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W.P.No.4138 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2024

CORAM :

THE HONOURABLE **MR.JUSTICE N.ANAND VENKATESH**

W.P.No.4138 of 2023

B.Asgok

... Petitioner

-Vs-

1.The Director

The Marine Products Export Development Authority
Ministry of Commerce & Industry
Government of India, Cochin 682 036.

2.The Deputy Director

The Marine Products Export
Development Authority Regional Division
Ministry of Commerce & Industry
Government of India
No.167, First Floor
Interpretation Building TNFDC, ECOPARK
Poonamallee High Road, Chetpet, Kilpauk
Chennai 600 010.

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the 1st and 2nd respondents to grant to the petitioner the benefit of General Provident Fund scheme and pension under the Old Pension Scheme that was in vogue prior to 01.01.2004 in accordance with law.

For Petitioner : Mr.P.Ulaganathan

For Respondents : Mrs.V.Sudaha
Central Government Standing Counsel
for R1 and R2



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ORDER

This writ petition has been filed for the issue of a writ of mandamus directing the 1st and 2nd respondents to grant the petitioner the benefit of General Provident Fund Scheme and Pension under the old Pension Scheme that was in vogue prior to 01.01.2004.

2.The case of the petitioner is that he joined the 2nd respondent as a casual labourer on a daily wage basis in the year 1984. According to the petitioner, this selection was made through the Employment Exchange. The further case of the petitioner is that he was conferred with temporary status by the 1st respondent through office Order dated 22.05.1995 with effect from 01.09.1993. Thereafter, he was regularized as a Messenger from 08.07.2010.

3.The petitioner retired from service on 31.05.2016 and he was not allowed to continue in the old General Provident Fund after 01.01.2004 and he has not been granted pension under the old Pension Scheme. He was brought under the new Pension Scheme and he is being paid the monthly pension under the new Pension Scheme. According to the petitioner, by virtue of certain subsequent developments and more particularly Office Memorandum dated 28.07.2016, the benefit of GPF and the old Pension Scheme will be applicable to all those casual labourers, who are covered under the Scheme of 10.09.1993 even if they have been regularized on or after 01.01.2004.



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4.The representation made by the petitioner in this regard seeking for bringing him under the old Pension Scheme did not yield any response. Hence, the present writ petition has been filed before this Court.

5.The respondents have filed a counter affidavit. The respondents have taken a stand that even during the regularization on 08.07.2010, the petitioner was specifically told that he will come under the new Scheme. Hence, it is stated that the petitioner after retirement cannot seek for bringing him under the old Pension Scheme by virtue of certain subsequent developments that have taken place. The respondents have further stated that the petitioner was regularized only with effect from 08.07.2010 and only the new Pension is applicable to all the Government servants, who are appointed on or after 01.01.2004. Accordingly, the respondents have refuted the claim made by the petitioner and they sought for the dismissal of the writ petition.

6.Heard Mr.P.Ulaganathan, learned counsel for the petitioner and Mrs.V.Sudha, learned Central Government Standing Counsel for the respondents.

7.There is no dispute with regard to the fact that the petitioner was regularized in service by virtue of the proceedings dated 08.07.2010. Clause 4 and 5 of the Office Order is extracted hereunder :



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4. New Pension Scheme as envisaged vide OM No.1/34(4*)/2003/O&M dated 30th November 2003 and 8th December 2003 will be application in his case.

5. 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits after his regularization.

8.The petitioner has retired from service in the year 2016. The petitioner is being granted pension only under the new Pension Scheme.

9.The petitioner for the first time makes a representation in 2019 to the 2nd respondent stating that he is entitled to be brought under the old Pension Scheme. Thereafter, some communication takes place and the present writ petition came to be filed in the year 2023.

10.In the considered view of this Court, the petitioner is bound by the terms and conditions of the Office Order dated 08.07.2010. This Office Order makes it clear that only the new Pension Scheme will be applicable to the case of the petitioner. If the petitioner is to be brought under the old Pension Scheme, the specific Clauses under the regularization order will be disregarded. The subsequent developments that has taken place will not create a cause of action to the petitioner to bring him under the old Pension Scheme in the light of the specific condition that was imposed during the regularization and only the new Pension Scheme will be



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applicable to the case of the petitioner.

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11.It is true that in pension cases, the Courts do not strictly go by the delay since in many cases it happens to be in continuing cause of action. That yardstick cannot be applied in the present case. The petitioner who was bound by the terms in regularization order dated 08.07.2010, cannot take advantage of some subsequent developments and seek for bringing him under the old Pension Scheme. The petitioner retired in the year 2016 and he makes a representation in the year 2019 and filed this writ petition in the year 2023. The delay that has occasioned from 2016 to 2023, when this writ petition was filed, stares at the face of the petitioner.

12.In the light of the above discussion, this Court is not inclined to grant the relief as sought for by the petitioner and accordingly, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes/No
Neutral Citation : Yes/No
Speaking Order : Yes /No
KP

N.ANAND VENKATESH. J.,
KP



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To

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