

(2012) 03 SHI CK 0453
In the High Court Of Himachal Pradesh
Case No : CWP No. 426 of 2007

R.C. Gupta, General Manager, H.P. Tourism Development Corporation Limited, Ritz Annexe, Shimla-171001 and Others APPELLANT

Vs

Union of India and Managing Director, H.P. Tourism Development Corporation Limited RESPONDENT

Date of Decision : 13-03-2012

Acts Referred:

Citation : (2012) 134 FLR 675

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Advocate : M.M. Khanna and Mr. Vayur Gautam, in CWP No. 426 of 2007, Mr. Subhash Sharma, in CWP No. 760 of 2011 and CWP No. 763 of 2011, for the Appellant; Sandeep Sharma, Asstt. Solicitor General of India with Mr. Ajeet Saklani, Advocate, and Mr. Naresh Kaul, Advocate, for respondent No. 4, in CWP No. 426 of 2007, CWP No. 760 of 2011 and CWP No. 763 of 2011, for the Respondent

Judgement

Surinder Singh, J.—In the above titled connected matters, learned counsel for the petitioners restricted only to the following relief:- 1. That the respondents be directed to recalculate and readjust the already deposited amounts of Employees' share of contributions under the appropriate heads of accounts of "Pension Fund Account" and "Provident Fund Account" beyond the wage limit from the date of enforcement of the Employees' Pension Scheme, 1995 i.e.16.11.1995 as per amendment dated 28.2.1996 of the said scheme.

Heard and gone through the record.

2. The Employees Provident Funds and Miscellaneous Provisions Act, 1952, in short "the Act" is applicable to the employers Corporation i.e. 4th respondent on and w.e.f. 1st September, 1974, which covers all the employees of the 4th respondent under the Employees Pension Scheme 1995 (Annexure P-1 in CWP No. 426 of 2007).

(ii) The aforesaid Act is a benevolent legislation meant for the welfare of the employees and the Scheme aforesaid has been floated for their betterment granting pensionary benefits after attaining the age of superannuation, to ensure financial benefits to meet old age problems and other infirmities.

(iii) The aforesaid Act provides for a system of Provident Fund compulsorily on contributory basis by the employer and employees jointly. The rate of contribution as on 16.11.1995 was 10% of salary, which was raised to 12% in the year 1997. The 4th respondent is contributing the employers' share at the rate on the total salary which constitutes basic pay plus dearness allowance w.e.f. 16.11.1995. Equal contribution is also made from the salary of the petitioners as employees' shares.

(iv) The Act aforesaid was amended in the year 1996 vide Act No. 25 of 1996, while making the provision for pension after the retirement of the employees covered under the Act. The amendment was constituted in terms of Section 6A & 6B of the Principal Act, authorizing the Central Government to frame "Employee's Pension Scheme" for providing superannuation or retiring pension etc.

(v) The Central Government notified Employees' Pension Scheme, 1995 on 16.11.1995 aforesaid. Vide Sub-para 3 of Para-7 of the Scheme, all the employees were required to exercise their options to join the Scheme within a period of six months from 16.11.1995, this date comes to 15.5.1996, but before the expiry of said option period, the Employees' Pension Scheme aforesaid was amended w.e.f. 16th March, 1996 vide GSR No. 748 (E) dated 16.11.1995 (Annexure P-2 in CWP No. 426 of 2007). The condition to exercise the option within six months is notified in the original Scheme was deleted besides making other amendments therein.

(vi) In Annexure P-1, the original Pension Scheme notified on 16.11.1995, the wage ceiling was Rs. 5,000/- for determining the pensionable salary, it was raised to Rs. 6,500/- per month w.e.f. 1.6.2001, which fact stands admitted by the respondents.

(vii) Para-11 of Annexure P-1, the original Scheme provides for determination of the pensionable salary. It has two kinds of the pension pattern as follows:-

(a) One based on the wage ceiling of Rs. 6,500/- per month; and

(b) Another based on the higher salary exceeding the wage limit of Rs. 6,500/- per month, for which the contribution of higher salary exceeding the wage ceiling are to be made in the pension fund on 16.11.1995, whereas, amended scheme (Annexure P-2) guarantee the pensionary benefits to the employees already covered under the original scheme.

