



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN

&

THE HONOURABLE MR. JUSTICE G. GIRISH

THURSDAY, THE 11<sup>TH</sup> DAY OF JANUARY 2024 / 21ST POUSHA, 1945

CON.CASE(C) NO. 1437 OF 2022

ARISING OUT OF THE JUDGMENT DATED 12.10.2018 IN WP(C)NO. 11629 OF 2015

OF HIGH COURT OF KERALA

PETITIONERS/PETITIONERS 124, 129, 48, 106, 21, 160, 52, 95 & 67:

- 1 M.P.NARAYANAN NAMBIAR, AGED 62 YEARS S/O.(L) KELU NAMBIAR, JUNIOR ENGINEER, (RETIRED) KELTRON COMPONENT COMPLEX LIMITED, KALLIASSERRY P.O, KANNUR-670562. RESIDING AT "SURYA", PULIYATHU VALAPPU, P.O.MORAZHA, KANNUR -670331., PIN - 670331
- 2 RAMESAN V.K, AGED 62 YEARS, S/O.(L)ACHUTHAN K., JUNIOR ENGINEER, (RETIRED), KELTRON COMPONENT COMPLEX LIMITED, KALLIASSERRY P.O, KANNUR-670562. RESIDING AT "ACHUTHAM", ACHUKULANGARA, P.O.PARAL, KANNUR -670671.
- 3 PURUSHOTHAMAN M, AGED 61 YEARS, S/O.(L)K.P.KORAN, FOREMAN, (RETIRED) KELTRON COMPONENT COMPLEX LIMITED, KALLIASSERRY P.O, KANNUR-670562. RESIDING AT MADAPPURAKKAL (H), NEAR VELAM GANAPATI KSHETHRAM, P.O.MAYYIL, KANNUR - 670602.
- 4 RADHAKRISHNAN T., AGED 64 YEARS, S/O.(L)RAMUNNI K. JUNIOR ENGINEER, (RETIRED) KELTRON COMPONENT COMPLEX LIMITED, KALLIASSERRY P.O, KANNUR-670562. RESIDING AT THOTTATHIL (H), MANGAD, KALLIASSERI P.O. KANNUR -670562.
- 5 C. SAYED AHMED THANGAL, AGED 62 YEARS, S/O.(L)KUNHIKOOYA THANGAL, JUNIOR ENGINEER, (RETIRED), KELTRON COMPONENT COMPLEX LIMITED, KALLIASSERRY P.O, KANNUR -670562 RESIDING AT KUNNATHPALLI (H), P.O.VALAPPATTANAM, KANNUR -670010.
- 6 K.M.THANKAMANI, AGED 64 YEARS, W/O.(L)KUNHIKANNAN, JUNIOR ENGINEER, (RETIRED) KELTRON COMPONENT COMPLEX LIMITED, KALLIASSERRY P.O, KANNUR-670562. RESIDING AT "VAISHAKH", P.O.EDATT, PAYYNNUR, KANNUR -670327, PIN - 670327
- 7 K. RAJASREE, AGED 63 YEARS, W/O.V.VELU, FOREMAN (RETIRED) KELTRON COMPONENT COMPLEX LIMITED, KALLIASSERRY P.O, KANNUR-670562. RESIDING AT "SHARANYA", MANGAD, P.O.KALLIASSERI, KANNUR -670562., PIN - 670562



- 8 SAVITHA V. , AGED 62 YEARS, W/O.NARAYANAN K.V. ,  
JUNIOR ENGINEER, (RETIRED) KELTRON COMPONENT COMPLEX LIMITED,  
KALLIASSERRY P.O, KANNUR-670562. RESIDING AT U.K(H) ,  
KEECHERI, ANCHAMPEEDIKA P.O. , KANNUR -670331. , PIN - 670331
- 9 P.M.PRAKASHAN, AGED 62 YEARS, S/O.(L)P.M.KUMARAN,  
FOREMAN, (RETIRED) KELTRON COMPONENT COMPLEX LIMITED,  
KALLIASSERRY P.O, KANNUR-670562. RESIDING AT "SHARADHA",  
MANGATTUPARAMBA, KANNUR UNIVERSITY CAMPUS P.O. KANNUR -  
670562.

