

HIGH COURT OF MADHYA PRADESH
WP. No.5567/2007

**(Om Prakash Vijayvargiya & Others v. The Employees Provident
Fund Organization & Others)**
Gwalior, Dated : 04.04.2019

Shri Vivek Jain, learned counsel for the petitioners.

Shri R.K. Goyal, learned counsel for respondent no.1.

Shri Amit Bansal, learned counsel for respondents no.2 and 3.

This petition under Article 226 of the Constitution of India has been filed seeking the following reliefs :-

- (i) that, the respondents may kindly be directed to pay pension to the petitioners from the date of their retirement from service.
- (ii) The entire arrears alongwith interest @ 12% may also be directed to be paid to the petitioners.
- (iii) Any other relief which this Hon'ble Court may deem fit in the circumstances of the case including costs may also be granted.

2. It is the case of the petitioners that they were the employees of respondent no.2 and took voluntary retirement under VRS Scheme, 2005 and the petitioners no.1 to 3 stood retired on 31.07.2005, whereas respondent no.4 stood retired on 30.09.2005.

3. Respondent no.2, i.e., Madhya Pradesh Road Transport Corporation was governed under the Employees Provident Fund and Misc. Provisions Act, 1952 (for short EPF Act) and all the provisions of the Act as well as the Rules and Scheme framed thereunder are applicable to the employees of the Corporation. All the employees, who had completed 50 years of age on the date of their retirement,

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were eligible to get pensions although they are entitled to get the pension at the reduced rate. It is submitted that after their retirement, neither the provident fund nor the pension was being paid to the petitioners and, therefore, they filed a writ petition before this Court, which was registered as WP No.3165/06, which was disposed of by this Court by order dated 27.10.2006 with the following observations:-

“As per the return filed by respondent no.1, respondents no.2 and 3 have not been deposited the contribution of Provident Fund of the petitioners neither the required forms have been forwarded to respondent no.1.

In view of above facts, petition of the petitioners is disposed of with a direction that respondents no.3 and 4 shall deposit the contribution of E.P.F. amount of the petitioners with respondent No.1 and the petitioners shall submit application in prescribe forms with regard to payment of E.P.F. amount before respondents No.3 and 4 and the same shall be forwarded to respondent No.1 and thereunder payment of E.P.F. Be paid to the petitioners as per rules. The whole exercise shall be completed within a period of three months from the date of receipt of certified copy of this order.”

4. Thus, it is clear that the respondents no.2 and 3 had not deposited contribution of provident fund of the petitioners.

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Accordingly, the respondents no. 3 and 4, i.e., Madhya Pradesh State Road Transport Corporation and Divisional Manager, M.P. State Road Transport Corporation, Gwalior were directed to deposit the contribution of EPF amount of the petitioners and the petitioners were directed to submit their applications in prescribed forms with regard to payment of EPF amount before respondents no.3 and 4 and in its turn, respondents no. 3 and 4 were directed to forward the same to respondent no.1.

5. It is submitted by the learned counsel for the petitioners that the prescribed forms were submitted by the petitioners, which were duly forwarded by respondents no.2 and 3, however, respondent no.1 instead of making payment of pension from the date of retirement of the petitioners, has paid the pension from the date of the option exercised by petitioner no.1 or from the date of receipt of the applications of petitioners no.2 to 4.

6. It is submitted that so far as petitioner no.1 is concerned, he had given an option of getting pension from 01.08.2005, but by making overwriting in the said form, this date was changed to 03.11.2006, whereas the option exercised by the petitioner was 01.08.2005. Thus, it is submitted that petitioner no.1 is entitled for pension from 01.08.2005 and not 03.11.2006. Respondent no.1 has filed return and in the return, it has been mentioned that since petitioner no.1 had

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opted for reduced pension with effect from 03.11.2007 (it should have been 03.11.2006), therefore, he has been paid pension with effect from 03.11.2006.

7. So far as petitioners no. 2 to 4 are concerned, it is the stand of respondent no.1 that since they have failed to exercise their option for reduced pension, therefore, they have been paid pension from the date of receipt of their application forms.

8. Respondent no.3 has filed an affidavit of one Shri Ashok Kumar Tomar, who was working as Divisional Manager of Madhya Pradesh State Road Transport Corporation, stating that he had forwarded the application form of petitioner no.1 on behalf of Madhya Pradesh State Road Transport Corporation, however, the duplicate copy of the application form of petitioner no.1 is not available in the office. It is also mentioned in the affidavit that there was no overwriting in the application form forwarded by the deponent and had there been any overwriting, respondent no.1 would have returned the application form. In view of the factual controversy raised by the respondents as well as the petitioner, this Court by order dated 07.05.2014 had directed respondent no.2 to produce copy of the option form retained by MPSRTC. However, in view of the affidavit submitted by Shri Ashok Kumar Tomar, it is clear that he has taken a specific stand that no duplicate copy of option form/application form as submitted by

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petitioner no.1 is available in the office of respondent no.1. Respondent no.1 has produced the original record of the pension case of petitioner no.1 from which it is clear that there is overwriting in form 10D and the column pertaining to date for early reduced pension has certain corrections. The date has been changed after applying white fluid whereas the month and year have been changed after scoring out the original entries.

