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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Decided on: 10th May, 2023*

\+ **W.P. (C) 5991/2012**

AIRPORT AUTHORITY EMPLOYEES UNION ..... Petitioner
Through: Mr. Nikhil Palli, Advocate (Ph.9811676973, e-mail: pallilawfirm@gmail.com)

versus

UNION OF INDIA AND ORS ..... Respondents
Through: Mr. Ruchir Mishra, Mr. Sanjiv Kr. Saxena, Mr. Mukesh Kr. Tiwari, Ms. Poonam Shukla and Ms. Reba Jena Mishra, Advocates for R-1/ UOI (Ph.8368422800, e-mail: ruchirmishra79@yahoo.co.in)

Mr. Rajesh Kumar, Standing Counsel, EPFO with Mr. Mishal Vij, Ms. Ramneet Kaur, Mr. Kushaj Bhushan, Mr. Sanad Dobwal, Advocates (Ph.9891235156, e-mail: rajesh.laws@gmail.com)

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\+ **W.P.(C) 1648/2014**

JYOTI PRASAD AND ORS ..... Petitioners
Through: Mr. Nikhil Palli, Advocate.

versus

UNION OF INDIA & ORS ..... Respondents
Through: Mr. Rajesh Kumar, Standing Counsel, EPFO with Mr. Mishal Vij, Ms. Ramneet Kaur, Mr. Kushaj Bhushan,

Mr. Sanad Dobwal, Advocates.

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA
[Physical Hearing/ Hybrid Hearing]

MINI PUSHKARNA, J. (ORAL):

1. The present matters have been received on transfer and marked to this Court.

2. The present writ petitions have been filed with prayer for quashing the order dated 13.08.2012 passed by respondent Nos. 4 and 5, whereby it was decided not to settle the pension claims of the employees of Airports Authority of India (AAI), on the basis of their actual salary drawn and by restricting at the pensionable salary limit of Rs.6,500/- per month.

3. It is the case on behalf of the petitioners that respondent No. 6 was set up on 01.04.1995 pursuant to promulgation of Airports Authority of India Act, 1994 on merger of International Airports Authority of India (lAAI) and National Airports Authority of India (NAAI). Thus, all the existing employees of lAAI and NAAI were absorbed in and stood transferred to Airports Authority of India w.e.f 01.04.1995.

4. It is submitted that vide letter dated 22.08.2007, respondent No.4 came to a conclusion that respondent No.6 establishment was covered under the provisions of Employees Provident Fund and Miscellaneous Provisions Act, 1952 (EPF Act) w.e.f. 01.04.1995. Thus respondent No. 6, Airport Authority of India (AAI) vide its letter

dated 03.10.2007, specified that the pension would be operated through the Regional Provident Fund Commissioner and stipulated that as required under the Pension Scheme, 1995, the employees had to exercise their option out of the two options available under Para 11 (3) of the Scheme on or before 22.10.2007 for onward submission to Respondent No.5. The two options were either for opting pension on full salary i.e. the salary on which Provident Fund (PF) was deducted or for opting for pension on the ceiling provided on ceiling applicable w.e.f. 01.06.2001 i.e. Rs.6,500/-.

5. It is the case of the petitioners that majority of employees/members of the petitioner exercised option 'A' in favour of transfer of 8.33% of their actual salary to the Pension Fund maintained with Regional Provident Fund Commissioner, Delhi (North). Thus, respondent No.6 transferred 8.33% of the total monthly salary of the employees with respondent No.5, which contribution was duly accepted by said respondent from October, 2007 onwards. It is submitted that vide its letter dated 05.05.2008, the AAI had given a final opportunity to the employees to exercise their option and clearly specified that in the absence of any option, the recovery of pension contribution would be made as per ceiling applicable under the Pension Scheme.