BY ADV KALEESWARAM RAJ

RESPONDENT/S:

- 1 SRI.EBIN VISWANATH V  
AGE AND FATHER'S NAME ARE NOT KNOWN TO THE PETITIONERS REGIONAL  
PROVIDENT FUND COMMISSIONER, EMPLOYEES PROVIDENT FUND ORGANISATION,  
SUB REGIONAL OFFICE, BHAVISHYANIDHI BHAVAN, V.K.COMPLEX, COURT  
ROAD, KANNUR -670001. , PIN - 670001
- \*ADDL.R2 SRI. K.G.KRISHNA KUMAR, MANAGING DIRECTOR, KELTRON COMPONENT  
COMPLEX LIMITED, KELTRON NAGAR, KALLIASSERI, KANNUR - 670562 IS  
IMPLEADED VIDE ORDER DTD 9/8/23 IN IA 3/23 IN COC 1437/22
- \*ADDL.R3 SRI M.PRAKASHAN, GENERAL MANAGER, KELTRON COMPONENT COMPLEX  
LIMITED, KELTRON NAGAR, KALLIASSERI, KANNUR - 670562 IS IMPLEADED  
VIDE ORDER DTD 9/8/23 IN IA 3/23 IN COC 1437/22

BY ADVS.NITA N.S  
SMT.M.A.ZOHRA, SC, KELTRON

THIS CONTEMPT OF COURT CASE (CIVIL) HAVING COME UP FOR ADMISSION  
ON 11.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**C.R.****JUDGMENT**Anil K. Narendran, J.

The petitioners, who are petitioners 124, 129, 48, 106, 21, 160, 52, 95 and 67 respectively in W.P.(C)No.11629 of 2015, have filed this contempt case, invoking the provisions under Section 12 of the Contempt of Courts Act, 1971, alleging wilful disobedience of the directions contained in Annexure A-I judgment dated 12.10.2018 of a Division Bench of this Court in **Sasikumar P. and others v. Union of India and others [ILR 2019 (1) Ker. 614]**, whereby W.P.(C)No.13120 of 2015 and connected matters, including W.P.(C)No.11629 of 2015, were disposed of by setting aside the Employees' Pension (Amendment) Scheme, 2014 brought into force by notification No.G.S.R.609 (E) dated 22.08.2014 and also all consequential orders and proceedings issued by the Employees Provident Fund Organisation on the basis of the aforesaid amendment.

2. On 23.09.2022, when this contempt case came up for admission, the learned Standing Counsel for the Employees Provident Fund Organisation took notice for the respondent. The personal appearance of the respondent was dispensed with, by the order dated 23.09.2022.

3. On 14.03.2023, the respondent filed an affidavit dated



10.03.2023, pointing out Annexure R1(A) judgment of the Apex Court dated 04.11.2022 in Civil Appeal Nos.8143-44 of 2022 and connected matters - **Employees Provident Fund Organisation v. Sunil Kumar B. [2022 (7) KHC 12 : AIR 2022 SC 5634]**, arising out of the judgment of the Division Bench of this Court in **Sasikumar P. and others v. Union of India and others [ILR 2019 (1) Ker. 614]** and the connected matters arising out of the judgment of the High Court of Delhi and the High Court of Rajasthan. In paragraph 5 of that affidavit, the respondent has pointed out Annexure R1(B) order of the Apex Court dated 25.02.2021 in SLP(C)Nos.8658-59 of 2019, whereby the Apex Court directed that pending further consideration, no contempt application seeking implementation of any of the orders passed in the four categories of matters shall be taken up by any court. The first category mentioned in the order dated 25.02.2021 is SLP(C)Nos.8658-8659 of 2019, W.P.(C)No.233 of 2018 [Item Nos.1 & 1.1], arising from the judgment dated 12.10.2018 of the High Court of Kerala. The relevant paragraphs of the order dated 25.02.2021 in SLP(C)Nos.8658-59 of 2019 read thus;

“It is made clear that under no circumstance the matters shall be adjourned and the matters shall be taken up for hearing on day-to-day basis.

For facility, we direct;



(i) SLP(C)Nos.8658-8659 of 2019, W.P.(C)No.233 of 2018 [Item Nos.1 & 1.1] [arising from the judgment dated 12.10.2018 passed by the High Court of Kerala];

(ii) SLP(C) Diary No.46219 of 2019 [Item No.2] [arising from the judgment dated 22.5.2019 passed by the High Court of Delhi] along with connected matter being SLP(C) No. 1366 of 2021 [Item No.1.54] [arising from the judgment dated 16.12.2019 passed by the High Court of Delhi];

(iii) SLP(C)No.2465 of 2021 [Item No.1.51] [arising from judgment dated 28.08.2019 passed by the High Court of Rajasthan, Jaipur]; and

(iv) Cont. Pet.(C)No. 1917-1918 of 2018 in C.A.No. 10013-10014 of 2016 [Item No.1.20] [seeking implementation of the order dated 04.10.2016 passed by this Court in C.A.No.10013 of 2016 : R.C. Gupta and others v. Regional Provident Fund Commissioner, Employees Provident Fund Organization and others] shall be taken up as lead matters representing the respective categories of matters.”

