

W.P.No.2861 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)

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RESERVED ON : 19.03.2025
PRONOUNCED ON : 29.05.2025

PRESENT:

THE HON'BLE DR. JUSTICE A.D. MARIA CLETE

W.P.No. 2861 of 2020
and
W.M.P.Nos. 3299, 3301 and 3303 of 2020
and
Review Application No.113/2020
(filed against the interim order dt. 17.8.2020)

W.P.No. 2861 of 2020

- 1.A Durairaj,
S/o. G.Ayyathurai,
7/4, V.P.Colony Extn.
Ayanavaram, Chennai – 600023.
2. S.Gopalakrishnan,
S/o. Subba Rado,
50-A, Ranganathasamy IInd Street,
Lakshmipuram,
Chromepet, Chennai – 600044.
3. RM.Baskaran,
S/o. S.Ramasamy,
50/176, Palani Andavar Koil Street,
Ayanavaram, Chennai – 600023.
4. R.Balraj,
S/o. Rajamanickam,
E-49, 16th Cross Street,
Besant Nagar, Chennai – 600090



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5. V.Geetha,
W/o. K.R.Prabhu,
B-45, Orchid Apartment,
2/1, Archid Street,
VGN, Blooming Garden,
Mugalivakkam, Chennai – 600125.

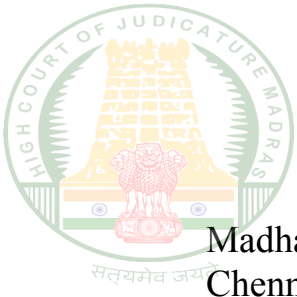
6. M.Rajamani,
S/o. M.Moongilan,
24, Bheemeswaran Nagar,
Main Road, Mudichur,
Chennai – 600048.

7. K.Varalakshmi Kumar,
W/o. C.S.Kumar,
No.5/3, South Mada Street,
Vijay Avenue,
Villavakkam, Chennai – 600049.

8. V.Malini,
W/o. Moorthy,
53/34, Rajuan Nagar, 1st Street,
Lakshmipuram,
Kolathur, Chennai – 600099.

9. S.Meikandan,
S/o. S.Sankara Desigar,
Mantrinavarathna Flats,
G-205, MGR Street,
Cholavaram Nagar,
Chrompet, Chennai – 600044.

10. A.Muniyandi,
S/o. M.Anbusamy,
78/48, Arignanar Anna Nagar,
Moolachatiram,
Nagathamman Koil Street,

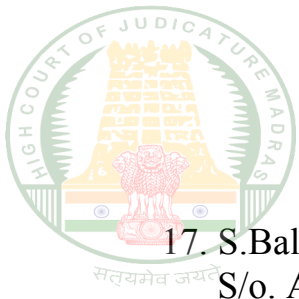


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Madhavaram Milk Diary,
Chennai – 600051.

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11. J.Sadhu Sundar Singh,
S/o. K.John,
2/24, Janakiamman Colony,
1st Cross Street,
Arubakkam, Chennai – 600106.
12. S.Varatharajulu,
S/o. S.Senthamarai Kannan,
13, IVth Avenue,
Besant Nagar,
Chennai – 600090
13. V.Prakasam,
S/o. V.Ramachandran,
3, Thayumanavar Street,
Lord Venkateswara Nagar,
Chitlapakkam, Chennai – 600064.
14. R.Balaganapathy,
S/o. A. Ramasamy,
Plot No.4/2, Prabhu Nagar,
Pallikaranai, Chennai – 600100
15. B.Chinnadurai,
S/o. K.Balakrishnan,
Plot No. 18, Sai Flats,
29th Street, Extn.,
Thillai Ganga Nagar, Chennai – 600061.
16. R.Natanasabapathy,
S/o. T.M.Rajagopalan,
204/5, SAS Apartment, IIrd Main Street,
Bhuvaneswari Nagar,
Velachery, Chennai – 600042.



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17. S.Balajee,

S/o. A.Sundarraaj,

No.7, B.8, Anuragh Flat,

Nanganallur, Chennai – 600061.

.....Petitioners

Vs.

1. The Union of India,

Represented by the Secretary to Government of India,

Ministry of Labour and Employment,

Shram Sakthi Bhavan, Rafi Marg,

New Delhi – 110001.

