IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2024

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.Nos. 8554, 8558, 8560, 8564
8147, 8171 and 8175 of 2021

W.P.No.8554 of 2021

M.Natarajan ... Petitioner

Vs.

1.The Secretary to Government of India,
Ministry of Labour & Employment,
New Delhi 110 001.

2.Addl. Central Provident Fund Commissioner,
Tamil Nadu (Excluding Chennai),
Employees Provident Fund Organisation (EPFO),
Dr.Balasundaram Road, Coimbatore 641 018.

3.Regional Provident Fund Commissioner-I,
Employees' Provident Fund Organisation,
Regional Office,
S-1, TNHB Phase III,
Sathuvachari, Vellore 632 009.

4.Regional P.F.Commissioner,
Employees Provident Fund Organisation,
Ministry of Labour & Employment -
Government of India,
Regional Office - Mumbai 1,

341, Bhavishya Nidhi Bhavan,
Bandra (East), Mumbai 400 051.

5.Employees Provident Fund Trustee,
Rep by Managing Trustee,
Employees Provident Fund Office,
Bhavishya Nidhi Bhavan, Wazirpur,
New Delhi 110052.

6.Provident Fund Commissioner-1 (Pension),
Bhavishya Nithi Bhavan,
14-Bhikaji Cama Palace,
New Delhi 110 066.

7.The Chairman,
Life Insurance Corporation of India,
"Yogakeshma", JB Marg,
Mumbai 400 021.

8.The Managing Director and Chief Executive Officer,
LIC Housing Finance Ltd.,
131, Maker Tower, "F" Premises,
13th Floor, Cuffe Parade,
Mumbai 400 005. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondents to make necessary adjustments in the petitioner's Employees' Provident Fund Account and Employees' Pension Scheme account to reflect the petitioner option for pension based on the actual salary from the date of joining the pension scheme with all consequential benefits and grant the enhanced pension under the EPS Scheme, 1995 as per the Hon'ble Supreme Court and Hon'ble Madras High Court judgments.

For Petitioner : Mr.J.Saravana Vel
For Respondents : Mr.N.Sivabharathi, CGC for R1
Mr.R.Vishnu for R2 to R6
Mr.R.S.Anandhan for R8
No appearance for R7

COMMON ORDER

These Writ Petitions have been filed for the issuance of a Writ of Mandamus, to direct the respondents to make necessary adjustments in the petitioners' Employees' Provident Fund Account and Employees' Pension Scheme account to reflect the petitioners' option for pension based on the actual salary from the date of joining the pension scheme with all consequential benefits and grant the enhanced pension under the EPS Scheme, 1995 as per the Hon'ble Supreme Court and Hon'ble Madras High Court judgments.

2. Heard Mr.J.Saravana Vel, learned counsel for the petitioner, Mr.N.Sivabharathi, learned Central Government Counsel for R1, Mr.R.Vishnu, learned counsel for R2 to R6 and Mr.R.S.Anandhan, learned counsel for R8.

3.The petitioners are the serving / resigned / retired employees of LIC Housing Finance Limited. The dispute in these Writ Petitions is the subject matter of the Civil Appeals filed before the Hon'ble Supreme Court in the case of ***The Employees Provident Fund Organisation & Anr. etc., Vs. Sunil kumar.B & Ors.etc., batch, reported in 2022 SCC Online SC 1521***, in which, a detailed order has been passed and the matter has settled at rest. The Hon'ble Supreme Court has given the following directions:

> *"46. We accordingly hold and direct:-*
> *(i) The provisions contained in the notification no. G.S.R. 609(E) dated 22nd August 2014 are legal and valid. So far as present members of the fund are concerned, we have read down certain provisions of the scheme as applicable in their cases and we shall give our findings and directions on these provisions in the subsequent sub-paragraphs.*
> *(ii) Amendment to the pension scheme brought about by the notification no. G.S.R. 609(E) dated 22 nd August 2014 shall apply to the employees of the exempted establishments in the same manner as the employees of the regular establishments. Transfer of funds from the*

exempted establishments shall be in the manner as we have already directed.

