IN THE HIGH COURT OF JUDICATURE MADRAS

DATED: 10.01.2024

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THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.A. No. 3496 of 2023
&
C.M.P. No. 28545 of 2023

The Assistant Provident Fund Commissioner
(Pension),
Employees Provident Fund Organization,
R-40A, TNHB Complex Mogappair East,
Chennai – 600037. ..Appellant

Vs.

V. Bakthavachalam ..Respondent

Prayer: Writ Appeal as against the order dated 30.08.2023 passed in W.P. No. 7242 of 2018.

For Appellant :: Mr.V. Vijayashankar

For Respondent :: Mr.P. Paramasivadoss

J U D G M E N T

(Delivered by ***S. Vaidyanathan,J.***)

The writ appeal is directed against the order dated 30.08.2023 passed in W.P. No. 7242 of 2018.

2. The summation of facts which resulted in filing of this writ appeal are as hereunder:

The respondent herein was appointed as a Tuner on 01.06.1974 in B and C Mills, Binny Limited and he served under the said employer from 01.06.1974 to 16.05.1998. He was inducted as a member in the Provident Fund Organisation and assigned with PF account. Upon closure of the said mill, he was subsequently employed in Empkee Engineers Private Limited from 01.10.1998 and superannuated on 28.02.2010. Upon retirement, he was paid with pension to the tune of Rs.363/-, which was subsequently enhanced to Rs.1000/-. Besides, for the service rendered under the 1st employer/B & C Mills, the short service pension that was paid to him was Rs.688/-, which was subsequently revised to Rs.712/- from September, 2014 onwards. On finding that the respondent/employee was drawing dual pension, by communication dated 15.02.2018, the respondent was informed that payment of pension under both PPOs was stopped and he was asked to approach the appellant office for clarification with the original pension payment order. Pursuant thereto, by letter dated 22.02.2018, the respondent accepted the mistake, tendered his apology and requested to club both the pensions. However, by order dated 27.02.2018, the respondent was informed by the EPFO that he is entitled for only one pension, though he had served in two different establishments; that payment of pension under both PPOs is stopped; that he shall repay the pension paid in excess to the tune of Rs.92,149/- and only on refund of the said sum, his pension will be released. Aggrieved by the said order, W.P. No. 7242 of 2018 came to be filed and the learned Single Judge, by the order under challenge, allowed the writ petition by setting aside the order of recovery issued. Assailing the same, the present intra-court appeal has been filed by the EPFO.

3. According to the learned counsel for the appellant, the order passed by the learned Single Judge is in contravention of the applicable statutory rules as the EPF scheme does not mandate the concept of dual

pension. According to the learned counsel, the respondent failed to disclose the details of his previous employment in Form No.11, which is a statutory declaration required under paragraph 34 of EPF Scheme. That apart, Form 10-D is another declaration which is obtained from an employee wherein column 17 requires the employee to declare that he/she is not drawing pension under the Employees Pension Scheme, 1995. According to the learned counsel, the respondent has been receiving dual pension by providing two different bank account numbers. Further, the learned counsel would submit that while replying to the show cause notice dated 15.02.2018, the respondent admitted his mistake, tendered apology and requested to club both the services and continue with the payment of single pension. Therefore, the learned counsel would submit that the order under challenge warrants interference and the writ appeal has to be allowed.

4. On the other hand, learned counsel for the respondent would submit that the payment of dual pension was not due to any misrepresentation or fraud committed on the part of the respondent. That being so, the order of recovery passed by the authority cannot be sustained.

The benefit so extended may be stopped in the future, but the amount already paid cannot be sought to be recovered, that too, after a lapse of nearly 8 years, Learned counsel further submitted that the respondent, who had superannuated on 28.02.2010, is aged 72 years now and he may not be put to such an ordeal of refunding nearly Rs.92,149/-, for no fault of his.

5. Heard both sides and perused the materials on record.

6. Though it appears that the respondent/employee had erroneously made a request and claimed double pension and the order of the authority in seeking refund of the excess amount is perfectly valid, however, taking note of the fact that the respondent is a supersenior citizen, aged about 72 years, who is in the twilight of his life; that he was drawing a sum of Rs.1712/- (both pension amounts put together) as pension even in the year 2014; that there would not have been a substantial hike by now and that he being a last grade servant, we are of the view that the excess pension amount paid by the EPFO need not be recovered. It cannot be gainsaid that the recovery also has been initiated after a lapse of nearly 8 years.

S. VAIDYANATHAN,J.

AND

K. RAJASEKAR,J.

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7. Therefore, while holding that the recovery of excess pension amount paid need not be effected, this Court directs the authority concerned to club the services rendered by the respondent under two different establishments and extend him the benefit of single pension from January, 2024 onwards. It is made clear that this order has been passed in the facts and circumstances of the case and shall not be treated as a precedent.

8. The writ appeal stands disposed of with the above observation. No costs. Connected C.M.P. is closed.

(S.V.N.J.) (K.R.S.J.)
10.01.2024
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To
The Assistant Provident Fund Commissioner
(Pension),
Employees Provident Fund Organization,
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