

APHC011032562017



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

FRIDAY, THE THIRTEENTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

WRIT PETITION NO: 45092 OF 2017

Between:

1. Aluri Nageswara Rao, S/o late Surya Narayana, Occ: Retired APSRTC Asst. Depot Clerk, R/o. Samatha Nagar, H.No. 136/7 Near Sailaja Hospital, Kothapet, Nuzvid, Krishna Dist, Andhra Pradesh

...Petitioner

AND

1. The Union of India, Ministry of Labour and Employment,
Government of India, New Delhi

2. The Central Provident Fund Commissioner, HQ (Pension),
Bhavishya Nidhi Bhawan, 14, Bhikaiji Cama Place, New Delhi.

3. The Addl. Central Provident Fund Commissioner-cum-Regional PF
Commissioner, Office of the Addl. Central Provident Fund Commissioner
(Andhra Pradesh, Telangana and Orissa), 3-4-763, Bhavishyanidhi
Bhavan, Barkatpura Chaman, Hyderabad, Telangana State -500 027

4. The Vice Chairman and Managing Director of APSRTC, Vijayawada,
Krishna District, Andhra Pradesh

...Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate writ, order or direction, more particularly one in the nature of Writ of Mandamus to declare the inaction of the respondents 3 to 4 to not consider the claim / representation dt. 02.12.2017 of the petitioner to enhance or refix his pension who retired

employee from the 4th respondent APSRTC and return is due pension amounts from the respondents 2 and 3 EPF organization to his accounts of the petitioner as illegal, arbitrary and unjust as well as violation of Article 14, 19 and 21 of Indian Constitution as well as violation of Clause I 1(3) of Employees' pension scheme, 1995, and consequently direct the respondents 1 to 4 to consider the claim / representation dt. 2.12.2017 of the petitioner and return the due amount of pension amount to the petitioner and to pass such other order or orders as this Hon'ble court may deem fit and

IA NO: 1 OF 2017

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased

IA NO: 2 OF 2017

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the respondents 1 to 4 to consider the claim / representation dt.02.12.2017 of the petitioner and return the due amount of pension amount to the petitioner and to pass such other order or orders as this Hon'ble court may deem fit and proper in

Counsel for the Petitioner: K J V N PUNDAREEKAKSHUDU

Counsel for the Respondents: T BALAJI(SC FOR EPFO)

Counsel for the Respondents: DEPUTY SOLICITOR GENERAL OF INDIA

Counsel for the Respondents: P DURGA PRASAD SC FOR APSRTC

The Court made the following order:

HON'BLE SRI JUSTICE MAHESWARA RAO KUNCHEAM**WRIT PETITION No.45092 OF 2017****ORDER:**

The instant writ petition has been filed by the petitioner under Article 226 of Constitution of India seeking the following main prayer:

“to issue an appropriate writ, order or direction, more particularly one in the nature of Writ of Mandamus to declare the inaction of the respondents 3 to 4 to not consider the claim / representation dt. 02.12.2017 of the petitioner to enhance or refix his pension who retired employee from the 4th respondent APSRTC and return his due pension amounts from the respondents 2 and 3 EPF organization to his accounts as illegal, arbitrary and unjust as well as violation of Article 14, 19 and 21 of Indian Constitution as well as violation of Clause I 1(3) of Employees' pension scheme, 1995, and consequently direct the respondents 1 to 4 to consider the claim / representation dt. 2.12.2017 of the petitioner and return the due amount of pension amount to the petitioner and to pass”

2. The case of the petitioner is that he was appointed as Assistant Depot Clerk in APSRTC on 20.07.1991. He worked in the same post until 2012 and retired on 30.06.2012 while working at Nuzvid Depot and at the time of retirement, the petitioner's basic salary is Rs.16,400/-. It is the further case of the petitioner that he

was a member of employees' pension scheme, 1995 governed by 2nd respondent and the said scheme has been administered by the 3rd respondent. The 4th respondent is the Vice Chairman and Managing Director of APSRTC. Even prior to said employees pension scheme, 1995 came into force, earlier there was a scheme called as family pension scheme, 1971.

