



W.P. Nos. 7851 of 2020 & batch

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	02242025
PRONOUNCED ON	03102025

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

W.P. Nos.7851, 12367, 12369, 12372, 12374,
12379, 12386, 12393, 12395, 12398, 12405,
12421, 12425, 12429, 12431, 12435, 12438 of 2020

along with

W.M.P. Nos. 9254, 9255, 15215, 15217, 15220, 15219,
15223, 15225, 15228, 15230, 15231, 15233, 15234, 15236,
15243, 15236, 15243, 15246, 15247, 15254, 15256, 15258,
15267, 15270, 15275, 15272, 15274, 15277, 15279, 15281,
15282, 15284, 15287, 15288, 15314, 15315, 15317, 15322,
15324, 15325, 15327, 15329, 15330, 15333, 15336, 15338,
15339, 15341, 15345, 15346, 15347 of 2020

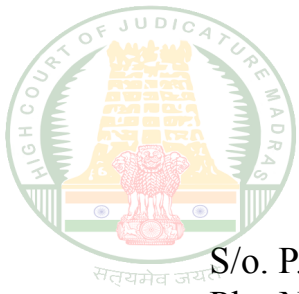
M.Krishnamurthy
S/o. Muniramaiah,
No.14, 4th Floor, Le-Orchid Block,
Ben Foundations, Padikuppam Road,
Anna Nagar West,
Chennai-600040.

...Petitioner in W.P.No. 7851 of 2020

P.Rajendran, Aged 48 Yrs
S/o. R.Pichaimuthu,
No.13/39, Kannimoola Ganapathy Street,
Ganapathy Nagar, Thirumullaivoyal,
Chennai – 600062.

...Petitioner in W.P.No.12367 of
2020

K.Venkataraman, Aged 55 Years,



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S/o. P.Krishnasami,
Plot No.31, Manickam Nagar 2nd Street,
Noothencheri, Madambakkam,
Chennai – 600 126. ...Petitioner in W.P.No.12369 of 2020

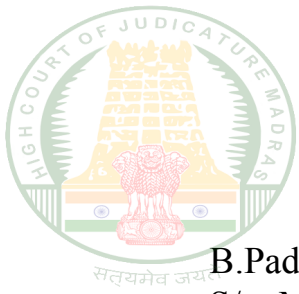
T.Sathyianarayana, Aged 56 Years,
S/o. T.Raghavaiah,
No.6/140/3, New Street West, Pudupet,
Nagari – 517590, Chittoor District
Andhra Pradesh ...Petitioner in W.P.No.12372 of 2020

Sumatha Thulasidaran, Aged 42 years,
W/o. V.Thulasidaran,
No.20/1, Vasudevapuram Street,
West Mambalam,
Chennai – 600033. ...Petitioner in W.P.No.12374 of 2020

R.Saravanan, Aged 49 Years,
S/o. K.Ramasamy,
Bhuvaneswari Flat, No.10,
Alamelumangapuram 2nd Main Road,
Madipakkam,
Chennai-600091. ...Petitioner in W.P.No.12379 of 2020

G.Kumaraswamy, Aged 55 Years,
S/o.G.Venkata Narasaiah,
Plot No.225, First Floor-F1, 7th Street,
Astalakshmi Nagar, Alapakkam,
Chennai -600116. ...Petitioner in W.P.No.12386 of 2020

D.N.Mahajan, Aged 55 Years
S/o. Narayan,
No.F1, 17/22, Kanchi Natarajan Street,
Vasudevan Nagar, Jaffer Khanpet,
Chennai – 600083. ...Petitioner in W.P.No.12393 of 2020



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B.Padmanaban, Aged 57 years

S/o. M.Buddan,

Door No. 15, Plot No.74, Arjunan Street,

Varadaraja Nagar, Periyakuppam,

Thiruvallur,

Chennai- 602

....Petitioner in W.P.No.12395 of 2020

A.Palani Kumar, Aged 57 Years

S/o. P.Arunagiri,

No.7/166, Santhanam Street,

V.G.P.Pushpa Nagar, Medavakkam,

Chennai – 600100.

...Petitioner in W.P.No.12398 of 2020

T.Malarvizhi, Aged 57 Years,

W/o. N.Thanigachalam,

No.57, 14th Street, Abirami Avenue,

Kannadasan Nagar, Kodungaiyur,

Chennai – 600118.

...Petitioner in W.P.No.12405 of 2020

M.K.Hanamantappa, Aged 53 Years,

S/o. Mareppa Kelaginamani,

No.31/202-B, 1st Floor, Karungalpatti Main Road,

Ashok Nagar, Gugai,

Salem – 636006.

