IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2024

CORAM

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN
AND
THE HONOURABLE MR. JUSTICE K. RAJASEKAR

W.A. Nos. 2621 to 2624 of 2023, 3501, 3687, 3735, 3750, 3755, 3918, 3920 to 3924, 3939, 3955, 3993, 3934, 4149, 4156, 4159, 4160, 4161, 4253, 4260, 4261, 4271 of 2019, 171, 177, 182, 200 to 203, 205, 207, 209, 218, 548 to 551, 557, 560, 574, 577, 578, 602, 657 of 2020, 521, 531, 1229, 2188, 2251 of 2021, 3559, 3560, 3562 and 3563 of 2023

W.P. No. 1630 of 2021 and W.M.P. Nos. 1845 and 1847 of 2021

and

C.M.P. Nos. 2449, 2581, 2696, 3098 to 3101, 3103, 3104, 3123, 3127, 3128, 3173, 3174, 3353, 7828, 7829, 7830, 7836, 7924, 7952, 8136, 8162, 8166, 8336, 9257 of 2020, 23456, 23714, 23769, 23788, 24636, 24643, 24644, 24653, 24659, 24663, 24712, 24732, 24802, 24981, 25857, 25876, 25879, 25881, 25884, 25888 to 25890, 26495, 26574, 26579, 26648 of 2019, 2044, 2068, 7846, 13832, 14352 of 2021, 21016, 22092, 22093, 22095, 22096, 29143, 29150, 29164, 29171 of 2023

W.A. No.2621 of 2023:

1. Employees Provident Fund Organization
rep. By Additional Central Provident
Fund Commissioner
Head Quarters (Pension)
Bhavishya Nidhi Bhawan, 14,
Bhikaji Cama Place,
New Delhi – 110 066.

2. Assistant Provident Fund
Commissioner – 1 (Pension)
Employees Provident Fund Organization,
Regional/ Sub Regional Office,
Vellore. ... Appellants / Respondents 2 & 3

-vs-

1. M. Narayanasamy ... 1st Respondent/ Writ Petitioner

2. Government of India, rep. By Secretary
to Government, Ministry of Labour and
Employment,
Shram Shakthi Bhavan, Rafi Marg,
New Delhi – 110 001.

3. The Management,
Vellore District Central Co-operative
Bank Limited,
rep. By its Managing Director,
No.1, Officers Line, Vellore,
Vellore District. ... Respondents 2 &3 / Respondents 1 & 4

For Appellants : Mr. R. Vishnu

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JUDGMENT

(By K.Rajasekar,J.,)

All the appeals arising out of common Order passed in batch of Writ petitions, dated 27.03.2019. Some of the Writ petitions were filed to quash the Circular No. Pension-I/12/33/EPS Amendment/96 Vol.II dated 31.05.2017 and consequently to grant pension on higher wages. Set of Writ petitions have been filed seeking direction to direct the Regional Provident Fund Commissioner, Employees Provident Fund Organization (EPFO hereafter) to receive refund of provident fund amounts and allow the petitioners to receive their respective pensions based on their actual salary, as per the judgments of the Hon'ble Apex Court in ***Regional Provident Fund Commissioner & Anr. Vs. A. Majeed Kunju & Ors.***, dated 31.03.2016 and ***R.C. Gupta & Ors. Etc. Vs. Regional Provident Fund Commissioner, Employees Provident Fund Organization & Ors Etc.***, dated 04.10.2016. Another set of Writ petitions have been filed seeking direction to direct the EPFO to revise the pension as per the circular, dated 23.03.2017.

2. The petitions were filed by two categories of employees: 1. Employees from exempted establishment under Section 17 of the Employee's Provident Fund and Miscellaneous Provisions Act, 1952 (EPF – MPA, 1952 hereafter) and 2. Un-exempted establishment, which are governed by the Provisions Act.