2. Central Provident Fund Commissioner,

Employees Provident Fund Organisation,

Ministry of Labour & Employment,

Govt. of India, Bhavishya Nidhi Bhawan,

14, Bhikaji Cama Place, New Delhi – 110066.

3. Addl. Central Provident Fund Commissioner, HQ (Pension)

Employees Provident Fund Organisation,

Bhavishya Nidhi Bhawan,

14, Bhikaji Cama Place, New Delhi – 110066.

4. Regional Provident Fund Commissioner – I (Pension)

Employees Provident Fund Organisation,

Bhavishya Nidhi Bhawan,

14, Bhikaji Cama Place, New Delhi – 110066.

5. Addl. Central Provident Fund Commissioner,

Employees Provident Fund Organisation,

37, Royapettah High Road,

Chennai – 600014.

6. Regional Provident Fund Commissioner,

Employees Provident Fund Organisation,

37, Royapettah High Road,

Chennai – 600014.

7. The Managing Director,

Tamilnadu Handloom Weavers Cooperative



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Society Ltd (TNHWCS)
350, Panthian Road, Egmore,
Chennai – 8

8. Regional Manager,
Tamilnadu Handloom Weavers Cooperative Society Ltd
(TNHWCS)
350, Panthian Road,
Egmore, Chennai – 8. ...Respondents

Review Application No.113/2020

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Arubakkam, Chennai – 600106.

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S/o. S.Senthamarai Kannan,



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Chennai – 600090

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S/o. V.Ramachandran,
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Employees Provident Fund Organisation,
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37, Royapettah High Road,
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7. The Managing Director,
Tamilnadu Handloom Weavers Cooperative
Society Ltd (TNHWCS)
350, Panthian Road, Egmore,
Chennai – 8
8. Regional Manager,
Tamilnadu Handloom Weavers Cooperative Society Ltd
(TNHWCS)
350, Panthian Road,
Egmore, Chennai – 8.
- ...Respondents/Respondents



W.P.No.2861 of 2020

Prayer in W.P.No.2861 of 2020

To issue a Writ of Certiorarified Mandamus or any other appropriate writ or direction calling for the records pertaining to the impugned letter issued by the 6th Respondent in No: TN/CHN/Pension/Regl.2019/restoration, dated 27.12.2019 and quash the same so far as the petitioners are concerned and consequently, direct the Respondents to restore pension to the petitioners on the actual salary under EPS, 1995 with effect from December 2019.

Prayer in W.M.P.No.3299/2020

To Dispense with the production of the original impugned order of the 6th Respondent in Letter No. TN/ CHN/ Pension/ Regl/2019/restoration, dated 27.12.2019 in so far as the petitioners 3 to 5 are concerned for the present.

Prayer in W.M.P. No. 3301/2020

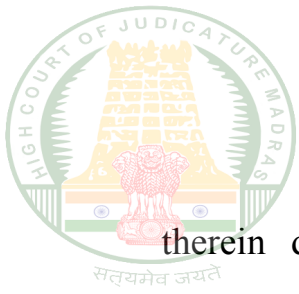
To Stay of all further proceedings of the impugned letter issued by the 6th Respondent in No. TN/ CHN/ Pension/ Regl/ 2019/ restoration, dated 27.12.2019 pending disposal of the main writ petition.

Prayer in W.M.P.No.3303/2020

To grant order of Interim Direction, Directing the 6th Respondent to restore pension on actual salary as was hitherto been paid to the petitioners as per order dated October to December 2018 pending disposal of the main writ petition

Prayer in Review Application No.113/2020

Review application filed under Article 226 of the Constitution of India r/w Section 114, Order XLVII and Section 151 of Code of Civil Procedure, and Madras High Court Rules to (a) Review the order dated 17.08.2020 made in W.P.No.2861/2020; (b) Clarify and order that W.P.No.2861/2020 is independent of and not related to the W.P.No.14368/2018 and the judgment



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therein dated 27.03.2019 passed by the Hon'ble High Court and other connected writ petitions; (c) Clarify and order that W.P.2861/2020 is independent of and not related to the W.A.No.3501/2019 and other connected Appeals; (d) And thereby Order correction and amendment of the order dated 17.08.2020 towards deciding W.P.No.2816 / 2020 on merits instead of waiting for the outcome of the Writ Appeal No.3501/2019 and other connected writ appeals. (e) Pass such other orders as may be deemed fit.

