



W.A.No.2511 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.04.2024

PRONOUNCED ON : 29.04.2024

CORAM

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

W.A.No.2511 of 2023
and C.M.P.No.21016 of 2023

P.Djeassilane @ Jayaseelan

...Appellant

-Vs-

The Regional Provident Fund Commissioner-II,
Regional Office, Puducherry,
101, 100 Feet Road, Cholan Nagar,
Mudaliarpeta, Puducherry - 605 004.

... Respondent

Prayer:- Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order in W.P.No.14255 of 2022 dated 27.07.2023 passed by this Court.

For Appellant : Mr.Anil Relwani

For Respondent : Mr.Vishnu Ramu
Standing Counsel

JUDGMENT

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

This Writ Appeal has been filed as against the order passed in



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W.P.No.14255 of 2022 dated 27.07.2023, wherein the appellant had filed the writ petition before the writ Court challenging the order of the respondent dated 18.01.2021 and direct the respondent to pay monthly pension of Rs.9,050/- as per P.P.O.No.TB/PDY/00064304, dated 28.07.2018 and the writ Court has dismissed the writ petition, as against the said order, the present writ appeal has been filed.

2. According to the appellant herein, an employee of M/s.Swadeshee-Bharathee Textile Mills Limited, who retired on 31.07.2011, the appellant opted the scheme of Employees Pension Scheme, 1995. According to P.P.O.No.TB/PDY/00058098 dated 11.10.2011 was issued by the respondent in favour of the appellant. The monthly pension was calculated as Rs.1,985/- on wage ceiling limit of Rs.6,500/- under the provisions of the EPS, 1995. Pursuant to the orders passed by the Hon'ble Supreme Court of India in ***R.C. Gupta & Ors. Vs. Regional Provident Fund Commissioner Employees Provident Fund Organisation & Ors etc***, the Additional Central Provident Fund Commissioner, HQ (Pension), Employees Provident Fund Organisation issued circular dated 23.03.2017, directing the officials to take necessary action in accordance with the order of the Hon'ble Supreme Court. As per the said circular, the appellant submitted the application to the respondent for revision of his pension and also to return the amount of Rs.6,04,663/- to the respondent



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and the respondent also paid a sum of Rs.5,89,928/- to the appellant towards the difference. The respondent issued a new P.P.O.No.TB/PDY/00064304, dated 28.07.2018 fixing the revised monthly pension at Rs.9,050/-.

3. While being so, the respondent by way of impugned order dated 18.01.2021 held that the appellant application for revision of Pension has been reviewed in line of Head Office Legal Wing circular dated 16.09.2020 and observed that the appellant has not exercised option under proviso to para 11(3) of the EPS, 1995 with the employer during the service and the appellant is not eligible to claim for revision of pension on higher wages and consequently, the respondent stopped the pension on higher wages and released the original pension of Rs.1,985/-. Hence, the present Writ petition was filed.

4. The Writ Court after considering the rival submission, dismissed the petition by holding that the appellant has not exercised his option during his period of service i.e., prior to 01.09.2014 and submitted his joint option only in the year 2017 and claims for a higher pension and as per the Judgment of the Hon'ble Supreme Court in ***the Employees Provident Fund Organisation & anr. etc Vs. Sunil Kumar B & Ors. etc*** dismissed the petition. Challenging the said order, the present writ appeal has been filed.



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5. The learned counsel for the appellant would contend that the appellant retired from service on 31.07.2011 and the appellant is an employee of M/s.Swadeshee-Bharathee Textile Mills Limited and had opted the scheme of Employees Pension Scheme, 1995 and he retired on 31.07.2011 and his pension was fixed to Rs.1,985/- on wage ceiling limit of Rs.6,500/- under the provisions of the Employees Pension Scheme, 1995. Thereafter, as per the judgment passed by the ***R.C. Gupta and ors. Vs. Regional Provident Fund Commissioner, Employees Provident Fund Organization & Ors Etc.,*** the pension was revised as per Clause 11(3) of the Employees Pension Scheme, 1995 and the monthly pension was fixed to Rs.9,050/-. The above said revised pension was only based on the circular issued by the respondent in terms of the order of the Hon'ble Supreme Court in *R.C. Gupta case*. But later, without any notice and without hearing the appellant, the respondent passed an impugned order by revising his pay scale under provisions of pension scheme and then stopped the higher pension and only released the original pension of Rs.1,985/- In the impugned order, it is observed that the applicant has not exercised his option under the provision of the EPS, 1995 during his service period and hence he is not eligible to claim for revision of pension of higher wages, as he attain the age of 58 years and already withdrawn the pension and joint option cannot be exercised *ad infinitum* and options could be exercised only during



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the service span of the employee in question because option has to be joint by employer and employee. According to the Judgment of *Sunil Kumar case*, the view taken by the Division Bench in the case of *R.C.Gupta case* was accepted, but the Writ Court has failed to consider the same. As per the *R.C. Gupta case*, there is no cut off dates to be contemplated prior to amendment of 2014, therefore the order passed by the writ Court is liable to be set aside.