3. The Hon'ble Apex Court in ***R.C. Gupta and Ors. Vs. Regional Provident Fund Commissioner, Employees' Provident Fund Organisation***

and Ors. [(2018) 14 SCC 809], dealt with the question of entitlement of members of the pension schemes, whose pensionable salary exceeded Rs.6,500/- per month, who exercise option in terms of proviso to paragraph 11(3) of the Employee's Pension scheme, 1995 and the Apex Court has held in paragraph 7, 8, 9 and 10 as follows:

> *"**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 31.3.2016. 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 ' 5,000/- or ' 6,500/- per month, as the case may be.*
>
> ***8.** XXX XXX XXX*
>
> ***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 benefited 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."*

4. In compliance to the above judgment, on 23.03.2017, a circular was issued by the EPFO, which reads as follows:

<u>CIRCULAR</u>

No:Pension-I/33/EPS Amendment/96/VoI.II
Dated: 23-03-2017

To,
All Regional P.F. Commissioner,
Regional Office/Sub-Regional Office.

Subject:- Allowing members of the Employees' Pension Scheme, 1995 the benefit of the actual salary in the Pension Fund exceeding wage limit of either Rs. 5000/- or Rs. 6500 per month from the effective date respectively as *per the Hon'ble Supreme Court's order in SLP No.33032-33033 of 2015 –Regarding.*

Sir,

The matter of determination of pensionable salary exceeding statutory wages ceiling and exercise of option under deleted proviso to Para 11(3) of the EPS, 95 was examined in the light of the Hon'ble Supreme Court's Order in SLP No.33032-33033 of 2015.

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.

(This issues with the approval of CPFC.)

Yours faithfully,
(Dr. S.K. Thakur)
Addl. Central PF Commissioner,
HQ(Pension)"

5. Subsequently, on 31.05.2017, another circular was issued by the EPFO, which reads as follows:

CIRCULAR

No.Pension-I/12/33/EPS Amendment/96Vol.II
Dated : 31.05.2017

To
All Accs (Zonal Offices)
All Regional PF Commissioner (In-charge of Regions),
All Officers – in – charge of SROs.

Subject : Allowing members of the EPS' 95 the benefit of the actual salary in the pension fund exceeding wage limit of either Rs.5000/- or Rs.6500/- per month from the effective dated respectively as per the Hon'ble Supreme Court's order in Civil Appeal No (S) 10013-10014 of 2016 arising out of SLP No.3302-33033 of 2015-Reg.

Sir,

Please arrange to refer this office letter No.Pension 1/12 (33/EPF/Amendments /96/Vol.I dated 23.03.2017 on the above cited subject. Many references have been received from field officers to confirm to the aforesaid circular dated 23.03.2017 is applicable to employees of EPF exempted establishment in the context, it is informed as under.

i. Approval to comply with the order of the Hon'ble Supreme Court in the matter of Shri R.C.Gupta and others is only in respect of the Provident Fund & Pension members whose accounts are maintained by EPFO and whose PF contribution on higher wages has been received by EPFO.

ii. All the appellant employees in the aforesaid case before the Hon'ble Supreme Court were from unexempted establishment i.e., an establishment making P.F. Contributions in the statutory Provident Fund managed by

EPFO. The employer's contribution of 12% under the Act in respect of the said employees was on actual salary and not on the ceiling limit of either Rs.5000/- or Rs.6,500/-.

iii. Exercise of option under para 26(6) of the EPF scheme, 1952 is a precursor to exercise of opinion under proviso to clause 11(3) of the pension scheme. The appellant employees in the aforesaid case had exercised option under para 26(6) of the EPF scheme and contribution on full salary was received in the statutory Provident Fund.

iv. Employee's pension scheme remittances are being made by the establishments and not by the exempted Trusts. As such if establishments with exempted trusts are allowed to make balance remittance on full salary to the Employees pension scheme afresh, the same will have to be considered for unexempted establishments also. It is not contemplated in the Judgment.

v. In the case of exempted establishments the Provident Fund and Pension Fund are managed by separate legal entitles. The Provident Fund of employees of exempted establishments are managed by exempted Trusts and pension fund is managed by EPFO. As such, adjustment of contribution from Provident Fund Account to Pension Accounts as contemplated in the Judgment is not possible.

The matter was placed in the 40th PEIC meeting. As decided in the 40th meeting of the PEIF the matter will be placed before the CBT. In the interim is a advised that no member of EPS 95 whose contribution of full salary has not been received on the account of the IPCO at the respective periods of contribution shall be eligible for the benefits contemplated in the Judgment as per the aforesaid Hon'ble Supreme Court.