(iii) The employees who had exercised option under the proviso to paragraph 11(3) of the 1995 scheme and continued to be in service as on 1st September 2014, will be guided by the amended provisions of paragraph 11(4) of the pension scheme.

(iv) The members of the scheme, who did not exercise option, as contemplated in the proviso to paragraph 11(3) of the pension scheme (as it was before the 2014 Amendment) would be entitled to exercise option under paragraph 11(4) of the post amendment scheme. Their right to exercise option before 1st September 2014 stands crystalised in the judgment of this Court in the case of R.C. Gupta (supra). The scheme as it stood before 1st September 2014 did not provide for any cutoff date and thus those members shall be entitled to exercise option in terms of paragraph11(4) of the scheme, as it stands at present. Their exercise of option shall be in the nature of joint options covering pre-amended paragraph 11(3) as also the amended paragraph 11(4) of the pension scheme.

There was uncertainty as regards validity of the post amendment scheme, which was quashed by the aforesaid judgments of the three High Courts. Thus, all *the employees who did not exercise option but were entitled to do so but could not due to the interpretation on cut-off date by the authorities, ought to be given a further chance to exercise their option. Time to exercise option under paragraph 11(4) of the scheme, under these circumstances, shall stand extended by a further period of four months. We are giving this direction in exercise of our jurisdiction under Article 142 of the Constitution of India.*

Rest of the requirements as per the amended provision shall be complied with.

(v) The employees who had retired prior to 1st September 2014 without exercising any option under paragraph 11(3) of the pre-amendment scheme have already exited from the membership thereof. They would not be entitled to the benefit of this judgment.

(vi) The employees who have retired before 1st September 2014 upon exercising option under paragraph 11(3) of the 1995 scheme shall be covered by the provisions of the paragraph 11(3) of the pension scheme as it stood prior to the amendment of 2014.

(vii) The requirement of the members to contribute at the rate of 1.16 per cent of their salary to the extent such salary exceeds Rs.15000/ per month as an additional contribution under the amended scheme is held to be

ultra vires the provisions of the 1952 Act. But for the reasons already explained above, we suspend operation of this part of our order for a period of six months. We do so to enable the authorities to make adjustments in the scheme so that the additional contribution can be generated from some other legitimate source within the scope of the Act, which could include enhancing the rate of contribution of the employers. We are not speculating on what steps the authorities will take as it would be for the legislature or the framers of the scheme to make necessary amendment. For the aforesaid period of six months or till such time any amendment is made, whichever is earlier, the employees' contribution shall be as stop gap measure. The said sum shall be adjustable on the basis of alteration to the scheme that may be made.

(viii) We do not find any flaw in altering the basis for computation of pensionable salary.

(ix) We agree with the view taken by the Division Bench in the case of R.C. Gupta(supra) so far as interpretation of the proviso to paragraph 11(3) (pre-amendment) pension scheme is concerned. The fund authorities shall implement the directives contained in the said judgment within a period of eight weeks, subject to our directions contained earlier in this paragraph.

(x) The Contempt Petition (C) Nos.1917-1918 of 2018 and Contempt Petition (C) Nos. 619-620 of 2019 in Civil Appeal Nos. 10013-10014 of 2016 are disposed of in the above terms.

4. Now the learned counsel for the petitioners submitted that in pursuant to the above directions, the Petitioners have given their options and now the employer LIC Housing Finance Limited and Employees' Provident Fund Organisation have to coordinate between themselves in order to pass orders and disburse benefits to the beneficiaries in terms of the orders of the Supreme Court.

5. In view of the same, these Writ Petitions are disposed. LIC Housing Finance Limited and Employees' Provident Fund Organisation are directed to coordinate between themselves in order to pass orders and disburse benefits to the beneficiaries in terms of the orders of the Supreme Court in the case of ***The Employees Provident Fund Organisation & Anr. etc., Vs. Sunil kumar.B & Ors.etc., batch, reported in 2022 SCC Online SC 1521.*** No costs.

20.03.2024

Index : Yes /No
Speaking / Non-speaking
Neutral Citation : Yes / No
gsk

To

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R.N.MANJULA, J.

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