IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.07.2024
DELIVERED ON : 04.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
and
THE HONOURABLE MR.JUSTICE P.DHANABAL

W.A.Nos.871, 872, 873, 875, 876, 877, 878, 879 of 2024

1. The Regional Provident Fund Commissioner-I
Employees Provident Fund Organization,
(Ministry of Labour, Govt. of India),
Regional Office, Bhavishyanidhi Bhavan,
Dr.Balasundaram Road, Coimbatore 641 018

3. The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Sub-Regional Office,
P.B.No.588, Sree Complex, D Block,
No.18, Madurai Road,
Trichy - 620 008. ..Appellants/ Respondents 2 and 3

Vs

1. N.V.Krishnamoorthy
2. The Government of India
Rep. By its Secretary to Government
Ministry of Labour and Employment
Shram Shakthi Bhawan, Rafi Marg
New Delhi 110 001 ... Respondents

Prayer: Writ Appeal filed under Clause XV of the Letters Patent Act, as against the order dated 28.11.2019 passed in W.P.No.4809 of 2019.

For appellants : Mr.C.Kulanthaivel

For respondents : Mr.G.Sankaran, Senior counsel for Mr.S.Nedunchezian for R1.

Mr.T.Chezhian, Addl Govt.Pleader for R2.

JUDGMENT

Per J.NISHA BANU, J.

The Writ Appeals filed as against the common order passed by the learned Single Judge, dated 28.11.2019.

2. The case of the appellants-Provident Fund Department is that the respondents 1 and 3 to 9 were employed in Central Co-operative Bank Ltd., Kumbakonam, an exempted establishment under Section 17(1)(a) of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952. The respondents were retired from their service in the years of 1999, 2002, 2005. After retirement, these respondents opted for 1/3rd commutation of pension under the Employees' Pension Scheme, 1995, and agreed to receive the balance 2/3rd pension

on monthly basis accordingly.

3. The respondents, after retirement sent representations to the appellant organisation, claiming their original pension after the period of 100 months, which includes their contributions which had been recovered from them. However, the organization denied the same vide order dated 02.01.2018, stating that there is no enabling provision for restoration of such Commuted pension, which lead to multiple writ petitions.

4. As per explanation 4 to para 13 of the scheme which were deleted vide order dated 26.09.2008, it has been reiterated that " *In cases of exercise of option for commutation under paragraph 12A, balance monthly pension payable after commutation shall be deemed to be the original monthly pension for the purpose of this paragraph."*

5. The learned Single Judge allowed the writ petition vide order dated 28.11.2019 and held as under:-

> *"21. This being the legal principles to be followed, this Court is of an opinion that, non restoration of full pension after the expiry of commutation period i.e., 100 months in this present*

case is improper and not in consonance with the very scheme of commutation itself.

22. Accordingly, the impugned orders passed by the Regional Provident Fund Commissioner-1, Employees Provident Fund Organization, in No.TN/ZO-CBE/PGHS/NIS/2018 dated 02.01.2018 is quashed and writ petitions stand allowed. The respondents are directed to restore the full pension on expiry of the 100 month period fixed for commutation and pay all other consequential and attendant benefits within a period of 12 weeks from the date of receipt of a copy of this order."

Challenging the same the present Writ Appeal has been filed.

6. The learned counsel appearing for the appellant-Provident Fund Department contented that as per explanation 4 to para 13 of the scheme, only the balance pension after commutation is to be treated as "Original Pension". The learned Judge erred in holding that after the deduction of the commuted amount for a period of 100 months from the date of received commuted amount, the petitioners are all entitled to claim full pension amount is not correct.

7. It is evident from the said provision in Para 12 (A), the emphasis is not on

100 months but on 100 times only and the same has been emphasized only for arithmetical calculation for the purposes of commuted value of 1/3rd pension to be paid as lump sum. Hence the learned Single Judge misconstrued the emphasis and the provision and granted the relief as prayed in the writ petition.

8. However, after the impugned orders passed in the writ petitions, the Ministry of Labour and Employment, Government of India, New Delhi issued a Notification No.G.S.R.132(E) dated 20.02.2020 by inserting Para 12B of Employees' Pension Scheme, 1995, enabling the pensioners to get full/normal pension after 15 years from the date of commutation and the said notification is as extracted below;

> *"12B. Restoration to normal pension in cases of grant of commutation.-*
>
> *The normal pension in respect of those members who availed the benefits of commutation of pension under the erstwhile paragraph 12A of this scheme, on or before the 25th of September, 2008, shall be restored after completion of fifteen years from the date of such commutation."*

9. The aforesaid notification clearly show that there was no enabling

provision earlier either under Para 12(A) or 13 of the Employees' Pension Scheme, 1995 to restore the full pension after completion of 100 months as claimed by the writ petitioners.

10. Therefore, the said subsequent notification of restoration of original pension has been implemented to all the respondents/pensioners and the full pension has been restored on completion of 15 years from the date of commutation of pension and settled with arrears.

