IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2024

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU
AND
THE HONOURABLE Mr.JUSTICE P.DHANABAL

W.P.No.5148 of 2012 and
MP.No.1 of 2012

1.G.Ponnambalam
2.V.Govindarajan .... Petitioners

vs

1. Regional Provident Fund Commissioner,
P.B.No.588, Shree Complex, "D" block,
No.18, Madurai Road,
Trichy 8.

2.Neyveli Lignite Corporation,
rep.by its Chairman,
Neyveli 607 801. .... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned orders bearing Nos. (1) TN/SRO-TRY/ Exem.Accounts/NLC (Non-Optees) 2010 dated 22.10.2010 (Ex-A) and (2) TN/SRO-TRY/Exem.Accounts/NLC (Non-Optees) 2010 dated 25.10.2010 (Ex-b) respectively issued by the 1st respondent to quash the same and consequently direct the 1st respondent to calculate the arrears of pension due to the petitioners from the date they retired and adjust it with the pension contribution due under EPS 1995 and pay them pension.

For Petitioner : Mr.I.Parvin Banu

For R1 : Mr.S.M.Deenadayalan
For R2 : Mr.N.Nithianandam

O R D E R
(Order of the Court was made by P.DHANABAL,J.)

This Writ Petition has been filed by the petitioners to issue a writ of Certiorarified Mandamus to call for the records of the 1st respondent relating to the impugned order bearing Nos. (1) TN/SRO-TRY/ Exem.Accounts/NLC (Non-Optees) 2010 dated 22.10.2010 (Ex-A) and (2) TN/SRO-TRY/Exem.Accounts/NLC (Non-Optees) 2010 dated 25.10.2010 (Ex-b) respectively and quash the same.

2. It is the case of the petitioners that the 1st petitioner joined in service of the 2nd respondent as casual on 18.07.1959 and regularised on 21.03.1962. The 2nd petitioner joined on 1967 as casual and he was regularised on 19.04.1969. On 01.03.1971, a Family Pension Scheme was introduced. Thereafter, the 1st petitioner was superannuated on 31.10.2002 as Manager (Finance). The 2nd petitioner was retired under the Voluntary Retirement Scheme on 31.05.2000 as Executive Engineer (Mech.) (E4 scale of pay).

Pension has been denied to them by the 1st respondent through the impugned orders on the ground that they as on 04.01.1993 were not members of Family Pension Scheme 1971 ('FPS 1971') and option cannot be entertained as per newly introduced Employees' Pension Scheme 1995, because on the date of exercising option, they should be members of FPS 1971 and they should not have completed 58 years. The said reasons given by the 1st respondent are untenable. On 01.03.1971, FPS, 1971 was introduced by the Government of India and options were called for. The petitioners were already employed before that date in the 2nd respondent Corporation. They were covered by the Employees Provident Fund and Miscellaneous Provisions Act, 1952.

3. As per 1971 Pension Scheme, pension is payable under the said scheme only to the employees in case the employee dies in harness. It was not payable to the employee during his lifetime. The scheme was compulsory to those who joined after 01.03.1971. Since the petitioners joined before 1971, they did not exercise that option. They continued to be members of EPFS, 1952. Thereafter, the Employees' Pension Scheme was introduced in the year 1995 (in short 'EPS 1995'). As per the said scheme, the contribution of the employer was to be taken to the pension fund and the Central Government

was to contribute 1-1/6 % to the fund. In the meantime, the 2nd respondent represented the employees that they would have given them better pension scheme and formulated their own pension scheme and sought for exemption from EPS scheme 1995 and it was denied. But the petitioners were making their contribution which mean that they had exercised option for EPS 1995. The 2nd respondent were making deduction towards their own scheme but the 1st respondent refused to grant exemption. In the meantime, the petitioners were retired from NLC in the year 1997 or thereafter. Since the NLC scheme had not been approved and not granted exemption, the scheme of NLC as on date cannot be made operative. When exemption was refused to NLC Pension Scheme and the petitioners had been superannuated from service, they sought for pension at least as per EPS 1995 scheme. To that effect they also made representations, but it was not considered.

4. The petitioners filed WP.No.36319/2005 through the Association and the learned Single Judge by order dated 09.08.2010 directed the petitioners to give individual claim petitions and the same will be considered by the authorities strictly in accordance with law. Thereafter, petitioners made detailed claim petition for grant of pension as per EPS 1995 from the date of

their retirement after adjusting from their pension, the arrears of amount due towards Employer's contribution together with interest. However, the 1st respondent has declined to grant pension under the EPS 1995 by the impugned orders on the ground that the petitioners were not members of FPS 1971 and further their option cannot be entertained as per para 6(d) of EPS 1995. Aggrieved by the impugned orders, the present writ petition is filed by the petitioners.

5. Perusal of the counter affidavit of 1st respondent would reveal that in supersession of the erstwhile Employees' Family Pension Scheme, 1971, the Government of India had introduced a newly formulated scheme viz., Employees' Pension Scheme, 1995 in the year 1996 giving retrospective effect from 16.11.1995. The members of the erstwhile FPS 1971 who had retired / resigned between 01.04.1993 and 15.11.1995 were also permitted to join in the newly introduced Pension Scheme by exercising option and refunding the amount of withdrawal benefit received by them with interest. The 2nd respondent instead of implementing the new pension scheme, had formulated a new scheme of its own substituting the new pension scheme and due to failure of the said scheme, the amount collected from the employees were returned with interest in the year 2004 .

