IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 17639 of 2026.
Decided on : 8th October, 2026

Man Singh ...**Petitioner.**

Versus

State of H.P. & Ors. ....**Respondents.**

Coram:

Ms. Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting?[1]

For the Petitioner: Mr. Sat Prakash, Advocate.

For the respondents: Mr. Y.P.S. Dhaulta, Additional Advocate General, for respondent No.1.
Ms. Shrutika Chauhan, Advocate, for respondents No.2 to 4.

Jyotsna Rewal Dua, Judge.

Notice. Mr. Y.P.S. Dhaulta, learned Additional Advocate General and Ms. Shrutika Chauhan, learned counsel appear and waive service of notice on behalf of respondents No.1 and 2 to 4, respectively.

2. Having regard to the grievance of the petitioner, the documents placed on record, the decision relied upon and the nature of order being passed hereinafter, there is no necessity to call for reply from the respondents. Matter has accordingly been heard at this stage.

3. Petitioner retired as regular driver from the respondent-Road Transport Corporation. Pension was not released in his favour since he did not have to his credit requisite qualifying regular service. Petitioner represented to the respondents seeking applicability of ***State of H.P. and***

[1] Whether reporters of the local papers may be allowed to see the judgment?

another versus Sheela Devi[2] for counting the contractual service rendered by him in order to have qualifying service for the purpose of pension. Since the representation was not decided, he instituted CWP No. 16014 of 2025. Writ petition was disposed of on 13.10.2025 with directions to the respondents to consider and decide the representation of the petitioner in accordance with law as well as taking into consideration of the decision in case of *Sheela Devi*[2].

Pursuant to above, the respondents considered the case of the petitioner and though added contractual service rendered by him towards his qualifying service for the purpose of pensionary benefits under office order dated 27.04.2026, however, still declined to grant pension to him on the ground that he had not exercised the option under the Old Pension Scheme within 60 days, as required under office memorandum dated 04.05.2023. Feeling aggrieved, petitioner has instituted this writ petition.

4. Learned counsel for the petitioner has invited attention to the office memorandum dated 09.07.2026 extending the time for exercising the option with cut-off date as 31.05.2026 for coverage under the CCS (Pension) Rules, 1972. This issue has also been adjudicated upon in

[2] SLP© No. 10399 of 2020, decided on 07.08.2023

Reshmo Devi vs. State of Himachal Pradesh & Ors.[3]**,**relevant portion of which reads as under:-

> *"It is well settled that pension is not a bounty. In R.C. Gupta & Ors. vs. Regional Provident Fund Commissioner, EPFO & Ors.*[4] *the appellant-employees' employer had contributed 12% of their actual salary (not restricted to the statutory ceiling) to the Provident Fund, and the employees sought pension benefits on this higher salary. The authorities denied this, citing a cut-off date under the proviso to Clause 11(3) of the Pension Scheme. The Hon'ble Supreme Court in paragraph 7, clarified that the dates mentioned in the proviso – such as the scheme's commencement or when salary exceeds the ceiling – are only for calculating pensionable salary, not as cut-off dates for exercising the option to contribute on a higher salary. The Court emphasized that a beneficial social welfare scheme should not be defeated by technicalities, especially where actual salary contributions had already been made, thereby upholding the welfare intent of the scheme. The Court held as under:-*
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> *"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 PensionScheme. A somewhat similar view that has been taken by this Court in a matter coming from the Kerala High Court*[5]*, 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*[6]*. 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*

[3]CWP No. 11004 of 2025, decided along with connected matters on 10.07.2025.
[4](2018)14 SCC 809
[5] Union of India vs. A. Majeed Kunju, Writ Appeal No. 1135 of 2012, order dated 5.3.2013 (Ker)
[6]. Regl. Provident Fund Commr. Vs. A. Majeed Kunju, 2016 SCC OnLine SC 1744

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) xxx xxx xxx (6) Notwithstanding anything contained in this paragraph, an officer not below the rank of an Assistant Provident Fund Commissioner may, on the joint request in writing, of any employee of a factory or other establishment to which this Scheme applies and his employer, enroll such employee as a member or allow him to contribute more than 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."

5. In view of above, this petition is disposed of by directing the respondents to consider the case of the petitioner for grant of pension under the Old Pension Scheme and the CCS (Pension) Rules, 1972 in terms of Notification dated 04.05.2023 and Office Memorandum dated 04.05.2023 within a period of four weeks. While considering the case, observations made above shall be kept in view. The case of the petitioner for grant of pension under the Old Pension Scheme shall not be rejected only for the reason that she could not exercise her option within the cut-off period mentioned in the Office Memorandum dated 04.05.2023. Copy of decision so taken be communicated to the petitioner."

Learned counsel further submits that the aforesaid decision has been affirmed by the Hon'ble Principal Division Bench in CMP(M) No.346 of 2026 (State of Himachal Pradesh and Others Versus Reshmo Devi and Another), decided alongwith connected matters with lead case LPA No. 2017 of 2026 (State of Himachal Pradesh and Others Versus Baldev Singh) on 09.07.2026. Relevant portion of the decision is as under:-

"6. From the perusal of LPA No.217 of 2026, titled as State of Himachal Pradesh and Others Vs. Baldev Singh, it is clear that representation of the petitioner regarding the option was received vide Diary No. 6003 on 19.09.2023. However, it was rejected on the grounds that he had failed to exercise

his option before the expiry of the 60-days' period from the date the Government instructions were issued. Consequently, because he submitted his option late, his request had not been favorably considered. Resultantly, he had filed CWP No. 948 of 2025, titled Baldev Singh Vs. State of Himachal Pradesh and Others, which culminated in the filing of LPA No.217 of 2026.

