2024:DHC:5509-DB

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision:- 25.07.2024

\+ W.P.(C) 11069/2017

FEDERATION OF TATA COMMUNICATIONS EMPLOYEES UNION .....Petitioner

Through: Mr. Nikhil Singhvi, Mr. Bilal Ikram and Mr. Parth Aggarwal, Advs.

versus

UNION OF INDIA & ANR .....Respondents

Through: Mr. Rakesh Kumar, CGSC with Mr. Sunil, Adv. for UOI.
Mr. Siddharth, Standing Counsel for R-2 with Mr. Anshul Saxena and Mr. Harshit Manwani, Advs.
Mr. Rajesh Kumar, Adv. for EPFO.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI
HON'BLE MS. JUSTICE SHALINDER KAUR

REKHA PALLI, J (ORAL)

1. The petitioner has approached this Court assailing the notification dated 20.09.2008 issued by the Ministry of Labour & Employment in so far as it directs deletion of para 12-A and 13 of the Employees Pension Scheme, 1995.

2. Learned counsel for the petitioners submits that the unilateral deletion of these clauses which provided a right to the employees to opt for commutation of pension and return of capital along with reduced pension has caused grave prejudice to the members of the petitioner/association as many of them were still in service and were desirous of availing of the

benefits accruing under these clauses at the time of their superannuation. He contends that once a pension scheme is formulated, the employees acquire a vested right to seek benefit in accordance with the clauses set out therein which clause of course, could not be deleted unilaterally at a later stage as has been done under the impugned notification. He therefore prays that the aforesaid notification dated 20.09.2008 in so far as it directs deletion of clause 12A and 13 of the Employees Pension Scheme, 1995 be quashed.

3. On the other hand, Mr. Siddharth, learned counsel for the respondent no.2 seeks dismissal of the writ petition and submits that merely because the pension scheme as initially promulgated provided for commutation or return of capital with reduced pension does not give any vested right to the employees to claim that these provisions could never be deleted. The introduction as also the deletion of these clauses, he contends was a policy decision which was taken on the basis of the financial health of the pension fund and market conditions. Further, a challenge to the deletion of a similar provision in clause 11 of the pension scheme has already been rejected by the Apex Court in ***Employees Provident Fund Organisation and Another vs. Sunil Kumar B. and Others***, **2022 SCC OnLine 1521**. He, therefore, prays that the writ petition be dismissed.

4. Having considered the submissions of learned counsels for the parties and perused the record, we may begin by noting clause 12-A and 13 of the Employees Pension Scheme, 1995, which have been deleted vide the impugned notification dated 26.09.2018. The same read as under:

> *"{12-A. OPTION FOR COMMUTATION. - member eligible to pension may, in lieu of pension normally admissible under para. 12, opt on completion of three*

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years from the commencement of this Scheme, to commute up to a maximum of One-third of his pension so as to receive hundred times .the monthly pension so commuted as commuted value of pension. Balance pension will be paid on monthly basis as per option exercised under para. 13.

EXPLANATION. – If for example, the normal pension under para. 12 is Rs. 600, and the pensioner opts to commute one-third of this monthly pension the commuted value will be equal to l/3rd x 600 x 100 = Rs. 20,000 and the same shall be paid at the time of exercise of option for commutation. The balance of pension payable on monthly basis is Rs. 400.]

1. Ins. by G.S.R. 134, dated 28th February, 1996 (w.e.f 16th March, 1996).

13. OPTIONS FOR RETURN OF CAPITAL

(1) A member eligible to pension may, in lieu of pension normally admissible under para. 12 {subject to commutation of pension, if any, under para. 12], opt to draw for reduced pension and avail of return of capital under any one of the three alternatives given below:

SI. Alternatives	*Revised pension payable*	*Amount payable as return of capital*
1. Revised pension during lifetime of member with return of capital on his death,	*90% of original monthly pension*	*100 times the origin Monthly pension on death of member to the nominee*
2. Revised pension during the lifetime of member, reduced pension during	*90% of original monthly pension to the member.*	*90 times the original monthly pension on death of widow/remarriage*

lifetime of the widow or her remarriage whichever is earlier and return of capital on widow's death/remarriage.	*On his death 80% of the original monthly pension to the widow.*	*to the nominee.*
3. Pension for a fixed period of 20 years notwithstanding whether the member lives for that period or not.	*87.5% of the original monthly pension for fixed period of 20 years. The pension will cease thereafter.*	*100 times the original monthly pension at the end of 20 years from the date of commencement of pension to the member if he is alive, otherwise to his nominee.*

EXPLANATION I. In alternative 2, if the ^2[spouse] dies or remarries before the death of member, capital equal to 90 times the original monthly pension shall be paid to the nominee on the member's death.

EXPLANATION 2. - In alternative 3, if the member dies before the end of 20-year period, the pension shall be paid to his nominee for the balance period.

EXPLANATION 3. -In the case of a member who is eligible for permanent total disablement pension, and where the payment of such pension is to commence before his attaining the age of 50 years, the option shall also be admissible but in such cases the actual pension payable shall be reduced by 1% and the return of capital shall be further reduced by Rs. 1,000/- for every year by which the age at the commencement of pension falls short of 50 years.

^3[EXPLANATION 4. -In cases of exercise of option for commutation under para. 12-A balance monthly pension

payable after commutation shall be deemed to be the original monthly pension for the purpose of this paragraphs.

(2) The option under sub-paragraph (1) shall be exercised by the member, at the time of submission of the application form for pension in accordance with the provisions of this Scheme. The option once exercised shall be final. If no option is exercised, the member shall be deemed not to have exercised any option under this paragraph and his/her pension shall be determined under the provisions of para.12.

(3) Notwithstanding that the capital is returned under this paragraph the widow/children shall continue to be eligible for normal widow pension/children pension/orphan pension under para. 16 of this Scheme from, the-date immediately following the date of death of the member."

5. Upon a perusal of the aforesaid clauses, we find that the said clauses would have come into force at the time of superannuation of an employee and therefore, we fail to appreciate as to how an employee who is yet to superannuate can claim that these clauses must continue as a part of the pension scheme. It is trite law that it is always open for the State operating a pension fund to decide the manner in which the same has to be operated. It is, therefore, open for the State to review the clauses of the pension fund from time to time. As long as these changes do not affect the vested right of an employee, no challenge can be laid thereto. In the present case, employees who are still in service, cannot claim that they have any vested right to seek commutation of pension or return of capital with reduced pension which was being earlier offered under the Scheme.

6. We may note that it is not even the petitioners' case that the rights of the employees who had already availed of the options available under clauses 12 & 13 are being in any manner curtailed. We, therefore, do not find any infirmity in the decision of the respondents to delete clauses 12-A & 13 of the pension scheme.

7. For the aforesaid reasons, we find no merit in the petition which is, accordingly, dismissed.

(REKHA PALLI)
JUDGE

(SHALINDER KAUR)
JUDGE

JULY 25, 2024
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