Appearance of Parties:

For Petitioners : Mr.C.M.Sundaram Iyer, Advocate
For Respondent 1 : Ms.Durga Rani, CGSC
For Respondents 2 to 6 : Mr.R.Vishnu, Advocate
For Respondent 7 : No appearance
For Respondent 8 : No appearance.

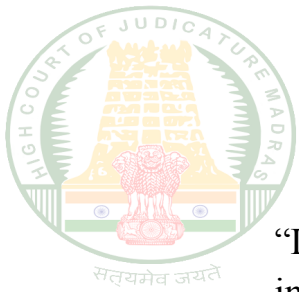
COMMON JUDGMENT

Heard.

Review Application No.113/2020

2.The present Review Petition is yet to be admitted by this Court. However, notice has been taken by the respondents. The petitioners in the writ petition are workers employed in the 8th respondent establishment. They filed the main writ petition seeking a direction to respondents 1 to 6 to pay pension based on higher wages. When the matter was listed on 17.08.2020, the learned Judge passed the following order: –

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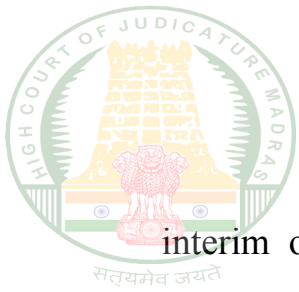
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“Learned Counsel for the Petitioner submits that the relief sought in the Writ Petition is to quash the letter issued by the Sixth Respondent in No. TN/CHN/Pension/ Regl/2019/restoration, dated 27.12.2019 and for a consequential direction to the Respondents to restore pension to the Petitioners on the actual salary under EPS, 1995 with effect from December 2019. It is contended that the claim is made pursuant to the relief granted to similarly placed persons in the order dated 27.03.2019 in W.P. No. 14368 of 2018 etc., batch passed by this Court quashing the order No. Pension-I/12/33/EPS Amendment/96 Vol.II dated 31.05.2017 issued by the Regional Provident Fund Commissioner – I (Pension). Learned Counsel appearing for the Respondents informs that an appeal has been preferred in W.A. No. 3501 of 2019 before the Division Bench of this Court against the aforesaid order, which is pending.

2. In view of the aforesaid submissions made, it is necessary to await the outcome of the appeal in W.A. No. 3501 of 2019 by the Division Bench of this Court in order to examine the claim made by the Petitioner in this case.

Post the matter along with W.P. Nos. 20160 and 26825 of 2019 after the disposal of the aforesaid Writ Appeal.”

3.It is rather unfortunate that the petitioners chose to file a review application against an innocuous order passed by the learned Judge, which merely directed that the matter be posted along with a pending writ appeal for hearing by a Division Bench. The petitioners cannot be said to be aggrieved by such an order. They could have, at the appropriate stage, informed the Division Bench that their case was not connected with the writ appeal referred to in the



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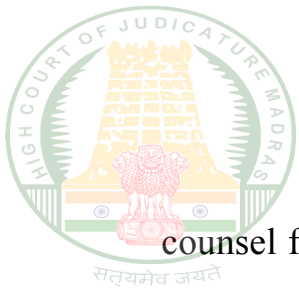
interim order, or alternatively, could have independently argued the matter

before the Division Bench by demonstrating the distinct nature of their case.

4. On the other hand, the review application itself came to be listed along with the main writ petition for final disposal after a delay of five years. The petitioners have achieved no substantive relief through this course, except to burden the Court with voluminous typed sets and compilations of judgments annexed to the review application. Moreover, there is no error apparent on the face of the record warranting a review of the interim order dated 17.08.2020. Now that the main writ petition is being heard and disposed of on merits, the review application has become infructuous and is accordingly dismissed. There shall be no order as to costs.