6. Further the 2nd respondent had not implemented the new pension scheme 1995 to its employees. Therefore, a batch of writ petitions were filed by the employees and the same were dismissed. The said orders were challenged through the Hon'ble Supreme Court wherein the orders of High Court were upheld and also uphold the validity of the new pension scheme 1995. Pursuant to the order of the Supreme Court, the 2nd respondent started implementing the new pension scheme, 1995 retrospectively from the date of introduction of the new pension scheme from 16.11.1995. But the employees who had retired on superannuation during the period between 01.04.1993 and date of actual implementation of the scheme of EPS 1995 in 2004, had not been permitted to become the members of the Employees' Pension Scheme, 1995, for the reason that they had already attained the age of 58 years and left service on superannuation and already got their provident fund account finally settled and withdrawn the accumulations. The employees who attained the age of 58 years and got the PF account finally settled cannot be permitted to exercise option to join in the newly introduced Pension Scheme 1995 as stated in para 6 of the said scheme. Therefore, the petitioners who had attained the age of 58 years as on date of implementation of new pension scheme, 1995,

cannot be permitted to join in the said scheme. Therefore, the petition is liable to be dismissed.

7. The 2nd respondent filed memo stating that the 1st petitioner viz., G.Ponnambalam superannuated at the age of 60 years on 31.10.2002. On retirement, final settlement of PF was made by actually disbursing an aggregate sum of Rs.11,21,276/- with interest. Prior to his retirement, he withdrawn the PF amount. Thereby the said amount was disbursed to him. The employer NLC has prepared a provisional amount to be remitted for him to made him as member of EPS 1995 and it is Rs.2,02,881/-. Likewise, the 2nd petitioner had also retired from service under Voluntary Retirement Scheme at the age of 56 years on 31.05.2000. On retirement, final settlement of PF was made by disbursing an aggregate sum of Rs.8,13,047/- . Prior to his retirement, he withdrawn his PF amount. The employer NLC has prepared a provisional amount to be remitted for him to made him as member of EPS 1995 and it is Rs.1,97,512/-.

8. The learned counsel appearing for the petitioners would contend that the petitioners were joined duty prior to the date of commencement of Family

Pension Scheme, 1971 and thereby they were not opted to the said scheme, moreover they were already covered under the scheme of EFPS, 1952 and thereafter, the Central Government introduced new pension scheme viz., Employees' Pension Scheme, 1995 in the year 1996 by giving retrospective effect. The 2nd respondent have introduced their own pension scheme and also applied for exemption from the 1st respondent. But the 1st respondent refused to grant exemption and thereby they failed to implement their own scheme. Thereafter, the 2nd respondent only implemented the scheme from 2004 onwards. By that time, these petitioners got superannuated. The petitioners have contributed for pension scheme and the employer also contributed. Therefore, they are liable to have pension under new pension scheme EPS 1995. However, the 1st respondent passed the impugned order erroneously without considering the above said aspects. Therefore, the order passed by the 1st respondent is liable to be quashed and the petitioners are entitled to get arrears of pension due from the EPS, 1995.

9. The learned counsel appearing for the 1st respondent would contend that the 2nd respondent has not implemented the scheme immediately after the commencement of the scheme. The 2nd respondent only implemented the

scheme in the year 2004. In the meantime, the petitioners got superannuated and they attained age of 58 years and also their PF account was settled. Thereby, there are not eligible to the EPS, 1995. Therefore, the present writ petition is liable to be dismissed.

10. This Court heard both sides and perused the materials on record.

11. It is an admitted fact that these petitioners were on service on the date of introduction of the scheme of EPF,1995 by the Government of India and they also paid subscription to the 2nd respondent. But the 2nd respondent has not implemented the new scheme. However, they introduced their own scheme, but the same was not approved by the 1st respondent. Thereafter, as per the order of the Hon'ble Supreme Court, the 2nd respondent has only introduced the new scheme from the year 2004. There is no fault on the side of the petitioners and on the date of commencement of the pension scheme, 1995, they are in service and they also paid contributions. It is the duty of the 2nd respondent to take care of it and implement the scheme on the petitioners. The grant of permission is between the 1st respondent and the 2nd respondent. For the fault of the 2nd respondent, the petitioners cannot be victimised and the

2nd respondent also filed Memo stating that the employer NLC has prepared a provisional amount to be remitted for the petitioners to make them as members of the EPS, 1995. However, according to the 1st respondent, para 6 of the new pension scheme, is a bar to implement the scheme on the petitioners, since the petitioners attained 58 years and also got the PF account finally settled. The petitioners attained superannuation during 2000 and 2002 respectively, not before the date of introduction of the new pension scheme ie., EPS, 1995. There is bar under para 6 of the said scheme, only for the employees retired / superannuated before the date of commencement of the new pension scheme. The 1st respondent has not considered the said aspects and passed the impugned order. Therefore, this Court is of the view that it is appropriate to direct the respondents to implement the scheme to the petitioners.

12. In view of the above said discussions, this Court is of the opinion that the petitioners are entitled to get the relief as sought for in the petition. The impugned orders bearing Nos. (1) TN/SRO-TRY/ Exem.Accounts/NLC (Non-Optees) 2010 dated 22.10.2010 (Ex-A) and (2) TN/SRO-TRY/Exem.Accounts/NLC (Non-Optees) 2010 dated 25.10.2010 (Ex-b)

respectively issued by the 1st respondent, are set aside and 1st respondent is directed to calculate the arrears of pension due to the petitioners from the date they retired and adjust it with the pension contribution due under EPS 1995 and pay them pension.

13. This Writ Petition is allowed, accordingly. No costs. Consequently connected miscellaneous petition is closed.

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

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Index : Yes / No
Internet : Yes / No

To

1. Regional Provident Fund Commissioner,
P.B.No.588, Shree Complex, "D" block,
No.18, Madurai Road,
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2.The Chairman,
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Neyveli 607 801.

J.NISHA BANU,J.
and
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