



2026:CGHC:10669

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 4132 of 2023

Judgment Reserved On: 11.02.2026

Judgment Delivered On: 02.03.2026

- Lalman Sahu S/o Rugsa Sahu Aged About 67 Years R/o Milan Chowk, Kududand, Sahu Bada, Bilaspur, District : Bilaspur, Chhattisgarh
--- **Petitioner**

versus

- 1 - Employees Provident Fund Organization, Through Commissioner, Regional Office, Block-D, Scheme-32, Indira Gandhi, Commercial Complex, Pandri, Raipur, District : Raipur, Chhattisgarh
- 2 - Zila Sahkari Kendriya Bank Maryadit Bilaspur Through Chief Executive Officer, Bilaspur, District : Bilaspur, Chhattisgarh
--- **Respondents**

WPS No. 7763 of 2024

- Sunil Kumar Muttoo S/o Late Bishamber Nath Muttoo, Aged About 69 Years (Pre Retiree- 1/9/2014, Un - Exempted), R/o - A- 2829, First Floor, Gate No. 24, Green Field Colony, Faridabad, Haryana - 121010
---**Petitioner**

Versus

- 1 - Employees Provident Fund Organization Through- Additional Central P. F. Commissioner, (Mpcg), Employees Provident Fund Organisation Zonal Office Bhavishya Nidhi Bhavan 59, Arera Hills, Bhopal- 462011
- 2 - Regional Provident Fund Commissioner, Employees Provident Fund Organization, Regional Office - Block-D, Scheme 32, Indira Gandhi Commercial Complex, Pandri Raipur, Chhattisgarh.
- 3 - Regional Provident Fund Commissioner, Employees Provident Fund Organization, Wazirpur Industrial Area, Delhi-110052.
- 4 - Chhattisgarh State Co-Operative Dairy Federation, Through Its Managing Director, Urla, Post - Bmy Charouda, District - Durg, Chhattisgarh.
--- **Respondents**

WPS No. 8104 of 2024

- P.N. Upadhyay S/o Shri Brijnandan Upadhyay Aged About 69 Years R/o- Om Vihar, Near Ridhi Sidhi Garden, Mahavir Nagar, Raipur, District - Raipur, Chhattisgarh.

---Petitioner

Versus

1 - Employees Provident Fund Organization Through- Additional Central P.F. Commissioner, (Mpcg), Employees Provident Fund Organisation Zonal Office, Bhavishya Nidhi Bhavan 59, Arera Hills, Bhopal (M.P.) Pin-462011

2 - Employees Provident Fund Organization, Through- Commissioner, Regional Office- Raipur, Raipur Chhattisgarh - Block- D, Scheme 32, Indira Gandhi Commercial Complex, Pandri Raipur, Chhattisgarh

3 - Chhattisgarh State Co-Operative Dairy Federation, Through Its Managing Director, Urla, Post- Bmy Charouda, District- Durg Chhattisgarh

--- Respondents

WPS No. 8225 of 2024

- Satya Narayan Dubey S/o Shri Ghanshyam Prasad Dubey Aged About 69 Years Present Add.- R/o- E-23, Rishabh Nagar, Near Dronacharay School, Amilidih, Ravigarm, Raipur, District- Raipur, C.G.

---Petitioner(s)

Versus

1 - Employees Provident Fund Organization Through- Additional Central P.F. Commissioner, (M P C G), Employees Provident Fund Organisation Zonal Office, Bhavishya Nidhi Bhavan 59, Arera Hills, Bhopal (M.P.) Pin- 462011

2 - Employees Provident Fund Organization Through Commissioner, Regional Office- Raipur, Raipur Chhattisgarh- Block- D, Scheme 32, Indira Gandhi Commercial Complex, Pandri Raipur, C.G.

3 - Chhattisgarh State Co-Operative Dairy Federation Ltd. Through Its Managing Director, Urla, Post- B M Y Charouda, District Durg, C.G.

--- Respondents

WPS No. 1381 of 2025

- Ravindra Singh Thakur S/o Shri Shaiyalal Singh Thakur Aged About 71 Years R/o Thakur Kirana Store, Bhairoganj, Maharaj Bag, Seoni (M.P.)

---Petitioner

Versus

1 - Employees Provident Fund Organization Through Its Commissioner, Regional Office- Raipur, Raipur Chhattisgarh- Block- D, Scheme 32, Indira Gandhi Commercial Complex, Pandri Raipur (C.G.)

2 - Chhattisgarh State Co-Operative Dairy Federation, Through Its Managing Director, Urla, Post- Bmy Charouda, District- Durg (C.G.)

--- Respondents

WPS No. 12334 of 2025

- Arun Kumar Jain S/o Hajari Lal Jain Aged About 72 Years R/o - Ward No. 7, Shivsathaliya Colony, Near Golden Zym, Ramlala Ward, Makroniya, Sagar, District - Sagar (M.P.)

---Petitioner

Versus

1 - Employees Provident Fund Organization Through Its Managing Director, Urla, Post - Bmy Charouda, District - Durg (C.G.)

2 - Chhattisgarh State Co-Operative Dairy Federation Through Its Managing Director, Urla, Post - Bmy Charouda, District - Durg (C.G.)

--- Respondents

WPS No. 4659 of 2023

- Kunwar Singh Dewangan Son Of S.S. Dewangan, Aged About 68 Years R/o. In Front Michalew School Samta Marg Govinnagar, District - Kanker, Chhattisgarh.

---Petitioner

Versus

1 - Employees Provident Fund Organization Through Commissioner, Regional Office, Block -D, Scheme -32, Indira Gandhi Commerical Complex, Pandri, Raipur, District - Raipur, Chhattisgarh.

2 - Zila Sahkari Kendriya Bank Maryadit Jagdalpur, Through District - Raipur, Chhattisgarh.

--- Respondents

WPS No. 5556 of 2023

1 - Sagun Lal Verma S/o Late Gaya Ram Verma Aged About 67 Years R/o A-162, Housing Board Colony, Kota Raipur, Raipur (C.G.)

2 - R.S. Sahu S/o Late Khuman Singh Sahu Aged About 67 Years R/o Near Abhanpur Police Station Raipur (C.G.)

3 - R.S. Sharma S/o Late Gaya Prasad Sharma Aged About 67 Years R/o C-41, Vijaypuram Colony, Seepat Road, Sarkanda, Bilaspur (C.G.)

4 - G.S. Gavel S/o Phool Singh Gavel Aged About 73 Years R/o Village Sukali Pali, Post Sulouni, Via Sakti, District : Janjgir-Champa, Chhattisgarh

---**Petitioners**

Versus

1 - Employees Provident Fund Organization Through Commissioner, Regional Office- Raipur, Raipur Chhattisgarh Block -D, Scheme 32, Indira Gandhi Commercial Complex, Pandri Raipur (C.G.)

