

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).10013-10014 OF 2016
(Arising out of SLP(C) Nos.33032-33033 of 2015)

R.C. GUPTA & ORS. ETC. ETC. . . . APPELLANT(S)

VERSUS

REGIONAL PROVIDENT FUND
COMMISSIONER EMPLOYEES PROVIDENT
FUND ORGANISATION & ORS ETC. . . . RESPONDENT(S)

O R D E R

1. Leave granted.
2. The challenge in these appeals is to an order passed by the Division Bench of the Himachal Pradesh High Court reversing the order of the learned Single Judge by which the learned Single Judge had directed that the appellant-employees would be entitled to the benefit of deposit of 8.33% of their actual salary in the Pension Fund irrespective of the ceiling limit. The aforesaid percentage i.e. 8.33% is out of the total of 12%, which constitutes the employer's share under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the 1952 Act").

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NEETU RHOJURIA
Date: 2016.11.08
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Reason:

3. The facts lie within a short compass. 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 an employee being the employer's share. The Act as enacted in the year 1952 did not contain any provision for pension. Sub-section 6A with which we are concerned, was inserted by an amendment w.e.f. 16.11.1995 providing for the Employees' Pension Scheme to be framed for payment of pension to retiring employees. The corpus of the pension fund was to be *inter alia* constituted by deposit of 8.33% of the employer's contribution under Section 6 of the Act. The Pension Scheme which was framed to give effect to the provisions of Section 6A contains *inter alia* Clause 11, which deals with determination of pensionable salary. Under Clause 11(3) of the Pension Scheme, the maximum pensionable salary was limited to Rs.5,000/-, which was subsequently enhanced to Rs.6,500/- per month w.e.f. 08.10.2001. A couple of months after the Pension Scheme was framed w.e.f. 16.11.1995, a proviso was added to Clause 11(3) w.e.f. 16.03.1996

permitting an option to the employer and an employee for contribution on salary exceeding Rs.5,000/- or Rs.6,500/- (w.e.f. 08.10.2001) per month. 8.33% of such contribution on full salary was required to be remitted to the Pension Fund.

4. The appellant-employees on the eve of their retirement i.e. sometime in the year 2005 took the plea that the proviso brought in by the amendment of 1996 was not within their knowledge and, therefore, they may be given the benefit thereof, particularly, when the employer's contribution under the Act has been on actual salary and not on the basis of ceiling limit of either Rs.5,000/- or 6,500/- per month, as the case may be. This plea was negatived by the Provident Fund Authority on the ground that the proviso visualized a cut-off date for exercise of option, namely, the date of commencement of Scheme or from the date the salary exceeded the ceiling amount of Rs.5,000/- or 6,500/- per month, as may be. As the request of the appellant-employees was subsequent to either of the said dates, the same cannot be acceded to.

5. Aggrieved the appellant-employees moved the High Court under Article 226 of the Constitution. The learned Single Judge decided the Writ petition in favour of the appellant-employees making it clear that the decision would not serve as a precedent for the future. The Division Bench reversed the said decision upholding the view of the Provident Fund Authority that under the proviso to Clause 11(3) of the Pension Scheme there was a cut-off date.

6. We have heard the learned counsels for the parties. We have read and considered the orders of the High Court, the provisions of the Act, the Provident Fund Scheme as well as the relevant provisions of the Pension Scheme.

7. Clause 11 (3) of the Pension Scheme is in the following terms :

11. Determination of Pensionable Salary.

xxx

xxx

xxx

(3) The maximum pensionable salary shall be limited to ¹[rupees six thousand and five hundred/Rs.6,500/-] per month.

²[Provided that if at the option of the

1 Subs. by G.S.R.774(E), dated 8th October, 2001 (w.r.e.f. 1-6-2001)

2 Subs. by G.S.R. 134, dated 28th February, 1996 (w.e.f. 16-3-1996)

employer and employee, contribution paid on salary exceeding [rupees six thousand and five hundred/Rs.6,500/-] per month from the date of commencement of this Scheme or from the date salary exceeds [rupees six thousand and five hundred/Rs.6,500/-] whichever is later, and 8.33 per cent share of the employers thereof is remitted into the Pension Fund, pensionable salary shall be based on such higher salary.]

8. 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 31.03.2016. A beneficial Scheme, in our considered view, ought not to be allowed 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 12% of the ceiling limit of Rs.5,000/- or Rs.6,500/- per month, as the case may be.

9. A further argument has been made on behalf of the Provident Fund Commissioner that the appellant-employees had already exercised their option under paragraph 26(6) of the Employees' Provident Funds Scheme. Paragraph 26(6) is in the following terms:

26. Classes of employees entitled and required to join the fund

xxx

xxx

xxx

(6) Notwithstanding anything contained in this paragraph, an officer not below the rank of an Assistant Provident Fund Commissioner may, on the joint request in writing, of any employee of a factory or other establishment to which this Scheme applies and his employer, enroll such employee as a member or allow him to contribute more than ³[six thousand five hundred rupees] of his pay per month if he is already a member of the fund and thereupon such employee shall be entitled to the benefits and shall be subject to the conditions of the fund, provided that the employer gives an undertaking in writing that he shall pay the administrative

3 Subs. By Notification No.S-350/2/2/96-SS II, dated 4th May, 2001, for "rupees five thousand". Earlier the words "rupees five thousand were substituted by G.S.R. 718(E), dated 23rd September, 1994, for the words "rupees three thousand and five hundred" (w.e.f. 1-10-1994).

charges payable and shall comply with all statutory provisions in respect of such employee].

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 benefitted 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.

12. Consequently and in light of the above, we allow these appeals and set aside the order of the Division Bench of the High Court.

.....,J.
(RANJAN GOGOI)

.....,J.
(PRAFULLA C. PANT)

NEW DELHI
OCTOBER 04, 2016

ITEM NO.1

COURT NO.5

SECTION XV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 33032-33033/2015

(Arising out of impugned final judgment and order dated 22/07/2015 in LPA No. 411/2012 and LPA No. 412/2012 passed by the High Court Of Himachal Pradesh at Shimla)

R.C. GUPTA & ORS. ETC. ETC.

Petitioner(s)

VERSUS

REGIONAL PROVIDENT FUND COMMISSIONER EMPLOYEES
PROVIDENT FUND ORGANISATION & ORS ETC.

Respondent(s)

(with interim relief and office report)

Date : 04/10/2016 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MR. JUSTICE PRAFULLA C. PANT

or Petitioner(s) Mr. Anip Sachthey, Adv.
Mr. Adhitya Dhawan, Adv.
Ms. Anjali Chauhan, Adv.
Mr. Vinayak Shukla, Adv.

For Respondent(s) Mr. Pankaj Garg, Adv.
Mr. Milind Garg, Adv.
Mr. Ajay shankar Mani, Adv.
Mr. Suvidutt M.S., Adv.

Mr. Vivek Gupta, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeals are allowed in terms of the signed
order.

(Neetu Khajuria)
Court Master

(Asha Soni)
Court Master

(Signed order is placed on the file.)