7. *Counsel for the appellants-State has submitted that as per the notification dated 04.05.2023 (Annexure R-I) as such, the cut-off period was 60 days from the date of issuance of these instructions and the Government servants, who had opted for the Central Civil Services (Pension) Rules, 1972, i.e. Old Pension Scheme were entitled to pensionary benefits only subject to depositing of the Government's contribution and the dividend/return earned thereon to the State Government's account. Because the respondents had failed to make this deposit, the issued directions are unjustified.*

8. *The learned Single Judge had relied upon the basic principle that the beneficial social welfare scheme could not be defeated by technicalities, while placing reliance upon the judgment of the Apex Court in R.C. Gupta & Others Vs. Regional Provident Fund Commissioner, EPFO & Others (2018) 14 SCC 80.*

9. *Reliance was also placed upon the judgment passed on an earlier occasion in CWP No. 7097 of 2024, titled as Phoolmati Vs. State of Himachal Pradesh & Others, dated 31.12.2024, wherein the view was taken that the Department was required to inform Class-III and Class IV employees of the memorandum and seek their options within a reasonable time. If the employee failed to do so within a reasonable time, the Department could then proceed with the matter in accordance with law.*

10. *It is not disputed that the said judgment was the subject matter of challenge by the appellants-State in LPA No. 791 of 2025, titled State of Himachal Pradesh and Others Vs. Phoolmati and Another, before us, wherein we had noticed that the petitioner had exercised her option only on 04.11.2023, though the said exercise was required to be completed by 03.07.2023. Resultantly, we had come to the conclusion that the cut-off date could not, as such, be*

strictly applied to retired government employees who were no longer in touch with their employer. The relevant part read as under:-

"6. It is not disputed that even as per the terms of the Notification dated 04.05.2023 (Annexure P-2), whereby the Central Civil Services (Pension) Rules, 1972, were amended by the State w.e.f. 01.04.2023, certain benefits were given to Government servants, who had already retired or died in harness during the period w.e.f. 15.05.2003 to 31.03.2023, if such retired Government servants or eligible family members exercise their option to get the pensionary benefits under the Rules from prospective date i.e. w.e.f. 01.04.2023, subject to deposit of Government contribution and dividend return earned thereon under the National Pension System to the State Government. Thus, apparently, it was a beneficial amendment as such which was also applicable to the persons who had retired at the prior point of time for over a period of 20 years.

7. In such circumstances, we are in agreement with the view taken by the learned Single Judge that a Class-IV employee, who had already retired as such at the time of issuance of the Memorandum dated 04.05.2023, who could not give an option within the prescribed period of 60 days, as she was not aware of the strict provisions as such of the cut-off date, not being in touch with her employer.

8. In such circumstances, we do not find any infirmity or illegality in the order passed by the learned Single Judge and are not inclined to interfere in the same.

9. Accordingly, the appeal is dismissed alongwith pending application(s), if any."

11. In the present set of cases, it is to be noticed that applications were filed in July, August, September, 2023 and by Gokal Ram on 10.02.2025. Since by that time, the employees had already retired: Baldev Singh on 28.02.2022, Sudershna Devi on 31.07.2017, Reshmo Devi on 17.06.2016, Gokal Ram on 31.03.2018, and Rasan Devi on 28.02.2022 and the Scheme was introduced later, in the year 2023.

> *12. It was in such circumstances that the employees had already superannuated long time back. Therefore, it becomes obvious that such employees were no longer in touch with their employer, as even monthly pension was not being paid. Consequently, taking a strict view regarding the non-consideration on the principle of cut off date, would not be justified in the facts and circumstances of these cases and can be considered arbitrary.*
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> *13. Resultantly, we are of the considered opinion that these appeals are not liable to be considered on merits, and the view taken by the learned Single Judge does not suffer from any infirmity. Accordingly, the present appeals stand dismissed accordingly.*
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> *14. The appellants-State shall necessarily quantify the amount and ask the retired employees to deposit the required amount within a stipulated period of two months. If the amount is not deposited within the specified time period, the appellants-State may pass fresh orders."*

Learned counsel for the petitioner submits that petitioner has furnished a fresh representation on 10.08.2026 (Annexure P-5) to the competent authority for the redressal of his grievances, including his option for coming over to the Old Pension Scheme, but the same has not been considered till date. Learned counsel also submits that petitioner would be content in case respondents/competent authority are directed to decide the fresh representation in accordance with law within a fixed time schedule.

In view of above, impugned decision of the respondents dated 01.08.2026 (Annexure P-3) is quashed and set aside. This writ petition is disposed of with direction to the respondents to consider and

decide the representation of the petitioner dated 10.08.2026 (Annexure P-5) seeking pension as per Old Pension Scheme, in accordance with law, keeping in view the aforesaid decisions, within a period of three weeks from today. In case the petitioner is held entitled to pension under the Old Pension Scheme, then the retiral benefits along with admissible arrears from due date be released to him, within a period of three weeks thereafter. All codal formalities be also completed within the aforesaid period. Pending application(s), if any, shall also stand disposed of.

Jyotsna Rewal Dua
Judge

8th October, 2026.
(jai)