6. The learned counsel for the respondent would contend that the circular dated 23.03.2017 was issued based on the *R.C.Gupta case*. Thereafter, after 2014 amendment, the option of the members to further opt to remain the scheme beyond the ceiling limit has been taken away. But the existing option members who had chosen to contribute beyond the salary limit has been permitted to exercise fresh option to continue with such contribution upon payment of an additional 1.16% of their salary beyond the said ceiling. Further, Section 11(3) of the EPS, 1995 will not applicable to the retired employees and as per the judgment of Hon'ble Supreme Court in *Sunil Kumar case*, the persons who retired prior to 01.09.2014 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 the judgment. The present appellant has retired from service prior to 01.09.2014 and he has not exercised any option and thereby he is not entitled the paragraph



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11(3) of the Employees Pension Scheme, 1995. The Writ Court after elaborate discussions declined to grant relief to the applicant and the writ petition was dismissed. Therefore, the present writ appeal is liable to be dismissed.

7. Heard both sides and carefully perused the materials available on records.

8. The main contention of the appellant is that he already drawn a sum of Rs.1,985/- under the provision of the EPS, 1995 and thereafter, the respondent issued a circular dated 23.03.2017 and based on the circular, the appellant pension was fixed a sum of Rs.9,050/- per month and he was also directed to repay the retirement amount already received with interest a sum of Rs.6,04,663/- and thereafter, the respondent also released a sum of Rs.5,89,928/- to the appellant towards the difference. The said order was issued based on the judgment of the Hon'ble Supreme Court in *R.C.Gupta case*. As per the dictum laid in *R.C.Gupta case*, there is no time limit under paragraph 11(3) of the EPS, 1995.

9. While that being so, without hearing the petitioner, immediately the respondent has passed an impugned order by stating that the revision application was considered by the Legal Wing and he is not entitled to the benefit of *R.C.Gupta case* as per paragraph 11(3) of the EPS, 1995 by stating



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that as per 6A of the EPS, 1995, a member can join the scheme only upto 58 years. R.C.Gupta case is not applicable, since the joint option was not exercised during the service period of the petitioner therein and he is not eligible as per paragraph 11(3) of the EPS, 1995 and revised his scale to the previous pension of Rs.1,985/-.

10. According to the respondents, the *R.C. Gupta case* is not applicable to the petitioner, since he retired from service prior to 01.09.2014 and 11(3) option is only applicable to the persons who are in employment and further R.C. Gupta case was clarified subsequently through the case of Sunil Kumar, where the Hon'ble Supreme Court stated that as in the case of *R.C.Gupta case*, it has been held that "there is no cut off date in proviso to paragraph 11(3) as it stood before the 2014 amendment. In our opinion, the interpretation given to the provision to paragraph 11(3) prior to 2014 amendment does not require any reconsideration. We agree with the reasoning of the two-judge Bench of this Court on this point, as expressed in the said judgment. As there was no cut off date to be contemplated prior to 2014 amendment, limiting the entitlement of enhanced pension coverage to those employees only who had already exercised an option under Clause of 11(3) of the amended scheme would be contrary".



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11. The Hon'ble Supreme Court in paragraph (44) (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 existed from the membership thereof. They would not be entitled to the benefit of this judgment.

12. In the case on hand, originally the petitioner was drawn pension of Rs.1,985/- and thereafter, based on the *R.C.Gupta case*, the appellant opted the EPS, 1995 only in the year 2017. He was retired from service in the year 2011 and not opted this scheme prior to 01.09.2014. Therefore, as per case law of *Sunil Kumar*, the appellant is not entitled to higher pension, since he opted in the year 2017. The first respondent has passed the reasoned order and the writ Court also, after elaborate discussions considered the order passed by the Hon'ble Supreme Court in *Sunil Kumar case and* correctly came to the conclusion that the appellant has not exercised his option during his service period i.e., prior to 01.09.2014 and he submitted his joint option only in the year 2017 and thereby he is not entitled to higher pension and dismissed the petition.



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13. In view of the above said discussions, the above said order of the writ Court is reasoned order and no infirmity found in the order of the writ Court and it does not warrant any interference.

14. This Court is of the view that this Writ Appeal has no merits and is liable to be dismissed. Accordingly, this Writ Appeal stands dismissed. No costs. Consequently connected miscellaneous petition is also closed.

(J.N.B., J.)

(P.D.B., J.)

29.04.2024

Index : Yes/No

Speaking order/Non-speaking order

Neutral Citation: Yes/No

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**J.NISHA BANU, J
and
P.DHANABAL, J**

rjr

To

The Regional Provident Fund Commissioner-II,
Regional Office, Puducherry,
101, 100 Feet Road, Cholan Nagar,
Mudaliarpet, Puducherry - 605 004.

Pre-delivery Judgment in W.A.No.2511 of 2023
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