9. Now, the only question for determination is that whether the corrected/modified date contained in original form 10D (EPS) forming part of the pension case of petitioner no.1, was forwarded by respondent no.2 or this interpolation has been done in the office of respondent no.1.

10. Respondent no.3 has filed an affidavit making a statement on oath that he had forwarded the form 10D (EPS) and at that time, there was no overwriting in the said form and, thus, respondents no.2 and 3 have tried to shift responsibility to the shoulders of respondent no.1. When the signatures of the forwarding officer posted in the Department of respondent no.2, which are available on form 10D (EPS), are compared with the signatures of the deponent, i.e., Shri Ashok Kumar Tomar, then it is clear that form 10D (Employees Pension Scheme, 1995) was not forwarded by deponent Shri Ashok Kumar Tomar and he has also given an affidavit that duplicate copy of

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form 10D of Employees Pension Scheme of petitioner no.1 is also not available in the office of respondent no.2. Thus, it is clear that the affidavit given by Shri Ashok Kumar Tomar to the effect that he had forwarded form 10D of Employees Pension Scheme, 1995 of petitioner no.1 and there was no interpolation at the said time is factually incorrect and deliberately Shri Ashok Kumar Tomar has given false affidavit before this Court in order to mislead this Court. For the reasons best known to respondents no.2 and 3, they have not chosen to file an affidavit of the Officer, who had actually forwarded form 10D (EPS) of petitioner no.1. Further, the petitioner in his rejoinder has filed photostat copy of the form, which, according to him, was originally filled by him and in the rejoinder he has stated that the said photostat copy, which is annexed as Annexure P/9 alongwith rejoinder, was provided by the Officer of respondent no.2. Para 3 of the rejoinder reads as under :-

“3.That, the contention that the petitioner No.1 had filled the date 3.11.2006 for start of pension, is wrong and incorrect. The MPRTC had given a photocopy of the pension form for 10-D to the petitioner No.1 at the time of filling of pension forms and in that form, the petitioner had clearly mentioned the date of option as 1.8.2005. A copy of the pension form as given to the petitioner no.1 is annexed herewith and marked as Annexure P/9.

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The respondent No.1 may be asked to produce the original pension forms before this Hon'ble Court so that the fraud committed by it with the petitioner No.1 may come to light.”

11. Thus, on one hand, petitioner no.1 has claimed that the photostat copy of form 10D (EPS) was made available to him, whereas it is the case of respondent no.2 that the duplicate copy of the form 10D (EPS) of petitioner no.1 was not available in the office of respondent no.2. Under these circumstances where the stands taken by petitioner no.1 and respondents no.2 and 3 are self-contradictory to each other, then this Court is of the considered opinion that the allegation of petitioner no.1 or respondents no.2 and 3 that it was the respondent no.1, who had manipulated form 10D (EPS) of petitioner no.1, cannot be accepted.

12. Thus under these circumstances, when respondent no.2 has tried to mislead the Court by filing an incorrect affidavit, therefore, this Court is left with no other option but to draw an adverse inference against respondent no.2 and accordingly, it is held that in fact form 10D (EPS) of petitioner no.1 was forwarded by respondent no.2 in the same condition which is found in the original pension record of petitioner no.1. Thus, it is held that after changing the date for receipt of reduced pension, form 10D (EPS) was forwarded by respondent

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no.2. If petitioner no.1 feels that he has been cheated by respondents no.2 and 3 by changing the option date for receipt of reduced pension from the date of his retirement, then he can take suitable action against the authorities, but since the application form 10D (EPS) of petitioner no.1 was forwarded with an option of receiving the reduced payment from 03.11.2006, therefore, in the considered opinion of this Court, the respondent no.1 has not committed any mistake by sanctioning pension to petitioner no.1 with effect from 03.11.2006.

13. So far as petitioners no.2 to 4 are concerned, admittedly they did not exercise any option for getting reduced payment from an early date. Certain instructions were attached with proforma of form 10D (EPS) and instructions 8A, reads as under :-

“8.ए यदि सदस्य 50 वर्ष की उम्र पूर्ण होने के पश्चात किन्तु सेवा निवृत्ति उम्र (58) वर्ष पूर्ण होने के पहले पेंशन प्राप्त करना चाहता है तो ऐसी स्थिति में उसे घटी दर पर (पूर्व पेंशन) देय होगी। इस के लिए विकल्प में से किसी एक का चयन कर पेंशन प्रारम्भ की दिनांक दर्शायी जानी चाहिए:-

(क) नौकरी छोड़ने पर आयु 50 वर्ष पूर्ण होनी की दिनांक

(ख) आयु के 50 वर्ष एवं 58 वर्ष पूर्ण होने के बीच की कोई दिनांक

(ग) प्रपत्र 10 डी भरने की दिनांक

उपरोक्त में से कोई भी दिनांक नहीं दर्शाने पर प्रपत्र 10 डी के

भ. नि. कार्यालय द्वारा प्राप्ति की दिनांक से पेंशन प्रारंभ होगी।”

According to these instructions, an employee is required to submit his one of the abovementioned options.

