BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD) No.9409 of 2019
and
W.M.P.(MD) Nos.7420 of 2019 & 13272 of 2020

P.Mariappan ... Petitioner

-vs-

1.The Additional Central
Fund Commissioner (Pension)
Employees Provident Fund Organisation
(Ministry of Labour and Employment)
Government of India
Bhavishya Nidhi Bhavan
14, Bhikaji Cama Place
New Delhi-110 066

2.The Assistant Provident Fund Commissioner
Regional Employees Provident
Fund Organisation
Lady Doak College Road
Madurai-625 002

3.The President
A1354, Panthalkudi
Primary Agricultural
Cooperative Credit Society
4/64, Poosaripatti Street
Panthalkudi, Arupukottai TK
Virudhunagar District-626 113 ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for the records pertaining to the impugned order issued by the second respondent in No.TN/MDU/RO/PPO-83742/NAN/19/12/18/2019 29.03.2019 and quash the same and consequently directing the second respondent to pay the higher pension to the petitioner in the light of the Judgment of the the High Court of Kerala made in W.P.(C) No.13120 of 2015 and the Honourable Supreme Court in S.L.P.No.10013 to 10014 of 2016, within the time stipulated by this Court.

For Petitioner	:	Mr.C.Jeganathan
For Respondents	:	Mr.A.John Xavier for R1 & R2 Mr.A.Baskaran Additional Government Pleader for R3

ORDER

This writ petition has been filed by the petitioner seeking a writ of certiorarified mandamus to call for the records pertaining to the impugned order issued by the second respondent, in No.TN/MDU/RO/PPO-83742/NAN/19/12/18/2019, dated 29.03.2019 and to quash the same and consequently to direct the second respondent to pay higher pension to the petitioner in the light of the Judgment of the the High Court of Kerala made in W.P.(C) No.13120 of 2015 and the Honourable

Supreme Court in S.L.P.Nos.10013 to 10014 of 2016, within the time stipulated by this Court.

2. When the matter is taken up for consideration, Mr.A.John Xavier, learned counsel appearing for the respondents 1 & 2 and Mr.A.Baskaran, learned Additional Government Pleader, appearing for the third respondent, brought to the notice of this Court that the very same issue has fallen for consideration before the Honourable Apex Court in the case of ***Employees Provident Fund Organisation & Anr vs. Sunil Kumar B. & Ors.*** reported in ***(2023) 12 SCC 701*** and the Honourable Apex Court has laid down certain guidelines and in terms of the said guidelines, the pension payable to the petitioner is required to be revised.

3. Learned counsel appearing for the respondents 1 & 2 submits that in case the petitioner submits a joint application along with the third respondent online before the respondents 1 & 2, the same would be considered and appropriate revision of pension would be made. He would further submit that it is only for want of appropriate joint application from the petitioner along with the third respondent, the revised pension payable to the petitioner could not be made in terms of the guidelines framed by the Honourable Apex Court, referred to above.

4. Learned counsel for the petitioner having noted the contention of the learned counsel appearing for the respondents 1 & 2 submitted that the petitioner would submit necessary joint application along with the third respondent and other relevant documents before the respondents 1 & 2 within a period of four weeks from today.

5. In view of the same, this Court does not see any impediment for the disposal of the present writ petition.

6. The Honourable Apex Court, having considered the matter, laid down the guidelines at Paragraph No.50 of the order dated 04.11.2022, which read as under:

> *"50. We accordingly hold and direct:*
>
> *50.1. The provisions contained in Notification No. GSR 609(E) dated 22-8-2014 are legal and valid. So far as present members of the fund are concerned, we have read down certain provisions of the Scheme as applicable in their cases and we shall give our findings and directions on these provisions in the subsequent subparagraphs.*
>
> *50.2. Amendment to the Pension Scheme brought about by Notification No. GSR 609(E) dated 22-8-2014*

shall apply to the employees of the exempted establishments in the same manner as the employees of the regular establishments. Transfer of funds from the exempted establishments shall be in the manner as we have already directed.