2 - Chhattisgarh State Co-Operative Dairy Federation Through Its Managing Director, Urla, Post - Bmy Charouda, District : Durg, Chhattisgarh

--- **Respondents**

WPS No. 5484 of 2023

1 - Prakash Bhalachandra Keskar S/o Late B.A. Keskar Aged About 67 Years R/o H. No. 207, Om Garden, Near Gajanand Mandir, Parijat Colony, Nehru Nagar, Bilaspur (C.G.)

2 - Virendra Narayan Shukla S/o Late Mahadev Shukla Aged About 68 Years R/o V 128, Manas Akriti Vihar, Mahaveer Nagar, Raipur (C.G.) Permanent Address H. No. 238, Harsevakpur, Rapti Nagar, Ph-4, Behind Sport College, Gorakhpur (U.P.)

---**Petitioners**

Versus

1 - Employees Provident Fund Organization, Through Its Managing Director, Head Office- Beej Bhawan, Ravigram, Telibandha, G.E. Road, Raipur (C.G.)

2 - Chhattisgarh State Beej Evan Krshi Vikas Nigam Limited Through Its Managing Director, Head Office- Beej Bhawan, Ravigram, Telibandha, G.E. Road, Raipur (C.G.)

--- **Respondents**

WPS No. 5106 of 2023

- Dhansi Ram Agrawal S/o Ram Kishan Agrawal, Aged About 67 Years R/o Behind Central Jail Babu Para, Telephone Exchange Road, Ambikapur, District Surguja Chhattisgarh.

---**Petitioner**

Versus

1 - Employees Provident Fund Organization Through Commissioner, Regional Office, Block-D, Scheme-32, Indira Gandhi Commercial Complex, Pandri, Raipur, District Raipur Chhattisgarh.

2 - Zila Sahkari Kendriya Bank Maryadit, Through Chief Executive Officer, Ambikapur, District Surguja Chhattisgarh.

--- Respondents

WPS No. 4703 of 2023

- Puran Singh S/o Drig Pal Singh Aged About 70 Years R/o Mahaveer Ward Dc Road Ambikapur, District : Surguja (Ambikapur), Chhattisgarh

---Petitioner

Versus

1 - Employees Provident Fund Organization Through Commissioner, Regional Office, Block-D, Scheme-32, Indira Gandhi Commercial Complex, Pandri, Raipur, District : Raipur, Chhattisgarh

2 - Zila Sahkari Kendriya Bank Maryadit Ambikapur Through Chief Executive Officer, Ambikapur, District : Surguja (Ambikapur), Chhattisgarh

--- Respondents

WPS No. 4391 of 2023

- Ganesh Prasad S/o Damodar Prasad Swarnkar, Aged About 67 Years R/o Ward No. 10, Ranger Gali, Akhra Bhata, Sakti, District Janjgir Champa , New District Sakti Chhattisgarh.

---Petitioner

Versus

1 - Employees Provident Fund Organization, Through Chief Executive Officer, Bilaspur District Bilaspur Chhattisgarh.

2 - Zila Sahkari Kendriya Bank Maryadit Bilaspur, Through Chief Executive Officer, Bilaspur District Bilaspur Chhattisgarh.

--- Respondents

WPS No. 4458 of 2023

- Shiv Kumar Singh Son Of Jhandu Singh, Aged About 68 Years R/o. Sattipara Bechen Colony Ambikapur District - Sarguja Chhattisgarh.

---Petitioner

Versus

1 - Employees Provident Fund Organization Through Commissioner, Regional Office, Block -D, Scheme -32, Indira Gandhi Commerical Complex, Pandri, Raipur, District - Raipur, Chhattisgarh.

2 - Zila Sahkari Kendriya Bank Maryadit Ambikapur, Through Chief Executive Officer, Ambikapur, District - Ambikapur, Chhattisgarh.

--- Respondents

For Petitioners	Respective : Mr. Govind Ram Miri, Sr. Advocate with Mr. Yogesh Chandra Sharma, Advocate Mr. S.P. Sannat, Advocate Mr. Basant Kaiwartya, Advocate and Mr. Neeraj Choubey, Advocate
For Respondents	Respective : Mr. Sunil Pillai, Advocate Mr. Bhupendra Shrivastava, Advocate appears on behalf of Mr. Vinay Pandey, Advocate Mr. Jitendra Shrivastava, Advocate with Mr. Amit Kumar Verma, Advocate, Mr. V. Jayant Kumar, Advocate appears on behalf of Mr. Prakash Tiwari, Advocate Mr. Keshav Dewangan, Advocate and Mr. Om P. Sahu, Advocate

Hon'ble Shri Narendra Kumar Vyas, J.

CAV ORDER

1. Since an identical issue and common question of facts and law are involved in the bunch of these writ petitions, they are heard analogously and are being decided by this common order.
2. The petitioners have filed the present petitions challenging the legality and validity of letters issued by the respondent – Employees' Provident Fund Organisation, Regional Office, Raipur (C.G.), whereby the respondent authority has discontinued the higher pension previously granted to them and started paying lower pension as detailed in the subsequent paragraph.
3. The petitioners have claimed following reliefs:-
 - (a) Issuance of direction to respondent No.1 to restore the higher pension to the petitioners and also to pay the arrears with interest @ 18% for delayed payment.
 - (b) The petitioners have also prayed for issuance of direction to the EPF Organisation to extend the date 26.06.2023 of filling application regarding pension on higher wages.

Or alternatively,

(c) They seek direction to the EPF Organisation to return the entire contributory amount of the petitioners along with the interest @ of 20%.

4. For the sake of convenience, facts of WPS No. 4132 of 2023 are taken into consideration for deciding the issue involved in the present writ petition as lead case.

5. The brief facts as projected by the petitioner are that :-

(a) He was employed in Zila Sahkari Kendriya Bank Maryadit, Bilaspur, District Bilaspur (C.G.)/respondent No.2. He joined service on 14.06.1976 and retired on 30.11.2014. During his service tenure, he was a member of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the schemes framed thereunder.

(b) Initially, his monthly pension was sanctioned at Rs. 2,190/- by the Employees' Provident Fund Organisation (in short "the EPFO"). The Government of India, Ministry of Labour amended the paragraph 11 of the Employees Pension Scheme, 1995 w.e.f. 01.09.2014 and has amended para 11 as under :-

"11(4) The existing members as on the 1st day of September, 2014, who at the option of the employer and employee, had been contributing on salary exceeding six thousand and five hundred rupees per month, may or a fresh option to be exercised jointly by the employer and employee continue to contribute on salary exceeding fifteen thousand rupees per month and the pensionable salary for the existing members who prefer such fresh option shall be based on the higher salary.