Rest of the matters shall also be listed on the same day.

Pending further consideration, no contempt application seeking implementation of any of the orders passed in the aforesaid four categories of matters, shall be taken up by any Court.

In the contempt petitions pending in this Court, personal presence of the alleged contemnor stands dispensed with.

(underline supplied)

4. By the order dated 16.03.2023, the respondent was directed to file an affidavit with regard to the enhanced pension already given to 76 persons, pursuant to the direction contained



in Annexure A-I judgment dated 12.10.2018 in W.P.(C) No. 11629 of 2015, from which this contempt case arises. Pursuant to that direction, the respondent has filed an affidavit dated 31.05.2023, producing therewith a copy of the aforesaid order dated 25.02.2021 of the Apex Court in SLP(C) Nos. 8658-8659 of 2019, 16721-16722 of 2019 as Annexure R1(B). In the said affidavit, it is pointed out that 76 persons, who were parties to W.P.(C) No. 11629 of 2015, were given their pension on various dates in the year 2020.

5. The petitioners have filed a reply affidavit dated 12.06.2023, wherein it is stated that they are also entitled to enhanced pension in terms of Annexure A-I judgment of this Court dated 12.10.2018 in W.P.(C) No. 11629 of 2015 and Annexure A-II order dated 18.12.2020 in Cont. Case (C) No. 2491 of 2019. By Annexure A-II judgment of this Court, Cont. Case (C) No. 2491 of 2019, filed by the petitioners along with others, was disposed of in the light of the judgment dated 06.11.2020 in Cont. Case (C) No. 1176 of 2019 and connected matters, granting six months' time to the respondent to comply with the directions issued by this Court in Annexure A-1 judgment dated 12.10.2018 in W.P.(C) No. 11629 of 2015, subject to the decision of the Apex Court. In the reply affidavit, it is contended that since the



petitioners were not parties in the SLP filed by the Apex Court by the Employees Provident Fund Organisation, the findings in Annexure R1(A) judgment of the Apex Court dated 04.11.2022 in Civil Appeal Nos.8143-44 of 2022 and connected matters - **Employees Provident Fund Organisation v. Sunil Kumar B. [AIR 2022 SC 5634]** are not binding on them. Annexure A-I *inter parte* judgment of this Court dated 12.10.2018 in W.P.(C)No.11629 of 2015 has attained finality, as the Employees Provident Fund Organisation did not challenge the same before the Apex Court.

6. By the order dated 12.06.2023 of a Division Bench of this Court, the learned Standing Counsel was directed to state whether the agreed minimum pension is being paid to the petitioners. It was ordered that, if the agreed minimum pension is not being paid, it shall be paid before the next posting date. The respondent has filed an affidavit dated 13.06.2023, furnishing therewith the pension payment details of the petitioners.

7. In the order dated 19.06.2023 of the Division Bench, it was noticed that any one among the petitioners, who retired after 01.09.2014, will have to exercise a fresh option in accordance with the judgment of the Apex Court. Therefore, it



was ordered that, if any one among the petitioners has not so far exercised fresh option in accordance with the judgment of the Apex Court, they have to do so within two weeks. The options so exercised shall be considered in accordance with the judgment of the Apex Court without any delay.

8. By the order dated 09.08.2023 in I.A.No.3 of 2023 the Managing Director and General Manager of Keltron Component Complex Limited were impleaded as additional respondents 2 and 3. In the order dated 18.08.2023, the Division Bench made it clear that the impleadment of the said respondents in the party array is only as a proforma party for the purpose of forwarding necessary papers in the light of the judgment of the Apex Court. The learned Standing Counsel for Keltron Component Complex Limited was directed to ascertain whether they have exercised option with regard to the employees referred to in Annexure V, in the light of the judgment of the Apex Court.

9. Heard the learned counsel for the petitioners, the learned Standing Counsel for Employees Provident Fund Organisation for the 1<sup>st</sup> respondent and also the learned Standing Counsel for Keltron Component Complex Limited for additional respondents 2 and 3.