3. It is further stated that as per the employees' pension scheme, 1995, the petitioner has exercised an option under Section 26(6) of the Act, as his basic salary is above Rs.6,500/- p.m. Thereafter, the contribution to the provident fund being 12% of the total salary deducted as employees contribution and 12% paid by the employer were remitted to employees' provident fund organization, who is 1st respondent herein. As per the provisions of the pension scheme 8.33% of the contribution from the employer is to be deducted and credited to the pension fund. However, without making such deduction, provident fund organization limited it to 8.33% of the maximum salary provided, i.e. Rs.6,500/-, the balance contribution made by the employer for the salary is excess of Rs.6,500/- and the same was fully retained in provident fund account itself.

4. It is the further case of the petitioner that he is entitled to refix or enhance the present pension under Rule 12(4) r/w Rule 10(2) of the employees' pension scheme, 1995 and also entitled to two years weightage pension of Rs.1,529/- as he completed 20 years service, i.e. 14 years prior to 1995 and further service upto his retirement date 30.06.2012 being actual service as per the employees' pension scheme, 1995. It is also stated that under the 1952 Act, 10% or 12% of the basic wages including dearness allowance etc. is required to be deposited in the provident fund account of the employee. Sub-section 6(A) of the Act framed for payment of pension to the retired employees. The pension scheme deals with the determination of pensionable salary under clause 11(3) of the pension scheme, the maximum pension was limited to Rs.5,000/-, which was subsequently enhanced to Rs.6,500/- w.e.f. 08.10.2001, As per the Act, the employers contribution has to be on the basis of actual salary but not on the basis of ceiling limit of either Rs.5,000/- or Rs.6,500/- per month.

5. It is also stated that the petitioner made several requests to the respondents to enhance or refix his present pension and remit his remaining pension amount to his account, which is kept with

Respondents 2 and 3. Now, the petitioner has been paying 12% contribution on the ceiling amount of Rs.5000/- or Rs.6,500/- but, the same has to be determined for 12% on the exact salary of the retired employee, which was deducted and remitted to the employees' provident fund organization, i.e. respondents 2 and 3. Hence, the respondents 2 and 3 are liable to return the due amount of pension and remit the same to his account.

6. It is further stated by the petitioner that he being the retired employee is entitled to get pension basing on his salary, which exceeds the ceiling amount of Rs.5000/- or Rs.6,500/- and in the same set of facts, the Hon'ble Kerala High Court in W.P.(C) No.8854 of 2014 passed orders against the respondents 2 and 3 and aggrieved by the same, the respondents 2 and 3 filed W.A.No.1362 of 2014. The said Writ Appeal was allowed in favour of respondents 2 and 3, thereafter, the retired employees filed S.L.P.No.19954 of 2015 before the Hon'ble Apex Court and the same was ordered in favour of retired employees. Another Special Leave Petition (C) No.1774 of 2014 filed by the Regional Provident Fund Commissioner was rejected by the Apex Court.

7. The petitioner further states that he was retired from service after completion of 20 years and hence, he is entitled to weight age of 2 years. The petitioner made a representation dated 02.12.2017 to respondents 2 to 4 requesting them to refix his present pension and refund the arrears of pension amount into his accounts. But the respondents 2 to 4 did not respond to him, hence, having no other go, the petitioner approached this Court by way of the present writ petition.

8. Respondent Nos.2 and 3 have filed a counter affidavit jointly, denying the case of the petitioner and they have reiterated the list of events that took place and requested to dismiss the writ petition. The 4th respondent also filed counter affidavit separately.

9. Heard learned counsel for the petitioner, Mr. K.J.V.N.Pundareekakshudu, learned Standing Counsel for APSRTC Sri Aravala Rama Rao and Sri. T. Balaji, learned Standing Counsel for Employees Provident Fund Organization of India.

10. During the course of arguments, learned counsel for the petitioner, while reiterating the facts narrated in the writ petition has raised several contentions. He further submits that the respondents

authorities have deducted the amounts from the pay of the petitioner and credited the same to respondent Nos.2 and 3 through respondent No.4, the respondent Nos.2 and 3 have to consider the case of the petitioner and ought not to have rejected the claim of the petitioner by just stating that there is a financial burden on the Department. The said reason stated by the respondents is not sustainable and such a stand should not have been taken after lapse of so many years from the date of payment of the amounts i.e. from the year 2012. The action of the respondents has resulted in an irreparable loss to the petitioner herein and also other APSRTC employees.

11. While concluding his arguments, learned counsel has requested this Court to direct the respondents to continue the higher option scheme under Paragraph No.11(3) of Employee's Pension Scheme, 1995 and grant additional financial benefits to the petitioner under the said scheme.