(viii) The contention of the petitioners is that the original scheme was given wide publicity and was circulated by the Provident Fund Organization, but when the amendment was carried out in the original scheme, it was neither publicized, nor

petitioners were aware of it, whereas the 4th respondent was required to frame Pension Scheme for employees after the retirement. The employees who were due to retirement and/or had retired from the service of respondent-department, made representations to 3rd respondent, but their representations were rejected and the respondent-Managing Director was informed accordingly. The letter can be usefully reproduced verbatim as under:-

EMPLOYEES" PROVIDENT FUND ORGANIZATION

Regional Office:

Block No. 34, I & II Floor, SDA Complex, Kasumpti, Shimla-9 (H.P.) No. Pension Cell/Ro/HP/HPTDC/EPS-95-16360 Dated: 10 JAN 2006.

To

The Managing Director

Himachal Pradesh Tourism Dev. Corp. Ltd.

Ritz Annexe, Shimla- 171001

Sub:-Implementation of the Employees" Pension Scheme 1995 regarding.

Sir,

This is with reference to your letter No. ACCtts./67-10/82-TDC dated 22.03.2005 regarding to contribute the pension contribution on higher rate from retrospective date.

In this connection, the matter was referred to Head Office and it has been clarified that Employer and Employee can exercise option to contribute on salary exceeding the wage ceiling on two occasion:

1. Immediately on and from the date of commencement of the scheme, i.e. 16.11.1995.
2. Immediately on and from the date the salary exceed the statutory limit (Rs. 6500/- at present.)

From the above provisions, it is clear that the establishment is required to remit the contribution on the salary over and above the statutory from the month in which the salary crossed that limit and not from any later date. Since your establishment wants to contribute on higher wages at present which is not within the provisions of EPS" 95, hence the permission to contribute on higher wages is hereby rejected.

Yours faithfully, Sd/-10/1/06 (J.R. Sharma) Regional P.F. Commissioner/H/OIC.

(ix) In fact, the 4th respondent on the basis of original Scheme Annexure P-1 deposited 8.33% subject to wage limit of Rs. 6,500/- (which was Rs. 5000/- upto 30.4.2001) out of the total 12% of employer"s share into the "Pension Fund

Account" and remaining 3.67% was remitted in the "Provident Fund" of the concerned employees. Consequent to the amendment in the Scheme, 8.33% on full salary beyond the wages limit of Rs. 6500/- should have been deposited in the Pension Fund Account and balance in the Provident Fund Account of the employees.

(x) Further, the 4th respondent had been contributing on full salary exceeding the wage ceiling i.e. Rs. 6500/- from the very commencement of the Employees' Pension Scheme, which was floated in the year 1995. But however, the amendment remained unnoticed for no fault of the petitioners, the employees of the 4th respondent and the opportunity to switch over to the amended scheme was not given by the 3rd respondent. Thus, 8.33% out of the employers' contribution remitted in the pension fund remained limited to wage salary, whereas, the only procedural requirement is bifurcation of the already deposited amount under the appropriate Heads of Accounts of "Pension Fund Account" and "Employees Provident Fund Account", which should have been done. The 4th respondent represented vide letter Annexure P-5 (in CWP No. 427 of 2007) dated 22nd March, 2005, precisely informed the 3rd respondent that the Corporation was contributing employers' share @ 12% of basis pay plus ADA. The amount so remitted in the Employees' Pension Fund under the Employees' Pension Scheme, 1995 is 8.33% of the Employees' share limited to Rs. 5000/- per month of pensionable salary which was initially the limit under the Employees' Pension Scheme, later raised to Rs. 6500/- per month w.e.f. 1.6.2001. Resultantly, the employees who had retired have been given the pension by their office taking the limit of pensionable salary of Rs. 6500/-. Had the remittance in the Employees' Pension Fund @ 8.33% been made without the limit of Rs. 6500/- out of 12% of the employer's share, the retirees would have got much higher pension based upon the average of basic pay plus ADA drawn by them during the preceding 12 months of their retirement. Thus, it was also informed that the Employees' unions had represented and demanded the higher pension based on the higher pensionable salary as mentioned in the letter and prayed to take a sympathetic view in the matter and allow the pension as aforesaid to avoid any financial hardship to the retirees.