10. The learned counsel for the petitioners would contend that though the judgment of a Division Bench of this Court in **Sasikumar P. and others v. Union of India and others [ILR 2019 (1) Ker. 614]**, whereby W.P.(C)No.13120 of 2015 and connected matters, including W.P.(C)No.11629 of 2015, were disposed of, was under challenge before the Apex Court in Civil Appeal Nos.8143-44 of 2022 and connected matters, the Employees Provident Fund Organisation has not chosen to file an SLP against that common judgment, insofar as it relates to the disposal of W.P.(C)No.11629 of 2015 filed by the petitioners and others. The petitioners were not made parties in any of the Special Leave Petitions filed by the Employees Provident Fund Organisation before the Apex Court. In the absence of a Special Leave Petition filed before the Apex Court with the petitioners in the party array, Annexure A-I judgment of this Court dated 12.10.2018, insofar as it relates to the disposal of W.P.(C)No.11629 of 2015 has attained finality. In view of that *inter parte* judgment, Annexure R1(A) judgment of the Apex Court dated 04.11.2022 in Civil Appeal Nos.8143-44 of 2022 and connected matters - **Employees Provident Fund Organisation v. Sunil Kumar B. [AIR 2022 SC 5634]**, is not binding on the petitioners and as such they are entitled to the right flowing out



of the direction contained in the judgment of this Court dated 12.10.2018 in W.P.(C)No.11629 of 2015. In support of the aforesaid contention the learned counsel for the petitioners would rely on the judgments of the Apex Court in **Neelima Srivastava v. State of Uttar Pradesh and others** [order dated 17.08.2021 in Civil Appeal No.4840 of 2021, arising out of SLP(C)No.18198 of 2018], **Union of India v. Major S.P. Sharma [(2014) 6 SCC 351]**, **Gorie Gouri Naidu (Minor) and another v. Thandrothu Bodemma and others [(1997) 2 SCC 552]** and **S. Ramachandra Rao v. S. Nagabhushana Rao and others [AIR 2022 SC 5317]**.

11. Per contra, the learned Standing Counsel for Employees Provident Fund Organisation would rely on the judgment of the Apex Court **Shenoy and Co., v. Commercial Tax Officer, Circle II, Bangalore [(1985) 2 SCC 512]**. The learned Standing Counsel would contend that the petitioners are bound by Annexure R1(A) judgment of the Apex Court dated 04.11.2022 in Civil Appeal Nos.8143-44 of 2022 and connected matters - **Employees Provident Fund Organisation v. Sunil Kumar B. [AIR 2022 SC 5634]**. The learned Standing Counsel would point out the specific direction contained in Annexure R1(D) order of the Apex Court dated 25.02.2021 in



SLP(C)Nos.8658-59 of 2019, whereby the Apex Court directed that pending further consideration, no contempt application seeking implementation of any of the orders passed in the four categories of matters shall be taken up by any court. The first category mentioned in the order dated 25.02.2021 is SLP(C)Nos. 8658-8659 of 2019, W.P.(C)No.233 of 2018 [Item Nos.1 & 1.1], arising from the judgment dated 12.10.2018 of the High Court of Kerala.

12. In **Major S.P. Sharma [(2014) 6 SCC 351]**, a decision relied on by the learned counsel for the petitioner, the Apex Court held that, a decision rendered by a competent court cannot be challenged in collateral proceedings for the reason that if it is permitted to do so there would be confusion and chaos and the finality of proceedings would cease to have any meaning.

13. In **Gorie Gouri Naidu (Minor) [(1997) 2 SCC 552]**, another decision relied on by the learned counsel for the petitioners, the Apex Court held that even if erroneous, an inter-parte judgment binds the party if the court of competent jurisdiction has decided the lis.

14. In **S. Ramachandra Rao [AIR 2022 SC 5317]**, another decision relied on by the learned counsel for the



petitioners, the Apex Court reiterated that a binding decision cannot lightly be ignored and even an erroneous decision remains binding on the parties to the same litigation and concerning the same issue, if rendered by a court of competent jurisdiction.

15. In **Neelima Srivastava** [order dated 17.08.2021 in Civil Appeal No.4840 of 2021], another decision relied on by the learned counsel for the petitioners, the Apex Court held that mere overruling of the principles by a subsequent judgment will not dilute the binding effect of the decision on inter-parties.