This issues with the approval of CPFC

Yours faithfully,

(Mukesh Kumar)
Regional PF Commissioner-I (Pension)

6. As per the circular dated 31.05.2017, the EPFO has taken a stand that employees of the exempted establishments are not eligible for the benefits contemplated in the Apex Court judgment in ***R.C. Gupta and Ors. Vs. Regional Provident Fund Commissioner, Employees' Provident Fund Organisation and Ors.*** cited supra.

7. Aggrieved over the above stand of the EPFO, the batch of Writ petitions have been filed for quashing the same and for the direction from this Court directing the EPFO to grant benefits as per the circular dated 23.03.2017 and also to comply the judgment of the ***R.C. Gupta and Ors. Vs. Regional Provident Fund Commissioner, Employees' Provident Fund Organisation and Ors.*** as applicable to them. After considering the various provisions, circulars and also various judgment of the other High Courts, the learned Single Judge of this Court has allowed the petitions as per the impugned Order, dated 27.03.2019, and in paragraph 48 held as follows:

> *"48. In the above mentioned circumstances, this Court consider the following directions as expedient to resolve the issues as projected in the Writ Petitions.*
>
> *i) Both the employees of the exempted and*

unexempted establishments are entitled to the benefit of enhanced pension on the basis of their contribution with reference to actual salary received by them to their Provident Fund accounts;

ii) The cut off date as prescribed i.e. 01.12.2004 is invalid in law and therefore, the same is held to be illegal and invalid;

iii)The employees, namely, the writ petitioners shall be permitted to exercise their option in terms of Proviso to Clause 11(3) of the Pension Scheme and while permitting so, the EPFO is at liberty to seek return of the higher Provident Fund contribution received by the respective employees with simple interest at the rate of 6% p.a. from the date of receipt of Provident Fund amount and till the date of payment;

iv) The amounts to be refunded by the employees concerned shall be verified by the EPFO in consultation with the respective establishments in which the employees were employed;

v) On refund of the verified amount with interest, the EPFO shall calculate and grant enhanced pension on the basis of actual salaries received by the employees with arrears of pension from the date of their retirement and continue to pay their monthly enhanced pension through out their life time;

vi)In case where the refund of the amount by any employee with interest is higher than the enhanced pension with arrears payable to him, the refund shall be insisted upon and in case where the refund, after calculation, is lower than the arrears of pension payable to the employee, the same shall be adjusted while disbursing the arrears to the employees concerned;

vii) The respective Managements of the exempted establishments which maintained the Private Trust are *directed to cooperate with the EPFO and render all assistance in quantifying the amount to be refunded by the respective employees with interest at 6% p.a. on such refund;*

viii) The entire exercise shall be initiated and completed by the individual Managements and the EPFO within a period of six months from the date of receipt of a copy of the order."

8. Aggrieved over the directions issued above, the EPFO has filed these appeals. In the mean time, batch of Writ petitions were filed before the Hon'ble Apex Court challenging certain amendment and modifications made by the Central Government in the Employees Pension Scheme 1995. Appeals were also filed challenging the quashing of the circular issued by the Provident Fund Authorities, dated 31.05.2017, which precluded exempted establishment from the benefit of higher pension by challenging the judgment of the Kerala High Court passed in ***Sasikumar & Others vs. Union of India (UOI) [in Writ Petition(C) No.13120 of 2015]***, judgment of the Delhi High Court in ***Bhartiya Khadya Nigam Karamchari Sangh and Anr. vs. Union of India and Ors. [in Writ Petition (C) No.5678 of 2018]***, judgment of the Rajasthan High Court in ***Union of India and Others vs. Jale Singh and Others [in D.B. Special Appeal Writ No.436 of 2019]***. Batch of contempt petitions filed, for implementation of the judgment of the Apex Court in ***R.C. Gupta and Ors. Vs. Regional Provident Fund***

