IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 5157 of 2025

Prabir Banerjee & Ors.

Vs.

Employees' Provident Fund Organisation & Ors.

For the Petitioners	:	Mr. Victor Chatterjee.
For the EPFO/RPFO	:	Mr. Satyendra Agarwal, Mr. Bijay Bag.
For the Respondent No. 4 to 6	:	Mr. S.R. Saha.
For the Respondent No. 3	:	Mr. Bhaskar Prasad Vaisya, Mr. Nilay Baran Mondal.
Hearing concluded on	:	17.09.2025
Judgment on	:	06.11.2025

Shampa Dutt (Paul), J.:

1. The petitioner has preferred this writ application being aggrieved by an order dated 22.10.2024 issued by the respondents/EPFO authorities.

2. The petitioners retired from service between the period from 2008 to 31.08.2014.

3. It is thus admitted that the petitioners who claim the benefit of the judgment in ***The Employees Provident Fund Organisation & Anr. ETC. vs Sunil Kumar B. & Ors. ETC., in Civil Appeal Nos. ……… of 2022 (arising out of the SLP (C) Nos. 8658-8659 of 2019), decided on November 04, 2022,*** **were not in service on 01.09.2014.**

4. The petitioners state that the respondent no.3 management on 04.05.2018 called for options from its retired employees for pension to be calculated on actual salary.

5. The petitioners accordingly opted for higher pension to be calculated on actual salary before the respondent no.3 on 11.05.2018.

6. On 12.09.2018, the Assistant Provident Fund Commissioner advised the petitioners to submit their respective applications for higher pension along with relevant documents.

7. The petitioners submitted their respective application along with all documents with their employer, that is the respondent no.3 herein on 26.10.2018.

8. On 22.01.2019 a circular was issued by the respondent authorities allowing members of EPS, 1995, benefits of pension on actual salary as per the judgment of ***R.C. Gupta and Others Vs. Regional Provident Fund Commissioner, Employees Provident Fund Organization and Others, (2018) 14 SCC 809.***

9. On 04.11.2022, the Hon'ble Supreme Court pronounced a judgment in the matter of ***The Employees Provident Fund Organisation & Anr. ETC. vs Sunil Kumar B. & Ors. ETC., in Civil Appeal Nos. ……… of 2022 (arising out of the SLP (C) Nos. 8658-8659 of 2019), decided on November 04, 2022.***

10. The respondent authority issued circulars dated 29.12.2022 and 23.03.2023 for compliance of the judgment dated 04.11.2022.

11. The petitioners' joint option forms were returned by the respondent authority for validation on 06.12.2023.

12. Finally the authorities rejected the joint applications vide the order dated 19.03.2025.

13. The petitioners now claim benefit relying upon the judgment in ***The Employees Provident Fund Organisation & Anr. ETC. vs Sunil Kumar B. & Ors. ETC., (Supra).***

14. Written notes filed by the petitioners, reiterating their case, and EPFO is with the record.

15. In their **affidavit in reply** the petitioners have stated that the petitioners have been from the very inception contributing towards provident fund on their actual salary, much beyond the statutory ceiling.

16. It is further stated that the respondent authorities having allowed the petitioner to contribute towards provident fund on their respective salaries cannot now deny such fact. The amount deposited by the employer and employee over and above the ceiling is required by the provident fund authorities to be adjusted with the pension account for the purpose of higher pension. In this regard the petitioners have already undertook to pay back such amount through their employer, as assessed, in terms of the judgment pronounced in the matter of R.C. Gupta.

17. Further, in as much as the question of exercise of option is concerned, **the Provident Fund Circular dated 22.01.2019** itself stated in cases where the employer and employee had been contributing on higher actual salary formal joint option of employer and employee should not be insisted. The contention of the answering respondents in the paragraphs under reply are contrary to their own circulars.

18. As such the petitioners state that they are fully entitled to pension on their actual salary in terms of the judgments pronounced by the Hon'ble Supreme Court of India.