50.3. The employees who had exercised option under the proviso to Para 11(3) of the 1995 Scheme and continued to be in service as on 1-9-2014, will be guided by the amended provisions of Para 11(4) of the Pension Scheme.

50.4. The members of the Scheme, who did not exercise option, as contemplated in the proviso to Para 11(3) of the Pension Scheme (as it was before the 2014 Amendment) would be entitled to exercise option under Para 11(4) of the post amendment Scheme. Their right to exercise option before 1-9-2014 stands crystallised in the judgment of this Court in R.C. Gupta [R.C. Gupta v. EPFO, (2018) 14 SCC 809 : (2018) 2 SCC (L&S) 745] . The Scheme as it stood before 1-9-2014 did not provide for any cut-off date and thus those members shall be entitled to exercise option in terms of Para 11(4) of the Scheme, as it stands at present. Their exercise of option shall be in the nature of joint options covering preamended Para 11(3) as also the amended Para 11(4) of the Pension Scheme.

50.5. 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 cut-off date by the authorities, ought to be given a further chance to exercise their option. Time to exercise option under Para 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.*

50.6. Rest of the requirements as per the amended provision shall be complied with.

50.7. The employees who had retired prior to 1-9-2014 without exercising any option under Para 11(3) of the pre-amendment Scheme have already exited from the membership thereof. They would not be entitled to the benefit of this judgment.

50.8. The employees who have retired before 1-9-2014 upon exercising option under Para 11(3) of the 1995 Scheme shall be covered by the provisions of Para 11(3) of the Pension Scheme as it stood prior to the amendment of 2014.

50.9. The requirement of the members to contribute @ 1.16% of their salary to the extent such salary exceeds Rs 15,000 per month as an additional contribution under the amended Scheme is held to be ultra vires the provisions of the 1952 Act. But for the reasons already explained above, we suspend *operation of this part of our order for a period of six months. We do so to enable the authorities to make adjustments in the Scheme so that the additional contribution can be generated from some other legitimate source within the scope of the Act, which could include enhancing the rate of contribution of the employers. We are not speculating on what steps the authorities will take as it would be for the legislature or the framers of the Scheme to make necessary amendment. For the aforesaid period of six months or till such time any amendment is made, whichever is earlier, the employees' contribution shall be as stopgap measure. The said sum shall be adjustable on the basis of alteration to the Scheme that may be made.*

50.10. We do not find any flaw in altering the basis for computation of pensionable salary.

50.11. We agree with the view taken by the Division Bench in R.C. Gupta [R.C. Gupta v. EPFO, (2018) 14 SCC 809 : (2018) 2 SCC (L&S) 745] so far as interpretation of the proviso to Para 11(3) (preamendment) Pension Scheme is concerned. The fund authorities shall implement the directives contained in the said judgment within a period of eight weeks, subject to our directions contained earlier in this paragraph.

50.12. Contempt Petitions (C) Nos. 1917-18 of 2018 and Contempt Petitions (C) Nos. 619-20 of 2019 *in Civil Appeals Nos. 10013-14 of 2016 are disposed of in the above terms."*

7. In the light of the guidelines laid down by the Honourable Apex Court, this writ petition is disposed of permitting the petitioner to submit necessary joint application along with the third respondent before the respondents 1 & 2 within a period of four weeks from today and on submission of such application by the petitioner, the respondents 1 & 2 shall consider the same and pass appropriate orders thereon for revision of pension in terms of the guidelines laid down by the Honourable Apex Court, within a further period of six weeks from the date of submission of application by the petitioner. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

20.02.2025

(3/3)

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To:
The President,
A1354, Panthalkudi
Primary Agricultural
Cooperative Credit Society,
4/64, Poosaripatti Street,
Panthalkudi, Arupukottai TK,
Virudhunagar District-626 113.

MUMMINENI SUDHEER KUMAR, J.

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