6. By way of present writ petition, it has been submitted that the petitioners had made representation dated 28.08.2012 to the Central Provident Fund Commissioner/ respondent No. 3 seeking intervention in the matter with respect to option having already been opted by the

petitioners herein. However, the respondent Nos. 3 to 5 issued impugned order dated 13.08.2012 taking wholly erroneous stand that the employees never applied to allow to contribute on more than the statutory limit of pay, as provident fund. Thus, the present writ petition had been filed with prayer for quashing the order dated 13.08.2012 passed by respondent Nos. 4 and 5, whereby it has been decided not to settle the pension claims of the employees of the AAI.

7. By way of present petitions, employees of the AAI submit that their claims may be settled on the basis of their pensionable salary to be calculated at the actual amount drawn by them month by month during the tenure of their employment on which an amount representing 8.33% share of the employee's share was submitted to the pension fund.

8. Today, learned counsels for the parties jointly submit that the issue as raised in the present writ petitions would be covered by the judgment dated 04.11.2022 passed by the Hon'ble Supreme Court in the matters of *The Employees Provident Fund Organisation and Anr. Etc. vs. Sunil Kumar B. and Ors. etc.* and connected matters arising out of *Special Leave Petition (C) Nos. 8658-59/2019* and other connected matters. By the said judgment, Hon'ble Supreme Court has held as follows:

> *"**44.** We accordingly hold and direct:-*
>
> *(i) The provisions contained in the notification no. G.S.R. 609(E) dated 22nd 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 22nd 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 1st 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 1st September 2014 stands crystalised in the judgment of this Court in the case of ***R.C. Gupta*** *(supra). The scheme as it stood before 1st September 2014 did not provide for any cutoff 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 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.

(vi) The employees who have retired before 1st 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.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.

(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*** *(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.*

(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."

9. By reference to the aforesaid judgment of the Supreme Court, it is submitted that the employees who had exercised option under proviso to paragraph 11(3) of the 1995 Scheme and continued to be in service as on 1st September 2014, were to be covered by the amended provisions of paragraph 11(4) of the Pension Scheme.

10. Mr. Nikhil Palli, Advocate appearing on behalf of the petitioners submits that all the petitioners had given the option before the cut-off date of 01.09.2014. The said option was given by employees of AAI to respondent No. 6, who forwarded the same to

respondent Nos. 3 and 4. However, on the other hand, learned counsel appearing for respondent Nos. 3 to 5 submits that each case would have to be examined individually by the Employees Provident Fund Organisation (EPFO), in terms of the Supreme Court judgment.

11. Learned counsel appearing for the petitioners has also handed over copy of the letter dated 17.04.2023 as issued by the AAI, wherein Joint Option Form is required to be submitted by the respective employees. It is submitted that the said Joint Option Form can now be submitted with the AAI, by employees of the AAI.

12. Be that as it may, since it is the case on behalf of the petitioners that they have already exercised the option before 01.09.2014, the EPFO would be at liberty to requisition any document that may be needed for the purposes of assessing the eligibility/ entitlement of the individual employees.

13. The petitioners are directed to cooperate with the respondent authorities, as and when the relevant documents are requisitioned by the said authority for the purposes of assessing their entitlement in terms of the judgment of the Supreme Court. In case, any employee has not exercised his option in terms of the proviso to paragraph 11(3) of the 1995 Scheme, the employees are given liberty to exercise their options in terms of the option as being granted by the AAI, as contained in their letter dated 17.04.2023. The letter dated 17.04.2023, as issued by the AAI is reproduced as below:

भारतीय विमानपत्तन प्राधिकरण
AIRPORTS AUTHORITY OF INDIA

By Speed Post and By Scanned Mail

No. A60011/Pen.Cell/HR/Misc/2022/Part-File/1064-72 17th April, 2023

To

The Regional Executive Director
Airports Authority of India
NR/WR/ER/SR/NER
Delhi/Mumbai/Kolkata/Chennai/Guwhati

The Executive Director
Airports Authority of India
RCDU/CRSD/FIU/E&M
New Delhi

The Airport Director
Airports Authority of India
Chennai Airport/ Kolkata Airport

