BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.03.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.17749 of 2020

Baalakumar ... Petitioner

Vs.

The Regional PF Commissioner-II,
The Employees Provident Fund Organization,
Bhavishya Nidhi Bhavan,
No.1, Lady Doak College Road,
Madurai-625 002. ... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the impugned order passed by the respondent in TN/RO/MDU/PPO: 102735/Pension-II/2020, dated 09.11.2020 and quash the same and consequently, directing the respondent to revise the petitioner's pension based on dictum laid down in Sasikumar's case ((2019) ILLJ 494Ker) with disbursing all pending arrears including detected amount.

For Petitioner : Mr.RM.Arun Swaminathan

For Respondent : Mr.K.Muralisankar
Standing Counsel

ORDER

The learned counsel appearing for the petitioner states that they were not able to contact the petitioner. Heard the learned standing counsel appearing for the respondent corporation.

2. The petitioner is a member of the pension scheme formulated by the respondent corporation. The petitioner has some grievance regarding reckoning the pensionable salary. His request was rejected by the impugned order dated 09.11.2020.

3. I do not want to go into the correctness of the impugned order. The Hon'ble Apex Court in S.L.P.(C)Nos.8658 & 8659 of 2019 dated 04.11.2022 (The employees Provident Fund Organisation VS. Sunil Kumar) had held as follows:-

> “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.
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> (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 paragraphs 11(3) of the 1995 scheme and continued to be in service as on 1st 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 1st September 2014 stands crystalised in the judgment of this Court in the case of R.C.Gupta(supra). The scheme as it stood before 1st 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 paragraph11(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 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.

(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 expired above, we suspended 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 farmers 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 employee's 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 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 out 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."

4. The petitioner is permitted to submit a representation to the respondent through online and the same will be disposed of by the respondent on merits

and in accordance with law in the light of the aforesaid decision of the Hon'ble Supreme Court within a period of eight weeks thereafter.

5. The Writ Petition is disposed of accordingly. No costs.

23.03.2023

Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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23.03.2023