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14. Thus, it is clear that in case if option nos. 1 and 2 are not opted by the employee, then the reduced pension shall be payable from the date of receipt of form 10D.

15. It is submitted by the learned counsel for the petitioners that there is no such provision in the Employees Pension Scheme for giving any option, therefore, these executive instructions given by the Department is bad and once the pension is opted by the employee, then it has to be paid from the date of his retirement and not as per the instructions.

16. It is well established principle of law that where the Act or Rules or Scheme is silent, then the gap can be filled up by issuing executive instructions. The executive instructions can supplement the Rule or Scheme, but they cannot supplant the Rule or Scheme. The petitioners have failed to point out as to how the executive instruction No.8A issued alongwith form 10D (EPS) amounts to supplanting the Scheme. Thus, in the considered opinion of this Court, the instruction 8A merely supplement the Scheme and thus it can be validly issued by the Department.

17. It is submitted by the learned counsel for the petitioners that earlier the petitioners were not paid the provident fund or the pension, therefore, they had filed the writ petition, which was registered as WP No.3165/06 and the said writ petition was disposed of by order dated

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27.10.2006, therefore, when the Department had not forwarded the application of the petitioner for payment of pension, then the employees cannot be held responsible for the same and the petitioners would be entitled for payment from the date of their retirement. To buttress this contention, the learned counsel for the petitioners has relied upon order dated 27.02.2009 passed by this Court in WP No.3416/2006 (S). In the present case, it is nowhere pleaded that on what date the forms 10D (EPS) were submitted by petitioners no.2 to 4. Copies of form 10D (EPS) of petitioners no. 2 to 4 are also available on record as Annexures R/2 to R/4. It is apparent from these forms that that the date of submission of these application forms is not mentioned. Thus, the forms were forwarded to respondent no.1 on 04.04.2007 and thus there is nothing on record to suggest that respondents no.2 and 3 had erroneously retained the forms with them after the same were filled up by petitioner no.2 to 4. If petitioners no.2 to 4 themselves had filled up the form in the month of – 2007, then they are entitled for the pension from the date of receipt of the application forms 10D (EPS) in the office of respondent no.1. Thus, this Court is of the considered opinion that the payment of pension to respondents no. 2 to 4 from 04.04.2007 cannot be said to be contrary to these Rules. This Court by order dated 02.03.2007 passed in WP No.3023/06 (S) has held as under :-

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“It is clear from the provisions of Employees Pension Scheme, 1995 that the employee would be entitled for pension from the date when he opts for pension. In my opinion, the respondents have rightly granted pension to the petitioner from the date of his option for pension. Rest of the retrial claims of the petitioner have been settled and there is no dispute about it. Hence, there is no merit in this petition, it is hereby dismissed.”

18. Accordingly, it is held that since petitioners no.2 to 4 have neither mentioned the date of filling of form 10D (EPS) nor they have opted for reduced pension from an early date, therefore, they have been rightly granted pension from the date of receipt of form 10D (EPS), i.e., 04.04.2007 and so far as petitioner no.1 is concerned, as the petitioner as well as respondents no.2 and 3 have failed to make out a case that the date of option was changed by respondent no.1.

19. So far as the affidavit filed by Shri Ashok Kumar Tomar on behalf of respondents no.2 and 3 is concerned, the same is misleading and false to the knowledge of the deponent himself. The counsel for respondents no.2 and 3 submits his unconditional apology and has submitted that because of incorrect expression of facts, the affidavit has been filed, but the intention of the deponent was never to mislead to this Court. The explanation given by Shri Amit Bansal about the intention of the deponent cannot be considered without detailed

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inquiry because the contents of the affidavit are clear and not vague or ambiguous. However, in view of the unconditional apology tendered by the learned counsel for respondent no.2, instead of taking strict action against the deponent, this Court is of the view that by condemning the act of the deponent in filing false affidavit, the unconditional apology tendered by the learned counsel for respondent no.3 on behalf of the deponent can be accepted. Accordingly, respondent no.2 is given a warning to remain more vigilant in future and not to file any return or any affidavit in a casual manner, otherwise any further default on the part of respondent no.2 would be taken with all seriousness and it would be considered as a deliberate attempt on the part of respondent no.2 to mislead the Court.

20. With the aforesaid observations, the petition fails and is hereby dismissed.

(G.S. Ahluwalia)
Judge

Meh/-