IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.28947 of 2024 and
W.M.P.No.31597 of 2024

M.Muraleedharan ... Petitioner

Vs.

1.Union of India,
Ministry of Labour,
Rep by Secretary,
Shram Shakti Bhawan, Rafi Marg,
New Delhi 110 001.

2.The Central Provident Fund Commissioner,
The Employees' Provident Fund Organisation,
Ministry of Labour and Employment,
Govt. of India, Bhavishya Nidhi Bhawan,
14, Bhikaji Cama Place, New Delhi 110066.

3.The Regional Provident Fund Commissioner,
The employees' Provident Fund Organisation,
Ministry of Labour and Employment,
No.37, Royapettah High Road,
Azad Nagar, Royapettah, Chennai.

4.NTPC Limited,
(Formerly National Thermal Power Corporation Ltd.)
Rep by Chairman, NTPC Limited,
NTPC Bhawan,
Core -7, 6th Floor, Scope Complex,
Lodhi Road, New Delhi 100007. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the respondents 2 and 3 to settle the petitioner's claim on enhanced monthly higher pension on the basis of the petitioner's last drawn salary (Basic Pay + DA) with effect from the date of entitlement from 01.09.2017 onwards within 20 days under Section 17A of EPS-95 and the petitioner is also paid the arrears after adjusting the already paid monthly pension of Rs.2,523/- on ceiling of salary and other receivables from him and the petitioner is also paid his enhanced monthly higher pension from the succeeding month and to direct the respondents 2 and 3 to settle the compensation as entitled to the petitioner by way of payment of interest @ 12% on the final settlement and payable arrears under Section 17A of EPS 1995.

For Petitioner	:	Mr.G.Srinivasan
For Respondents	:	Mr.K.Srinivasa Murthy, SPCCG for R1 Mr.R.Vishnu for R2 & R3 Mr.Nithiyanandam for R4

O R D E R

This Writ Petition has been filed seeking for a direction to the respondents 2 and 3 to settle the petitioner's claim on enhanced monthly higher pension on the basis of the petitioner's last drawn salary with effect from the date of entitlement from 01.09.2017 onwards within 20 days under Section 17A of EPS 95 and to direct the respondents 2 and 3 to settle the compensation as entitled to the petitioner by way of payment of interest @

12% on the final settlement and payable arrears under Section 17A of EPS 1995.

2. Heard Mr.G.Srinivasan, learned counsel for the petitioner, Mr.K.Srinivasa Murthy, learned Special Panel Counsel for the first respondent, Mr.R.Vishnu, learned counsel for the respondents 2 and 3, Mr.Nithiyanandam, learned counsel for the third respondent and perused the materials available on record.

3. The petitioner has given a legal notice on 14.06.2024 by claiming that he is entitled for the enhanced monthly higher pension on the basis of the actual last drawn salary, in view of the orders passed by the Hon'ble Supreme Court in the case of ***the Employees Provident Fund Organisation and Another Vs. Sunil Kumar and Others in SLP (C) Nos.8658-8659 of 2019 dated 04.11.2022***.

4. On perusal of the orders passed by the Hon'ble Supreme Court in the above case, on a dispute arose in respect of determination of pension in accordance with the scheme, the following directions have been made:

"44. 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 subparagraphs.

(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 cut off 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 preamended 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 cutoff 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 1 st September 2014 without exercising any option under paragraph 11(3) of the preamendment 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) (preamendment) 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.19171918 of 2018 and Contempt Petition (C) Nos. 619620 of 2019 in Civil Appeal Nos. 1001310014 of 2016 are disposed of in the above terms.

5. The petitioner claims that the direction given under Paragraph No.44 (ii) is applicable to him.

6. So it is for the respondents 2 and 3 to consider the claim of the petitioner in the light of the above judgment of the Hon'ble Supreme Court and pass an order about the entitlement of the petitioner. But, the respondents 2 and 3 so far did not pass any orders and hence, I feel it is necessary to issue a direction in this regard.

7. In the result, this Writ Petition is disposed and the respondents 2 and 3 are directed to consider the representation of the petitioner in the light of the judgment of the Hon'ble Supreme Court held in the case of ***the Employees Provident Fund Organisation and Another Vs. Sunil Kumar and Others in SLP (C) Nos.8658-8659 of 2019 dated 04.11.2022*** and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

28.10.2024

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

To

1.The Secretary,
Union of India,
Ministry of Labour,
Shram Shakti Bhawan, Rafi Marg,
New Delhi 110001.

2.The Central Provident Fund Commissioner,
The Employees' Provident Fund Organisation,
Ministry of Labour and Employment,
Govt. of India, Bhavishya Nidhi Bhawan,
14, Bhikaji Cama Place, New Delhi 110066.

3.The Regional Provident Fund Commissioner,
The employees' Provident Fund Organisation,
Ministry of Labour and Employment,
No.37, Royapettah High Road,
Azad Nagar, Royapettah, Chennai.

4.The Chairman
NTPC Limited,
(Formerly National Thermal Power Corporation Ltd.)
NTPC Bhawan,
Core -7, 6th Floor, Scope Complex,
Lodhi Road, New Delhi 100007.

R.N.MANJULA, J.

gsk

W.P.No.28947 of 2024 and
W.M.P.No.31597 of 2024

28.10.2024