...Petitioner in W.P.No.12421 of 2020

K.Annadurai, Aged 53 Years

S/o. A.Kalusulingam,

No.93/1, Ramalaxmanan Nagar,

Teachers Colony,

Erode – 638 011.

...Petitioner in W.P.No.12425 of 2020

R.Chellam, Aged 57 Years

W/o. Rathinam



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No.4, 2nd Main Road, Behind Church,
Chembakkam,
Chennai – 600073.
2020

...Petitioner W.P.No.12429 of

R.Jothi, Aged 55 Years,
W/o. B.Rajendrakumar,
No.69, Balaji Avenue, 1st Street,
Varadarajapuram 9th Street,
Neeklamangalam, Guduvancheri,
Chennai – 603 202.
2020

...Petitioner in W.P.No.12431 of

A.Indu, Aged 33 Years,
W/o. G.T.Anukumar,
Plot No.31, 5th Street, Periyar Nagar,
Madipakkam,
Chennai – 600091.
of 2020

...Petitioner in W.P.No.12435

S.K.Hussain, Aged 57 Years,
S/o. S.A.Kasim,
No.16/33, Big Street, Triplicane,
Chennai – 600005.
2020

...Petitioner in W.P.No.12438 of

Vs.

1. The Union of India,
Rep. by the Secretary to Govt. of India,
Ministry of Labour and Employment,
Shram Sakthi Bhavan, Rafi Marg,
New Delhi – 110 001.

2. Central Provident Fund Commissioner
Employees Provident Fund Organisation
Ministry of Labour and Employment,



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Govt. of India, Bhavishya nidhi Bhawan,
14, Bhikaji cama place, New Delhi-110066.

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3. Addl. Central Provident Fund Commissioner, HQ(pension)
Employees Provident Fund Organization,
Bhavishya nidhi bhawan,
14, Bhikaji cama place,
New Delhi – 110066.

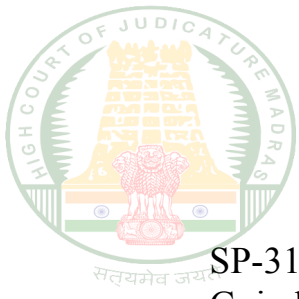
4. Regional Provident Fund Commissioner, I (pension)
Employees Provident Fund Organization,
Bhavishya Nidhi Bhawan,
14, Bhikaji cama place,
New Delhi – 110066.

5. Addl. Central Provident Fund Commissioner,
Employees Provident Fund Organization,
37, Royepetah High Road,
Chennai – 600014.

6. Regional Provident Fund Commissioner (I pension),
Employees Provident Fund Organization,
37, Royepetah High Road,
Chennai – 600014.

7. The Chairman and Managing Director,
Handicrafts and Handlooms Exports Corporation of India Ltd,
(HHEC),
Jawahar Vyapar Bhavan Annex,
1, Tolstoy Marg,
New Delhi – 110001.

8. The Branch In-charge,
The Handicrafts and Handlooms Exports Corporation of India Ltd,
(HHEC),



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SP-31-32, Industrial Estate,
Guindy, Chennai – 600032.

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9. The HHEC of India Ltd,
Provident Fund Trust,
Rep. by its secretary,
Jawahar Vyapar Bhavan Annex,
1, Tolstoy Marg,
New Delhi – 110 001.

.....Respondents in all W.Ps.

Prayer in all W.P.s:

To issue a Writ of Certiorarified Mandamus or any other Writ, Order or direction in the nature of Writ of Certiorified Mandamus calling for the records pertaining to the impugned orders in Letter No.DL-CPM-502/1138 dated 04.10.2019 and quash the same and consequently direct the Respondents to grant pension on higher wages under EPS, 1995 and pass such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

Prayer in W.M.Ps: 9254, 15215, 15219, 15228, 15233, 15243, 15267, 15272, 15279, 15284, 15315, 15322, 15327, 15333, 15338, 15345, 15254 of 2020

To stay the operation of the impugned orders dt. 4.10.2019 of the 2nd



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respondent

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(i) in Letter No.DL-CPM-502/1138/ 534/8790 (WMP No.9254 of 2020 in W.P.No.7851 of 2020)

(ii) in Letter No.DL-CPM-502/1138/552/8797 (WMP No.15215 of 2020 in W.P.No. 12367 of 2020)

(iii) in Letter No.DL-CPM-502/1138/544/8801 (WMP No.15219 of 2020 in W.P.No.12369 of 2020)

