

**(2010) 10 MAD CK 0211**

**Madras High Court (Madurai Bench)**

**Case No:** Writ Petition (MD) No. 2453 of 2009 and M.P. (MD) No's. 2 of 2009 and 1 of 2010

S. Victor and Others

APPELLANT

Vs

The Government of India, The  
Employees' Provident Fund  
Organization and The Regional  
Provident Fund Commissioner

RESPONDENT

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**Date of Decision:** Oct. 27, 2010

**Acts Referred:**

- Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 6A, 7(1)

**Hon'ble Judges:** K. Chandru, J

**Bench:** Single Bench

**Advocate:** V.R. Shanmuganathan, for the Appellant; K. Murali Shankar, for Respondents 1 and 2 and K.K. Senthilvelan, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

@JUDGMENTTAG-ORDER

K. Chandru, J.  
Heard both sides.

2. The petitioners have come forward with the present Writ Petition seeking for a direction to the third respondent i.e., the Regional Provident Fund Commissioner, Madurai to grant the pensionary benefits to which they are entitled to under the Employees' pension Scheme, 1995 without any reduction in the pensionary benefits, quoting the clarification letter dated 10.05.1999 issued by the first respondent.

3. According to the petitioners, the said clarification letter came to be set aside by this Court in W.P. No. 5485 of 2005, vide judgment dated 08.02.2008.

4. Notice was ordered in this Writ Petition on 31.03.2009. During the pendency of the Writ petition, the first petitioner died and, hence, M.P.(MD) No. 1 of 2010 was filed to substitute the Legal Representatives of the deceased first petitioner and the same is ordered.

5. In the clarification letter, the Ministry of Labour, Government of India interpreted para-41 of the Employees' Pension Scheme and two different pensions were ordered depending upon the total service. This Court, by judgment dated 08.02.2008, set aside the clarification and held that the employees are entitled to get pension as per the provisions of the Employees' Pension Scheme, 1995 and the clarification was incorrect. Thereafter, the petitioners made claim for getting higher amount and when the same was not considered, they filed the present Writ Petition.

6. On behalf of the respondents, it was contended that the respondents have preferred a Writ Appeal in W.A.(MD) No. 311 of 2009. It is also stated that a similar judgment was rendered by the Karnata High Court and the Department has preferred a SLP before the Supreme Court in S.L.P.(Civil) No. 2077/2005 and the Supreme Court was seized of the matter.

7. The Karnataka High Court, vide its judgment in [K. Chennakesavalu Vs. The Employees Provident Fund Organisation and Others](#), had held that the clarification issued by the Central Government cannot run against the statutory scheme framed under the Employees' Provident Funds and Miscellaneous Provisions Act. He also submitted that subsequent to the judgment of the Karnataka High Court, even while, the matter was pending before the Supreme Court in S.L.P., the Central Government has issued a statutory notification u/s 6-A read with Section 7(1) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, dated 15.06.2007, vide G.S.R.431(E), amending the Employees' Pension Scheme, known as "the Employees' Pension (Amendment) Scheme, 2007" and it has been notified with retrospective effect from 1995.

8. In the light of the subsequent statutory notification, the claim of the petitioners, based upon the earlier order of this Court, does not survive and the scheme is also not under challenge.

9. In the light of the subsequent development, the case pleaded by the petitioners cannot be countenanced by this Court and hence, the Writ Petition stands dismissed. Consequently, the connected Miscellaneous Petition in M.P.(MD) No. 2 of 2009 is closed. No costs.