(2018) 08 MP CK 0181

In the Madhya Pradesh High Court

Case No : Writ Appeal No. No.766, 887, 973 Of 2018

Regional Provident Fund Commissioner Employees Provident Fund Organization	APPELLANT
Vs	
Kushlesh Kumar Gorana	RESPONDENT

Date of Decision : 23-08-2018

Acts Referred:

Madhya Pradesh Uchcha Nyaylaya (Khand Nyay Peeth Ko Appeal) Adhiniyam, 2005 — Section 2(1)
Employees Pension Scheme, 1995 — Section 11(3)

Citation : (2018) 08 MP CK 0181

Hon'ble Judges : S.K. Awasthi, J;P.K. jaiswal, J

Bench : Division Bench

Advocate : Pankaj Kumar Jain, Aviral Vikas Khare

Final Decision : Dismissed

Judgement

P.K. Jaiswal, J

As common question of law and facts are involved in these three writ appeals, therefore, the writ appeals are heard analogously and are being

disposed of by this common order. For the sake of convenience, facts are taken from Writ Appeal No.766/2018.

2. This intra court appeal under Section 2 (1) of MadÂ hya Pradesh Uchcha Nyalayaya (Khand Nyay Peeth Ko Appeal) Adhiniyam, 2005 has been

filed by the appellant / Employeesâ?? Provident Fund Organization against order dated 03.01.2018 (Annexure A/2) passed in Writ PetiÂ tion

No.4979/2017 by which the learned Writ Court alÂ lowed the writ petition filed by respondent No.1 (writ peÂ titioner) and directed the appellant to

accept the amount from respondent No.1, which he withdrew and revise his pension, as per the directions given by Honâ??ble the Apex Court on

04.10.2016 in the case of R.C. Gupta & othÂ ers v. Regional Provident Fund Commissioner, Employeesâ?? Provident Fund Organization & othÂ?

ers (SLP No.33032/2015). It is also observed by the learned Single Judge that since appellant was also not at fault and Honâ??ble the Apex Court in

the year 2016 has diÂ rected them to give benefit of the scheme without applyÂ ing cut off date, hence the appellant is also not liable to pay interest

on the arrears of pension to respondent No.1.

3. Facts of the case are that respondent No.1 (writ peÂ titioner) while working in Indore Development Authority as Accounts Officer became a

Member of Employeesâ?? Provident Fund under Employeesâ?? Provident Fund Scheme, 1952 and Employeesâ?? Pension Scheme, 1995 having

PF Account No.MP/IND/0003839/000/0002243. Under the aforeÂ said Scheme, the appellant deducted 12% from the monthly salary of respondent

No.1 and contributed the same amount in his Provident Fund Account with the apÂ pellant. Out of 12% employeesâ?? contribution, 8.33% used to

be remitted under the Pension Fund. Proviso to SecÂ tion 11 (3) of the Employeesâ?? Pension Scheme, 1995 proÂ vides for an option to contribute

on full salary exceeding ceiling limit. In the year 2006, Indore Development AuÂ thority (respondent No.2) in consensus with the employÂ ees

decided to pay contribution on the full salary which is reflected from the voucher dated 18.11.2008. ResponÂ dent No.1 (writ petitioner) made a

representation dated 05.05.2012 to the appellant through its employer for computing the pension on the basis of full salary folÂ lowed by reminder

dated 28.05.2012. Vide communicaÂ tion dated 17.10.2012, the appellant has refused to deterÂ mine the pension on the basis of full salary.

Thereafter, Pension Payment Order (PPO) dated 30th August, 2013 was issued fixing pensionable salary of respondent No.1 up to the limit of

Rs.6,500/-. Consequently, respondent No.1 started getting pension of Rs.2,020/- per month.

4. Similar issue came up before the Honâ??ble Apex Court in the case of R.C. Gupta & others v. Regional Provident Fund Commissioner,

Employees ProvÂ ident Fund Organization (supra), wherein the Apex Court has held that if employer and the employee opt for deposit against the

actual salary and not the ceiling limit, the exercise of option under paragraph 26of the ProviÂ dent Fund Scheme is inevitable. The Provident Fund

Commissioner has been permitted to seek the return of all such amounts that the concerned employee may have taken or withdrawn from Provident

Fund Account before granting benefit of Proviso to Section 11 (3) of the EmÂ? ployees Pension Scheme, 1995.

