

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 14968 of 2025

Gobinda Prasad Bera
Vs
Union of India & Ors.

For the Petitioner : Mr. Indranath Mitra.

For the E.P.F. Authority : Mr. Shiv Chandra Prasad.

For the Respondent Nos. 5, 6 and 8 : Mr. Dhiman Kumar Sengupta,
Mr. Farhin Mustaque.

Judgment reserved on : 19.09.2025/07.11.0225

Judgment delivered on : 14.11.2025

Shampa Dutt (Paul), J.:

1. The writ application has been preferred praying for direction upon the respondent/P.F. Authorities not to give effect to its order dated 18.04.2024.
2. The petitioner's case is that the Executive Officer, Tamluk, Ghatal Central Co-operative Bank Ltd. (hereinafter referred to as TGCC Bank Ltd.) issued an appointment letter bearing Memo No. G/4078/291(II)

dated 06.04.1983 in favour of the petitioner for appointment to the post of Grade-IV staff.

3. The petitioner retired from service on 31.08.2016, on attaining the age of superannuation.
4. During the tenure of his service, the petitioner was a member of Employees Pension Scheme' 1995, Employees' Provident Fund Organization and Pension Payment Order (in short PPO) was issued in favour of the petitioner. The petitioner has been getting pension to the tune of Rs.2169/- per month.
5. It is stated by the petitioner that the issue of applicability of paragraph 11(4) which came into force with effect from 01.09.2014 came up for consideration before the Hon'ble Supreme Court in ***EPFO & Anr. Vs. Sunil Kumar B. & Ors., (2023) 12 SCC 701***. After considering all aspects, the Hon'ble Supreme Court held and directed under paragraph 44 (iv) that 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**. It was observed by the Hon'ble Supreme Court that their right to exercise option before 1st September, 2014 stands crystallized in the judgment of this Court in the case of ***R.C. Gupta and Others Vs. Regional Provident Fund Commissioner, Employees Provident Fund Organization and Others, (2018) 14 SCC 809***, wherein no cut off date was given for exercising option.

6. It is the case of the petitioner that within the time frame fixed/provided by the EPFO, the petitioner uploaded joint option declaration on the portal of the EPFO on 18.03.2023, which was duly acknowledged by the EPFO authority.
7. The petitioner further states that since joint option form has been submitted by the petitioner, in terms of the order of the Supreme Court dated November 4, 2022, the petitioner expected that he will get pension on the basis of last pay drawn, but he has not received higher pension as per his entitlement. Hence, the writ application.
8. In course of hearing the respondent/EPF Authority has filed a report in the form of affidavit and an exception to the report has also been filed.
9. **The respondent** has relied upon paragraph 44 of the judgment of the Supreme Court in ***Employees Provident Fund Organisation & Anr. vs. Sunil Kumar B. & Ors. (Supra)*** and has stated that in the instant case, that 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 record of such an application is available with 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.
10. It is thus submitted that as such the petitioner herein is not eligible for revised pension, as he did not exercise his option prior to his retirement. The petitioner thus cannot get the benefit of the judgment of the

Supreme Court in ***Employees Provident Fund Organisation & Anr. vs. Sunil Kumar B. & Ors. (Supra)***.

11. Admittedly, the petitioner **exited** from EPF Scheme on attaining the age of 58 years on 18.07.2014. He **retired** from service on **31.07.2016**, that **is after 01.09.2014, when he admittedly was in service.**
12. It is the case of the petitioner that the joint option form exercising his option was submitted by the petitioner on 29.08.2014, that is prior to the amendment of paragraph 11 (3) of the EPS Act, 1995. As such, he is entitled to higher pension, having submitted the joint option form prior to his retirement on 31.07.2016.
13. **Both parties** rely upon the judgment of the Supreme Court in ***Employees Provident Fund Organisation & Anr. vs. Sunil Kumar B. & Ors. (Supra)***, wherein the Court held:-

*“50.4. The members of the Scheme, **who did not exercise option**, as contemplated in the proviso to Para 11(3) of the Pension Scheme (as it was before the 2014 Amendment) would be entitled to exercise option under Para 11(4) of the post amendment Scheme. Their right to exercise option before 1-9-2014 stands crystallized in the judgment of this Court in R.C. Gupta. The Scheme as it stood before 1-9-2014 did not provide for any cut-off date and thus those members shall be entitled to exercise option in terms of Para 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 Para 11(3) as also the amended Para 11(4) of the Pension Scheme.***

50.7. The employees who had retired prior to 1-9-2014 without exercising any option under Para 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.

