IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 26.03.2024
Pronounced On : 28.03.2024

CORAM

THE HONOURABLE **DR. JUSTICE D.NAGARJUN**

W.P.No. 13675 of 2016

R.Veerasamy ... Petitioner

Vs.

1. The Assistant Provident Fund,
Commissioner (Pension),
Employees Provident Fund Organization,
Ministry of Employment and Labour,
Government of India,
Regional Office, Tambaram,
No.3 Rajaji salai,
Chennai - 600 045.

2. The Regional Provident Fund Commissioner,
Regional Office,
New Delhi - 110 052.

3. The Manager (HR),
Airport Authority of India,
Rajiv Gandhi Bhawan,
Safdarjung Bhawan,
New Delhi - 110 003. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for records pertaining to the impugned order passed by the first respondent in

No.TN/TBM/RO/PENSION/322935/2015, dated 12.11.2015, quash the same and direct the first respondent to add 2 years of pensionable services, re-calculate the pension and disburse the revised pension with arrears to the petitioner.

For petitioner	:	Mr.R.Subramanian
For R1 & R2	:	Mr.R.Thirunavukarasu
For R3	:	Ms.R.Sumathy

ORDER

This writ petition is filed to quash the order passed by the first respondent in No.TN/TBM/RO/PENSION/322935/2015, dated 12.11.2015 and direct the first respondent to add 2 years of pensionable services, re-calculate the pension and disburse the revised pension with arrears to the petitioner.

2. The facts in brief as per the affidavit enclosed in this writ petition are as follows:

2.1. The petitioner worked in the third respondent Department from the year 1993 until he attained superannuation on 31.03.2012 as General Manager (Fin). The third respondent initiated disciplinary proceedings against the petitioner and imposed one increment cut on the last working day. The said proceedings were challenged by the petitioner before the appellate authorities and the same was dismissed. Subsequently, the petitioner filed writ petition and the same is pending.

2.2. The petitioner was permitted to retire on 31.03.2012 on attaining the age of superannuation. The third respondent sanctioned minimum pension instead of calculating the pension on the basis of the last drawn pay. The petitioner has challenged to grant of minimum pension in W.P.(MS)No.8695 of 2012 and this Court by way of interim direction granted for payment of actual pension. The petitioner's pension was revised to Rs.16,589/- w.e.f. 25.03.2010 as per the pension orders dated 04.03.2014.

2.3. While computing the pension scheme, Rule 10 (2) of the Employees Pension Scheme, 1995, was not taken into consideration. According to Section 10 (2) of the Employees Pension Scheme, 1995, if any person retires after attaining the age of 58 years and / one who has rendered pensionable service, he will be added two years of weightage. The petitioner has submitted representation in respect of his grievances as there was no response, this writ petition has been filed.

3. Counter affidavit has been filed by the first, second and the third respondents stating that the petitioner was permitted to retire w.e.f. 31.03.2012, even though disciplinary proceedings were still pending the petitioner's gratuity amount was released on 03.09.2014. It is mentioned further in the counter affidavit that the petitioner became eligible for drawing pension under Employees Pension Scheme, 1995, from March 2010 on attaining the age of 58 years. The total pensionable period works out to be 14 years 11 months and 23 days. In the counter affidavit filed by the third respondent, benefits that was released infavour of the petitioner by the respondent Department was clearly mentioned and the relevant paragraph is quoted hereunder:

> *"a) Amount of Rs. 16,589/- towards Pension Amount under EPS 1995 issued by EPFO vide PPO No. TBTAM00322935*
>
> *b) Amount of Rs. 1560/- p.m. towards Benevolent Fund for a period of 05 years w.e.f. 01.04.2012 vide Sanction Order No. 87/2012 dt. 27/03/2012.*
>
> *c) Encashment of 276 days EL vide Sanction No.186/2012 dated 26/04/2012.*
>
> *d) Encashment of 63 days HPL vide Sanction Order No. 298/2012 dated 03/08/2012.*

> *e) Payment of Rs. 29,772/- towards GSLIS issued vide Order No. A.27023/01/2012-EH/688/1711/680 dated 03/07/2012.*
>
> *f) Payment of Rs. 10,00,000/- towards Gratuity released vide Claim No. 108/2014 Order No. HR/GGCA/Super/2014/01/800 dated 03/09/2014 (As per Madras High Court at Madurai Bench Judgement Order dated 02.07.2014)."*

4. Heard both sides and perused the materials available on record.

5. Admittedly, the petitioner retired from service after attaining the age of 60 years as mentioned in Rule 10 (2) Employees Pension Scheme, 1995, relevant portion of amended Rule 10 (2) is extracted hereunder:

> *"In the case of the member who superannuates on attaining the age of 58 years and who has rendered 20 years pensionable service or more, his pensionable service shall be increased by adding a weightage of 2 years".*

6. According to the above referred rules a person will be added with two years of weightage for calculating pension and other pensionary benefits, in case, if a person retires at the age of 58 years and has rendered 20 years of pensionable service or more. The petitioner in this case as admittedly retired at the age of 60 years. Therefore, one of the condition

of Rule 10 (2), *ibid,* is that in order to get benefits of two years one must retire after attaining the age of 58 years is fulfilled and in respect of other requirement of having 20 years of pensionable service is concern, the petitioner has retired from service after rendering the Department for about 18 years. Therefore, as per the amended Rule 10 (2) Employees Pension Scheme, 1995, for the second condition the petitioner was not qualified. According to the third respondent even though the petitioner retired after touching 58 years and because of the fact that he has not completed 20 years of pensionable service, Rule 10 (2) of the Employees Pension Scheme, 1995, is not applicable.

