



W.A.No.555 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2024

CORAM

**THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MR. JUSTICE P.DHANABAL**

**W.A.No.555 of 2014
and MP.No.1 of 2014**

1.The Regional Provident Fund Commissioner
Employees Provident Fund Organization
Sub Regional Office,
P.B.No.588, Sree Complex D.Block,
No.18, Madurai Road, Trichirappalli 620 008.

... Appellant/1st respondent

Vs.

1.G.Rengapashyam
2.N.Kandaswamy
3.Kajamohideen
4.Kothandapani
5.Devaraj
6.M.Thanickachalam
7.R.Rajamanickam
8.P.Rajagopal
9.K.Jayaraman
10.M.Kannan
11.L.Mani
12.S.Nagarajan
13.Marimuthu
14.V.Avayam
15.V.Pakkirisamy



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16.K.V.Ganesan

(The respondents 1 to 7 and 9 to 16 are rep.by the 8th respondent)

17.Neyveli Lignite Corporation

rep.by its Chairman

Neyveli 607 201.

...Respondents/petitioners

Prayer: Writ Appeal filed under Clause 15 of the Letters patent to set aside the order of the learned Judge dated 20.07.2012 made in W.P.No.27110/2007.

For Appellant	: Mr.Mr.C.Kulanthaivel
For R1 to 16	: No appearance
For R17	: Mr.N.Nithianandam
For R18	: Mr.S.T.P.Kanimozhi

J U D G M E N T

(Judgment of the Court was made by P.Dhanabal,J.)

This Writ Appeal has been preferred as against the order passed in W.P.No.27440/2007, wherein the 1st respondent herein has filed the above said Writ Petition for issuance of writ of Mandamus directing the respondents therein to calculate the employees pension from 01.02.1996 till the date of payment and pay the same to the writ petitioner in accordance with law.



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2. The Writ Court has allowed the writ petition and directed the respondents 1 and 2 therein to comply with paragraph 18 of the 1995 scheme and implement the Employees' Pension Scheme, 1995 for the petitioners. Aggrieved by the said order, the present Writ Appeal has been filed by the appellant / 1st respondent.

3. The respondents 1 to 16 herein / petitioners have filed a batch of writ petitions stating that they are retired employees of the 17th respondent Corporation (hereinafter referred as "respondent Corporation"). They joined respondent Corporation prior to 01.03.1971 and retired before and after 16.11.1995. In the year 1996, the Government of India enacted the Employees Pension Scheme 1995 for employees (i) who are working in the public and private sector. The Employee Pension Scheme was made applicable to the employees who on or after 16.11.1995 become a member of Provident Fund of the Factories and other establishments exempted by the appropriate Government as per section 17 of the Employees Provident Fund and Miscellaneous Act, 1972 or whose case exemption has been granted under Paragraphs 27 or 27-A of the Employees Provident Fund Scheme,



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1952 from the date of such member; (ii) who has been member of the ceased Employees Family Pension Scheme, 1971, before the commencement of scheme from 16.11.1995; (iii) who ceased to be a member of the Employees Family Pension Scheme, 1971, between 01.04.1993 and 15.11.1995 and opts to exercise the option under para 7; (iv) who has been a member employees Provident Fund or Provident Funds of Factories and other establishments exempted by the appropriate Government under Section 17 of the Act or in whose case exemption has been granted under paragraph 27 or 27-A of the Employees Provident Fund Scheme, 1972, on 15.11.1995 but not being the member of the ceased Employees Provident Fund Scheme 1971 and opts exercise his option under paragraph 7.

4. It is the case of the respondents/writ petitioners that the respondents employees who are not members of earlier Family Pension Scheme 1971 and who retired after 16.11.1995 were also eligible to avail benefit of the Employees Pension Scheme 1995 by remitting the EPS components with interest upto date. As per the said scheme, the appellant Management is under legal obligation to issue circular and get option



