(2023) 05 RAJ CK 0004

In the Rajasthan High Court

Case No : Civil Writ Petition No. 15117 Of 2018

Gurnam Singh Gill APPELLANT

Vs

Regional Provident Fund Commissioner, Employees Provident Fund Organization And Others RESPONDENT

Date of Decision : 01-05-2023

Acts Referred:
Constitution Of India, 1950 — Article 142

Citation : (2023) 05 RAJ CK 0004

Hon'ble Judges : Dinesh Mehta, J

Bench : Single Bench

Advocate : RS Choudhary, Mali Ram Pareek

Final Decision : Disposed Of

Judgement

Dinesh Mehta, J

1. This writ petition has been filed by the petitioner seeking direction to the respondents to accord them benefits of pension/family pension, pursuant to the Employee's Pension Scheme, 1995.

2. Learned counsel for the petitioner submitted that the respondents be directed to accord benefits to the petitioner in light of order in R.C. Gupta & Ors. Vs. Regional Provident Fund Commissioner, Employees Provident Fund Organisation & Ors.:2018 (4) SCC 809 and other judgments, which have followed the said judgment including a judgment of this Court.

3. The issues, which have been raised by the petitioner all stand concluded by Larger Bench Judgment of Hon'ble the Supreme Court in Employee Provident Fund Organization & Ors. Vs. Sunil Kumar B. & Ors.: 2022 SCC Online SC 1521.

4. In the said judgment, the Hon'ble Supreme Court has directed as under:-

"46. We accordingly hold and direct:-

(i) The provisions contained in the notification no. G.S.R.609(E) dated 22nd August 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.

(ii) Amendment to the pension scheme brought about by the notification no. G.S.R. 609(E) dated 22nd August 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.

(iii) The employees who had exercised option under the proviso to paragraph 11(3) of the 1995 scheme and continued to be in service as on 1st September 2014, will be guided by the amended provisions of paragraph 11(4)of the pension scheme.

(iv) The members of the scheme, who did not exercise option, as contemplated in the proviso to paragraph 11(3)of the pension scheme (as it was before the 2014Amendment) would be entitled to exercise option under paragraph 11(4) of the post amendment scheme. Their right to exercise option before 1st September 2014 stands crystalised in the judgment of this Court in the case of R.C.Gupta (supra). The scheme as it stood before 1st September 2014 did not provide for any cutoff date and thus those members shall be entitled to exercise option in terms of paragraph 11(4) of the scheme, as it stands at present. Their exercise of option shall be in the nature of joint options covering pre- amended paragraph 11(3) as also the amended paragraph 11(4) of the pension scheme.

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 paragraph 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 142of the Constitution of India. Rest of the requirements as per the amended provision shall be complied with.

(v) The employees who had retired prior to 1st September2014 without exercising any option under paragraph 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.

(vi) The employees who have retired before 1st September2014 upon exercising option under paragraph 11(3) of the1995 scheme shall be covered by the provisions of the paragraph 11(3) of the pension scheme as it stood prior to the amendment of 2014.

(vii) The requirement of the members to contribute at the rate of 1.16 per cent of their salary to the extent such salary exceeds Rs.15000/- per month as an additional contribution under the amended scheme is held to be ultravires 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 stop gap measure. The said sum shall be adjustable on the basis of alteration to the scheme that may be made.

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

(ix) We agree with the view taken by the Division Bench in the case of R.C. Gupta (supra) so far as interpretation of the proviso to paragraph 11(3) (pre-amendment) 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.

(x) The Contempt Petition (C) Nos.1917-1918 of 2018 and Contempt Petition (C) Nos. 619 -620 of 2019 in Civil Appeal Nos. 10013-0014 of 2016 are disposed of in the above terms.

47. All the appeals which we have heard simultaneously are allowed in the above terms and the judgments impugned are modified accordingly. The writ petitions brought by employees or their representatives shall also stand disposed of in the same terms."

5. The present writ petition filed by the petitioner is disposed of in light of the directions given by Hon'ble the Supreme Court. Both the parties shall abide by the directions of Hon'ble the Supreme Court, as noticed hereinabove.

6. The stay application also stands disposed of accordingly.