16. In **Shenoy and Co. [(1985) 2 SCC 512]**, a decision relied on by the learned Standing Counsel for the Employees Provident Fund Organisation, a Three-Judge Bench of the Apex Court was dealing with civil appeals and writ petitions challenging the common judgment dated 24.08.1979 of the Karnataka High Court in a batch of writ petitions challenging the constitutional validity of the Karnataka Tax on Entry of Goods Act, 1979. A Division Bench of the Karnataka High Court, by that common judgment allowed the writ petitions forbearing the State Government from taking any proceedings under the Act. The State took the matter in appeal before the Apex Court. However, only one appeal was filed, which was one filed against Writ



Petition No.7039 of 1979 filed by Hansa Cooperation, impleading the Corporation alone as a respondent. By the judgment dated 25.09.1980 - **State of Karnataka v. Hansa Corporation [(1984) 4 SCC 697]** – the Apex Court allowed Civil Appeal No.3049 of 1979, by setting aside the judgment dated 24.08.1979 of the Karnataka High Court and upholding the validity of the Act. While Civil Appeal No.3049 of 1979 was pending before the Apex Court, the Governor of Karnataka promulgated the Karnataka Tax on Entry of Goods into a Local Area for Consumption, Use or Sale Therein Ordinance of 1980, providing for levy of entry of tax on registered dealers, removing the infirmities in the 1979 Act, that were pointed out by the Karnataka High Court in its judgment dated 24.08.1979 while striking down the Act. The Ordinance of 1980 was replaced by Act 21 of 1980, giving it retrospective effect from 08.06.1980. After the judgment of the Apex Court in **Hansa Corporation [(1984) 4 SCC 697]**, the Governor of Karnataka promulgated another Ordinance of 1980 on 25.10.1980 replacing the Entry Tax Act of 1980, from its inception with certain other directions regarding adjustment of tax, if any, paid. This was followed by the Karnataka Tax on Entry of Goods into a Local Area for Consumption, Use or Sale Therein (Repeal) Act, 1981 and Act 10



of 1981 replacing the 1980 Act, which however did not repeal Ordinance level of 1980. In the meantime, the Ordinance 3 of 1981 came into force, which was followed by Act 12 of 1981, which repealed Ordinance 11 of 1980. As a result of the combined operation of Ordinance 3 of 1981 and Act 12 of 1981, the 1979 Act was made to be operative only from 01.10.1980 and not from 01.06.1979, as originally enacted. After the judgment of the Apex Court in **Hansa Corporation [(1984) 4 SCC 697]**, upholding the validity of the 1979 Act, the authorities appointed under the Act issued notices under the Act to all the dealers including those who had filed writ petitions earlier, calling upon them to register themselves under the Act, to file returns and to pay the amount of tax due from them under the original Act of 1979. Aggrieved by the said notices, writ petitions were filed before Karnataka High Court, contending that the notices issued to them were bad inasmuch as the writ of mandamus issued in their favour by the High Court in the earlier judgment survived and was effective since the State had not filed appeals against them and that the judgment of the Apex Court in **Hansa Corporation [(1984) 4 SCC 697]** could rescue the State from taking proceedings only against Hansa Corporation and not against them. The State contended that the



judgment of the Apex Court was binding on all and no one could escape from it. The learned Single Judge dismissed the writ petitions holding, among other things, that Section 3 of Act 10 of 1981 revived the 1979 Act and that action taken against the petitioners in the writ petitions was, therefore, valid. The Writ Appeals filed before the Division Bench were also ended in dismissal.

17. A judgment is a formal expression of conclusive adjudication of the rights and liabilities of the parties. The judgment may operate in two ways, in rem or in personam. Section 41 of the Evidence Act, 1872 which deals with relevancy of judgments in the context of conclusiveness of a judgment, order or decree reads thus;

"41. Relevancy of certain judgments in probate, etc. jurisdiction.- A final judgment, order or decree of a competent court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proof –

that any legal character, which it confers accrued at



the time when such judgment, order or decree came into operation;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person;

that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease;

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property."

18. In **Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd. [(2011) 5 SCC 532]** the Apex Court held that a right in rem is a right exercisable against the world at large, as contrasted from a right in personam which is an interest protected solely against specific individuals. Actions in personam refer to actions determining the rights and interests of the parties themselves in the subject-matter of the case, whereas actions in rem refer to actions determining the title to property and the rights of the parties, not merely among themselves but also against all persons at any time claiming an interest in that property. Correspondingly, a judgment in personam refers to a judgment against a person as distinguished from a judgment



against a thing, right or status and a judgment in rem refers to a judgment that determines the status or condition of property which operates directly on the property itself. [Vide Black's Law Dictionary]