12. Conversely, learned Standing Counsel appearing for the Employees Provident Fund Organization (EPFO), while denying the contention raised by learned counsel for the petitioner that the petitioner is entitled to be continued the higher option scheme under

Paragraph No.11(3) of Employee's Pension Scheme, 1995 has referred to a judgment in ***R.C. Gupta and Ors. Vs. Regional Provident Fund Commissioner, Employees' Provident Fund Organisation and Ors***¹.

13. He further submits that in the aforesaid judgment, the Hon'ble Apex Court while dealing with the question of entitlement of members of the pension schemes, whose pensionable salary exceeded Rs.6,500/- per month, who exercise option in terms of the proviso under paragraph 11(3) of the Employee's Pension Scheme, 1995; held as under:

"7. Reading the proviso, we find that the reference to the date of commencement of the Scheme or the date on which the salary exceeds the ceiling limit are dates from which the option exercised are to be reckoned with for calculation of pensionable salary. The said dates are not cut-off dates to determine the eligibility of the employer employee to indicate their option under the proviso to Clause 11(3) of the Pension Scheme. A somewhat similar view that has been taken by this Court in a matter coming from the Kerala High Court, wherein the Special Leave Petition (C) No. 7074 of 2014 filed by the Regional Provident Fund Commissioner was rejected by this Court by order dated 31.3.2016. A beneficial Scheme, in our considered view, ought not to be defeated by reference to a cut-off date, particularly, in a situation where (as in the present case) the employer had deposited 12% of the actual salary and not

¹ (2018) 14 SCC 809

12% of the ceiling limit of ' 5,000/- or ' 6,500/- per month, as the case may be.

8. XXX XXX XXX

9. *We do not see how exercise of option under paragraph 26 of the Provident Fund Scheme can be construed to estop the employees from exercising a similar option under paragraph 11(3). If both the employer and the employee opt for deposit against the actual salary and not the ceiling amount, exercise of option under paragraph 26 of the Provident Scheme is inevitable. Exercise of the option under paragraph 26(6) is a necessary precursor to the exercise of option under Clause 11(3). Exercise of such option, therefore, would not foreclose the exercise of a further option under Clause 11(3) of the Pension Scheme unless the circumstances warranting such foreclosure are clearly indicated.*

10. *The above apart in a situation where the deposit of the employer'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."*

14. He further submitted that, in compliance to the orders issued by the Hon'ble Apex Court in ***R.C. Gupta and Ors. Vs. Regional Provident Fund Commissioner, Employees' Provident Fund Organisation and Ors*** [referred supra], has passed a judgment in ***The Employees Provident Fund Organisation and Ors. Vs. Sunil Kumar B. and Ors.***², wherein he draw attention of this Court at paragraph No.44 as follows:

"44. We accordingly hold and direct:

(i) The provisions contained in the notification No. G.S.R. 609(E) : MANU/LABR/0034/2014 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) : MANU/LABR/0034/2014 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.

² AIR 2022 SC 5634

(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 (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 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. 15000/- 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.”*

15. After hearing both sides and after perusing the various material provided by both the learned counsel for the petitioners and learned Standing Counsel for Employees Provident Fund Organization, this Court has come to a conclusion that the Hon'ble Apex Court in ***The Employees Provident Fund Organisation and Ors. Vs. Sunil Kumar B. and Ors.***, after considering the reasons given by the EPFO for issuance of their circular dated 31.05.2017 and after detailed discussion, has issued guidelines to be followed by the EPFO regarding the grant of pension as per their actual salary paid by the employees as pension.

16. In view of the above, and also as submitted by the learned counsel for the petitioner as well as learned counsel for the respondents that this Court already passed a detailed order in W.P.No.30608 of 2015 and batch, the instant writ petition is also liable to be disposed of in similar lines.

17. Accordingly, following the directions issued in paragraph No.44 of the judgment of the Hon'ble Apex Court in ***The Employees Provident Fund Organisation and Ors. Vs. Sunil Kumar B. and Ors.***, as detailed in preceding paragraph No.14, the present writ petition is disposed of.

There shall be no order as to costs. Miscellaneous petitions pending if any, shall stand closed.

MAHESWARA RAO KUNCHEAM, J

Date:12.02.2026
Rns



THE HON'BLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

WRIT PETITION No.45092 of 2017

Date: 12.02.2026

Rns