
(2016) 02 MP CK 0037
In the Madhya Pradesh High Court
Case No : W.P. No. 7670 of 2014.

Achyut Bhoraskar

APPELLANT

Vs

Employees Provident Fund Organisation

RESPONDENT

Date of Decision : 10-02-2016

Acts Referred:

Citation : (2016) 2 CLR 1108 : (2016) 151 FLR 349 : (2016) LabLR 1277 :
(2016) LabLR 1052 : (2016) 2 LLJ 539

Hon'ble Judges : S.C. Sharma, J.

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.C. Sharma, J. - Parties through their counsel.

2. The petitioner before this Court, who is a retired employee of Indore Development Authority has filed this present petition for issuance of an appropriate writ, order or direction directing the employer to hold that the petitioner is entitled for enhancement of pension keeping in view the letter dated 22.11.2006 (Annexure P-4), as the employer has deducted less than 12% from his salary towards contribution payable under the Employees Pension Scheme, 1995. The contention of the learned counsel is that under the Scheme, 12% amount of the salary has to be deducted by the employer and contribution to the extent of 12% has to be made by the employer towards the employees fund. His contention is that out of the 12%, only 8.33% has been deposited in the pension fund and 3.67% has been deposited in the provident fund and the employer has deducted 8.33% and, therefore, the pension being granted to the petitioner is less than his entitlement.

3. The aforesaid controversy has been decided by this Court in the case of Devendra Kumar Sharma and Others v. Sant Ravidas Madhya Pradesh Hastshilp Evam Hathkargha Vikas Nigam Ltd. and Others, (W.P. No.3368/2014) and the order passed in the aforesaid matter reads as under:-

"The petitioners before this Court who are the employees of Sant Ravidas Madhya Pradesh Hastshilp Evam Hathkargha Vikas Nigam Limited have filed this present petition for issuance of an appropriate writ, order or direction directing the Regional Provident Fund Commissioner, Bhopal and Regional Provident Fund Commissioner, Indore to deduct the contribution in respect of Employees' Pension Scheme, 1995 beyond the ceiling limit of Rs.6,500/- per month.

The Employees' Pension Scheme, 1995 was enacted by the Central Government in exercise of power conferred under Section 6-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and has come in to force w.e.f. 16/11/1995.

The contention of learned counsel appearing for the respondent is that the present writ petition is not maintainable before this Court as the provident fund accounts are maintained at Bhopal by the Regional Provident Fund Commissioner, Bhopal, however, he has also argued the matter on merits and his contention is that as per the regulations of the Employees' Pension Scheme, 1995 the upper ceiling limit has been prescribed as Rs. 6,500/- per month and even if the pay of member exceeds Rs. 6,500/- per month the contribution payable by the employer and the Central Government has to be limited to the pay of Rs.6,500/- per month only. He has placed reliance on Regulation 3 and 11 of the Employee's Pension Scheme, 1995.

Heard learned counsel for the parties and perused the record.

This Court has carefully gone through the statutory provisions governing the field.

It is true that the Central Government has framed Employee's Pension Scheme, 1995 in exercise of power conferred under Se.6-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The Regulation 3 and Regulation 11 of the Pension Scheme reads as under:-

3. Employees pension fund."

(1) From and out of the contributions payable by the employer in each month under Section 6 of the Act or under the rules of the Provident Fund of the establishment which is exempted either under clauses (a) and (b) of sub-section (1) of Section 17 of the Act or whose employees are exempted under either paragraph 27 or paragraph 27-A of the Employees' Provident Fund Scheme, 1952, a part of contribution representing 8.33 per cent of the Employee's pay shall be remitted by the employer to the Employees' Pension fund within 15 days of the close of every month by a separate bank draft or cheque on account of the Employees' Pension Fund contribution in such manner as may be specified in this behalf by the Commissioner. The cost of the remittance, if any, shall be borne by the employer.

(2) The Central Government shall also contribute at the rate of 1.16 per cent of the pay of the members of the Employees' Pension Scheme and credit the contribution to the Employees' Pension Fund: PROVIDED that where the pay of

the member exceeds [rupees six thousand and five hundred] five thousand per month the contribution payable by the employer and the Central Government be limited to the amount payable on his pay of [rupees six thousand and five hundred] only.

(3) Each contribution payable under sub-paragraphs (1) and (2) shall be calculated to the nearest rupee, fifty paise or more to be counted as the next higher rupee and fraction of a rupee less than fifty paise to be ignored.

(4) The net assets of the Family Pension Scheme, 1971 shall vest in and stand transferred to the Employees' Pension Fund.

11. Determination of Pensionable Salary

(1) "Pensionable salary" shall be average monthly pay drawn (in any manner including on piece-rate basis) during the contributory period of service in the span of 12 months preceding the date of exit, from the membership of the Employees' Pension Fund.