Commissioner, Employees' Provident Fund Organisation and Ors. [(2018) 14 SCC 809] where all listed together before the three Judges Bench of the Hon'ble Apex Court and the Hon'ble Apex Court has considered the amendment, validity of the various provisions including the quashing of the circular from the Provident Fund Authorities, dated 31.05.2017 and the issue of implementation of judgment of **RC Gupta and others** cited supra. Hon'ble Apex Court has held in paragraph 44 as follows:

> *"**44.** We accordingly hold and direct:*
>
> *(i) The provisions contained in the notification No. G.S.R. 609(E) : MANU/LABR/0034/2014 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) : MANU/LABR/0034/2014 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. At the time of passing the impugned common Order, the learned Single Judge has taken note of the judgment in the **RC Gupta** cited supra

and was not having the benefit of judgment passed in ***The Employees Provident Fund Organisation and Ors. Vs. Sunil Kumar B. and Ors.***, cited supra.

10. According to the counsels representing the EPFO, the circular issued by them dated 31.05.2017 relating to the employees of the exempted establishment have reached its finality in the judgment of ***Sunil Kumar B. case*** cited supra. The subsequent proceedings have been issued by the EPFO, in compliance in the Order passed by the Apex Court. They further submitted that the case of the Writ petitioners herein would falls within the paragraph 44-V and since they have exited from the membership, they are not entitled to get any benefit. Several Miscellaneous petitions were also filed to modify the paragraph 44 (V), were also dismissed by the Hon'ble Apex Court, hence the petitioners herein are not entitled to contend that they all fall within the category of paragraph 44 (VI) of the judgment of the Apex Court cited supra.

11. The learned counsels for the Writ petitioners contended that their case falls under paragraph 44-VI of the Apex Court judgment, wherein it is held that they have already exercised their option as per Proviso to 26(6) of the Provident scheme, hence they are entitled for pension on actual salary

paid by them and prays to issue direction to EPFO to pay higher pension as per actual salary paid by them.

12. The contentions raised herein by the counsels for the writ petitioners have already been raised before the Hon'ble Apex court by way of filing several Miscellaneous petitions by several associations and individual retired employees. The EPFO has also circulated the list of above Miscellaneous application seeking clarifications and modifications of the above Order of the Apex Court. Few Miscellaneous applications filed given below:

1. *M.A. No.2162 of 2022 in W.P. No.874 of 2018 filed by the Association of Former Executives of Hindustan Aeronautics Ltd. (Hale) Vs. Employees Provident Fund Organization.*
2. *M.A. No.2191 of 2022 in W.P. No.233 of 2018 filed by M. Chokalingam Vs. Union of India Represented By The Secretary to Govt. Of India Ministry of Labour and Department of Employment.*
3. *M.A. No.122 of 2023 in W.P. No.778 of 2018 filed by the BHEL Superannuated Executive Forum (Delhi) Vs. Union of India.*
4. *M.A. No.241 of 2023 in W.P. No.1134 of 2018 filed by V.N. Sharma Vs. Employees Provident Fund Organization.*
5. *M.A. No.495 of 2023 in W.P. No.804 of 2018 filed by the SAIL Retired Employees Association Vs. Employees Provident Fund Organization.*
6. *M.A. No.1533 of 2023 in W.P. No.390 of 2019 filed by the POWERGRID Retired Employees Association Vs. UOI & Ors.*

13. The Miscellaneous Applications prayed, seeking modifications and clarifications of the paragraph 44-V as to declare to the effect that the employees, who were retired prior to 01.09.2014 without exercising any option but whose provident fund contribution was on their actual salary (above the ceiling limit under paragraph 26(6) of the EPF, 1952) covered by the Apex Court judgment of the RC Gupta vs. EPFO and they are entitled to jointly exercise the option with their employees under paragraph 11(3) of the preceding paragraph IV. Hon'ble Apex Court after considering all those batches of Miscellaneous petitions has dismissed all in liminie.