(xi) On receipt of the above communications and further representation of the employees, the 3rd respondent referred the matter to 2nd respondent (Central Provident Fund Commissioner) for clarification vide letter dated 14.10.2005, consequently, the said respondent vide their letter dated 24.11.2005 (Annexure P-9) issued clarification, which reads as under:-

EMPLOYEES' PROVIDENT FUND ORGANIZATION (Ministry of Labour, Government of India) Head Officer-Bhavishya Nidhi Bhawan 14-Bhikaji Cama Place, New Delhi- 110066

Dated: 24 NOV 2005.

No. Pension /Misc/2001/Vol-III

To

The Regional PF Commissioner, Shimla.

Sub:- Contribution under EPS"95 - reg.

Sir,

Please refer to your letter No. Pen RO/HPTDS/EPS-95/10692 dated 14.10.05 on the above subjected.

In this regard, it is informed that the employer and the employee can exercise option to contribute on salary exceeding the wage ceiling on two occasions:-

1. Immediately on & from the date of commencement of the scheme, i.e. 16.11.95.
2. Immediately on & from the date the salary exceed the statutory limit (Rs. 6500/- at present.)

According to the above, the position is as under:-

It is clear from the above provision that the establishment is required to remit the contribution on salary over and above the statutory limit from the month in which the salary crossed that limit and not from any later date.

If in the past, contribution paid on the wage ceiling, now the contribution on higher salary cannot be allowed. However, if the contribution has been made on the full salary to EPS right from 16.11.95, then benefits are to be based on the said pensionable salary.

Yours faithfully, Sd/- (BHUPENDER SINGH) ASSISTANT PF COMMISSIONER(PENSION)

3. Shri M.M. Khanna, learned Senior Advocate, duly assisted by Shri Vayur Gautam, Learned Advocate (in CWP No. 426 of 2007) & Shri Subhash Sharma, learned Advocate (in CWP Nos. 760 & 763 of 2011), submitted that in view of Annexure P-9 aforesaid, the respondents should have recalculate and readjust the already deposited amount of the employees' shares of contribution under the appropriate Heads of Accounts of "Pension Fund Account" as the contribution has been made on the full salary to EPS right from the inception of the Scheme and "Provident Fund Account".

4. Contra, Shri Sandeep Sharma, learned Assistant Solicitor General of India, duly assisted by Shri Ajeet Saklani, Advocate submitted that since the petitioners had failed to exercise their options through their employer on the higher rate as such, they cannot be permitted retrospectively to make contributions to increase the payable amount of pension and they also did not exercise the option within the stipulated time.

5. To appreciate the rival contentions of the parties on meticulous examination, I

find it from the record that right from the very inception, the employees who were covered under the Act aforesaid, had been contributing on the full salary at that time. This fact also stands admitted in para-10 of the reply filed by the 4th respondent, wherein it is clearly mentioned that the amendment dated 28.2.1996 to the Employees' Pension Scheme, 1995 remained unnoticed by their Corporation and the Employees Provident Organization who was administering the scheme did not invite the revised options for contribution on full salary beyond the wage limit from the employees through their employers- Corporation, consequent to the said amendment. However, subsequently, when it was brought to their notice, they took up the matter with the Employees' Provident Organization for allowing the contribution on the full salary beyond the wage limit, which was deposited from the very inception of the Scheme i.e. on 16.11.1995 (Annexure P-1).

6. Against the above fact situation, the employees of the Corporation cannot be faulted for the inaction of 3rd respondent or any instrumentality of the State and whereas the 4th respondent on coming to know about the amendment in the Scheme deposited its share right from the inception of the Scheme. Therefore, the lapse of the respondents would cost dearer to its employees covered under the benevolent legislation without any lapse on their part. Therefore, the respondents are hereby directed to re-calculate and re-adjust the already deposited amount of employers' share contribution under the appropriate Head of Accounts of "Pension Fund Account" and "Provident Fund Account" from the wage limit from the date of enforcement of the Pension Scheme in the year 1995, as per the subsequent amendment carried out in the year 1996 (Annexure P-2 referred above). However, it is made clear that these directions are only for the benefits of the petitioners in the above mentioned petition in peculiar facts and circumstances and shall not be treated as a precedent. Consequently, all the petition(s) mentioned above are accordingly disposed of in the aforesaid terms, so also the pending application(s), if any.