5. After the aforesaid order of the Honâ??ble Apex Court, the Head Office of the Employees Provident Fund OrgaÂ nization vide letter dated

23.03.2017 has conveyed its approval to allow all the Members of the Employees PenÂ sion Scheme, 1995, who had contributed on higher wages

exceeding the statutory wage ceiling of Rs.6,500/- in the Provident Fund to divert 8.33% of the salary to the PenÂ sion Fund with up to date interest

declared under the Employeesâ?? Provident Fund Scheme to get the benefit of higher salary on receipt of joint option of the employer and employee.

6. The case of respondent No.1 before the Writ Court was that despite the Apex Court judgment and order dated 23.03.2017, the appellant is not

granting him benÂ? efit of pension on the basis of full salary.

7. The stand of the appellant before the Writ Court was that after retirement from the services of respondent No.2 (IDA), respondent No.1 had

submitted claim appliÂ cation for withdrawal of amount of Provident Fund standing to the credit of his PF Account. He was paid Rs.16,45,775/- by

way of full and final settlement. He has also been served with PPO No.46887 by paying monthly pension of Rs.2,020/-, treating monthly salary of

Rs.6,500/- per month.

8. During pendency of the writ petition, letter dated 27.09.2017 was served on respondent No.1, directing him to refund the contribution with interest

under the Employeesâ?? Pension Scheme, 1995 on the basis of statuÂ? tory limit in Form No.3-A in order to pay him the penÂ? sion on higher rate.

9. Contention of the learned counsel for respondent No.1 before the Writ Court was that appellant is wrongly demanding interest on the amount so

deposited by reÂ spondent No.1. If respondent No.1 is liable to deposit inÂ terest, then he is also liable to get interest on the arrears of pension

payable to him in compliance to order of Honâ??ble Supreme Court. Therefore, in order to maintain equity and balance, the appellant be restrained to

claim interest from respondent No.1and he shall not claim inÂ terest on the arrears of pension and the appellant is deÂ mand interest, then respondent

No.1 is also entitled for interest on arrears of pension.

10. Learned Writ Court relying on paragraph No.11 of the judgment of the Supreme Court in the case of R.C. Gupta & others v. Regional Provident

Fund ComÂ missioner, Employees Provident Fund OrganizaÂ tion (supra) has held that the Honâ??ble Supreme Court has permitted the Provident

Fund Commissioner to seek return of such amount which the employees have withÂ drawn from the Provident Fund Account; and has diÂ rected the

Provident Fund Commissioner not to claim inÂ terest along with such amount of PF. It was also obÂ served by the Writ Court that by order dated

17.10.2012, the appellant has rejected the claim of respondent No.1 for re-fixation of pension on the basis of actual salary exÂ ceeding wage limit, but

now the appellant permitted to revise pension of respondent No.1 after the judgment of the Supreme Court; and as he was not at fault to withÂ draw

the amount of PF, therefore, he is not liable to pay interest on such amount which he withdrew from his PF Account and deposit it for the revision of

pension.

Relevant part of order dated 03.01.2018 passed in Writ Petition No.4979/2017 reads, as under: -

â??As per Section 13(3) of the Pension Scheme, 1995 maximum pensionable salary shall be limited to only @ Rs.5,000/-p.m./Rs.6,500/- per month.

Later on, a proviso was inserted by which option was given to the employer and employees to deposit the contribution on the actual salary i.e.

exceeding Rs.6,500/- per month from the date of commencement of this Scheme or from the date the salary exceeds whichever is later and 8.33%

share of the employer thereof is remitted into the pension fund and the pensionable salary established pension on the higher salary. The petitioner

submitted representation in the year 2012 to take benefit of the said proviso i.e. before retirement. Vide order dated 17.10.2012 the respondent no.1

has rejected his claim as he has failed to exercise option w.e.f. the commencement of the scheme in the month of November, 1995 as well as from

the date of salary exceed to Rs.6,500/-. After the rejection of the claim vide order dated 17.10.2012, the petitioner has withdrawn the amount of

Rs.16,45,775/- from his provident fund Account and the respondent has fixed the pension of Rs.2020/-