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5. The standing counsel for the EPFO submitted that all writ petitions filed by similarly placed employees of the 7th and 8th respondents have already been disposed of by a common judgment rendered in a batch of cases beginning with **W.P. No. 7851 of 2020, in M. Krishnamurthy & Others v. Union of India & Others, dated 10.03.2025**. This submission was not disputed by the



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counsel for the petitioners. In the said common judgment, this Court issued the

following directions, as reflected in paragraphs 10 to 16 of the order: –

“10. When Writ Petition No. 1630 of 2021 was presented before Justice M.Govindaraj on 03.02.2021, the following order was passed:

“2. The learned Senior Counsel appearing for the Provident Fund Organisation would submit that the matter is seized of by the Hon'ble Supreme Court and is listed for hearing on 26.02.2021.

3. The learned Senior Counsel appearing for some of the Writ Petitioners would submit that the Writ Petitions are not connected to the matter pending before the Hon'ble Supreme Court. However, the learned Senior Counsel appearing for the Provident Fund Organisation would affirm that all these matters are connected to the matters pending before the Hon'ble Supreme Court as well as the Division Bench of this Court.

4. Therefore, recording the statement of the learned Senior Counsel appearing for the Provident Fund Organisation that in the event of the appeals and the petitions are allowed in favour of the pensioners, the withhold amount will be paid along with interest, this Court directs the Registry to tag all these matters with W.A.No.3501 of 2019 and batch. In cases, where the application is not processed, the respondents are directed to process the application except for disbursing the money.”

11. When several other writ petitions raising similar grounds came before different learned judges, and considering the pendency of the matter before the Supreme Court, a Division Bench took cognizance of the issue. The Division Bench, comprising the Hon'ble Chief



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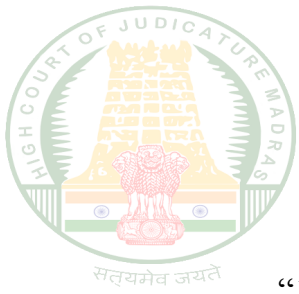
Justice and Justice Subramonium Prasad, initially passed the following order on 10.12.2019 in Writ Appeal No. 3501 of 2019 and the batch cases:

“It has been stated at the bar that as per the directions given by the Division Bench in the order dated 07.11.2019, as continued in the order dated 12.11.2019, the processing of the applications shall be undertaken and the employers would be under an obligation to despatch such applications to the Provident Fund Commissioner for the same being processed as per the directions hereinabove, as expeditiously as the applications are received.”

12. Subsequently, another Division Bench, by its order dated 25.04.2023 in W.P. No. 20160 of 2019 and related batch cases, issued the following interim order:

“The employees concerned in these cases and similarly placed employees whose cases are pending before this Court, are entitled to submit their option form through online and through physical mode, since it is represented that the employees are unable to access the site to submit their option form online and that the date fixed by the Supreme Court expires on 03.05.2023. If the employees file hard copies, the same shall be processed by the Employees Provident Fund Organisation.”

13. Subsequently, all the writ petitions and writ appeals were heard by a Division Bench comprising Justices S. Vaidyanathan and K. Rajasekar in Writ Appeal No. 2621 of 2023 and the batch cases. The matters were disposed of by an order dated 07.02.2024. In their ruling, the Bench considered both R.C. Gupta's case and Sunil Kumar's case and, in paragraphs 13 to 17, held as follows:



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“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 limine.

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,



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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



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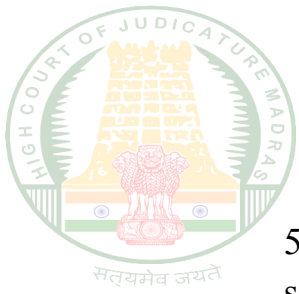
have also expressed our view at the time of hearing that it is for the Larger Bench of the Apex Court to take a different view when all the pleas have been answered.

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).”

Notwithstanding the ruling of the Division Bench, the counsel for the petitioners reiterated that all the petitioners fall under the category of superannuation pension cases, having rendered the requisite eligible service of 10 years or more upon attaining the age of 58 years. As per the EPS 1995, superannuation is defined as reaching the age of 58 years.

