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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.19985 of 2018 (O&M)

Date of Decision: 31.05.2023

RAJESH CHAUDHARY

.....Petitioner

Vs

**UNION OF INDIA THROUGH SECRETARY, MINISTRY OF
LABOUR AND EMPLOYMENT, NEW DELHI AND ORS.**

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Manohar Lall, Advocate
for the applicant-petitioner.

Mr. Rajesh Hooda, Advocate
for the respondents No.2 to 4.

Mr. Padamkant Dwivedi, Advocate
for the respondent No.5.

RAJ MOHAN SINGH, J.(Oral)

[1]. The petitioner has assailed the order dated 06.07.2018 vide which the respondents No.2 to 4 have declared the petitioner ineligible for the enhanced pension.

[2]. Learned counsel for the petitioner submitted that the petitioner has served in the Haryana Agro Industries Corporation Limited as Manager, Food Processing for 19 years 5 months and 13 days and he retired on 30.04.2015. After his

retirement, the petitioner was getting pension on the salary limited to Rs.6,500/- whereas his contribution to the employees provident fund on actual salary was more than Rs.6,500/-.

[3]. Learned counsel for the petitioner further submitted that the provident fund was created under the Employees Provident Funds Miscellaneous Provision Act, 1952. The Employees Pension Scheme was introduced w.e.f. 16.11.1995. As per Section 6 of the Employees Provident Fund Misc. Provision Act, 1952, the contribution payable by the employer to the fund shall be 10% or 12% of the total salary viz. Basic pay + D.A. + Retaining allowances (if any) payable to the employee. The employees contribution shall be equal to the contribution payable by the employer. If the employee is willing to contribute more than the requisite percentage i.e. 10% or 12% of the Basic pay + D.A, he may do so but it will be subject to the condition that the employee shall not be required to pay over and above his contribution payable under the aforesaid provision of the Employees Pension Scheme.

[4]. In the present case, the petitioner was contributing 10% of his actual salary under the 1952 Act which was increased to 12% at a subsequent stage towards the employees provident fund on the basis of actual salary received by the petitioner. After introduction of Employees Pension Scheme in 1995,

8.33% was to be deposited out of 12% of the employer's share under the Employees Provident Fund. 8.33% was to be deposited in the Pension Scheme, irrespective of ceiling i.e. Rs.6,500/-. The ceiling limit was increased from Rs.6,500/- to Rs.15,000/- per month w.e.f. 01.09.2014. In this way, both the employer and the employee were contributing 12% of the actual salary in the provident fund and not on the ceiling limit of Rs.15,000/-.

[5]. Learned counsel for the petitioner further submitted that pension of the petitioner has been fixed on the ceiling amount of Rs.6,500/- which was in existence prior to 01.09.2014. After the decision in **R.C. Gupta and others vs. Regional Provident Fund Commissioner, Employees Provident Fund Organization and others,(2018) 14 SCC 809**, it was made clear that there was no cut off date prescribed for submitting the option under Clause 11(3) of the Employees Pension Scheme, 1995, therefore, the employee who had not submitted his option was made eligible to give his fresh option under Clause 11(3) of the Pension Scheme for enhanced pension on his actual salary. This provision was made applicable only to the employees, who had retired prior to 01.09.2014. Thereafter in view of decision rendered on 04.11.2022 in **The Employees Provident Fund Organisation and Anr. Etc. vs. Sunil Kumar B. and Ors. Etc.,**

2022(4) S.C.T. 674, it was made clear that the members of the scheme, who did not exercise their options as contemplated in the proviso to Clause 11(3) of the Pension Scheme would be entitled to exercise their options under paragraph 11(4) of the post amendment Scheme. The right to exercise option prior to 01.09.2014 already stood crystallized in R.C. Gupta and others' case (supra). It has been clarified that the coverage beyond the ceiling amount is extended by further period of four months from 04.11.2022. In this provision the members of pension fund drawing more than Rs.6,500/- are entitled to exercise their joint options under paragraph 11(4) of the Pension Scheme (post 2014 Amendment).

[6]. Learned counsel for the petitioner further submitted that since the petitioner has already given his option on 01.05.2023, therefore, the said option would suffice to meet the ratio of The Employees Provident Fund Organisation and Anr. Etc. vs. Sunil Kumar B. and Ors. Etc., case (supra).

[7]. The factual position of the case is admitted by learned counsel for the respondents No.2 to 4.

[8]. Learned counsel for the respondent No.2 to 4 submitted that the option given by the petitioner shall be considered on legal parameters and if the petitioner is found entitled to the relief in question, the same shall be granted at the

earliest preferably within a period of three months.

[9]. In view of above, this writ petition is allowed. The impugned order dated 06.07.2018 is set aside. If the petitioner is found entitled for the relief in question, then a speaking order be passed and the same be conveyed to the petitioner within a further period of two weeks thereafter. However, in the event of dismissal of the claim of the petitioner, he shall be at liberty to assail the order in accordance with law.

[10]. All the civil misc. applications, if pending are also disposed of accordingly.

May 31, 2023	(RAJ MOHAN SINGH)
Atik	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No