11. Per Contra the learned counsel for the respondents-retired employees submitted that the employees who opted for the employees pension scheme, 1995 are entitled to receive their E.P.F. With respect to the same, the Bank Management recovered 12% from their salary and the 12% from the Employer as contribution to E.P.F. fund. Out of the Employer's contribution, an amount @ 8.33% will be remitted to the E.P.S. 1995 scheme account in the Additional P.F. Commissioner Office, Tiruchirapalli before 15th of the next month. In case, the amount (8.33%) is not paid, penalty will be imposed by E.P.F. Office. The contribution of 8.33% will be calculated and remitted to the E.P.S. 1995 account.

12. The E.P.S Pension scheme is being paid from out of the pension corpus fund maintained by the E.P.S. Office by investing the fund in the profitable oriented securities as when dictated by the Central Government. Now the Minimum Pension received by the respondent employees is at Rs.1000/- per month. The Employer contribution as had been recovered till his superannuation is being kept in the E.P.S. Account. The remaining amount available in the Employer's contribution along with Employee's share will be disbursed to the retired employees.

13. Now, the main contention of the respondents-retired employees is that when the law contemplates that pension payable to the employees is the balance of pension after deducting the commutation amount, the original pension ought to be restored as and when the commuted value has been fully recovered.

14. Further, respondents contended that the stand of the appellant-PF Department is that the scheme did not contemplate the restoration of full pension after completion of 100 months, but they failed to note that the scheme as well does not contemplate the capital value of the pension not to be restored or the

capital value of 2/3rd pension alone would be given till the life time of employees even after the recovery of entire commuted amount in 100 instalments. This being the case, in the absence of the explicit provisions, the scheme being the social welfare legislation, the benefit ought to be extended to the employee's for restoration of the capital value (i.e.Original pension) after recovery of commuted amount in 100 instalments.

15. As per the Employees' Pension (Amendment) Scheme 2020, the provision of para 12B was introduced to restore the normal pension after completion of 15 years from the date of commutation. This amendment applies prospectively and clarifies that there was no such provision existed earlier. Previously, the recovery of the commuted pension amount was made through 100 instalments, after which no further deductions were made.

16. The learned counsel for the respondents-retired employees would rely on the following judgments:-

(i) ***ESI Corporation vs "Radhika Theatre, reported in 2023 SCC Online SC 64***

(ii) ***"Regional PF Commissioner, Jaipur vs Naraini Udyog and others reported in (1996) 5 SCC 522.***

The learned counsel for the respondents submits that the respondens are entitled to get their full pension which includes the Commuted pension and recovery of the commuted pension amount shall be made for the 100 instalments only. Hence, prayed for the dismissal of this Writ Appeal.

17. Heard the learned counsel appearing on either side and perused the materials available on record.

18. We are of the opinion that the order passed by the learned Single Judge in the Writ Petitions is just and proper. As observed by the learned Single Judge, Clause 12(A) is silent with reference to the permanent deduction of the commuted value of pension throughout the life time and also there is no specific prohibition under the provisions of the scheme for restoration of full pension. The pension scheme being a welfare scheme, must be interpreted constructively. The scheme of commutation is to provide a lump sum to the pensioner and deduct the same on monthly basis and the period of commutation is also fixed at the time of availing the pension scheme.

19. This being the fact after the expiry of the commutation period, the

competent authorities are bound to restore the full pension and they cannot permanently deny the full pension under the guise of commutation for the pensioner, which would amount to unlawful enrichment and which is not contemplated under Employees Pension Scheme itself. Thus, once an employee availed the facility of commutation, the portion of the pension is to be deducted for the period fixed and beyond the period, the authorities have no powers to deduct the pension for an unspecified period or for their life time. Such a concept is unknown and if such principles are adopted, it will amount to unjust enrichment to the Employees Provident Fund Organization.

20. This being the legal principles to be followed, this Court is of the opinion that, non restoration of full pension after the expiry of commutation period i.e., 100 months in this present case is improper and not in consonance with the scheme of commutation itself. Therefore, this Court confirms the order passed by the learned Single Judge order dated 28.11.2019, by directing the appellant-PF Department to restore the full pension on expiry of the period 100 months as fixed for commutation and pay all other consequential and attendant benefits within a period of eight weeks from the date of receipt of a copy of this order.

21. In the result, the Writ Appeals are dismissed. No costs.

Index:Yes/No [J.N.B.,J.] [P.D.B.,J.]
Internet :Yes/No 04.10.2024

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Today, the matter is listed under the caption 'for being mentioned'.

2. It is represented by the learned counsel for the appellants that in the judgment passed by this Court in the above Writ Appeals, the year of the Writ Appeals has been wrongly mentioned as '2024' instead of '2020'.

3. We have perused the judgment dated 04.10.2024 passed in the above Writ Appeals.

4. On perusal of the said judgment, it is seen that inadvertently, it has been wrongly typed as 'W.A.Nos.871, 872, 873, 875, 876, 877, 878, 879 of **2024**' instead of 'W.A.Nos.871, 872, 873, 875, 876, 877, 878, 879 of **2020**'. Therefore, Registry is directed to make necessary correction and issue fresh order copy forthwith.

[J.N.B.,J.]   [M.J.R.,J.]
04.06.2025

vsi

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