IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2024

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THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P.No.29030 of 2024
and
W.M.P.Nos.31674 &31675 of 2024

Anitha Mabel Manohar ... Petitioner

Vs.

1. The Employees Provident Fund Organization,
   Rep. by its Regional Provident Fundamental
   Commissioner – II (PoHW),
   Regional Office, Chennai south
   No.37, Royapettah High Road,
   Chennai – 600 014.

2. National Institute of Fashion Technology,
   Rep. by its Director,
   NIFT Campus,
   Rajeev Gandhi Salai,
   Taramani,
   Chennai – 600 113. ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of certiorarified mandamus, after calling for the concerned records from the first respondent, quash the order of the first respondent dated 16.08.2024 bearing No.TN/RO-CHENNAI (SOUTH)/ PENSION / Higher Wages / 36090 / 20 / 2024 as illegal, arbitrary and contrary to law and consequently direct the first respondent to pay pension to the petitioner from August, 2022 onwards every month on the basis of the higher contribution paid by petitioner and the second respondent.

For Petitioner	:	Mr.Balan Haridas
For R1	:	Mr.Vishnu Standing Counsel
For R2	:	Mr.K.Srinivasamurthy SPC, Central Govt.

ORDER

This writ petition has been filed challenging the order of the first respondent organization dated 16.08.2024 withholding the pension payable to the petitioner corresponding to the contribution made on higher wages.

2. Mr.Balan Haridas, the learned counsel for the petitioner, submitted that the petitioner shall not be aggrieved for any of the grievances the first respondent might have against the second respondent that the second respondent did not pay the administrative charges. But the fact that the employer has remitted the share of contribution of higher wages to the first respondent has not been denied.

3. Mr.K.Srinivasamurthy. the learned counsel for the second respondent, submitted that the allegation of non-payment of administrative

charges for the period between December, 2000 and March, 2008 has been raised for the first time in the impugned order and about which the second respondent has no knowledge. If the first respondent has felt that the second respondent has not paid the administrative charges for any particular period, it would have been open to the first respondent to issue notice to the second respondent calling upon him to make such charges. But the petitioner who is beneficiary of the scheme has been deprived of getting the benefit of the welfare legislation and he is yet to get his pension corresponding to the contribution made on higher wages.

4. Attention of the Court was drawn to the judgment of the Hon'ble Supreme Court held in ***The Employees Provident Fund Organisation & Anr. Etc. Vs. Sunil Kumar B. & Ors. Etc in Civil Appeal No. 8143-8144 of 2022*** wherein the Hon'ble Supreme Court has given a set of directions and in which it has been stated as under:

> *" ... 44 (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 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 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"

5. The learned counsel for the petitioner submitted that the petitioner has already exercised the option to get pension on higher wages by agreeing to make higher contribution and that has been remitted to the first respondent.

6. As the second respondent has also made the employer's contribution on the higher wages, the first respondent shall not withhold to release the benefit to the petitioner. If the petitioner has got any dues to be paid by the second respondent towards the alleged administrative charges, the same can be raised against the second respondent.

7. In view of the above observations, this Writ Petition is allowed and? the impugned order passed by the second respondent bearing No.TN/RO-CHENNAI (SOUTH)/ PENSION / Higher Wages / 36090 / 20 / 2024, dated 16.08.2024 is hereby quashed and the first respondent is directed to release the pension payable to the petitioner corresponding to the contribution made on higher wages from August, 2022, within a period of four weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petitions are closed.

29.10.2024

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order
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R.N.MANJULA, J.

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To:

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   The Employees Provident Fund Organization,
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