerce and Industry,
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   2nd Floor, B-Plate, Block-1, Commercial Complex,
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   6th Floor CMDA Tower II,
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