("Provided that if a member was not in receipt of full pay during the period of twelve months preceding, the day he ceased to be the member of Pension Fund, the average of previous 12 months, full pay drawn by him during the period for which contribution to the pension fund was recovered, shall be taken into account as pensionable salary for calculating pension.) (Please refer to para 43A)

(2) If during the said span of 12 months there are non-contributory periods of service including cases where the member has drawn salary for a part of the month, the total wages during the 12 months span shall be divided by the actual number of days for which salary has been drawn and the amount so derived shall be multiplied by 30 to work out the average monthly pay.

(3) The maximum pensionable salary shall be limited to (Rupees six thousand and five hundred rupees per month).

(Provided that if at the option of the employer and employee, contribution paid on salary exceeding (Rupees 6500/-) per month from the date of commencement of this Scheme or from the date salary exceeds (Rupees 6500/-) whichever is later, and 8.33 per cent share of the employers thereof is remitted into the Pension Fund, pensionable salary shall be based on such higher salary.) (Please refer Para 43A)"

Proviso to Regulation 3 makes it very clear that there is a upper ceiling limit of Rs. 6,500/- only. This proviso makes it very clear that in case the salary of the member exceeds to Rs. 6,500/-, contribution payable by the employer and the Central Government has to be limited to the amount payable on his pay of Rs. 6,500/- only, meaning thereby, for an amount above Rs. 6,500/- only, no contribution can be made by the employer or by the Central Government. Therefore, the prayer of the petitioners for deducting an amount by treating his salary more than Rs. 6,500/- cannot be allowed.

A similar matter came up before the Patna High Court in the matter of Ram Nandan Prasad and Others v. Union of India and others reported in 2014 (141) FLR 1114. The Patna High Court in paragraph No.14, 15 and 16 has held as under:-

"14. Annexure-F series to the counter-affidavit reveals that the employees" provident fund organisation issued guidelines to Regional Provident Fund Commissioner"s office as well as sub-regional offices and according to the aforesaid guidelines, in the cases where no option was given and consequently no permission was given but contribution on higher salary was deposited by the Establishment/employees on their own, such excess contribution will be considered as erroneous contribution and the pensionable salary will be restricted to the statutory ceiling existing from time to time.

15. In the present case, admittedly, no option was given by Establishment as well as the concerned employees nor any acceptance was given by the provident fund commissioner and therefore, in my view, according to the aforesaid guidelines, excess contribution shall be treated as erroneous contribution restricted to the statutory ceiling. 16. No doubt, the Employees" Pension Scheme, 1995 is a beneficiary legislation but the aforesaid scheme is subsidiary scheme of the Employees" Provident Funds and Miscellaneous Provisions Act, 1952 and when the statutory limit for making contribution has specifically been made in the Employees" Provident Funds and Miscellaneous Provisions Act, 1952, in my view, the aforesaid statutory limit of contribution cannot be stretched by the Court. So far as proviso of para 11(3) of the Employees" Pension Scheme, 1995 is concerned, the said proviso only describes the modality of calculation of pensionable salary and the aforesaid proviso is applicable only when the contribution beyond the statutory limit is made in accordance with the rules. In the present case, the contribution beyond the statutory limit has not been made in accordance with rules as there was no valid option and acceptance for making contribution beyond the statutory limit. Therefore, proviso of para 11(3) of the Employees" Pension Scheme, 1995 is not applicable in this case."

In the aforesaid judgment the Patna High Court has held that the deduction in excess contribution would be considered as erroneous contribution and therefore, in the considered opinion of this Court once the upper ceiling limit has been provided under the law the same cannot be interfered with in absence of a statutory provisions of law.

This Court does not find any reason to allow the prayer made by the petitioners. It has brought to the notice of this Court that the upper ceiling limit has now been revised to Rs. 15,000/- per month and therefore, the petitioners shall be free to submit proper application by taking into account the revised upper ceiling limit of Rs. 15,000/- and in case such an application is preferred by the petitioners the respondent shall pass necessary order for making deduction and payment of pension thereof keeping in view the Employees" Pension Scheme, 1995 within a period of three months from the date of receipt of such an

application. It is made clear that the deductions pursuant to the such an application will have prospective effect the employee will certainly entitled for the aforesaid benefits flowing out of the scheme.

The writ petition stands disposed."

4. This Court, keeping in view the copy provided under the pension scheme, which provides that only the amount of Rs. 6,500/- can be deducted (maximum limit) from the salary of an employee enabling him to receive pension under the Pension Scheme, 1995, the writ petition filed by the identically placed person has been dismissed.

5. In light of the aforesaid order, this Court is of the considered opinion that the petitioner is not entitled for grant of any relief. The admission is declined.