108(2) **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CWP-8275-2023 (O&M)
Date of decision: 17.11.2023

Jagdev Singh Saini and others **......Petitioners**

V/s

Union of India and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Brijesh, Advocate
for the petitioner(s).

Mr. Rajesh Hooda, Advocate
for the respondents No. 2 and 5.

Mr. Animesh Sharma, Advocate
for respondent No.3.

Mr. Arun Gupta, AAG Punjab.

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DEEPAK MANCHANDA J. (ORAL)

CM-19185-CWP-2023

This is an application under Article 226 of the Constitution of India read with Order 1 Rule 10 of CPC read with Section 151 CPC for impleading the applicants as petitioner(s) No.54 and 55.

For the reasons mentioned in the application, same is allowed.

The applicants are impleaded as petitioners No.54 and 55 in the present petition and amended memo of parties is taken on record.

Main case

Present petition has been filed under Article 226 of the Constitution of India, 1950 for issuance of a writ in the nature of mandamus directing the

Punjab State Cooperative Supply and Marketing Federation-respondent No.3 to submit an unequivocal and clear joint option form, in strict compliance with paragraph 11(3)(4) of the Employees' Pension Scheme, 1995; to waive the requirement for the petitioners to submit a joint option form under Paragraph 26(6) of the Employees' Provident Fund Scheme, 1952 and to accept the joint options form as contemplated in paragraph 11(3)(4) of the Employees' Pension Scheme, 1995; to refrain from seeking Provident Fund deduction details from the petitioners while filling the pension forms, as the information is readily available with the Organization; to dertermine the petitioner(s) pensionary entitlement based on their actual or higher salary from the date of their retirement and further to release the petitioner(s) pensionary benefits, including arrears, forthwith along with interest 18 % per annum from the date of their retirement. Further, the prayer has been made for quashing the circulars of the Employees' Provident Fund Organization dated 29.12.2022 and 20.02.2023 (Annexures P-5 and P-6) in the light of the judgment of the Apex Court rendered in the case of Employees Provident Fund Organisation Vs. Sunil Kumar and others, AIR 2022 SC 5634 dated 04.11.2022 (Annexure P-4) and R.C.Gupta Vs. Regional Provident Fund Commissioner, Employees Provident Fund Organisation (2018) 14 SCC 809 dated 04.10.2016 (Annexure P-1).

Learned counsel for the petitioner(s) submits that the grievance of the petitioner(s) is squarely covered by the judgment dated 04.11.2022 (Annexure P-4) passed by the Hon'ble Supreme Court of India in case titled ***The Employees Provident Fund Organization and Anr. Etc. Vs. Sunil Kumar B. And Ors. Etc., 2022 AIR (Supreme Court) 5634.***

Paras 41 to 44 of the aforesaid judgment are reproduced hereinbelow:-

"41. So far as the first condition is concerned, we have expressed our views earlier in this judgement regards legality of having such a provision. In relation to the second condition, our opinion is that the eligibility for enhancement cannot be restricted to those employees only who had exercised the option to remain in the scheme once their salary went beyond the capping of Rs. 6500/- per month. As we have already discussed, in case of R.C. Gupta (supra), it has been specifically held that there was no cutoff date in proviso to paragraph 11(3) as it stood before the 2014 amendment. In our opinion, the interpretation given to the proviso to paragraph 11(3) prior to 2014 amendment does not require any reconsideration. We agree with the reasoning of the two-judge Bench of this Court on this point, as expressed in the said judgement. As there was no cutoff date to be contemplated prior to the 2014 amendment, limiting the entitlement of enhanced pension coverage to those employees only who had already exercised an option under Clause 11(3) of the unamended scheme would be contrary to the ratio of the decision of this Court held in the case of R.C. Gupta (supra). We are not holding that no option was required to be exercised as per proviso to paragraph 11(3) of the scheme, as it stood prior to 2014 amendment. As held in the case of R.C. Gupta (supra), there was no time-limit for exercising such option.

42. The dual option, as is contemplated in paragraph 11(4) of the pension scheme (post 2014 amendment), has to be merged into one. In the event the employer and employee jointly opt for coverage beyond the salary limit of Rs. 15000/-, without giving an earlier option under the unamended Clause 11(3) of the pension scheme, they would not be automatically excluded from their right to exercise option under paragraph 11(4) of the scheme, post amendment.

43. The other condition for enhanced coverage relates to the date within which such fresh option is to be exercised by a member, which is stipulated to be within a period of six months from 1st September 2014. It would be legitimate to proceed on the basis that several members did not exercise such option earlier because of the stand taken by the Provident Fund authorities that option under proviso to paragraph 11(3) of the scheme (prior to 2014 amendment) has to be exercised within a specified date, which stand was negated in the decision of R.C. Gupta (supra). We are of the view that the time limit for coverage beyond the ceiling amount should be extended by a further period of four months from today to enable all the members of the pension fund drawing more than Rs.6500/- to exercise the joint option as contemplated in paragraph 11(4) of the pension scheme (post 2014 amendment). Once such joint option is exercised, the transfer of fund from the provident fund corpus to the pension fund shall be effected in terms of the scheme.

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 paragraph 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 judgement 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 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 judgements 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 cutoff 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."

Learned counsel for the respondents No.2 and 5 does not dispute the prayer made by learned counsel for the petitioner(s).

Learned counsel for the respondents No.2 and 5 submits that since the petitioners have applied before the respondent-Department in pursuance of the aforesaid judgment and the period thereto had been further extended and has acknowledged the request of the petitioners, also submits that the prayer of the petitioners shall be considered within four months.

In view of the above, nothing remain to be adjudicated in the present petition.

Petition is disposed of.

(DEEPAK MANCHANDA)
17.11.2023 **JUDGE**
Sapna

Whether speaking/reasoned Yes/No
Whether reportable Yes/No