Provided that the aforesaid members have to contribute at the rate of 1.16 percent on salary exceeding fifteen thousand rupees as an additional contribution from and out of the contribution s payable by the employees for each

month under the provisions of the Act or the rules made thereunder.

Provided further that the fresh option shall be exercised by the member within a period of six months from the 1st day of September, 2014:

Provided also that the period specified in the second proviso may, on sufficient cause being shown by the member, be extended by the Regional Provident Fund Commissioner for a further period not exceeding six months:

Provided also that if no option is exercised by the member within such period (including the extended period), ti shall be deemed that the member has not opted for contribution over wage ceiling and the contributions to the Pension Fund made over the wage ceiling in respect of the member shall be diverted to the Provident Fund account of the member along with interest as declared under the Employees' Provident Fund Scheme from time to time."

- (c) It is the case of the petitioner that the EPFO was not allowing the members to contribute at the option of employer and employee exceeding Rs. 6500/- per month from the date of commencement of this Scheme or from the date salary exceeds Rs. 6500/- to the employees who have retired, therefore, they have filed writ petition before the High Court of Himachal Pradesh wherein the writ petition was allowed and the Division Bench of Himachal Pradesh High Court has reversed the judgment. The matter was travelled upto the Supreme Court and the Hon'ble Supreme Court in case of *R.C. Gupta and Others vs. Regional Provident Fund Commissioner and Others* {2018 (14) SCC 809} has held that there is no time limit for submitting the option form under the amended provisions of para 11 of the Scheme, as such, the authority cannot fix any time limit and deprive them to submit option form. The Hon'ble Supreme Court in *R.C. Gupta (supra)* has held in paragraph 6, 7 and 9 as under :-

"6.Clause 11 (3) of the Pension Scheme : -

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

[Provided that if at the option of the 1 Subs. by G.S.R.774(E), dated 8th October, 2001 (w.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.]

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 31.03.2016. 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. 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. “

- (d) Thereafter, in compliance of the order of the Hon'ble Supreme Court the EPFO issued a circular dated 23.03.2017 inviting options from eligible employees who had retired after the cut-off date i.e. 14.09.2014 for grant of higher pension on the basis of

higher wages. The operative part of the circular reads as under :-

“2) The Hon'ble Apex court in SLP No. 33032-33033 of 2015 observed 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 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. It has further been observed that a beneficial Scheme, 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 limited of Rs. 5000/- or Rs. 6500/- per month, as the case may be.

In a situation where the deposit of the employer's share at 12% has been on the actual salary and not the ceiling amount, the Provident Fund Commissioner could 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 benefits of the proviso to Clause 11(3) of the Pension Scheme. Once such a return is made in whichever cases is due, consequential benefits in terms of this order will be granted to the said employees.

Thus a member contributing to the Provident Fund on the wages exceeding the statutory ceiling or who had contributed to the Provident Fund on wages exceeding the Statutory ceiling cannot be debarred from exercising the option to contribute on such higher wages to the pension fund. (Copy of the order of the Hon'ble Supreme Court enclosed).

3) Accordingly a proposal was sent to MOL&E to allow members of the Employees' Pension Scheme, 1995 who had contributed on higher wages exceeding the statutory wage ceiling of 6500/- in the Provident Fund to divert 8.33% of the salary exceeding Rs.6500/- to the Pension Fund with up to date interest as declared under EPF Scheme, 1952 from time to time to get the benefit of pension on higher salary on receipt of joint option of the Employer and Employee.

4) The MOL&E vide letter dated 03.2017 has conveyed its approval to allow members of the Employees' Pension Scheme, 1995 who had contributed on higher wages exceeding the statutory wage ceiling of Rs. 6500/- in the Provident Fund to divert 8.33% of the salary exceeding Rs.6500/- to the Pension Fund with up to date interest as declared under EPF Scheme, 1952 from time to time to get the benefit of pension on higher salary on receipt of joint option of the Employer and Employee. (copy enclosed for ready reference).

5) The officers in charge of all field offices are directed to take necessary action accordingly in accordance with the

order of the Hon'ble Supreme Court in SLP No.33032- 33033 of 2015 as approved by the Government and as per the provisions of the EPF & MP Act, 1952 and Schemes framed there under.”

- (e) Pursuant thereto, the petitioner submitted his option form on 17.04.2018. Upon consideration of the said option, the respondent authorities granted the petitioner higher pension, and his monthly pension was revised to Rs. 8,270/- vide Pension Payment Order dated 18.05.2018. The petitioner continued to receive the said higher pension till 25.02.2022. Subsequently, the respondents withdrew the higher pension and reduced the petitioner's pension. Aggrieved thereby, the petitioner challenged the order dated 25.02.2022 before this Court by filing WPS No. 2358 of 2022. This Court, vide order dated 05.04.2022, quashed the said order and granted liberty to the Provident Fund Department to take appropriate steps after the decision in the Review Petition pending before the Hon'ble Supreme Court in *R.C. Gupta* (supra) after affording the petitioner a fair and reasonable opportunity of hearing.
- (f) In purported compliance with the directions of this Court, the EPF Organisation continued higher pension of Rs. 8270/-. Thereafter the respondents passed the impugned order dated 22.03.2023 (Annexure P/1), whereby the petitioner's pension has again been reduced and a fresh PPO has been issued fixing his pension at Rs. 2,190/- per month. The said order is under challenge in the present writ petition wherein petitioner has prayed for continuation of higher pension which has already been released in his favour by the EPF Organisation.

(g) The details of all the individual petitioners consisting the names, date of joining, date of retirement, initial pension, amount of higher pension, effective date and current pension amount of all the petitioners in brief are given below in tabular form:-