*50.8. The employees who have retired before 1-9-2014 **upon exercising option** under Para 11(3) of the 1995 Scheme shall*

*be covered by the provisions of Para 11(3) of the Pension Scheme as it stood **prior to the amendment of 2014.***"

14. Admittedly, the petitioner **exited** from the scheme on **18.07.2014**. The petitioner submits that he submitted his joint option declaration in the portal of the EPFO on 29.08.2014 (no proof).
15. It appears from the judgment in ***Employees Provident Fund Organisation & Anr. vs. Sunil Kumar B. & Ors. (supra)*** that at paragraph 50.7 and 50.8, the Hon'ble Supreme Court has referred to the words '**retired**' and '**exited**' from membership. Though the petitioner in this case **exited** from the scheme on **18.07.2014**, he **retired** from service on **31.07.2016 that is after 01.09.2014**.
16. It is the case of the petitioner that he exercised his option on 29.08.2014.
17. On the other hand, the contention of the respondent/EPF authority on filing copies of documents is that **the joint option form was filed on 03.03.2023**.
18. A report has been placed by the learned counsel for the EPF Authority, submitted by **the Assistant Provident Fund Commissioner (Legal), Howrah**, wherein it is stated as follows:-

".....Hence considering the Date of Birth of the petitioner being 19th July 1956, the membership of the petitioner with regard to EPS, 1995 ceased with effect from 18/07/2014 irrespective of the date of his actual superannuation. Further as per the exception filed by the petitioner, the petitioner has himself declared that he has exercised joint option on 29.08.2014 which is subsequent to the cessation of his membership on 18.07.2014 after attaining the age of 58 years.

Further, operative part of the Hon'ble Apex Court judgment dated 04.11.2022 in Sunil Kumar B. is placed hereinafter for your perusal.

“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.”

*Hence as per the Hon’ble Supreme Court Order dated 04.11.2022 in **Sunil Kumar B.** case the petitioner is not eligible for pension on higher wages....”*

19. It is the case of the respondent authorities that even if the petitioner’s declaration is to be believed that he exercised his joint option on 29.08.2014, the same is subsequent to the cessation of/exit from his membership on 18.07.2014.
20. It is to be noted that paragraph 44 (v) of **Sunil Kumar B.**, relied upon by the APFC, Howrah, talks about ‘**retired**’ prior to 1st September, 2014. **In the present case the petitioner retired from his service on 31.07.2016, that is after 01.09.2014.**
21. It appears from page 22 of the writ application wherein the petitioner has stated in his application form for validation of joint option which was filed on 16.03.2023 that he had exercised his joint option on 29.08.2014. But no such document to substantiate that he had exercised his option on 29.08.2014 is annexed to the writ application.
22. **The categories of employees for such benefit can be divided as follows:-**
 - (i) Employees who have exercised option under the proviso to Para 11(3) of the 1995 Scheme and continuing in service as on 1-9-2014;

- (ii) Employees who have not exercised their option under the proviso to Para 11(3) of the 1995 Scheme, and continuing in service as on 1-9-2014;
- (iii) Employees who have retired prior to 1-9-2014 without exercising an option under Para 11(3) of the 1995 Scheme;
- (iv) Employees who have retired prior to 1-9-2014 after exercising the option under Para 11(3) of 1995 Scheme.

23. The Supreme Court in ***Employees Provident Fund Organisation & Anr. vs. Sunil Kumar B. & Ors. (Supra)***, clearly lays down the entitlement of an employee under the provisions of the Act, employee under contingent on the condition, “whether **retired before or after 01.09.2014** and **with or with exercise of option**”.