19. In **Vidya Drolia v. Durga Trading Corporation [(2021) 2 SCC 1]** a Three-Judge Bench of the Apex Court reiterated that a judgment in rem determines the status of a person or thing as distinct from the particular interest in it of a party to the litigation; and such a judgment is conclusive evidence for and against all persons whether parties, privies or strangers of the matter actually decided. Such a judgment settles the destiny of the res itself and binds all persons claiming an interest in the property inconsistent with the judgment even though pronounced in their absence. By contrast, a judgment in personam, 'although it may concern a res, merely determines the rights of the litigants inter se to the res'. Distinction between judgments in rem and judgments in personam turns on their power as res judicata, i.e., judgment in rem would operate as res judicata against the world, and judgment in personam would operate as res judicata only against the parties in dispute.

20. The decision of a Three-Judge Bench of the Apex Court in **Employees' Provident Fund Organisation and**

**another v. Sunil Kumar B. and others [AIR 2022 SC 5634]**

was in the Civil Appeals arising out of the judgment of the Division Bench of this Court in **Sasikumar P. and others v. Union of India and others [ILR 2019 (1) Ker. 614]** [Annexure A-I judgment dated 12.10.2018 in W.P.(C)No.13120 of 2015 and connected matters, including W.P.(C)No.11629 of 2015] setting aside the Employees' Pension Amendment (Scheme), 2014 conceived in G.S.R.609 (E) dated 22.08.2014; the judgment of the High Court of Delhi in **Bhartiya Khadya Nigam Karamchari Sangh v. Union of India** - Writ Petition (C) No. 5678 of 2018 – following the view expressed by this Court; and judgment of the High Court of Rajasthan in **Union of India v. Jale Singh** - D.B. Special Appeal Writ No.436 of 2019 – expressing the same opinion.

21. By Annexure A-I judgment dated 12.10.2018 in **Sasikumar P. and others v. Union of India and others [ILR 2019 (1) Ker. 614]**, the Division Bench of this Court disposed of W.P.(C)No.13120 of 2015 and connected matters, including W.P.(C)No.11629 of 2015, by setting aside the Employees' Pension (Amendment) Scheme, 2014 brought into force by notification No.G.S.R.609 (E) dated 22.08.2014 and also all consequential orders and proceedings issued by the Employees



Provident Fund Organisation on the basis of the aforesaid amendment. The Division Bench set aside various proceedings issued by the Employees Provident Fund Organisation declining to grant opportunities to the writ petitioners to exercise a joint option along with other employees to remit contributions to the Employees' Pension Scheme on the basis of the actual salary drawn by them. The Division Bench held that the employees shall be entitled to exercise the option stipulated by paragraph 26 of the Employees' Provident Fund Scheme without being restricted in doing so by the insistence on a date.

22. The decision of a Three-Judge Bench of the Apex Court in **Employees' Provident Fund Organisation and another v. Sunil Kumar B. and others [AIR 2022 SC 5634]** was in the Civil Appeals arising out of the judgment of the Division Bench of this Court in **Sasikumar P. and others v. Union of India and others [ILR 2019 (1) Ker. 614]** [Annexure A-I judgment dated 12.10.2018 in W.P.(C)No.13120 of 2015 and connected matters, including W.P.(C)No.11629 of 2015] setting aside the Employees' Pension Amendment (Scheme), 2014 conceived in G.S.R.609 (E) dated 22.08.2014; the judgment of the High Court of Delhi in **Bhartiya Khadya Nigam Karamchari Sangh v. Union of India** - Writ Petition



(C) No. 5678 of 2018 – following the view expressed by this Court; and judgment of the High Court of Rajasthan in **Union of India v. Jale Singh** - D.B. Special Appeal Writ No.436 of 2019 – expressing the same opinion.

23. In **Employees Provident Fund Organisation v. Sunil Kumar [AIR 2022 SC 5634]** the Three-Judge Bench of the Apex Court, at paragraph 44 of the judgment, held and directed as follows;

“44. We accordingly hold and direct:-

(i) The provisions contained in the notification No. G.S.R.609(E) dated 22<sup>nd</sup> August 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.

(ii) Amendment to the pension scheme brought about by the notification No. G.S.R.609(E) dated 22<sup>nd</sup> August 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.

(iii) 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<sup>st</sup> September 2014, will be guided by the amended provisions of paragraph 11(4) of the pension scheme.