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from the employees for their willingness to join the Employees Pension Scheme 1995. However, the Management did not call for options from the employees who are on roll as on 16.11.1995. In the year 1997, respondent Corporation commenced a scheme viz., Employees Group Contributory Superannuation Scheme, 1997 and the amounts were collected from the employees and deposited with the Life Insurance Corporation of India and the interest derived from the said deposit was to be paid as pension to the employees. But the said scheme failed and the amount collected from the employees were returned with interest during the year 2004. Therefore, the respondents /writ petitioners requested the 2nd respondent to implement the Employees' Pension Scheme, 1995. Several representations were made by the respondents / writ petitioners to respondent Corporation in that regard. A batch of writ petitions filed by the Members Association were dismissed by this Court and the same was challenged through appeal before the Hon'ble Supreme Court. The Apex Court in the order dated 11.11.2023, upheld the validity of the Employees Pension Scheme 1995 and issued direction to the public and private sector to implement the scheme for all its employees. The respondent Corporation had submitted a representation to the concerned



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after attaining the age of 58 years and having got their PF account amounts finally settled, are not entitled to exercise option to join the newly implemented Employee Pension Scheme as per paragraph nos.6 and 7 and 17 of the Employees' Pension Scheme. The appellant also has no objection in implementing the Employee Pension Scheme 1995 to the petitioners by respondent Corporation provided that the writ petitioners should not have attained the age of 58 years and should not have withdrawn Provident Fund accumulations finally settled as required under paragraph nos.6 and 7 and 17 of the Employees' Pension Scheme.

5.1. The respondent Corporation has forwarded a letter dated 15.06.2011, copies of circular issued by the Neyveli Lignite Corporation dated 06.06.2002, in which option was called for from the employees as to whether they wish to avail the benefits under the erstwhile EPF 1971 scheme or under the new Employees' Pension Scheme 1995. Further respondent Corporation has forwarded another Circular dated 07.04.2003 whereby the Heads of Unit P&A requested to distribute the option forms to enable employees to ensure their option to join in EPS 1995. They



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have failed to execute the option to join in EPS 1995. The respondents / writ petitioners are barred by doctrine of estoppel to join in the EPS 1995, after a lapse of more than a decade.

6. The 2nd respondent Corporation has filed counter affidavit in the writ petition stating that the respondents / petitioners have no legally protected and judicially enforceable right to seek for Mandamus. Already, WP.No.36319/2005 filed for the identical relief, is also pending for adjudication. The Employees' Pension Scheme 1995 was introduced in the year 1995, but the Writ Petitions have been filed in the year 2007, to implement the said scheme. The respondents / writ petitioners were aware of the scheme but not chosen to agitate for its implementation after a long period. Therefore, prayed for dismissal of the writ petition on the ground of delay and laches. As far as Employees' Pension Scheme, 1995, is concerned, respondent Corporation's role is limited. Admission of members or determining the eligibility of a person to become member are matters within the purview of the appellant and the grievance of the respondents / writ petitioners ought to be addressed to the appellant and not to the respondent Corporation. Already,



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respondent Corporation sought for exemption and the same was rejected by the appellant. The respondents / writ petitioners fall in the category of "those who had joined EPS, 1971 and are still in service or have retired, the respondent Corporation on its own had taken steps in respect of who are not members of EPS 1995, with the EPF organization for allowing them to join the EPS, 1995 on payment of appropriate amount together with interest. Therefore, the averment that respondent Corporation did not call for option from the employees for joining EPS 1995, is denied, since the scheme itself was under stay by an order of this Court, for some period, the question of obtaining option arose only when the stay was no longer in force. After disposal of the case, there was no provision for obtaining option from those who had already retired. For that reason only, respondent Corporation took up the matter with appellant / EPFO to provide a one time opportunity. But the said request was declined by appellant / EPFO and prays for dismissal of the writ petition.

7. The Writ Court after hearing both the parties allowed the writ petitions by holding that EPS 1995 is beneficial piece of legislation and therefore, interpretation to the scheme has to be given to advance the



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object achieved by the scheme; ie., to provide pension to the eligible members after referring paragraph 6(d) and also paragraph 17 and 17(2) of the EPS 1995. As against the said order, the present writ appeal is preferred.

8. The learned counsel appearing for the appellant would contend that the respondents / writ petitioners retired long back and while they are in service they have not opted to chose EPS 1995 and they are not even members of the erstwhile Employees Family Pension Scheme, 1971 and therefore, they are not entitled to the benefits of the scheme after retirement. But the Writ Court has failed to consider the same. Therefore, the Writ Appeal is to be allowed by setting aside the order of the Writ Court.