S.N o.	WPS No.	Name of Petitioners	Date of Joining	Date of Retirement	1 st PPO (in Rs.)	Addition al Amount (in Rs.)	Higher Pension 2 nd PPO (in Rs.)	Date of Grant of Higher Pension (w.e.f.)	Allowed WPS Filed By The Petitioners	Current Pension 3 rd PPO (in Rs.)
1.	4132/2023	Lalman Sahu	14.06.1976	30.11.2014	2,190/-	1,87,580/-	8,270/-	18.05.2018	2358/2022	2,190/-
2.	4391/2023	Ganesh Prasad	26.06.1976	19.09.2013	2,303/-	1,86,560/-	6,432/-	25.07.2018	2248/2022	2,303/-
3.	4458/2023	Shiv Kumar Singh	06.12.1977	30.09.2011	2,104/-	2,82,261/-	7,944/-	29.11.2018	2660/2022	2,104/-
4.	4659/2023	Kunwar Singh Dewangan	08.05.1978	31.10.2011	1,926/-	2,77,500/-	8,141/-	-	2560/2022	2,112/-
5.	4703/2023	Puran Singh	10.10.1977	31.07.2012	1,963/-	2,88,599/-	4,944/-	29.11.2018	2378/2022	1,963/-
6.	5106/2023	Dhansi Ram Agrawal	01.08.1977	31.05.2018	2,282/-	5,74,212/-	14,534/-	22.02.2019	-	2,282/-
7.	5484/2023	P.B. Keshkar	01.10.1982	14.03.2014	2,017/-	8,90,751/-	20,156/-	15.07.2019	1725/2022	2,292/-
		V.N. Shukla	01.05.1980	09.07.2012	2,120/-	7,20,022/-	14,689/-	13.10.2018	1763/2022	2,120/-
8.	5556/2023	Sagun Lal Verma	01.08.1985	06.07.2014	2,269/-	3,09,881/-	13,976/-	31.05.2018	2521/2022	2,269/-
		R.S. Sahu	01.01.1982	22.12.2013	2,117/-	5,08,139/-	14,419/-	20.09.2018	1824/2022	2,302/-
		R.S. Sharma	06.04.1976	25.11.2012	2,286/-	4,71,738/-	13,201/-	01.10.2018	1849/2022	2,286/-
		G.S. Gavel	05.10.1983	28.06.2008	1,668/-	2,30,304/-	3,667/-	01.12.2018	2347/2022	1,668/-
9.	7763/2024	Sunil Kumar Muttoo	20.09.1980	01.04.2013	2132/-	9,50,276/-	27,333/-	05.09.2018	NA	2,318/-
10.	8104/2024	P.N. Upadhyay	01.02.1978	31.12.2012	2,295/-	2,20,505/-	8,936/-	23.08.2018	1888/2022	2,295/-
11.	8225/2024	Satya Narayan Dubey	19.06.1982	31.05.2014	2,157/-	4,53,488/-	14,821/-	30.08.2018	NA	2,343/-
12.	1381/2025	Ravindra Singh Thakur	01.02.1983	10.12.2013	2,300/-	4,26,760/-	12,891/-	04.09.2018	NA	2,300/-
13.	12334/2025	Arun Kumar Jain	01.05.1981	20.11.2011	1,861/-	3,80,201/-	10,127/-	17.10.2018	NA	2,046/-

6. The EPF Organization has filed their affidavit wherein they have relied upon the judgment of the Hon’ble Supreme Court in case of *The*

***Employees Provident Fund Organisation & Anr. vs. Sunil Kumar B. & Ors."* reported in (2023) 12 SCC 701** for declining the relief as prayed by the petitioners and have contended that :-

- (a) Since the 2014 amendments to the Employees' Pension Scheme, 1995 (EPS, 1995) have been accepted by the Hon'ble Supreme Court, as such, the pension must remain sustainably balanced with contributions. The rate of pension cannot be amended prior to its existence in the Scheme prior to 01.09.2014, as such, the petitioners cannot seek revision of pension now after superannuation.
- (b) It has been further contended that the Pension Scheme is not directly proportionate to individual contributions but it is funded by diversion of 8.33% employer contribution and 1.16% Central Government contribution (on wages up to the wage ceiling). It is pertinent to mention here that on 01.09.2014, the wage ceiling has been increased from Rs. 6,500/- to Rs. 15,000/-, contributions were correspondingly enhanced, and the pensionable salary cap was raised. The proviso to Paragraph 11(3), which earlier permitted option to members to contribute on actual wages above the ceiling, was omitted prospectively. Therefore, the existing members who had already contributed on higher wages were permitted to continue subject to additional contribution. It has also been contended that the option under Paragraph 26(6) of the EPF Scheme pertains only to membership of the Provident Fund (and by extension, pension scheme membership under Paragraph 6), whereas the option under the proviso to Paragraph 11(3) concerns only computation of pensionable salary. The two operate in distinct

fields. The contention that option members under Provident Fund automatically became entitled to pension on actual wages without exercising option under Paragraph 11(3) deserves to be rejected.

- (c) It has been further contended that in light of judgment of Hon'ble Supreme Court in *R.C. Gupta (supra)* an option member who had entered the Pension Scheme by exercising option under Paragraph 26(6) (read with Paragraph 6 of the unamended EPS) could exercise the option under the proviso to Paragraph 11(3) at any time during membership. The Provident Fund provides a one-time lump sum upon exit, whereas the Pension Scheme ensures lifelong monthly payments, including benefits to dependents as held by the Hon'ble Supreme Court in *Otis Elevators Employees' Union Society Registered v. Union of India* (2003) 12 SCC 68 and *PEPSU Road Transport Corporation, Patiala v. Mangal Singh* (2011) 11 SCC 702. It has been further contended that Hon'ble Supreme Court categorically held that employees who retired prior to 01.09.2014 without exercising any option under the proviso to Paragraph 11(3) of the pre-amended scheme have already exited from the membership, cannot claim enhanced pension by making retrospective contributions. Since their contributions were never subjected to actuarial evaluation under Paragraph 32, the Pension Fund was structured without factoring such enhanced liability. Accordingly, transfer of funds from Provident Fund to Pension Fund in such cases is impermissible and would refer to Paragraph 50.7 of the judgment which is extracted below :

“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."

- (d) It has been further contended that the Hon'ble Supreme Court further upheld the wage-based classification of members as constitutionally valid. Confining Pension Scheme membership to employees within the lower wage bracket was held to be rational and consistent with the objective of providing social security to economically weaker sections. Such classification satisfies the test of Article 14, as recognised in *Krishena Kumar v. Union of India* (1990) 4 SCC 207 and *Mafatlal Group Staff Association v. Regional Commissioner, Provident Fund* (1994) 4 SCC 58.
- (e) It has been further contended by the EPFO that after attaining the age of superannuation of 58 years of age the initial pension was fixed. After addition of weightage benefit, monthly pension has been increased and arrears of weightage benefit have also been released from date of commencement of pension. For instance, in case of petitioner-Lalman Sahu monthly pension on higher wages was fixed as Rs. 8270/- and difference of arrears Rs. 3,98,645/- for the period from 14.11.2012 to 30.04.2018 were released. The pension of the petitioner was originally enhanced to higher wages not on the basis of Court order, but as per the application made by the Pensioner stating himself to be eligible for pension on actual salary vide his declaration/joint option dated 01.12.2017 (received on 06.12.2017). But in view of the subsequent law laid down by the Hon'ble Supreme Court, particularly para 50(vii) of the judgment employees whoever retired prior to 01.09.2014 without exercising option under para 11(3) of pre-amended scheme shall not be

entitled to higher pension.

