

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

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Writ Petition Nos.1411/2018, 2360/2018, 2665/2018, 2666/2018, 2951/2018, 3054/2018, 4015/2018, 4020/2018, 5309/2018, 5942/2018 and 6025/2018

Writ Petition No.1411/2018

(Prakash Chand Jain Vs. Regional Provident Fund Commissioner)

Writ Petition No.2360/2018

(Chandrakant Patel Vs. Employer Provident Fund Organisation)

Writ Petition No.2665/2018

(Devendra Jain Singhal Vs. Employer Provident Fund Organisation)

Writ Petition No.2666/2018

(Anil Kumar Buddhiwant Vs. Employer Provident Fund Organisation)

Writ Petition No.2951/2018

(Anoop Dhaketa Vs. Employer Provident Fund Organisation)

Writ Petition No.3054/2018

(Omprakash Kulkarni Vs. Employer Provident Fund Organisation)

Writ Petition No.4015/2018

(Suresh Chandra Verma Vs. Employer Provident Fund Organisation)

Writ Petition No.4020/2018

(Shyam Kumar Wagde Vs. Employer Provident Fund Organisation)

Writ Petition No.5309/2018

(Dilip Acharya Vs. Employer Provident Fund Organisation)

Writ Petition No.5942/2018

(Umakant Thombre Vs. Employer Provident Fund Organisation)

Writ Petition No.6025/2018

(Madan Kumar Babade Vs. Employer Provident Fund Organisation)

Indore, dated 27/04/2018

Parties through their counsel.

The petitioner before this Court, who is a retired employee and has served the Indore Development Authority, has filed present petition being aggrieved in the matter of grant of pension by the Regional Provident Fund Commissioner.

The petitioner has prayed for the following reliefs:-

- “a. Appropriate Writ, Direction or order in the nature of mandamus or other, the Respondents be directed to extend the benefit of proviso to Section 11(3) of the Employee's Pension Scheme, 1995 in terms of re-fixing the pension of the Petitioner on the basis of full salary

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exceeding ceiling limit.

- b. Appropriate Writ, Direction or order in the nature of mandamus or other, the Respondents be directed to calculate and pay the arrears of pension after re-fixing the pension on the basis of full salary exceeding ceiling limit alongwith all other consequential benefits.
- c. Appropriate Writ, Director or order in the nature of mandamus or other, the Respondents be directed to pay interest at the Rate of 12% on the entire arrears amount of pension computed on the basis of fully salary exceeding ceiling limit.
- d. Costs of this Petition be awarded.
- e. Any other appropriate relief, which this Hon'ble Court may deem fit, be awarded to the petitioner."

Shri Aviral Vikas Khare, learned counsel for the petitioner at the outset has drawn the attention of this Court towards order dated **23/02/2018** passed in **Writ Petition No.5042/2017 (Pradeep Vyas Vs. Employee Provident Fund Organisation)** and has stated that controversy involved in the present case stands concluded by the aforesaid judgment. The judgment dated 23/02/2018 passed in Writ Petition No.5042/2017 reads as under:-

“Shri Aviral Vikas Khare, learned counsel for the petitioner.

Shri Ajay Kumar Shukla, learned counsel for respondent No.1.

Ms. Vinita Phaye, learned counsel for respondent No.2.

This petition under Article 226 of the Constitution of India has been filed seeking writ in the nature of mandamus directing the respondents to extend the benefit of proviso to Section 11(3) of the Employees' Pension Scheme, 1995 in terms of re-fixing the pension of the petitioner on the basis of the full salary exceeding ceiling limit. The direction has also been sought for against the respondents to calculate the pay and arrears of pension after re-fixing the pension, as per full salary and not as per ceiling specified. The interest @ 12% on

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the entire arrears has also been sought for.

Learned counsel for the petitioner contends that the dispute in the present case is squarely covered by judgment of the Hon'ble Supreme Court in the case of ***R.C. Gupta and Ors. vs. Regional Provident Fund Commissioner Employees Provident Fund Organisation and Ors.*** decided in ***Civil Appeal No.10013- 10014/2016*** as per order dated 04.10.2016 wherein in para 10 and 11, the Court observed as under :-

“10. 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.

11. 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.”

Considering the said judgment, this Court in W.P. No.4979/2017 has held as under :-

“In the aforesaid paragraph, the Hon'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 Hon'ble Apex Court has not directed the Provident Fund Commissioner to claim interest alongwith such amount of

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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 Hon'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 Hon'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 Hon'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.

C.C.as per rules."

In view of the facts of the present case, the payment of the pension as per the ceiling of the salary Rs.6,500/- is unjustified and the respondent/Commissioner Provident Fund is required to observe Clause 11(3) of the Scheme of 1995, and accordingly, the pension is to be calculated.

As per reply filed by the respondents it is said that the petitioner if redeposits the amount received by him in excess alongwith amount of the pension and to pay the interest then Commissioner Provident Fund shall pass proper order and pay the amount as per the provision of Clause 11(3) of the Scheme.

In view of the foregoing discussion, in my considered opinion, keeping this petition pending is not in the benefit of any of the party, however, it is hereby disposed of with a direction that the petitioner shall pay the amount received by him within one month from the date of receipt of certified copy of this order without interest as directed by this Court in W.P. No.4979/2017. The said deposit be accepted, and thereafter, Commissioner Provident Fund shall determine the pension of the petitioner in terms of the order passed by the Supreme Court in the case of **R.C. Gupta (supra)** and be paid within a period of three months. The arrears of the pension be also calculated and be paid within the time specified alongwith interest as permissible.

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Accordingly, this petition is disposed of.

Certified copy as per rules.”

In light of the aforesaid judgment, present petition also stands disposed of and the judgment delivered in the case of **Pradeep Vyas (supra)** shall be applicable *mutatis-mutandis* in the present case also.

In the present writ petition i.e. Writ Petition No.1411/2018 and another writ petition i.e. Writ Petition No.5309/2018 (Dilip Acharya Vs. Employees Provident Fund Organisation) Form 3A is available with the Provident Fund Organisation and they have already processed the claim of the petitioners and therefore, granted 60 days time is granted to the respondent to finalized the claim of the petitioner and to extend all the benefits flowing out of the judgment dated 23/02/2018.

In respect of other connected writ petitions Form 3A is not received by the Provident Fund Organisation.

Resultantly, the petitioner shall make all possible endeavor to ensure that Form 3A is forwarded by the employer to the Employees Provident Fund Organisation enabling the Provident Fund Organisation to process the matter. The Provident Fund Organisation after receiving Form 3A in respect of other writ petitioners will process the same within 60 days and shall also

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confer the same benefits which have been extended to Pradeep Vyas in Writ Petition No.5042/2017.

In Writ Petition No.5942/2018, the Provident Fund Organisation has not refunded the amount to the petitioner and the amount is still lying with the Provident Fund Organisation and therefore, the Provident Fund Organisation shall process the claim of the petitioner within 60 days for grant of similar benefits as has been extended to the Pradeep Vyas in Writ Petition No.5042/2017.

With the aforesaid, all the writ petitions stand disposed of.

Certified copy as per rules.

(S. C. SHARMA)
J U D G E

Tej

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Tej Prakash Vyas
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