(iv) in Letter No.DL-CPM-502/1138/510/8791 (WMP No.15228 of 2020 in W.P.No.12372 of 2020)

(v) in Letter No.DL-CPM-502/1138/624/8798 (WMP No. 15233 of 2020 in W.P.No.12374 of 2020)

(vi) in Letter No. DL-CPM-502/1138/549/8807 (WMP No.15243 of 2020 in W.P.No. 12379 of 2020)

(vii) in Letter No.DL-CPM-502/1138/538/8800 (WMP No.15267 of 2020 in W.P.No.12393 of 2020)

(viii) in Letter No.DL-CPM-502/1138/540/8805 (WMP No.15272 of 2020 in W.P.No.12395 of 2020)

(ix) in Letter No.DL-CPM-502/1138/509/8806 (WMP No.15279 of 2020 in W.P.No. 12398 of 2020)

(x) in Letter No. DL-CPM-502/1138/361/8796 (WMP No. 15284 of 2020 in W.P.No. 12405 of 2020)

(xi) in Letter No.DL-CPM-502/1138/350/8802 (WMP No. 15315 of 2020 in W.P.No. 12421 of 2020)

(xii) in Letter No.DL-CPM-502/1138/504/8803 (WMP No.15322 of



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2020 in W.P.No. 12425 of 2020)

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(xiii) in Letter No.DL-CPM-502/1138/494/8793 (WMP No.15327 of 2020 in W.P.No.12429 of 2020)

(xiv) in Letter No.DL-CPM-502/1138/622/8799 (WMP No.15333 of 2020 in W.P.No. 12431 of 2020)

(xv) in Letter No. DL-CPM-502/1138/615/8794 (WMP No.15338 of 2020 in W.P.No.12435 of 2020)

(xvi) in Letter No. DL-CPM-502/1138/410/8792 (WMP No. 15345 of 2020 in W.P.No. 12438 of 2020)

(xvii) in Letter No. DL-CPM-502/1138/562/8795 (WMP No.15254 of 2020 in W.P.No.12386 of 2020)

pending disposal of the writ petition.

Prayer in W.M.Ps: 9255 , 15217, 15223, 15230, 15234,15246, 15256, 15270, 15274, 15281, 15287, 15317, 15324, 15330, 15336, 15341,15347 of 2020

To grant an order of interim direction directing the respondents to issue necessary demand note seeking transfer of arrears of pension contribution on actual salary w.e.f. 16.11.1995 from the Employees provident Fund Account of the Employers PF Trust to the employees pension fund Account maintained by the respondent EPFO account pending disposal of the writ petition.



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WEB COPY Prayer in W.M.Ps: 15314, 15220, 15225, 15231, 15236, 15247, 15258, 15275, 15277, 15282, 15288, 15325, 15329, 15335, 15339, 15346 of 2020

To grant an order of interim direction directing the respondents to allow the petitioners to exercise Joint option under para 11(3) of the Employees Pension Scheme, 1995 based on the Honourable Supreme Court Judgment dated 04.10.2016 in SLP No.33032 – 33033 of 2015 and to derive the pensionary benefits there under pending disposal of the writ petition.

Appearance of Parties:

For Petitioners in all WPs:

M/s. C.M.Sundaram Iyer, G.V.Sridharan,
R.Karthikeyan, Advocates

For Respondent No.1 :

Mr.J.Madanagopal Rao, CGSC
in W.P.Nos. 12421, 12425, 12429, 12431, 12435
and 12438 of 2020

Mr.M.Sathyan, Advocate



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in W.P.Nos. 12367, 12372, 12393, 12398, 12405, 12369, 12374, 12379, 12386 and 12395 of 2020

M/s. R.Vishnu, Standing Counsel in W.P.No. 7851 of 2020

For Respondent Nos.2 to 6 :

M/s. T.R.Sundaram, Standing Counsel
in all WPs except W.P.No.7851 of 2020

M/s. R.Vishnu, Standing Counsel
in W.P.No. 7851 of 2020

For Respondent Nos. 7 to 9:

Notice not served till date. No appearance.

J U D G M E N T

Heard.

2. The Writ Petitioners in all the WPs were employees either working or retired from Handicrafts and Handlooms Exports Corporation of India Ltd (for short HHEC). In all these writ petitions, they were seeking to challenge the order passed by the 4th Respondent Regional Provident Fund Commissioner (Pension) dt. 4.10.2019. The impugned orders in all the WPs contained identical statements which are as follows:-

“Please refer to your grievance of subject cited above in this regard, it is informed that as per



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Circular No Pension-1/12/33 EPS Amendment/96-vol.II/4432 dated 31.05.2017, the order is not applicable on exempted establishment. Further, no directions in this regard has been issued by Head Office for exempted establishment.”