- (f) It has been further contended that since the petitioners stood retired from service prior to 1st September 2014 without exercising any option under paragraph 11(3) of the pre amendment scheme, they have already exited from the membership thereof and the EPFO is entitled to correct the mistakes as held by the Hon'ble Supreme Court in case of Union of India and another Vs. Narendra Singh reported in (2008) 2 SCC 750. It has also been contended that since the petitioners have attained the age of 58 years and ceased to be members of the Pension Scheme 1995, as per the definition contained in Para 2 (ix) of the Employees Pension Scheme 1995, they are not entitled to grant of higher pension and therefore, the petitions deserve to be dismissed.
- (g) It has been further contended by the EPFO that they have made arrangements for obtaining application for validation of Option/Joint Option from pensioners/members as per the Hon'ble Supreme Court order dated 04.11.2022. Earlier the time was extended upto 03.05.2023. The timeline is being extended upto 26.06.2023 and lastly upto 11.07.2023 to facilitate and provide ample opportunity to the pensioners/members so as to ease out any difficulty being faced by them. Though the petitioners have also prayed for extension of time for filing application beyond 26.06.2023, the time was already available upto 11.07.2023 and the petitioners failed to exercise the same. It has been further contended that the petitioners on one hand would submit that they have submitted joint option on 01.12.2017 and on the other hand, they would submit that timeline should be extended till September because the

petitioner needs more time to collect the documents from offices which reflects that they have not submitted the joint option form, on this count alone, their prayer deserves to be rejected and consequently, the writ petitions deserve to be rejected.

7. The employer-Banks have filed return contending that the petitioners have not raised any specific grievance against them. It is submitted that the principal grievance of the petitioners is against the Employees' Provident Fund Organisation. Therefore, the employers refrained from filing reply to the present writ petitions at this stage.
8. Learned counsel for the petitioners would submit that the matter with regard to grant of higher pension was agitated before the Hon'ble Supreme Court in case of ***R.C. Gupta (supra)*** wherein Clause 11(3) of the Pension Scheme was subject matter of scrutiny by the Hon'ble Supreme Court and the Hon'ble Supreme Court in paragraphs 6 to 10 has examined the scheme which reads as under:-

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

"11. *Determination of pensionable salary.*- (1)-(2) * * *

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

[Provided that if at the option of the 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.]"

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 31.03.2016. 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.

8. 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.- (1)-(5) * * *

(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 [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 charges payable and shall comply with all statutory provisions in respect of such employee."

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 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."

9. They would further submit that in pursuance of the judgment rendered by the Hon'ble Supreme Court in *R.C. Gupta (supra)* and in terms of Para 5 of the circular dated 23.03.2017, the Employees' Provident Fund Organisation directed the employers to invite options from eligible employees for grant of higher pension on actual salary. In compliance of the aforesaid directions and the law laid down by the Hon'ble Supreme Court, the employer called upon the concerned employees to submit their options. Accordingly, the petitioners submitted their joint options along with the requisite declarations and also deposited the differential arrears as required under the Scheme. After due verification of the option forms submitted by the individual petitioners, the respondent authorities recalculated the pension on higher wages and issued revised PPOs granting higher pension in their favour. It is further submitted that after disposal of the earlier writ petitions filed by the petitioners before this Hon'ble Court, the respondents resumed payment of higher pension. However, subsequently, the respondents again discontinued the higher pension vide order dated 22.06.2023, which is arbitrary and deserves to be quashed.

10. Learned counsel for the petitioners would submit that the petitioners fully satisfied the statutory requirements as the petitioners were drawing wages exceeding Rs. 6,500/- per month and their contributions were duly deposited with the Employees' Provident Fund Organisation. Learned counsel would further submit that in view of Para 26(6) of the Employees' Provident Fund Scheme, 1952, once contributions on higher wages were deposited and accepted by the EPF Organisation, the petitioners stood covered within the ambit of the Scheme. Since their salary exceeded Rs. 6,500/- and contributions were regularly made, they were members of the EPF Scheme from the very inception. As such, in view of amendment in para 11(3) of the Scheme the petitioners rightly submitted joint option for grant of higher pension to them and it has been rightly granted to them by the EPF Organisation but without rhyme and reason, it has been withheld, which is without any authority of law and liable to be quashed by this Court and would pray for allowing the writ petitions.
11. They would further submit that the respondents after amendment in 11(3) have already asked the petitioners to deposit difference of PF contribution beyond the ceiling and accordingly they have deposited the same as detailed in foregoing paragraphs by this Court, thus they have already fulfilled the requirement made in Para 26(6) along with judgment of the Hon'ble Supreme Court in case of **Sunil Kumar B. (supra)** particularly 50.8 therefore, would pray for allowing the petitions.
12. It has been further submitted that judgment of the Hon'ble Supreme Court in case of **Sunil Kumar B. (supra)** has approved the finding in RC Gupta (surpra) wherein it has been held that there was no cut-off date in proviso to 11(3) as it stood before the 2014 amendment and has

held that interpretation given to the proviso to para 11(3) prior to 2014 amendment does not require any reconsideration. The Hon'ble Supreme Court has also held that as there was no cut-off date to be contemplated prior to 2014 amendment limiting the entitlement of enhanced pension coverage to those employees only who had already exercised an option under Clause 11(3) of the unamended scheme would be contrary to the ratio of the decision of this Court held in R.C. Gupta (supra). As such, he would submit that judgment of Hon'ble Supreme Court in case of Sunil Kumar B. (supra) does not help the respondents. They would further submit that since the matter has already been settled, it cannot be re-opened and the pension which petitioners are getting on higher side can be reduced, as such, this order is in violation of order laid down by the Hon'ble Supreme Court in case of **R.C. Gupta (supra)** and even in case of **Sunil Kumar B. (supra)** action of the respondent in reducing the pension is *per se* illegal. They would further submit that since the respondents in compliance of the order passed by the Hon'ble Supreme Court has issued circular dated 23.03.2017 and directed the petitioners to submit option form and difference of pension which they have deposited and in furtherance of the order of the Hon'ble Supreme Court in R.C. Gupta the respondents have given higher pension to them which cannot be withheld on the count that they have kept in abeyance the circular dated 23.03.2017 vide dated 20.03.2021 as the effect of stay and keeping the things in abeyance will be effective from the date it has been stayed or kept in abeyance as per the law laid down by the Hon'ble Supreme Court, thus, keeping the payment of higher pension in abeyance is illegal. They would further submit that the compliance of order of the

Hon'ble Supreme Court cannot be wiped out or withdrawn in view of subsequent decision of the Hon'ble Supreme Court unless so specified. In the present case, there is no such circumstance, as such abeyance of higher pension suffers from perversity, illegality and arbitrariness on the part of EPF Organisation.