Rule 10 (2) Employees Pension Scheme, 1995, prior to amendment and post amendment are as follows:

Prior to amendment:

> *"In the case of the member who superannuates on attaining the age of 58 years, and/or who has rendered 20 years pensionable service or more, his pensionable service shall be increased by adding a weightage of 2 years".*

After amendment:

> *"In the case of the member who superannuates on attaining the age of 58 years and who has rendered 20 years pensionable service or more, his pensionable service shall be increased by adding a weightage of 2 years".*

7. On account of the amendment, which came into effect from 24.07.2009 both the conditions namely retiring on attaining the age of 58 years and rendering 20 years of service are required to be fulfilled in order to get two years of weightage in pensionable service.

8. According to the petitioner, this amendment is not applicable to the facts of this case, as the amendment came into force only in the year 24.07.2009 and the petitioner benefits would not be based on the amended Rule as stated *supra.*

9. On perusal of the amendment made in Rule 10 (2) Employees Pension Scheme, 1995, it is clear that it applies to the persons who were in service as on the date of amendment i.e., 24.07.2009 and that there is no mention specifically that the amended rule applies to the persons who were working prior to the amendment.

10. When the petitioner has joined the service the unamended Rule 10 (2) of the Employees Pension Scheme was in force according to which an employee either retires after working for 58 years or renders 20 years of service, he is entitled for computing 2 years of pensionable

service. If this argument is accepted, then the petitioner who has retired after attaining 58 years us entitled for compulsory pensionable pension. However, on account of the amendment which came into force from 24.07.2009 in addition to retirement after attaining the age of 58 years and other condition is to complete 20 years of service.

11. In view of the above, the amendment dated 24.07.2009 was only prospective in nature. If the petitioner was very much in service prior to amendment, thereby, amendment is not applicable to the petitioner and hence, he is entitled for 2 years pensionable service.

12. The petitioner has cited a judgment of this Court dated 07.06.2011 in W.P.No.1644 of 2010 and the relevant portion is extracted hereunder

> *"6.If the original paragraph 9(b) of the Employees Pension Scheme 1995 stood as it is, there is no difficulty in counting the petitioner's service before introduction of the Employees Pension Scheme 1995, which works out to more than 9 years and 10 months, which is eligible for drawal of monthly pension. The Government of India amended paragraph 9(b) of the Employees Pension Scheme, 1995 and introduced an explanation with effect from 21.08.2009 vide G.S.R.No.594/E. After amendment, the following explanation was added:*

"2.In the Employees' Pension Scheme, 1995, in paragraph 9 in sub-paragraph (b), for explanation, the following explanation shall be substituted, namely:-

"Explanation For the purpose of this sub-paragraph, the aggregate of actual service and past service for less than six months shall be ignored and six months and above shall be rounded off to a year."

7.It is submitted that this explanation must be prospective and should not affect the right accrued to the petitioner. In this regard, a reference was made to the judgment of the Punjab and Haryana High Court in Regional Provident Fund Commissioner, Karnal Vs. Gurnam Singh and Others reported in 2009 (III) LLJ 33 (P&H) wherein, the Court held that if the employee had contributed to the Scheme for 9 years, he can get weightage of 2 years as per paragraph 10(2) of the Employees Pension Scheme 1995, which reads as follows:

"10.(2) In the case of the member who superannuates on attaining the age of 58 years, and/or who has rendered 20 years pensionable service or more, his pensionable service shall be increased by adding a weightage of 2 years."

8.In the judgment referred to above, the Punjab and Haryana High Court in para 9, had observed as follows:

"9.Concededly, as per the showing of the learned counsel for the appellant if an employee had completed 10 years of service and contributed to the scheme, he was entitled to the benefit of the family pension. It is the case of the appellant that the plaintiff / respondent had contributed to the scheme for 9 years, therefore, if the benefit of Para 10 is awarded to the appellant by giving weightage of 2 years, he completes 11 years and becomes entitled to the benefit of the scheme. That

> *apart, the appellant is estopped by its conduct on account of the fact that it had initially waived off the period from 1982 to 1990 enabling the employees to become members of the scheme without depositing the amount."*
>
> *9.So looked it from any angle, the petitioner is entitled to succeed. The stand taken by the respondents in denying pension to the petitioner is totally unjustified and the impugned order stands set aside and the writ petition is allowed. The respondents are directed to grant monthly family pension to the petitioner in accordance with the Employees' Provident Fund Pension Scheme, 1995 and an order to the effect shall be passed within a period of eight weeks from the date of receipt of a copy of this order. No costs."*

13. In view of the above the amendment of Rule 10 (2) of the Employees Pension Scheme, 1995, is not applicable to the petitioner. Thereby, basing on un amended Rule 10 (2) of the Employees Pension Scheme, 1995, the petitioner shall be given 2 years in addition to the actual service rendered by him and accordingly, his pension and other benefits are to be re calculated.

14. Accordingly, this writ petition is allowed. Costs made easy

.03.2024

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Index : Yes/No

Internet : Yes/No

Citation : Yes/No

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