(iv) 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<sup>st</sup> September 2014 stands crystalised in the judgment of this Court in the case of **R.C. Gupta and others v. Regional Provident Fund Commissioner, Employees Provident Fund Organisation and others [(2018) 14 SCC 809]**. The scheme as it stood before 1<sup>st</sup> September 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. 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. Rest of the requirements as per the amended provision shall be complied with.



(v) The employees who had retired prior to 1<sup>st</sup> 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.

(vi) The employees who have retired before 1<sup>st</sup> September 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.

(vii) The requirement of the members to contribute at the rate of 1.16 per cent of their salary to the extent such salary exceeds Rs.15,000/- 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.



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

(ix) We agree with the view taken by the Division Bench in the case of **R.C. Gupta [(2018) 14 SCC 809]** 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.

(x) The Contempt Petition (C) Nos.1917-1918 of 2018 and Contempt Petition (C) Nos.619-620 of 2019 in Civil Appeal Nos.10013-10014 of 2016 are disposed of in the above terms.”

24. In **Employees Provident Fund Organisation v. Sunil Kumar [AIR 2022 SC 5634]** the Three-Judge Bench of the Apex Court set aside the impugned judgments, including the judgment of a Division Bench of this Court in **Sasikumar P and others v. Union of India and others [ILR 2019 (1) Ker. 614]**, declaring that the provisions contained in the notification No.G.S.R.609(E) dated 22<sup>nd</sup> August 2014 are legal and valid. In sub-paragraphs (i) to (x) of paragraph 44 of the judgment, the Apex Court issued consequential declarations and directions.

25. In **Shenoy and Co. [(1985) 2 SCC 512]**, before the Apex Court, the main thrust of the submission made by the learned counsel for the appellants was that the writ of



mandamus issued by the High Court in their favour in the common judgment dated 24.08.1979 was effective since the judgment in their favour was not challenged by the State by filing appeals before the Apex Court. Therefore, the law laid down by the Apex Court in **Hansa Corporation [(1984) 4 SCC 697]** would apply only against Hansa Corporation, against whom alone the State had filed an appeal.

26. In **Shenoy and Co. [(1985) 2 SCC 512]**, the Apex Court noticed that though a large number of writ petitions were filed before the Karnataka High Court challenging the 1979 Act, all those writ petitions were grouped together, heard together and were disposed of by the High Court by a common judgment. No petitioner advanced any contention peculiar or individual to his petition, not common to others. To be precise, the dispute in the cause or controversy between the State and each petitioner had no personal or individual element in it or anything personal or peculiar to each petitioner. The challenge to the constitutional validity of 1979 Act proceeded on identical grounds common to all petitioners. This challenge was accepted by the High Court, by a common judgment, and it was that common judgment that was the subject-matter of appeal before the Apex Court in **Hansa Corporation case [(1980) 4 SCC 697]**. When the



Apex Court repelled the challenge and held the Act constitutionally valid, it in terms disposed of not the appeal in Hansa Corporation [(1980) 4 SCC 697] alone, but the writ petitions in which the Karnataka High Court issued mandamus on the non-existent ground that the 1979 Act was constitutionally invalid. It is, therefore, idle to contend that the law laid down by the Apex Court in Hansa Corporation case [(1980) 4 SCC 697] would bind only Hansa Corporation and not the other petitioners against whom the State of Karnataka had not filed any appeal. To do so is to ignore the binding nature of a judgment of the Apex Court under Article 141 of the Constitution. In cases where numerous writ petitions are disposed of by a common judgment and only one appeal is filed, the parties to the common judgment could very well have and should have intervened and could have requested the Court to hear them also. They cannot be heard to say that the decision was taken by the Court behind their back or profess ignorance of the fact that an appeal had been filed by the State against the common judgment. The Apex Court observed that, in the fitness of things, it would be desirable that the State Government also took out publication in such cases to alert the parties bound by the judgment, of the fact that an appeal had been preferred by them. The Apex Court



noticed that the normal procedure to enforce a writ of mandamus is to move the Court in contempt when the parties against whom mandamus is issued disrespect it. In the contempt petition the State cannot be punished for disrespecting the mandamus, when the law of the land has been laid down by the Apex Court against the mandamus issued, since the mandamus issued by the High Court becomes ineffective and unenforceable when the basis on which it was issued falls, by the declaration by the Apex Court, of the validity of 1979 Act.