13. To substantiate their submission they would refer to judgment of ***R.C. Gupta (supra), Sunil Kumar B. (supra), Punjab and Haryana At Chandigarh in case of Inderjit Singh Kaknian and Others Vs. Union of India and Others (para 25) and Neelima Srivastava vs. The State of Uttar Pradesh & Others decided on 17.08.2021 in Civil Appeal No. 4840 of 2021.***
14. Mr. Pillai and Mr. Pandey would submit that the Employees' Provident Fund Organisation, vide letter/circular dated 20.03.2021 has kept in abeyance the earlier circular dated 23.03.2017 pending final adjudication of the SLP in Sunil Kumar B. They would further contend that the contribution deposited by the petitioners towards higher pension is less than the total arrears of higher pension already paid to them for the relevant period for instance petitioner Lalman Sahu has deposited Rs. 1,87,580/- whereas he has been paid Rs. 3,98,645/- and would submit that as per the classification of the members for entitlement of higher pension as referred in para 50.7 to 50.11 the petitioners fall within the category of para 50.7 of the judgment of Sunil Kumar B. (supra), as such they are not entitled to get higher pension and would pray for dismissal of the writ petitions.
15. They would further submit that pursuant to the amendment introduced in the Employees' Pension Scheme with effect from 01.09.2014, the

amended provisions are applicable only to existing members of the Scheme, as clarified by the judgment of the Hon'ble Supreme Court in *Sunil Kumar B. (supra)*. Since the petitioners had already attained the age of 58 years as such they were no longer existing members on the relevant date, therefore, they are not entitled to exercise option for higher pension. It is further submitted that the term "member" has been defined under Para 2(ix) of the Employees' Pension Scheme, 1995 according to which 'Member' means an employee who becomes a member of the Employees Pension Fund in accordance with the Provisions of this Scheme. The explanation Clause further provides that an employee shall cease to be member of the pension fund from the date of attaining 58 years of age or from the date of vesting admissible benefits under the Scheme, whichever is earlier.

16. They would also refer to 'pension fund' as defined in Clause XIV means the employees pension fund setup under Subsection 2 of Section 6A of the Act. They would further submit that as per Para 26(6) of the Employees' Provident Fund Scheme, 1952, an employee may opt for contribution on higher wages only by way of a joint option exercised along with the employer. Since, no such joint option was exercised during the petitioners' service tenure in accordance with the amended provisions, they cannot seek to exercise such option after retirement. Learned counsel for the Organization has vehemently argued that since the petitioners ceased to be members after attaining the age of 58 years, therefore, they cannot be given the benefit of amended provision of Clause 11(3) of the Employees' Pension Scheme, 1995. They would further submit that any interpretation extending the benefit to persons not expressly covered would amount to re-drafting the statutory scheme

which is impermissible within the jurisdiction of this Hon'ble Court and would refer to judgment passed by the Hon'ble Apex Court in case of **Powergrid Retired Employees' Association (PREA) Vs. Union of India & Ors. WPS (C) No. 97 of 2025** dated 19.03.2025 which reads as under:-

"The petitioner-association primarily seeks a review of the judgment passed by a three Judge Bench of this Court in the case of Employees Provident Fund Organisation & Anr. vs. Sunil Kumar B. & Ors." reported in (2023) 12 SCC 701, though Mr. Gopal Sankaranarayanan, learned senior counsel for the petitioner-association would argue that this is not so, and they are only seeking implementation the directions given by this Court in the case of "R.C. Gupta & Ors. vs. Regional Provident Fund Commissioner, Employees Provident Fund Organisation & Ors." reported in (2018) 14 SCC 809, which has been upheld in Sunil Kumar B (supra). All the same, this argument is totally misconceived since admittedly, the employees who are being represented by the petitioner-association have been held to be ineligible for the reason that they had retired prior to 01.09.2014, without exercising their option under the pre-amendment Scheme/Employees' Pension Scheme, 1995 as it stood prior to the amendment in 2014. In fact, this position has been clarified by this Court in Sunil Kumar B (supra) and the relevant excerpts are reproduced herein as under:-

"50. We accordingly hold and direct:

50.7. The employees who had retired prior to 1-9-2014 without exercising any option under Para 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.

50.8 The employees who have retired before 1-9-2014 upon exercising option under Para 11(3) of the 1995 Scheme shall be covered by the provisions of Para 11(3) of the Pension Scheme as it stood prior to the amendment of 2014.

(emphasis provided)

In view of the fact that it is an admitted position that these employees have retired prior to 01.09.2014 & that too without exercising their option, we see no reason to entertain this petition in exercise of our jurisdiction under Article 32 of the Constitution of India.

The present petition is, accordingly, dismissed along with pending application(s), if any. "

17. On the above factual and legal matrix the respondents would pray for dismissal of the writ petitions.

18. I have heard learned counsel for the parties and perused the record with utmost circumspection.
19. The issue involved in the case is “whether the benefit accrued to the petitioners in pursuance of circular dated 23.03.2017 in furtherance of order passed by the Hon'ble Supreme Court in R.C. Gupta and in subsequent judgment affirming the same and even there is no withdrawal of the circular by the E.P.F. Organization, action of the respondent Organization in reducing the pension can be said to be legal and justified?
20. To ascertain the issue involved in the matter, it is expedient for this Court to go through the provisions of relevant provisions which are extracted below :-

Para 2(ix) and 11 of the Employees' Pension Scheme, 1995 read as under:

"2(ix) "member" means an employee who becomes a member of the Employees' Pension Fund in accordance with the provisions of this Scheme;

[Explanation.- An employee shall cease to be the member of Pension Fund from the date of attaining 58 years of age or from the date of vesting admissible benefits under the Scheme, whichever is earlier.]

11. Determination of Pensionable Salary.- (1) The pensionable salary shall be the average monthly pay drawn in any manner including on piece rate basis during contributory period of service in the span of sixty months preceding the date of exit from the membership of the Pension Fund and the pensionable salary shall be determined on pro-rata basis for the pensionable service up to the 1st day of September, 2014, subject to a maximum of six thousand and five hundred rupees per month, and for the period thereafter at the maximum of fifteen thousand rupees per month :

Provided that if a member was not in receipt of full pay during the period of sixty months preceding the day, he ceased to be the member of the Pension Fund, the average of previous

sixty months full pay drawn by him during the period for which contribution to the pension fund was recovered, shall be considered as pensionable salary for calculating pension.

(2) If during the said span of 60 months there are non-contributory periods of service including cases where the member has drawn salary for a part of the month, the total wages during the 60 months span shall be divided by the actual number of days for which salary has been drawn and the amount so derived shall be multiplied by 30 to work out the average monthly pay.

(3) The maximum pensionable salary shall be limited to fifteen thousand rupees per month.

