Sushanth C.M. vs Sunil Barthwal

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Court : Kerala

Decided On : Oct-31-2023

Judge : Honourable Mr. Justice Anil K.Narendran,Honourable Mr. Justice G.Girish

Appeal No. : Con.Case(C)/724/2021

Appellant : Sushanth C.M.

Respondent : Sunil Barthwal

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ANIL K. NARENDRAN & THE HONOURABLE MR.JUSTICE G.GIRISH TUESDAY, THE 31ST DAY OF OCTOBER 2023 / 9TH KARTHIKA, 1945 CON.CASE(C) NO. 724 OF 2021 ARISING OUT OF THE JUDGMENT DATED 12.10.2018 IN WP(C)NO. PETITIONERS/PETITIONERS 14,45,50 & 68: 1 SUSHANTH C.M. AGED 60 YEARS S/O.LATE C.M.INDRAN, SENIOR PRINCIPAL SCIENTIST, CENTRE FOR WATER RESOURCES DEVELOPMENT AND MANAGEMENT, P.F.ACCOUNT NO.KR/KKD/4938/250, 7D, BRIDGE TOWER APARTMENTS, NADAKAVU P.O. - 673 006. 2 P.JAYAKUMAR AGED 60 YEARS S/O.LATE R.PUSHKARAN, SENIOR PRINCIPAL SCIENTIST, CENTRE

FOR WATER RESOURCES DEVELOPMENT AND MANAGEMENT, P.F.ACCOUNT NO.KR/KKD/4938/263, SAIKRIPA, NTMC ROAD (LANEII, KAVOOR, KOZHIKODE - 673 017. 3 REGHUNADHAN C. AGED 59 YEARS S/O.LATE M.K.PANICKER, DEPUTY REGISTRAR, CENTRE FOR WATER RESOURCES DEVELOPMENT AND MANAGEMENT, PF ACCOUNT NO.KR/KKD/4938/244, LAVANYAM, CHEVARAMBALAM P.O., KOZHIKODE - 673 017. 4 K.REMADEVI AGED 59 YEARS W/O.V.EASWARAN POTTI(L) OFFICE ATTENDANT CENTRE FOR WATER RESOURCES DEVELOPMENT AND MANAGEMENT, KR/KKD/4938/327 UAN.100312604614, KARINGAMANNAILLAM, THAMARASSERY P.O., KOZHIKODE - 673 573.

BY ADVS. SRI.R.SANJITH SMT.C.S.SINDHU KRISHNAH RESPONDENTS/RESPONDENTS 2 & 3: 1 SUNIL BARTHWAL AGE AND FATHER'S NAME NOT KNOWN TO THE PETITIONERS, THE CHIEF PROVIDENT COMMISSIONER, THE EMPLOYEES PROVIDENT FUND ORGANISATION, BHAVISHYA NIDHI BHAVAN, 14, BHIKAJI CAMA PALACE, NEW DELHI - 110 066. 2 N.RAJANNA AGE AND FATHER'S NAME NOT KNOWN TO THE PETITIONER, REGIONAL PROVIDENT FUND COMMISSIONER, THE EMPLOYEES PROVIDENT FUND ORGANIZATION, KOZHIKODE - 673 001. BY ADV SRI.SAJEEV KUMAR K.GOPAL SC THIS CONTEMPT OF COURT CASE (CIVIL) HAVING COME UP FOR ADMISSION ON 31.10.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Anil K. Narendran, J.

The petitioners, who are petitioners 14, 45, 50 and 68 in W.P.(C)No.30990 of 2016, have filed this Contempt Case, invoking the provisions under Section 12 of the Contempt of Courts Act, 1971 alleging willful disobedience of the directions contained in Annexure A1 judgment dated 12.10.2018 in that writ petition along with W.P.(C)No.13120 of 2015 and connected matters.

2. The SLP filed by the Employees Provident Fund

Organisation against the judgment dated 12.10.2018 in W.P.(C) No.13120 of 2015 and connected cases were dismissed by the Apex Court vide order dated 01.04.2019 in SLP (C) - Diary No.9610 of 2019. That order was recalled and the Apex Court rendered a detailed judgment dated 04.11.2022 in Civil Appeal Nos.8143 of 2022 and 8144 of 2022 and connected matters- Employees Provident Fund Organisation v. Sunil Kumar B. [2022 (7) KHC 12 : AIR 2022 SC 5634]. In that judgment, the Apex Court held that the provisions contained in Notification No.GSR 609(E) dated 22.08.2014 is legal and valid. The directions contained in paragraph 44 of the said judgment of the Apex Court dated 04.11.2022 read as follows: 44. 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 sub- paragraphs.

(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 2014 Amendment) 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 and others v. Regional Provident Fund Commissioner, Employees Provident Fund Organisation and others [(2018) 14 SCC 809]. The scheme as it stood before 1st September 2014 did not provide for any cut-off 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 142 of 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 September

2014 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 September

2014 upon exercising option under paragraph 11(3) of the 1995 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.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 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. 10013-10014 of 2016 are disposed of in the above terms.

3. Heard the learned counsel for the petitioners and also the learned Standing Counsel for the Employees Provident Fund Organisation, for the respondents.

4. In view of the judgment of the Apex Court dated

04.11.2022 in Civil Appeal Nos.8143-44 of 2022 and connected matters [2022 (7) KHC 12 : AIR 2022 SC 5634], the entitlement of the petitioners for disbursement of higher pension requires reconsideration at the hands of the Employees Provident Fund Organisation.

5. The learned Standing Counsel for the respondents

would submit that the aforesaid exercise shall be undertaken by the Employees Provident Fund Organisation in accordance with law. In the said circumstances, this Contempt Case is closed, without prejudice to the right of the Employees Provident Fund Organisation to reconsider the entitlement of the petitioners for disbursement of higher pension, in view of the judgment of the Apex Court dated 04.11.2022 in Civil Appeal Nos.8143-44 of 2022 and connected matters [2022 (7) KHC 12 : AIR 2022 SC 5634]. Sd/- ANIL K. NARENDRAN, JUDGE Sd/- G. GIRISH, JUDGE AV/16/11 APPENDIX OF CON.CASE(C) 724/2021 PETITIONER ANNEXURES ANNEXURE A1 CERTIFIED COPY OF THE JUDGMENT DATED 12/10/2018 IN W.P.C.NO.30990/2016 OF THE HONOURABLE DIVISION BENCH OF THE HONOURABLE HIGH COURT OF KERALA. ANNEXURE A2 TRUE COPY OF THE COVERING LETTER DATED 08/12/2020 FORMS OF THE 1ST PETITIONER. ANNEXURE A3 TRUE COPY OF THE COVERING LETTER DATED 08/12/2020 FORMS OF THE 2ND PETITIONER. ANNEXURE A4 TRUE COPY OF THE COVERING LETTER DATED 08/12/2020 FORMS OF THE 3RD PETITIONER. ANNEXURE A5 TRUE COPY OF THE COVERING LETTER DATED 08/12/2020 FORMS OF THE 4TH PETITIONER. ANNEXURE A6 TRUE COPY OF THE PENSION PAYMENT ORDER OF 1ST ANNEXURE A7 TRUE COPY OF THE PENSION PAYMENT ORDER OF 2ND ANNEXURE A8 TRUE COPY OF THE PENSION PAYMENT ORDER OF 3RD ANNEXURE A9 TRUE COPY OF THE PENSION PAYMENT ORDER OF 4TH ANNEXURE A10 TRUE COPY OF THE INTERIM ORDER IN C.C.C.369/2020 DATED 17/03/2020.