14. Now, in this appeal, the Writ petitioners are seeking further direction to declare that their case falls within paragraph 44(VI). Batch of cases relating to Food Corporation of India pensioners and Handicrafts and Handlooms Exports Corporation (HHEC) pensioners, it is submitted by their counsel that they have already executed joint option and it was provisionally accepted by the EPFO for revision of pension and the EPFO has sought for certain clarifications from the employees and he has also circulated the above clarification letter. The EPFO has sought for various proof and this letter/ circular shows that the EPFO is processing the application of the

certain employees, who are already claimed that they had exercised their option for payment of pension as per actual salary. The Hon'ble Apex Court in **Sunil Kumar case** after considering the reasons given by the EPFO for issuance of their circular dated 31.05.2017 and after detailed discussion, has given the steps, to be taken by the EPFO regarding the grant of pension as per their actual salary paid by the employees as pension. Since these petitioners claims that they have already exercised their options, they have to satisfy the EPFO regarding the queries raised by them. In this appeal, they shall not seek, dispensing the answer to the queries, raised to them by the EPFO.

15. The Hon'ble Apex Court has categorically directed the EPFO to extend the benefit to the employees of exempted establishment and they could not seek indulgence of this Court to exempt them from satisfying the queries of the EPFO and we are not inclined to go into the above factual aspects, and burden is on them to satisfy that they are eligible to get benefit on actual salary paid by them as per the various direction issued in the Apex Court in paragraph 44.

16. As submitted by the EPFO, since various clarifications and modifications petitions filed seeking applicability of, paragraph 44-VI to the

persons, who are retired prior to 01.09.2014 based on the option exercised by them, under paragraph 26(6) of Provident Fund scheme, to get pension on the basis of actual salary paid by them has been rejected by the Apex Court, this Court need not go into very same issue again. Hon'ble Apex Court has categorically held in paragraph 44(V) and 44(VI), that the employees who are retired prior to 01.09.2014 without exercising any option under 11(3) of the Pre-amendment scheme, are not entitled to the benefit of this judgment and employees who have retired before 1st September 2014 upon exercising option under paragraph 11(3) of 1995 scheme shall be covered by the provision of the paragraph 11(3) of the Pension scheme as stood prior to amendment - 2014, we are of the view that, this Court has no authority to clarify or modify the same. Accordingly, this Court is not inclined to pass any Orders in this regard. Though the contention of the pensioners appears to have force, unless the Larger bench of the Apex Court takes a different view, we are bound by the decision of the Apex Court in **Sunil Kumar's** case cited supra, in the light of the law of the precedent. We have also expressed our view at the time of hearing that it is for the Larger Bench of the Apex Court to take a different view when all the pleas have been answered.

17. In view of the categorical pronouncement of the Apex Court and directions issued under paragraph 44, these batch of Writ Appeals filed herein stands disposed of in terms of the judgment of the Apex Court in ***The Employees Provident Fund Organisation and Ors. Vs. Sunil Kumar B. and Ors.*** **[2002 SCC online] (SLP C.No.8658, 8659 of 2019).** Consequently, connected civil miscellaneous petitions stands closed. No cost.

[S.V.N., J.] [K.R.S., J.]
07.02.2024

Internet:Yes
Speaking Order: Yes/No
Neutral Citation Case: Yes/No
stn

To:

1. The Additional Central Provident Fund Commissioner,
Employees Provident Fund Organization
Head Quarters (Pension)
Bhavishya Nidhi Bhawan, 14, Bhikaji Cama Place,
New Delhi – 110 066.

2. Assistant Provident Fund Commissioner – 1 (Pension),
Employees Provident Fund Organization,
Regional/ Sub Regional Office,
Vellore.

3. The Secretary to Government,
Ministry of Labour and Employment, Government of India,
Shram Shakthi Bhavan, Rafi Marg,

New Delhi – 110 001.

S.VAIDYANATHAN, J.,
and
K.RAJASEKAR, J.,

stn

W.A. Nos. 2621 to 2624 of 2023, 3501, 3687, 3735, 3750, 3755, 3918, 3920 to 3924, 3939, 3955, 3993, 3934, 4149, 4156, 4159, 4160, 4161, 4253, 4260, 4261, 4271 of 2019, 171, 177, 182, 200 to 203, 205, 207, 209, 218, 548 to 551, 557, 560, 574, 577, 578, 602, 657 of 2020, 521, 531, 1229, 2188, 2251 of 2021, 3559, 3560, 3562 and 3563 of 2023

W.P. No. 1630 of 2021

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