The Honâ??ble Supreme Court in the case of R.C.Gupta (Supra) has held that the date mentioned in the proviso to Section 11(3) of the Pension

Scheme are not the cut of date to determine the eligibility of the employer and the employee to indicate their option. A beneficial scheme ought not to

be allowed to defeat by reference to cut-off date particularly in a situation where the employer had deposited the 12% of actual salary and not the

12% of ceiling limit of Rs.5000-6000/- per month as the case may be, therefore, directed all the Provident Fund Commissioner to permit the employees

to return such amount which they have withdrawn and their pension be fixed accordingly. Para 11 of the aforesaid judgment is reproduced below:-

â??11. The above apart in a situation where the deposit of the employerâ??s share at 12% has been on the actual salary and not the ceiling amount,

we do not see how the Provident Fund Commissioner could have been aggrieved to file the L.P.A. Before the Division Bench of the High Court. All

that the Provident Fund Commissioner is required to do in the case is an adjustment of accounts which in turn would have benefited some of the

employees. At best what the Provident Commissioner could do and which we permit him to do under the present order is to seek a return of all such

amounts that the concerned employees may have taken or withdrawn from their Provident Fund Account before granting them the benefit of the

Proviso to clause 11(3) of the Pension Scheme. Once such a return is made in whichever cases such return is due, consequential benefits in terms of

this order will be granted to the said employees.â??

In the aforesaid paragraph, the Honâ??ble Apex Court has permitted the Provident Fund Commissioner to seek return of all such amount which the

employees have withdrawn from the Provident Fund Account. The Honâ??ble Apex Court has not directed the Provident Fund Commissioner to

claim interest along with such amount of Provident Fund.

The petitioner claimed re-fixation of the pension on the basis of actual salary exceeding wage limit, but he respondent no.1 has rejected his claim by

order dated 17.10.2012. The respondent no.1 has now permitted him to revise the pension after the Honâ??ble Supreme Court judgment; therefore,

the petitioner was not at fault to withdraw the amount of provident fund. Hence he is not liable to pay the interest on such amount which he withdrew

from his account and now depositing for the revision of pension.

Accordingly, the petition is allowed. Respondent no.1 is directed to accept the amount from the petitioner which he withdrew and revise his pension as per the directions given by Honâ??ble the Apex Court in the case of R.C.Gupta and others (Supra) and Employees Provident Fund Organisation vide

its order dated 23.03.2017. Since the respondent no.1 was also not at fault and Honâ??ble the Apex Court in the year 2016 has directed them to give

the benefit of the scheme without applying the cut-off date. Hence, respondent no.1 is also not liable to pay interest on the arrears of pension to the

petitioner.â??

11. Learned counsel for the appellant has submitted that the learned Writ Court has misinterpreted the order passed by the Apex Court in the case of

R.C. Gupta & others v. Regional Provident Fund CommisÂ sioner, Employees Provident Fund Organization (supra). It was ignored that the issue of

interest was not before the Apex Court, and therefore, the impugned orÂ der, so far as it relates to non payment of interest part is concerned, it is

liable to be set aside.

12. On the other hand, learned counsel for respondent No.1 has submitted that benefit was not granted to the writ petitioner, and therefore, the learned

Writ Court has rightly held that respondent No.1 is not liable to pay any interest; and prayed for dismissal of the writ appeal.

13. On due consideration of the arguments of the learned counsel for the parties, so also the reasoning asÂ signed by the learned Writ Court in the

impugned order, we are of the view that there is no legal flaw in the order passed by the learned Writ Court. Judgment dated 22. 09.2014 passed in

Writ Petition (C) No.12999/2014 T.V. Joseph & others v. Union of India & others of the High Court of Kerala at ErnakuÂ lam cited by the learned

counsel for the appellant will not be applicable in the present facts and circumstances of the case.

14. For the above mentioned reasons, Writ Appeal No.766/2018, Writ Appeal No.887/2018 and Writ ApÂ peal No.973/2018 filed by the appellant /

Employeesâ?? Provident Fund Organization have no merit and is acÂ? cordingly dismissed.

15. Original order be retained in Writ Appeal No.766/2018 and a copy thereof be retained in connected Writ Appeal No.887/2018 and Writ Appeal

No.973/2018.