(4) The existing members as on the 1st day of September, 2014, who at the option of the employer and employee, had been contributing on salary exceeding six thousand and five hundred rupees per month, may on a fresh option to be exercised jointly by the employer and employee continue to contribute on salary exceeding fifteen thousand rupees per month and the pensionable salary for the existing members who prefer such fresh option shall be based on the higher salary:

Provided that the aforesaid members have to contribute at the rate of 1.16 per cent. [***] on salary exceeding fifteen thousand rupees as an additional contribution from and out of the contributions payable by the employees for each month under the provisions of the Act or the rules made thereunder:

Provided further that the fresh option shall be exercised by the member within a period of six months from the 1st day of September, 2014:

Provided also that the period specified in the second proviso may, on sufficient cause being shown by the member, be extended by the Regional Provident Fund Commissioner for a further period not exceeding six months:

Provided also if no option is exercised by the member within such period (including the extended period), it shall be deemed that the member has not opted for contribution over wage ceiling and the contributions to the Pension Fund made over the wage ceiling in respect of the member shall be diverted to the Provident Fund account of the member along with interest as declared under the Employees' Provident Funds Scheme from time to time."

21. Section 2(j) and 2(kB) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 reads as under:

"2(j)" "member" means a member of the Fund;

2(kB) "Pension Scheme" means the Employees' Pension Scheme framed under sub-section (I) of section 6A"

22. Para 26 of the Employees' Provident Funds Scheme, 1952, reads as under:

"Membership of the Fund

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

(1) (a) Every employee employed in or in connection with the work of a factory or other establishment to which this scheme applies, other than an excluded employee, shall be entitled and required to become a member of the Fund from the day this paragraph comes into force in such factory or other establishment.

(b) Every employee employed in or in connection with the work of a factory or other establishment to which this Scheme applies, other than an excluded employee, shall also be entitled and required to become a member of the fund from the day this paragraph comes into force in such factory or other establishment if on the date of such coming into force, such employee is a subscriber to a provident fund maintained in respect of the factory or other establishment or in respect of any other factory or establishment (to which the Act applies) under the same employer:

Provided that where the Scheme applies to a factory or other establishment on the expiry or cancellation of an order of exemption under section 17 of the Act, every employee who but for the exemption would have become and continued as a member of the Fund, shall become a member of the Fund forthwith.

(2) After this paragraph comes into force in a factory or other establishment, every employee employed in or in connection with the work or that factory or establishment, other than an excluded employee, who has not become a member already shall also be entitled and required to become a member of the Fund from the date of joining the factory or establishment.

(3) An excluded employee employed in or in connection with the work of a factory or other establishment, to which this Scheme applies shall, on ceasing to be such an employee, be entitled and required to become a member of the Fund from the date he ceased to be such employee.

(4) On re-election of an employee or a class of employees exempted under paragraph 27 or paragraph 27-A to join the Fund or on the expiry or cancellation of an order under that paragraph, every employee shall forthwith become a member thereof.

(5) Every employee who is a member of a private provident

fund maintained in respect of an exempted factory or other establishment and who but for exemption would have become and continued as a member of the fund shall, on joining a factory or other establishment to which this Scheme applies, become a member of the fund forthwith.

(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 rupees [fifteen thousand 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 charges payable and shall comply with all statutory provisions in respect of such employee."

23. From the records of the case, it is quite vivid that the Ministry of Labour & Employment has amended the Employees Pension Scheme by amending Para 11(3) of the Scheme and deleted the proviso clause which confines the limitation of Rs. 6500/- with effect from 01.09.2014 and now limit has been enhanced to maximum contribution to Rs. 15,000/-. By the said amendment the Ministry of Labour and Employment have also amended Clause 11(4) which provides that existing members as in the 1st day of September, 2014, who at the option of the employer and employee, had been contributing on salary exceeding six thousand and five hundred rupees per month, may on a fresh option to be exercised jointly by the employer and employee continue to contribute on salary exceeding fifteen thousand rupees per month and the pensionable salary for the existing members who prefer such fresh option shall be based on the higher salary. Clause 11(4) further provides that the fresh option shall be exercised by the member within a period of six months from the 1st day of September, 2014. Hon'ble Supreme Court in case of R.C. Gupta (supra) has already held that under the old Scheme there was no such time limit for submission

of option, therefore, as per Clause 11(3) of the Pension Scheme it would not foreclose the exercise of a member to exercise such option and the Hon'ble Supreme Court has also held that the Provident Fund Commissioner what is required to do in the case is that an adjustment of account which in turn would have benefitted some of the employees and also permitted the Provident Fund Commissioner to seek a return of all such amount that the employees concerned may have taken or withdrawn from their Provident Fund account before granting them the benefit of the proviso Clause 11(3) of the Pension Scheme. Hon'ble Supreme Court has further held that once such a return is made in whichever cases, return is due, consequential benefits will be granted to the said employees.

24. In pursuance of the direction of the Hon'ble Supreme Court the respondents have issued circular dated 23.03.2017, directed the employer and employee to submit joint option form for granting higher pension and also directed to deposit the PF contribution which has been withdrawn by the employees, accordingly, the petitioners have submitted the joint option form as well as additional PF amount which has been withdrawn by them as detailed above. Thereafter, the petitioners were given higher pension with effect from their date of retirement.
25. The issue was again agitated before the Hon'ble Supreme Court in case of Sunil Kumar B. (supra) wherein the Hon'ble Supreme Court has approved the finding with regard to fact that there was no cut off date to be contemplated prior to 2014 amendment and limiting the entitlement of enhanced pension coverage those employees only who had already exercised an option under Clause 11(3) of the unamended Scheme

would be contrary to the ratio of the case of R.C. Gupta (supra) and thereafter, they have categorized the employees who can be given the benefits of higher pension from paragraph 50.1 to 50.11.

“50. We accordingly hold and direct:

50.1 The provisions contained in the Notification No. G.S.R. 609(E) dated 22-8-2014 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.

50.2 Amendment to the Pension Scheme brought about by Notification No. G.S.R. 609(E) dated 22-8-2014 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.

50.3 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 1-9-2014, will be guided by the amended provisions of Paragraph 11(4) of the Pension Scheme.

50.4 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 1-9-2014 stands crystalised in the judgment of this Court in the case of R.C. Gupta (supra). The Scheme as it stood before 1-9-2014 did not provide for any cut-off 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.

50.5 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.

50.6 Rest of the requirements as per the amended provision shall be complied with.

50.7 The employees who had retired prior to 1-9- 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.

50.8 The employees who have retired before 1-9-2014 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.

50.9 The requirement of the members to contribute @ 1.16% 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.

50.10 We do not find any flaw in altering the basis for computation of pensionable salary.

50.11 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."

26. From perusal of paragraph 50.7 it is quite vivid that this clause is applicable to those employees who have retired prior to 01.09.2014 without exercising any option under para 11(3) of the pre-amended Scheme have already existed from the membership thereof.