19. The judgment in ***The Employees Provident Fund Organisation & Anr. ETC. vs Sunil Kumar B. & Ors. ETC., (Supra)*** has been passed on **4th November, 2022**, that is **after the circular dated 22.01.2019** relied upon by the petitioner.

20. **Para 25** of ***The Employees Provident Fund Organisation & Anr. ETC. vs Sunil Kumar B. & Ors. ETC., (Supra)*** relied upon by the petitioners also clearly states that *to remain in the scheme beyond the ceiling limit an existing option member had to exercise fresh option.*

21. As such exercise of fresh option as per Para 44 of the judgment is mandatory in this case.

22. Supplementary affidavit filed by respondent no. 1 & 2 is also with the record.

23. The relevant extract of the impugned order dated 19.03.2025 is as follows:-

> *"6) Accordingly the EPFO, Head Office issued a circular on 29.12.2022 No. Pension/2022/54877/15149 dt. 29.12.2022 which clearly stated at paragraph 5 as follow:*
>
> *"Accordingly, the direction of the Hon'ble Supreme Court in R.C. Gupta judgement pertains to such employees who contributed on higher wages under paragraph 26(6) of EPF Scheme, and had further exercised their option under the proviso to erstwhile para 11(3) prior to their retirement, but their option request under the proviso to paragraph 11(3) prior to their retirement, was explicitly denied by concerned office of the RPFC and/or contribution on higher salary was refunded/diverted back to provident fund accounts."*
>
> *7) In the instant case the member has indicated in his application that he had applied for the joint option under the proviso to para 11(3) on 16.11.1995 but he has attached no proof of the same in his application. No records of such an application are present in the Regional Office, EPFO, Kolkata.*
>
> *Further, from perusal of the records it is clear that the contribution to the Pension Fund (EPS 1995) in respect of the member has always been on the statutory ceiling and not on actual wages.*
>
> *8) Accordingly, the application was sent back **to the Employer on <u>06/12/2023</u>** through online portal to provide any supporting evidence to prove that the joint option was exercised prior to retirement and/or even if any remittance has been made to the pension fund on actual salary.*
>
> ***9) The employer not responded to the above and also failed to submit any proof of joint option under the proviso to un-amended Para 11(3) duly verified by the employer not attached and is not available on record.***

From the above points and considering the facts of the case it is abundantly clear that SMT. MALLIKA ROY is not eligible for revised pension since he never applied for the same before his date of retirement. Hence granting them revised pension would be against the judgement of Hon'ble Supreme Court as delivered in case of "The Employees' Provident Fund Organisation & Anr. etc -vs- Sunil Kumar B. & Ors etc" dated 04.11.2022 and therefore not permissible under law.
Encl: As stated

(KRISHNA SHANKER)
Regional Provident Fund Commissioner-I
Regional Office, KOLKATA."

24. The Supreme Court in ***The Employees Provident Fund Organisation & Anr. ETC. vs Sunil Kumar B. & Ors. ETC., in Civil Appeal Nos. ……… of 2022 (arising out of the SLP (C) Nos. 8658-8659 of 2019), decided on November 04, 2022,*** held:-

> *"44. (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."*

25. The petitioners have all retired prior to 01.09.2014 without exercising their option and submitted option forms only on 11.05.2018.

26. There is no proof to show that the petitioners exercised their option under Para 11(3) of the 1995 scheme **prior to their retirement** which is admittedly prior to 01.09.2014 and as such the petitioners herein would not be entitled to the benefit of Higher pension (Para 44(V) of ***The Employees Provident Fund Organisation & Anr. ETC. vs Sunil Kumar B. & Ors. ETC., (Supra)***).

27. Thus the order under challenge dated 19.03.2025 being in accordance with law requires no interference.

28. **The writ petition is dismissed.**

29. All connected application, if any, stands disposed of.

30. Interim order, if any, stands vacated.

31. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)