



2024:DHC:10108



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 18th December, 2024

+ W.P.(C) 2308/2016

SUNIL KUKREJA

.....Petitioner

Through: Mr. Chetan Lokur, Advocate.

versus

NATIONAL RURAL ROADS DEVELOPMENT
AGENCY AND ANR

.....Respondents

Through: Mr. Mayank Yadav and Mr. Jitender
Verma, Advocates for R1.

Mr. M.K Vashishth, Advocate for R2.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J.**

1. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India laying a challenge to order dated 29.10.2015 whereby Respondent No. 1/National Rural Roads Development Agency has rejected the representation of the Petitioner for pension contribution with a direction to the said Respondent to pay their part of pension contribution to LIC with 9 per cent interest so that Petitioner is able to receive his pension from his parent organisation i.e. M/s. Projects & Equipment Corporation of India Limited ('PEC Limited')/Respondent No. 2.

2. Facts to the extent necessary are that Petitioner joined PEC Limited on 26.03.1977 whereafter he proceeded on deputation with Respondent



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No. 1 on 30.11.2010 and remained on deputation upto 22.05.2015. On 18.06.2014, PEC Limited informed Respondent No. 1 about the introduction of pension scheme in the said organisation in March, 2014 w.e.f. 01.01.2007 with a request to send requisite contribution w.e.f. 30.11.2010 i.e. the date of commencement of deputation upto 30.06.2014 as also monthly contribution thereafter till the end of deputation period.

3. It is averred that on 14.07.2014, Petitioner opted under the pension scheme introduced by PEC Limited and on 11.03.2015 requested Respondent No. 1 to remit its pension contribution for deputation period i.e. 30.11.2010 to 22.05.2015. On 22.05.2015, Petitioner was repatriated to PEC Limited, his parent organisation and retired therefrom on 31.05.2015, on attaining the age of superannuation. By letter dated 08.06.2015, Respondent No.1 refused to remit the pension contribution for the deputation period constraining the Petitioner to file a writ petition in this Court being W.P.(C) 8794/2015, which was disposed of on 15.09.2015, with a direction to Respondent No. 1 to decide Petitioner's representation dated 18.06.2015 within eight weeks. By the impugned order dated 29.10.2015, Respondent No. 1 disposed of the representation rejecting the claim of the Petitioner allegedly without any cogent reason and Petitioner once again approached this Court.

4. Learned counsel for the Petitioner submits that the impugned order dated 29.10.2015 by which Respondent No. 1 has refused to remit the pension contribution is wholly illegal. The decision is based on the sole ground that Respondent No. 1 being fully funded by Central Government cannot pay both Contributory Pension and Contributory Provident Fund and since it has made contribution towards gratuity and share of provident fund



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with leave salary contribution, no further contribution could be made towards pension. This stand is in turn predicated on the fact that Petitioner had opted under the Employees Defined Contribution Superannuation Funds Scheme (Pension Scheme) with PEC Limited without sending the application through Respondent No. 1 and its concurrence was not obtained and therefore, Respondent No. 1 cannot be a party to any Pension Scheme by PEC Limited. This, according to Mr. Chetan Lokur, counsel for the Petitioner is a fallacious ground inasmuch as PEC Limited had introduced the Pension Scheme for the first time by its Circular No. 12/2014 dated 13.06.2014 and the Scheme was not in existence when Petitioner joined Respondent No. 1 on deputation on 30.11.2010. Therefore, till the introduction of the Pension Scheme, Respondent No. 1 was right in taking a stand that it would contribute towards Provident Fund, however, after the Petitioner became a pension optee, Respondent No. 1 cannot insist to remit the contribution towards provident fund. Respondent No. 1 is correct in its submissions that as an organisation fully funded by the Central Government, it can contribute either towards provident fund or towards pension and not both but Petitioner does not seek contributions on both counts and is only seeking contribution towards pension as the inaction by Respondent No. 1 has led to a situation where despite superannuating on 31.05.2015, Petitioner is without a single penny of pensionary benefits. Reliance is placed on the judgment of a Co-ordinate Bench of this Court in ***Pradeep Kumar Rohatgi v. NTPC Ltd. and Others, 2022 SCC OnLine Del 3734***, where the Court directed both the borrowing and the lending departments to resolve the matter and forthwith make their respective contributions towards the pension fund in question for the relevant period.



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5. Learned counsel for PEC Limited submits that the parent organisation cannot be held responsible for non-contribution of the pension for the period the Petitioner was on deputation with Respondent No. 1 as that is the responsibility of the deputationist department. Pension Scheme came into force in PEC Limited in June, 2014 for those who were on rolls since January, 2007 and accordingly, PEC Limited remitted 9% of employer's contribution in Petitioner's pension fund account from 01.01.2007 till 29.11.2010 and for the deputation period, a letter was sent twice over to Respondent No. 1 to remit its contribution @ 9% but the same was not done and PEC Limited cannot be blamed for this inaction.