The term "**any**" has been defined in the Cambridge Dictionary to mean "some, or even the smallest amount or number of." As such the word "any" has wide amplitude may mean "even a single" or "none whatsoever."

In the present context, the expression "without exercising any option" clearly contemplates a situation where **no option at all** was exercised under paragraph 11(3) of the pre-amended Scheme.

27. Since, the petitioners have already submitted option before retirement upon exercising option under para 11(3) of the pre-amended Scheme 1995, therefore, the case of the petitioners will be governed by para

50.8 of the judgment and not by 50.7 which has already been extracted above. Therefore, the petitioners are entitled to get higher pensions as they were already granted by the respondents in pursuance of judgment passed by the Hon'ble Supreme Court in case of R.C. Gupta (supra) and their own circular dated 23.03.2017. Consequently, the finding recorded by the respondents that petitioners are not eligible to higher pension on the strength of the documents to be submitted by them as per the judgment of the Hon'ble Supreme Court and circular issued by the department, is quashed. Consequently, the contention of the respondents that the petitioners 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 and the EPFO is entitled to correct the mistakes, is misconceived as the petitioners have already submitted option before their retirement and their case is covered by the paragraph 50.8 of the judgment not para 50.7 of the judgment.

28. The judgment in case of *Narendra Singh (supra)* is not applicable in the present facts of the case as the Hon'ble Supreme Court in case of R.C. Gupta (supra) has held that there is no time period for submission of option form in the original scheme, therefore, it cannot be allowed to insert by the amendment in the Scheme. The judgment of R.C. Gupta has been affirmed in subsequent judgment of Sunil Kumar B. as such it cannot be held that by mistake they have granted the benefits. Therefore, the submission of the respondents that they can rectify the mistake deserves to be rejected as the grant of higher pension is in conformity with the law laid by the Hon'ble Supreme Court.
29. Further reliance of the respondents in case of *Krishena Kumar (supra)*.

The judgment is distinguishable as in the pension scheme framed by the Railways authorities there is a Railways Contributory Provident Fund Scheme. The said scheme was before 1957 and in the year 1957, the said scheme was replaced by pension scheme in the year 1957 and employees who entered Railway service on or after 1957 were automatically covered by the Railway Pension Scheme. The employees who were already in service on 1st April, 1957 had to submit an option and if they have not submitted the option they are deemed to be members of pension scheme, as such, a cutoff date was prescribed whereas in the Provident Fund Pension Scheme, 1995 there is no cutoff date as held by the Hon'ble Supreme Court in case of *R.C. Gupta* and *Sunil Kumar B. (supra)*.

30. So far as judgment of *Otis (supra)* is concerned, in that case the EPF Scheme 1995 was challenged which has been dismissed by the Hon'ble Supreme Court and held that the EPF Act is social welfare legislation and if legislation is not patently arbitrary, the Hon'ble Supreme Court will not monitor implementation of such policy unless the same is discriminatory and arbitrary. Since the scheme is for the welfare of the employees, the same cannot be held to be violative of Constitution of India. So far as this legal position is not in dispute, even otherwise in the present case there is no challenge to scheme but its implementation was sought as per the judgment of Hon'ble Supreme Court in case of *R.C. Gupta (supra)*.

31. Further reliance of the respondents in case of *PEPSU Road Transport Corporation (supra)*, wherein the issue raised in that case is as per Regulation 4, the condition for exercise of the option on or before 15.12.1992 by an employee in order to avail the pensionary benefit

under the scheme. Subsequently, the corporation has also extended this period by 3 months, still the employees had not exercised any option for availing the benefits under the pension scheme and they were granted all the benefits under the CPF and the Gratuity without any objection or protest. However, on 01.06.2002, after merely 10 years, from the retirements, the respondent filed a suit for declaration of entitlement to pension and other benefits in the Court of Civil Judge, Senior Division, Bhatinda. This is not the situation in the present case as the petitioners immediately after judgment of Hon'ble Supreme Court in R.C. Gupta and circular issued by the department itself submitted option. This case is also distinguishable on the facts also as in the case in hand, no cutoff date has been prescribed under the original scheme.

32. One of the contentions advanced by the learned counsel for the EPF Organisation is that the Organisation has paid an amount exceeding what was deposited by the petitioners and, therefore, they are facing difficulties in making further higher payments. This contention is contrary to the record as the petitioners have deposited the provident fund amount received by them, and the EPF Organisation has paid them arrears arising on account of revision of pension. For instance, petitioner Lalman Sahu deposited a sum of Rs. 1,87,580/- towards the provident fund amount received by him. Thereafter, he was paid Rs. 3,98,645/- towards differential arrears of pension for 65 months, from 14.11.2012 to 30.04.2018, over and above the lower pension already paid. As such both the transactions relate to different heads. Thus, the payment made by the EPF Organisation represents arrears of pension lawfully due and not any excess return of the deposited amount. It cannot, therefore, be accepted that the respondents have returned more

than what was deposited by the petitioners. Accordingly, the said contention is rejected.

33. Further contention of the respondents is that they have kept the implementation of grant of higher pension in abeyance as the matter in case of Sunil Kumar B. (supra) was pending before the Honble Supreme Court, though the Hon'ble Supreme Court while disposing of the case of Sunil Kumar B. (supra) has directed the respondents to implement the directives contained in the judgment within a period of 8 weeks subject to direction contained in aforesaid paragraphs vide its judgment dated 22.12.2022. Despite that, the respondents have not granted the higher pension to the petitioners, accordingly direction is issued to them to restore the higher pension forthwith.
34. The arrears, if any, arising on account of reduction of pension shall be calculated and released to the petitioners within a period of 90 days from the date of receipt of a certified copy of this order. In case of default, the amount shall carry interest at the rate of 6% per annum from the date it becomes due till actual payment is made.
35. With the aforesaid observation and direction, the impugned orders whereby the pension of the petitioners has been reduced, are hereby quashed and the bunch of these Writ Petitions (S) is allowed.

Sd/-
(Narendra Kumar Vyas)
Judge

HEAD NOTE

If an Employee exercised any option under paragraph 11(3) of the pre-amended Employees' Pension Scheme, 1995 prior to retirement, he is eligible for higher pension as there is no cut-off date under the original Scheme to opt for higher pension.

निर्णय सार

यदि किसी कर्मचारी ने सेवानिवृत्ति से पूर्व कर्मचारी पेंशन योजना, **1995 (संशोधन पूर्व)** के पैरा **11(3)** के अंतर्गत किसी भी विकल्प का प्रयोग किया है, तो वह उच्च पेंशन प्राप्त करने का अधिकारी है, क्योंकि मूल योजना के अंतर्गत उच्च पेंशन के लिए विकल्प चुनने हेतु कोई कट-ऑफ तिथि निर्धारित नहीं थी।