3. In these writ petitions, notices were issued on different dates, with liberty granted to the petitioners to serve the respondents privately as well. Despite the writ petitions being pending for five years, the petitioners' counsel has not ensured service of notice on respondents 7 to 9. Meanwhile, the main writ petitions have now been listed for final disposal. The counsels appearing in these matters have failed to serve notice on the employer under whom the petitioners are working. Furthermore, the respondents who have been served have not filed any counter affidavits in these cases.

4. Although the writ petitions were filed by individual petitioners, their grievances were identical. Consequently, they were clubbed together, and after hearing all parties concerned, a common order has been passed. The petitioners were employed under the Handicrafts and Handlooms Exports Corporation of India Ltd. (HHEC), a company that

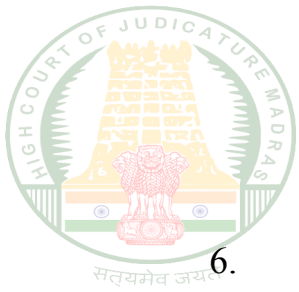


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had obtained an exemption from the Provident Fund but remained an unexempted establishment under the Employees' Pension Scheme (EPS).

The exemption was granted by the Central Government under Section 17(1A) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. As a result, the provident fund contributions deducted from the employees were maintained in a separate trust created by HHEC, which is the 9th respondent in these proceedings.

5. The petitioners asserted that they contributed 12% of their salary towards the provident fund, with an equal contribution made by HHEC. Initially, this amount accrued interest at a rate of 12%, which was later gradually reduced by the EPFO authorities. In 1995, the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, was amended to introduce Section 6A, which established the Employees' Pension Scheme (EPS), 1995. Under this provision, the employer was required to allocate a portion of the provident fund contribution toward the pension fund, with 8.33% of the employee's pay designated for pension benefits.



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6.

When the Employees' Pension Scheme (EPS), 1995, was introduced, the maximum pension receivable by an employee was initially Rs. 5,000 per month. This limit was later increased to Rs. 6,500 per month with effect from 01.06.2001 and subsequently raised to Rs. 15,000 per month from 01.09.2014. The contribution towards the pension scheme was solely the employer's responsibility, with no direct financial role for employees. The petitioners opted to enroll as members of the EPS, 1995. Deductions were made only up to the maximum pensionable salary. Subsequently, through GSR No. 134 dated 28.02.1996, effective from 16.03.1996, paragraph 11(3) of the scheme was introduced, limiting the maximum pensionable salary to Rs. 6,500 per month. The relevant paragraph reads as follows:

"Provided that if at the option of the employer and employee, contribution paid on salary exceeding [rupees six thousand and five hundred/Rs. 6,500] [Added by G.S.R. 134, dated 28.2.1996 (w.e.f. 16.3.1996).] [per month from the date of commencement of this Scheme or from the date salary exceeds [rupees six thousand and five hundred/Rs. 6,500] [Added by G.S.R. 134, dated 28.2.1996 (w.e.f. 16.3.1996).] [whichever is later, and 8.33 per cent share of the employers thereof is remitted into the Pension Fund, pensionable salary shall be based on such higher salary.] [Added by G.S.R. 134, dated 28.2.1996 (w.e.f.



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16.3.1996).”

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7. Subsequently, the EPFO issued an order stipulating that the benefit provided in the aforementioned proviso had to be availed by employees on or before 01.12.2004. However, neither the EPF Act nor the EPS Scheme explicitly prescribed any such cut-off date. This issue became the subject of legal challenge before the Kerala High Court and eventually reached the Supreme Court in *R.C. Gupta & Ors. v. Regional Provident Fund Commissioner, Employees Provident Fund Organisation & Ors.*, reported in 2018 (14) SCC 809. In this case, the Supreme Court held that the prescribed cut-off dates were not intended to determine the eligibility of employer-employee contributions under the proviso to Paragraph 11(3) of the Pension Scheme. The Court, after affirming the Kerala High Court’s decision, observed in Paragraphs 10 and 11 as follows:

“10. 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



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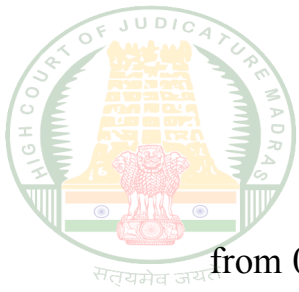
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option under paragraph 26 of the Provident Scheme is inevitable. Exercise of the option under paragraph 26(6) is a necessary precursor to the exercise of option under Clause 11(3). Exercise of such option, therefore, would not foreclose the exercise of a further option under Clause 11(3) of the Pension Scheme unless the circumstances warranting such foreclosure are clearly indicated.