9. The learned counsel appearing for the respondents / writ petitioners would contend that options were not called for from respondent Corporation while the respondents / writ petitioners are in service. They are entitled to opt for new EPS 1995. In the meantime they retired. They already made representations to respondent Corporation



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and the same was declined. Therefore, the Writ Court after referring the appropriate provisions of the scheme, had correctly allowed the writ petitions. Therefore, the writ appeal is liable to be dismissed.

10. This Court heard both sides and perused the records.

11. According to the appellant, the respondents / writ petitioners are not entitled to the benefits under the new EPS 1995, since they are not members of the erstwhile Employees Family Pension Scheme, 1971. The respondents / writ petitioners have not received any amount from the Employees Family Pension Scheme, 1971 and thereby, no question of remitting the amount would arise as per para 17(2) of the EPS 1995. The said scheme is also applicable to the members of the erstwhile Employees Family Pension Scheme, 1971, who returned the amount of withdrawal benefits received, together with interest at the time of retirement. The main contention of the employees are that option was not called for and the 2nd respondent introduced Employees Group Contributory Superannuation Scheme, 1997 and amounts were collected from the employees and the said scheme failed. Thereafter, they made



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representations to the 2nd respondent to implement EPF, 1995, but the 2nd respondent only implemented the scheme in the year 2004, pursuant to the orders of the Hon'ble Supreme Court. The respondent Corporation who is the employer, also in the counter affidavit stated that the question of calling for option would not arise, since the matter was stayed by the Court and in the meantime, the employees were retired from service, which shows that respondent Corporation has not given any option to the respondents / writ petitioners. Further the implementation of the Scheme is between respondents 1 and 2 in the writ petition. The employees / writ petitioners already paid contributions to the employer NLC and the NLC also sought for exemption and the same was denied by the 1st respondent in the writ petition. Therefore, there is no fault on the side of the writ petitioners. The Writ Court after elaborately discussed the matter in paragraphs 34 ad 35 of the order, came to a conclusion that the writ petitions have to be allowed and it is relevant to extract the said paragraphs:

"34. The Employees Pension Scheme 1995 is beneficial piece of legislation and therefore, interpretation to the Scheme has to be given to advance the object to be achieved by the Scheme; i.e. to provide pension to the eligible members. Paragraph 6(d) of the Scheme leaves no manner of doubt that even persons who were not members of the Family



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Pension Scheme 1971, could also opt under para 7 of the Scheme. Para 7 further provides that the persons covered under para 6(d) shall have option to join the Scheme as per the provisions of paragraph 17. Paragraph 17(2) removes any doubt with regard to the eligibility of the petitioner, as it provides that the members would have option to join the Scheme by returning the amount of withdrawal benefits received if any, together with interest @ 8.5.% per annum from the date of said withdrawal of the benefit till the date of exercise of option, to receive the monthly pension as per the provisions of the Scheme. Therefore, the persons who attained the age of superannuation, and stand retired from service are also entitled to opt for the pension scheme by depositing the withdrawal benefits with interest, which is available only on retirement. The stand of the respondent No.1 therefore deserves to be rejected.

35. The petitioners had opted to be covered under the Scheme 1995, and even the learned counsel for M/s.Neyveli Lignite Corporation very fairly submitted that the respondent No.2 has no objection if the petitioners are allowed to opt under 1995 Scheme by depositing benefits withdrawn in terms of para 17(2) of the Scheme."

The said order shows that the Writ Court after elaborate discussion has passed a reasoned order. Therefore, there is no infirmity in the order passed by the Writ Court and does not warrant interference. Hence, the present Writ Appeal is liable to be dismissed.



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and
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12. Accordingly, this Writ Appeal is dismissed. No costs.

Consequently, connected miscellaneous petition is also closed.

(J.N.B,J.) (P.D.B., J.)
05.04.2024

Index : Yes / No
Internet : Yes/No
Speaking order : Non-speaking order
Neutral Citation :Yes/No
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To
The Chairman,
Neyveli Lignite Corporation
Neyveli 607 201.

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