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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2024

CORAM:

THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

W.P.No.16739 of 2011

R.Sivanesan ...Petitioner

Vs

1. The Regional Commissioner,
   Office of the Regional Commissioner,
   Employees Provident Fund,
   No.20, Royapettah High Road,
   Chennai 600 014.

2. The Assistant Provident Fund Commissioner,
   Sub Regional Office,
   Venny Commercial Complex,
   No.101, 100 Feet Road,
   Cholan Nagar, Olandaikeerapalayam,
   Pondicherry.

3. The Labour Welfare Officer,
   Pondicherry Cooperative Sugar Mills Ltd.,
   Pondicherry. ...Respondents

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Prayer: Writ Petition filed Under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the second respondent with No.TBM/SRO/PCY/PC/286/227/PGHS/2010 dated 18.02.2010 and to quash the same and consequently to direct the respondents to grant pension to petitioner with effect from 30.04.1998 onwards the day on which the petitioner got retired from service with all other consequential benefits including arrears of pension with interest at the rate of 18% per annum.

For Petitioner	:	Mr.V.Ajayakumar
For Respondents	:	
For R1 and R2	:	Mr.K.Srinivasa murthy Senior Counsel
For R3	:	Mr.D.Sreenivasan

ORDER

This writ petition is filed for a direction to call for the records of the second respondent relating to No.TBM/SRO/PCY/PC/286/227/PGHS/2010 dated 18.02.2010, to quash the same and consequently, to direct the respondents to grant pension to the petitioner with effect from 30.04.1998

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onwards, the day on which the petitioner got retired from service, with all other consequential benefits including arrears of pension with interest at the rate of 18% per annum.

2. According to the learned counsel for the petitioner, the petitioner was working under the Contractors, who have undertaken contract in the Pondicherry Co-Operative Sugar Mills from the year 1981. The petitioner met with a fatal accident, in 1985. The 3rd respondent appointed the petitioner in the post of Peon on consolidated pay of Rs.400/- per month from 13.03.1985 and the said amount was revised to Rs.600/- from 17.01.1986. The 3rd respondent issued an order granting the basic pay of Rs.298-334 (Un-skilled) with effect from 17.01.1987 and the petitioner got superannuated with effect from 30.04.1998 at the age of 60.

3. According to the petitioner, the 1st respondent, on 26.09.1997 directed the 3rd respondent to submit the claim of the petitioner in Form 10. On 11.10.1997, the 3rd respondent has submitted Form 10B to dispose of the

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application of the petitioner in Form 10.

4. The petitioner had made oral submissions before the 3rd respondent and a copy of the written letter was submitted to the 3rd respondent on 26.09.1997 seeking for pensionary benefits.

5. The petitioner, being an un-skilled employee and was working as Peon, and he is entitled to get the benefit of service upto 60 years as per Rules. According to the petitioner, the stand of the 3rd respondent that the petitioner has attained superannuation at the age of 58 years on 05.04.1996 and therefore, the petitioner is not entitled for the pensionary benefits which is illegal.

6. The learned counsel appearing for the respondents 1 and 2 has filed the counter contending that the petitioner bearing PF.A/c.No.PC/286/227, who was an employee of M/s.Pondicherry Co-Operative Sugar Mills Ltd., (PC/226), enrolled as Provident Fund member on 01.02.1987 and attained the age of 58 years on 05.04.1998. The petitioner has approached the Employees' Provident

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Fund Office for settlement and as such, his account was settled and a sum of Rs.83,772/- towards the settlement of Employees Provident Fund and a sum of Rs.7,233/- towards the settlement of Employees Pension Fund was paid on 31.06.1998 and 24.10.1997 respectively.

7. The respondents in their counter have extracted the details of the petitioner's entitlement, which reads as follows:-

"These respondents deny the averment made in paragraph 4 of the affidavit as partly true. Since the establishment M/s. Pondicherry Co-operative Sugar Mills Ltd. Reddiyarpalayam, Katterikuppam, Puducherry, where the petitioner worked, was covered under the Employees Provident Fund and Miscellaneous Provisions Act 1952, with effect from 01.02.1987, the period of membership has been calculated with effect from 01.02.1987, (ie..) the membership has been calculated from the date of coverage of the establishment and not from the date, the petitioner is stated to have been employed by the establishment M/s. Pondicherry Co- operative Sugar Mills Ltd., The details are as given below:-

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Date of Joined : EPF 01.02.1987
: EPS 01.03.1987

58 years completed on 05.04.1996
60 years completed on 05.04.1998

Past service : 15.11.1995
: 01.03.1987
: 14.08.2008 (9 years)

Pensionable Service : 05.04.1996
16.11.1995
Four months and 19 days.

As per the order of appointment, the petitioner was appointed as Peon with effect from 13.03.1985. Vide Memorandum dated 24.01.1987, fixation of pay of the petitioner was made. As per norms, the petitioner is not eligible for pension under para 12 of the Employees Pension Scheme 1995, since the petitioner has not rendered eligible period of membership of 10 years as a whole. Due to the above factor, the claim application in Form 10B has been called for, for the settlement of EPF account and a sum of Rs. 7,233/- was

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released on 24.10.1997 under para 14 of the Employees Pension Scheme, 1995.

8. The petitioner after receiving the EPS benefit under Section 14, without any demur or protest, the petitioner has now approached this Hon'ble Court claiming his pensionary benefits, which according to the respondent, the petitioner is not eligible as per the scheme. The EPS accumulation released by the EPFO is absolutely correct. There is no violation of law in this regard. Thus, the claim of the petitioner made in the present writ petition is untenable in law."

9. The learned counsel for the respondents contended that establishment was covered under the EPF & MP Act, 1952, only with effect from 01.12.1987 and the benefit under EPF & MP Act, 1952 will be calculated only from the date of coverage and not from the earlier one.

10. The learned counsel for the respondents further contended that the Act/Scheme itself stipulates the age of 58 years as per the Employees Pension

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Scheme, 1995 and not 60 years for the purpose of counting pensionary benefits.

11. The only point arises before this Court is whether the 10 years of service completed by the petitioner would enable him to get the pensionary service as contemplated under EPF & MP Act. The breakup details given in the counter clearly establishes that the petitioner has only served for a period of 9 years and one month and not served for 10 years.

12. As the petitioner has not completed the period of 10 years to avail the pensionary benefits, this writ petition is devoid of merits and therefore, dismissed. No Costs.

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Index: Yes/No
Speaking/Non-speaking Order
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