24. Para 9 and 10 of the judgment in ***R.C. Gupta and Others Vs. Regional Provident Fund Commissioner, Employees Provident Fund Organization and Others, (Supra)*** being relevant is reproduced herein:-

“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 LPA 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 employees concerned 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."

25. In *Employees Provident Fund Organisation & Anr. vs. Sunil Kumar*

B. & Ors. (*Supra*), the Supreme Court observed in Para 17,18:-

"17. Under the post-2014 regime, the fourth proviso to sub-clause (4) of Para 11 specifies that if no option is exercised by a member within the aforesaid period, it would be deemed that the member concerned has not opted for contribution over the wage ceiling. In such a case, the contributions to the pension fund made beyond the wage limit in respect of such a member are to be diverted to the provident fund account of the member along with interest, as declared under the provident fund Scheme from time-to-time.

18. It was held in R.C. Gupta, dealing with pre-2014 position of the Scheme that the dates or time-limit specified in Clause 11(3) of the Pension Scheme were not cut-off dates. The said time-limit determined the eligibility of the employer and employee to exercise their option under the proviso to the said paragraph. It was also observed in this judgment that a beneficial Scheme ought not to be allowed to be defeated by reference to a cut-off date in a situation where the employer was not following the ceiling limit of Rs 5000 or Rs 6500 and had deposited 12% of the actual salary."

26. Para 34 in *Sunil Kumar B. & Ors. (*Supra*)*, lays down:-

“34. We also do not accept the argument that the Pension Scheme considers employees as a homogeneous group and no distinction can be made among different categories of employees based on their monthly salary to determine for whom the Scheme shall operate in a particular manner. It is well within the power and authority of the statutory authorities to reasonably classify different sets of employees and categorise them for the nature of benefits they might get from an existing Scheme. In fact, the Scheme, at its inception was made applicable to those drawing wages up to Rs 5000. The provision relating to exercising option was introduced later, in the year 1996.”

27. Para 50.4 and 50.5 (applicable in this case) in **Sunil Kumar B. & Ors.**

(Supra) is as follows:-

“50.4. The members of the Scheme, who did not exercise option, as contemplated in the proviso to Para 11(3) of the Pension Scheme (as it was before the 2014 Amendment) would be entitled to exercise option under Para 11(4) of the post amendment Scheme. Their right to exercise option before 1-9-2014 stands crystallized in the judgment of this Court in R.C. Gupta. The Scheme as it stood before 1-9-2014 did not provide for any cut-off date and thus those members shall be entitled to exercise option in terms of Para 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 Para 11(3) as also the amended Para 11(4) of the Pension Scheme.

50.5. 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 Para 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.”

28. From the judgment of Madurai Bench of Madras High Court dated 02.09.2025, in W.P.(MD) Nos. 29573 to 29578 of 2024 and others **(BHEL, NLC, MADURA COATS Vs. UOI and Ors.)**, relied upon by the

petitioners, it appears that **from time to time the cut off date for exercising joint option has been extended by the EPFO** keeping with the spirit of the judgment in **Sunil B. (Supra)** and it has been last extended till **31.01.2025**.

29. Para 39 in **BHEL NLC (Supra)**, lays down:-

*“39. The notification dated 22.08.2014, was upheld by the Hon'ble Supreme Court in **Sunil Kumar case** only on 04.11.2022. Hence, till 04.11.2022, paragraph 11(4) was not in operation, in view of the fact that it was struck down by the High Court of Kerala. Therefore, non-exercising of option either under unamended paragraph No.11(3) or under amended paragraph No. 11(4) of the Pension Scheme till 04.11.2022, cannot be found fault with. As pointed out by the Hon'ble Supreme Court in paragraph No.50.5 in **Sunil Kumar case** uncertainty was prevailing from the date of notification namely, 22.08.2014, till it was upheld by the Hon'ble Supreme Court on 04.11.2022, nearly for a period of 8 years. Only considering the above said facts, the Hon'ble Supreme Court was pleased to grant 4 months window period from 04.11.2022. The said window period has been extended by the Employees' Provident Fund Organisation, till 31.01.2025. Hence, the contention of the respondents that the employees have neither exercised their option under 11(3) nor under 11(4) before the date of superannuation and therefore, they are not entitled to the benefits of the judgment of the Hon'ble Supreme Court is not legally sustainable. The petitioners herein have admittedly attained superannuation only after 01.09.2014. Therefore, due to uncertainty that prevailed till the date of judgment of the Hon'ble Supreme Court dated 04.11.2022, they would be entitled to exercise their option within the time granted by the Hon'ble Supreme Court, that is upto 04.03.2023, and **the time extended by the Employees' Provident Fund Organisation upto 31.01.2025.**”*