14. The learned counsel submitted an additional affidavit dated 19.02.2025, wherein the petitioners presented their case in paragraphs 4 to 6 as follows:

“4. Hence in view of the said judgments dated 24.8.2021 read in conjunction with judgement dated 4.11.2022 of the Hon’ble Supreme Court of India and further in view of the fact that the Petitioner herein along with the other Petitioners of my HHEC Corporation having continued in service with HHEC beyond 1.9.2014 we are as such passing this eligibility qualification pronounced by the Hon’ble Supreme Court of India by those Judgements and as such our Writ Petitions and prayers contained therein may graciously be granted by this Hon’ble Court.



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5. This Petitioner was humbly submits that I have continued in service with the Handloom & Handicrafts Corporation Limited (HHEC), under the control of the Ministry of Textiles, Government of India even after 1.9.2014.

6. The said HHEC was would up by the decision taken by the Government of India and as a result of which this Petitioner and others who served the said HHEC were all granted Voluntary Retirement as on 30.09.2021 only and by means of such VRS we got superannuated from the said HHEC after putting the Employees' Pension Fund Qualifying Service of 10 years or more, and, thereafter after 30.09.2021 attained the age of superannuation of 58 years for being eligible to received Employees' Pension."

15. However, this Court is not inclined to examine the issues raised by the petitioners for the first time or to determine the extent to which they are covered by the Supreme Court's judgment in Sunil Kumar's case. The EPF authorities are bound to comply with the directions issued by the Supreme Court in Sunil Kumar's case. Accordingly, in line with the order passed by the Division Bench in Writ Appeal No. 2621 of 2023 and batch cases dated 07.02.2024, a similar direction will be issued in the present matter.

16. Hence, all the writ petitions are disposed of with a direction to the authorities to implement the directives set forth in Paragraph 44 of the Supreme Court's judgment in Employees Provident Fund Organisation & Anr. v. Sunil Kumar B. & Ors., reported in 2022 SCC Online SC 1521. However, there shall be no order as to costs. Consequently, all miscellaneous petitions stand dismissed."

6. In light of the above, this writ petition is also disposed of in terms of the direction contained in paragraph 16 of the order dated 10.03.2025.



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Accordingly, the writ petition stands disposed of with a direction to the authorities to implement the instructions laid down in paragraph 44 of the judgment of the Hon'ble Supreme Court in **Employees Provident Fund Organisation & Another v. Sunil Kumar B. & Others, reported in 2022 SCC OnLine SC 1521**. There shall be no order as to costs. Consequently, all connected miscellaneous petitions stand dismissed.

7. Accordingly, Review Application No. 113 of 2020 stands dismissed.

There shall be no order as to costs.

29.05.2025

ay

NCC : Yes / No

Index : Yes / No

Speaking Order / Non-speaking Order

To

1. The Union of India,
Represented by the Secretary to Government of India,
Ministry of Labour and Employment,
Shram Sakthi Bhavan, Rafi Marg,
New Delhi – 110001.

2. Central Provident Fund Commissioner,
Employees Provident Fund Organisation,

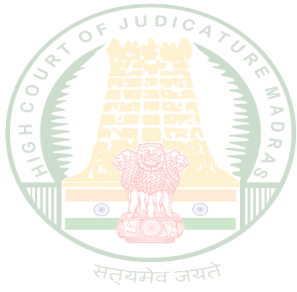
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Employees Provident Fund Organisation,
Bhavishya Nidhi Bhawan,
14, Bhikaji Cama Place, New Delhi – 110066.
5. Addl. Central Provident Fund Commissioner,
Employees Provident Fund Organisation,
37, Royapettah High Road,
Chennai – 600014.
6. Regional Provident Fund Commissioner,
Employees Provident Fund Organisation,
37, Royapettah High Road,
Chennai – 600014.
7. The Managing Director,
Tamilnadu Handloom Weavers Cooperative
Society Ltd (TNHWCS)
350, Panthian Road, Egmore,
Chennai – 8
8. Regional Manager,
Tamilnadu Handloom Weavers Cooperative Society Ltd
(TNHWCS)
350, Panthian Road,
Egmore, Chennai – 8.



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W.P.No.2861 of 2020

DR. A.D. MARIA CLETE, J

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Pre-Delivery Judgment made in
W.P.No. 2861 of 2020
and
W.M.P.Nos. 3299, 3301 and 3303 of 2020
and
Review Application No.113/2020



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W.P.No.2861 of 2020

29.05.2025