11. 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 benefitted 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."

8. The judgment in *R.C. Gupta* was delivered on 04.10.2016.

However, even before that date, the amendments to the Pension Scheme introduced through GSR 609 dated 22.08.2014, which came into effect



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from 01.09.2014, were not considered. When a similar issue arose before the Supreme Court in the *Sunil Kumar* case, a two-judge bench, by its order dated 24.08.2021, referred the matter for consideration by a three-judge bench. Consequently, a three-judge bench was constituted, and a ruling was delivered in *The Employees' Provident Fund Organisation & Anr. v. Sunil Kumar B. & Ors.*, reported in 2022 SCC Online SC 1521. In this case, the Supreme Court, in Paragraph 44, observed 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 subparagraphs.

(ii) Amendment to the pension scheme brought about by the notification no. G.S.R. 609(E) dated 22 nd 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.



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(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 cut off 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 cutoff 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 preamendment scheme have already exited from the membership thereof. They would not be entitled to the benefit of this judgment.*



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(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*



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directions contained earlier in this paragraph.”

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9. Meanwhile, several writ petitions were filed before this Court by individuals employed in various organizations covered under the EPF Act. These petitioners sought a higher pension based on their actual wages under the EPS 1995 Scheme and also requested coverage under Paragraph 44(v) of the *Sunil Kumar* case, along with modifications to Paragraph 44(vi). In the present case, the petitioners contended that the exemption granted to their employer, HHEC, under Section 17(1A) of the EPF Act does not preclude employees from availing benefits under the EPS 1995. Their request to change their pension contribution option from the statutory ceiling limit to their actual salary, effective from 16.11.1995, for the purpose of obtaining a higher pension, was denied by the impugned order. The petitioners argue that the cut-off date imposed is contrary to the principle laid down by the Supreme Court in *Nakara's case* (AIR 1983 SC 130). Furthermore, the EPFO has already extended the benefit of pension based on actual salary under Paragraph 11(3) of EPS 1995 to more than 23,400 pensioners.

10. When Writ Petition No. 1630 of 2021 was presented before Justice



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M. Govindaraj on 03.02.2021, the following order was passed:

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“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



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matter before the Supreme Court, a Division Bench took cognizance of the issue. The Division Bench, comprising the Hon'ble Chief 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



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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:

“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



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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



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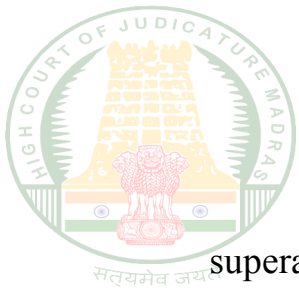


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by them has been rejected by the Apex Court, this Court need not go into very same issue again. Hon'ble Apex Court has categorically held in paragraph 44(V) and 44(VI), that the employees who are retired prior to 01.09.2014 without exercising any option under 11(3) of the Pre-amendment scheme, are not entitled to the benefit of this judgment and employees who have retired before 1 st 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)."

Notwithstanding the ruling of the Division Bench, the counsel for the petitioners reiterated that all the petitioners fall under the category of



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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.

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



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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



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miscellaneous petitions stand dismissed.

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10.03.2025

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Index : Yes / No

Neutral Citation : Yes / No

Internet : Yes / No

Copy to:

- 1.The Union of India,
Rep. by the Secretary to Govt. of India,
Ministry of Labour and Employment,
Sharam Sakthi Bhavan, Rafi Marg,
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- 2.Central Provident Fund Commissioner
Employees Provident Fund Organisation
Ministry of Labour and Employment,
Govt. of India, Bhavishya nidhi Bhawan,
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- 3.Addl. Central Provident Fund Commissioner, HQ(pension)
Employees Provident Fund Organization,
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- 4.Regional Provident Fund Commissioner, I (pension)
Employees Provident Fund Organization,

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W.P. Nos. 7851 of 2020 & batch

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W.P. Nos. 7851 of 2020 & batch

DR. A.D. MARIA CLETE, J

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Pre-Delivery Judgment made in
W.P. Nos.7851, 12367, 12369, 12372,12374, 12379,
12386, 12393, 12395,
12398, 12405, 12421, 12425, 12429, 12431,
12435, 12438 of 2020

10.03.2025