30. The employee in this case retired on superannuation on 31.08.2016, that is **after 01.09.2014** and filed his joint option form on **03.03.2023** **as stated by the EPF Authority/Respondent** and as such the same is

a valid option form, as it has been submitted prior to 31.01.2025 (time extended by EPFO).

31. The Supreme Court in **Sunil B. (Supra)** at Para 49, further held:-

“49. The other condition for enhanced coverage relates to the date within which such fresh option is to be exercised by a member, which is stipulated to be within a period of six months from 1-9-2014. It would be legitimate to proceed on the basis that several members did not exercise such option earlier because of the stand taken by the Provident Fund authorities that option under the proviso to Para 11(3) of the Scheme (prior to the 2014 Amendment) has to be exercised within a specified date, which stand was negated in R.C. Gupta. We are of the view that the time-limit for coverage beyond the ceiling amount should be extended by a further period of four months from today to enable all the members of the pension fund drawing more than Rs 6500 to exercise the joint option as contemplated in Para 11(4) of the Pension Scheme (post the 2014 Amendment). Once such joint option is exercised, the transfer of fund from the provident fund corpus to the pension fund shall be effected in terms of the Scheme.”

32. It is to be kept in mind that the Supreme Court has clearly stated the status of employees, who **retired** prior to or after 01.09.2014 having exercised their joint option form within the time, as extended from time to time.

33. The Court's directions clearly only took into consideration the date of retirement from service and not date of exit from the scheme, which the respondent, EPFO, relies upon while rejecting the claim of the petitioners herein.

34. As such the date of **exit from scheme is immaterial** in these cases and the stand of the respondent/EPFO that as the exercise of option is after

having exited the scheme has no substance, considering that the said observation is not in accordance with paras 49 and 50.5 in **Sunil B (Supra)**, wherein the cut off date has been extended and the authorities themselves have now extended the same till 31.01.2025.

35. The authority in its report has wrongly/erroneously relied upon a paragraph in **Sunil B. (Supra)**, which relates to employees who have retired prior to 01.09.2014, whereas **in this case, the petitioner has admittedly retired after 01.09.2014.**

36. In the judgment in **BHEL NLC (Supra)**, the High Court held:-

*“41. It is the further contention on the side of the respondents that any payment of higher pension based upon pay remittance by the employee would result in financial loss to the Employees' Provident Fund Organisation. Only after taking into consideration these aspects, the Hon'ble Supreme Court was pleased to issue direction for transfer of funds from the Trust to the Pension Scheme both in **R.C.Gupta case** and in **Sunil Kumar case**. In the present case, instead of funds being transferred from the Trust, they are going to be remitted by the concerned employees. Therefore, such contention is liable to be rejected.”*

37. Transfer of such funds from exempted establishment is always along with interest as the funds maintained accrue interest on the amount being appropriately invested.

38. As to how is RPFO aggrieved, **if any employer agrees**, by filing joint option form, there being no burden on the authorities (EPFO). In denying the same, the P.F. Authorities are acting against the purpose of a beneficial legislation.

39. Accordingly the order dated 18.04.2024 passed by the respondent P/F Authorities being not in accordance with law is set aside.

40. Any joint option application presented on or before 31.01.2025, shall be accepted by the respondents.
41. On remittance of the differential contribution amount to the pension scheme, to the Employees' Provident Fund Organisation, by the employees, **along with applicable interest, higher pension shall be disbursed** to them from the succeeding month of their remittance.
42. **The writ petition is disposed of as allowed.**
43. There will be no order as to costs.
44. Connected application, if any, stands disposed of.
45. Interim order, if any, stands vacated.
46. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously after due compliance.

(Shampa Dutt (Paul), J.)