The Principal
CATC, Allahabad

Subject: Regarding Submission of 'Joint Option Form' under Para 11(3) and Para 11(4) of Employees Pension Scheme, 1995 in accordance with Order of Hon'ble Supreme Court of India dated 04th November 2022 in SLP No. 8658-8659 of 2019

This is in reference to this office letter of even No. dated 01/03/2023 on the above said subject through which CHQ had requested all eligible members to also submit their Joint Option Forms through online mode on https://unifiedportal-mem.epfindia.gov.in/memberinterface/ website in compliance with directions of EPFO in their Circulars dated 29/12/2022 and 20/02/2023.

2. Several queries, e-mails and representations were received in this office from individuals/ Regions/ Stations seeking clarification regarding the suitable documents to be uploaded/ attached on the EPFO Portal while submitting application for opting pension on Actual Salary through URL provided by EPFO on its Member Portal Interface as they have defined a mandatory requirement for attaching/ uploading the following documents:

- Permission under para 26(6) of EPF Scheme.
- Relevant document as a proof of PF balance.
- Undertaking to deposit the contribution along with interest due till date of payment through his last employer [only when PF Account has no/ insufficient balance]

3. In this regard, it is informed that AAI had referred this issue to EPFO seeking their kind guidance regarding document suitable for uploading on EPFO Portal. Officers of HR and Finance Dept. of Corporate Headquarters also visited both EPFO Head Office and Regional Office, Delhi (Central) requesting them to provide requisite clarification on this issue. However, no reply has been received from them.

4. It may be relevant to mention here that EPFO, Delhi (Central) meanwhile has returned the Joint Option Forms of AAI employees / ex- employees forwarded to their office in Hard Copy with due attestation by Authorized Signatory with the advise to apply *digitally/ online at* ***https://unifiedportal-mem.epfindia.gov.in/*** *and fill all the relevant details along with annexures/ documents as mentioned therein for further necessary action.*

निरंतर

5. In view of the fact that the last date defined by EPFO for submission of the Online Joint Option Forms i.e. 3rd May, 2023 is nearing, the matter was internally deliberated by HR and Finance Departments of Corporate Headquarters. Accordingly, a Certificate in Lieu of Para 26(6) of the EPF Scheme ***(as attached Annexure- I)*** and Member Undertaking ***(as attached Annexure- II)*** has been prepared by CHQ and is being forwarded herewith to all AAI Offices with the request to further circulate the same to employees/ ex-employees eligible and willing to opt for drawing benefits of Pension on Actual Pay. With regard to proof of PF Account balance, the latest PF Statement issued by AAI to all the employees may be uploaded on EPFO portal.

6. It is requested to actively sensitize all concerned regarding this so that they may be able to successfully fill up and submit their Online Application Forms within the stipulated time limit and as per the procedure prescribed by the EPFO Head Office for submission of Joint Option Forms online through URL facility provided on EPFO's Member Interface Portal.

7. This issues with the approval of the Competent Authority.

निवेदिता

(Nivedita Dubey)
General Manager (HR)

Encl.: As Above

Circulation:

- **ED (HR)-CHQ** – for similar action please
- **ED (Finance)-CHQ**
- **OSD to Chairman, AAI**
- **EA to Member (HR)/ EA to Member (Finance)** – for information please.
- **GS, AAEU/ GS, AAIEG/ GS, ATCG(I)/ GS, IAAIOA/ GS, AAI SC/ST EWA/ GS, AAI SC/ST/OBC (NE) EWA/ GS, IAKU**

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14. It is submitted before this Court that the cutoff of date of 03.05.2023 for submission of the Joint Option Form has since been extended beyond the period of 03.05.2023.

15. In view of the aforesaid, the employees who have not given their options as yet may do so in terms of the option as available.

16. With the aforesaid observations, the present writ petitions are disposed of.

MINI PUSHKARNA, J

MAY 10, 2023
PB