6. Learned counsel for Respondent No.1 argues that Respondent No. 1 was regularly paying employer's share of CPF to PEC Limited in respect of the Petitioner and cannot be called upon to contribute towards pension and CPF at the same time. The CPF contribution matching employer's share @12% of Basic Pay plus Grade Pay plus DA was in lieu of pension contribution. Petitioner had opted under the Pension Scheme with PEC Limited without the consent of Respondent No. 1 and the answering Respondent cannot be held responsible for contribution towards the pension scheme, which is a matter between the Petitioner and PEC Limited. In consonance with FR 115, Respondent No. 1 has discharged all its liabilities with regard to leave encashment, CPF and gratuity contributions.

7. Heard learned counsels for the parties and examined their submissions.

8. Facts are not in dispute to the extent that PEC Limited was the parent organisation of the Petitioner and he proceeded on deputation with Respondent No. 1 from 30.11.2010 to 22.05.2015. When the Petitioner



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proceeded for deputation, PEC Limited did not have a Pension Scheme. However, vide Circular dated 19.03.2014, a Pension Scheme was introduced by PEC Limited and Petitioner admittedly opted under the same. Petitioner was repatriated to PEC Limited on 22.05.2015 and superannuated on 31.05.2015. Petitioner and PEC Limited requested Respondent No. 1 to contribute its share towards pension contribution, however, as the matter rests today, neither Respondent No. 1 has remitted its pension contribution for the deputation period nor PEC Limited has made any effort to release the pension of the Petitioner.

9. Mr. Lokur is right in his submission that the impugned order is wholly untenable in law and reflects that Respondent No. 1 declined to contribute towards its share of the pension on a perception that it was called upon to contribute towards CPF and pension both. This misconception has led to 09 years passing by without pension to the Petitioner. Reading of the communications exchanged between the Petitioner and Respondent No. 1 as also request letters sent by PEC Limited to Respondent No. 1, there is not an iota of doubt that Respondent No. 1 was requested to remit its contribution towards pension for the deputation period from 30.11.2010 to 22.05.2015 and not both, the pension and CPF. It is true that Petitioner was not a pension optee when he joined Respondent No. 1 on deputation on 30.11.2010 but this was because the Pension Scheme was introduced by PEC Limited only in the year 2014 and as soon as Petitioner was given an option, he opted for the Pension Scheme and correctly sought pension contribution from Respondent No. 1 on retirement from PEC Limited. There is no provision of law and/or judicial precedent which impeded Respondent No. 1 from making contribution towards pension once the Petitioner opted



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for pension with PEC Limited. The simple course of action that Respondent No. 1 was required to follow was to adjust the contributions made towards CPF and remit the balance pension contribution, which it failed to do under a wrong impression and belief.

10. Co-ordinate Bench of this Court in ***Pradeep Kumar (supra)*** was in *seisin* of a similar controversy where the Petitioner was an employee of NTPC and was on deputation for 03 years with IPGCL. After he superannuated on 30.09.2015 *albeit* his other terminal benefits were released by the parent department, however, since employer's contribution towards pension fund was not made by both the departments, he was receiving lesser pension. Respondents as usual were passing the blame on one another and holding each other responsible for not making the contributions. NTPC took a stand that IPGCL being the borrowing department was responsible to make contribution towards employer's share to the pension fund for the deputation period while IPGCL submitted that pension scheme was introduced after the Petitioner was repatriated and thus it cannot be held liable to make the contribution. After hearing all the parties, the Court observed that due to *inter se* disputes of two public sector undertakings, the Petitioner was without full pension long after his retirement and could not be made to wait endlessly till the *inter se* disputes were resolved between the Respondents either on their own or through a Court. It was directed that the Respondents shall make the requisite contributions and it was for them to resolve their *inter se* disputes. It was further directed that copy of the order will be forwarded to the respective Secretaries of the concerned Ministries/Departments so that in future employees like the Petitioner are not compelled to knock the doors of the Court on account of failures of their



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employers to make contributions towards their pension funds.

11. In my view, Respondent No. 1 is not justified in taking a stand that it is not bound to contribute towards the pension payable to the Petitioner who is admittedly a pension optee, for the period of deputation. At best, Respondent No. 1 can adjust the amounts paid towards CPF. No law permits Respondent No. 1 to withhold the pension contribution to the extent of its share and none has been shown during the course of hearing. It is not understood how FR 115 is even applicable to the present controversy on which Respondent No. 1 has strenuously pegged its case.

12. Accordingly, this writ petition is allowed with a direction to Respondent No. 1 to remit its share of the pension contribution for the period from 30.11.2010 to 22.05.2015 to LIC within a period of eight weeks, after making necessary adjustments with the amounts contributed towards CPF. PEC Limited will ensure release of pensionary benefits to the Petitioner as soon as the remittance is made by Respondent No. 1 without any further delay. It is a settled law that pension is not a bounty of the State and an employee is entitled to interest on delayed payments of retiral benefits and therefore, it is further directed that Petitioner will be entitled to interest @ 8% from the date of his superannuation till the date of release of his pensionary benefits, which will be paid by Respondent No.1.

JYOTI SINGH, J

DECEMBER 18, 2024
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