27. In the instant case, the judgment of a Division Bench of this Court in **Sasikumar P. and others [ILR 2019 (1) Ker.614]** setting aside the Employees' Pension (Amendment) Scheme, 2014 brought into force by notification No.G.S.R.609(E) dated 22.08.2014 and also all consequential orders and proceedings issued by the Employees' Provident Fund Organisation on the basis of the aforesaid amendment, was set aside by the Apex Court in **Employees Provident Fund Organisation v. Sunil Kumar [AIR 2022 SC 5634]**. The law laid down by the Apex Court in the said decision, upholding the Employees' Pension (Amendment) Scheme, 2014 brought into force by notification No.G.S.R.609(E) dated 22.08.2014, is binding on all persons claiming pension under the Employees'



Pension Scheme, which is also binding on the petitioners. Ignoring the binding nature of that judgment under Article 141 of the Constitution of India, the petitioners cannot seek implementation of Annexure A-I judgment of this Court dated 12.10.2018, by contending that since the Employees' Provident Fund Organisation has not chosen to file appeal in W.P.(C)No. 11629 of 2015 before the Apex Court, the mandamus issued by this Court in that judgment has to be enforced in exercise of the contempt jurisdiction under Section 12 of the Contempt of Courts Act, 1971. The mandamus issued by this Court in that judgment has become ineffective and unenforceable when the basis on which it was issued falls by the declaration of law by the Apex Court in **Employees Provident Fund Organisation v. Sunil Kumar [AIR 2022 SC 5634]**, upholding the validity of Employees' Pension (Amendment) Scheme, 2014 brought into force by notification No.G.S.R.609(E) dated 22.08.2014.

In the above circumstances, we find no reason to proceed with this Contempt of Court Case further and the same is accordingly closed, after recording the submission made by the learned Standing Counsel for Employees' Provident Fund Organisation that, in view of the judgment of the Apex Court in **Employees Provident Fund Organisation v. Sunil Kumar**



**[AIR 2022 SC 5634]** the entitlement of the petitioners for disbursement of higher pension will be reconsidered by the Employees Provident Fund Organisation, in terms of the directions contained in that judgment.

Sd/-

**ANIL K. NARENDRAN, JUDGE**

Sd/-

**G. GIRISH, JUDGE**

AV/18/1



APPENDIX OF CON.CASE (C) 1437/2022

**PETITIONER ANNEXURES**

- Annexure I** CERTIFIED COPY OF THE JUDGMENT DATED 12.10.2018 IN W.P(C)NO.11629/2015
- Annexure II** TRUE COPY OF THE ORDER DATED 18.12.2020 IN COC NO.2491/2019 IN WPC 11629/2015
- Annexure III** TRUE COPY OF LETTER NO. KR/KNR/4401/316/PEN.REV/2020 DATED 08.09.2020
- Annexure IV** TRUE COPY OF THE LETTER NO. KR/KNR/PENSION CELL/60654 DATED 06.04.2022 ISSUED BY THE RESPONDENT TO 3RD PETITIONER.

**RESPONDENT ANNEXURES**

- ANNEXURE R1A** TRUE COPY OF THE JUDGMENT IN SLP(C) No.8658-8659 OF 2019 DATED 04/11/2022
- ANNEXURE R1(B)** TRUE COPY OF THE ORDER DATED 25/02/2021 IN SLP 8658-8659 OF 2019

**PETITIONER ANNEXURES**

- Annexure V** TRUE COPY OF THE CERTIFICATE ISSUED BY HOD (P AND A, KELTRON COMPONENT COMPLEX LTD. DATED 30.12.2022
- Annexure VI** TRUE COPY OF THE JOINT OPTION SUBMITTED BY THE 2ND PETITIONER DATED 07.06.2023.
- Annexure VII** TRUE COPY OF THE JOINT OPTION SUBMITTED BY THE 3RD PETITIONER DATED 25.04.2023
- Annexure VIII** TRUE COPY OF THE JOINT OPTION SUBMITTED BY THE 4TH PETITIONER DATED 19.04.2023.
- Annexure IX** TRUE COPY OF THE OPTION SUBMITTED BY THE 5TH PETITIONER DATED 21.04.2023.
- Annexure X** TRUE COPY OF THE JOINT OPTION SUBMITTED BY THE 6TH PETITIONER DATED 20.04.2023.



- Annexure XI** TRUE COPY OF THE JOINT OPTION SUBMITTED BY  
THE 7TH PETITIONER DATED 25.05.2023.
- Annexure XII** TRUE COPY OF THE JOINT OPTION SUBMITTED BY  
THE 8TH PETITIONER DATED 24.04.2023.
- Annexure XIII** TRUE COPY OF THE JOINT OPTION SUBMITTED BY  
THE 9TH PETITIONER DATED 28.04.2023.