IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2025

CORAM :

THE HONOURABLE MR. JUSTICE **M.DHANDAPANI**

W.P.No.15222 of 2025
and
WMP.No.17174 of 2025

G.Sakthivel ...Petitioner

Vs.

1. Union of India,
   Rep. by its Secretary,
   Labour and Employment Department,
   New Delhi-1.

2. Central Board of Trustees for Employees
   Provident fund Organisation,
   Rep. by its Chairman,
   Shram Sakthi Bhavan, New Delhi – 1.

3. Central Provident Fund Commissioner-1 (Pension),
   Bhaisya Nidhi Bhavan,
   14, Bhaikaji Gama Place, New Delhi – 110 066.

4. The Additional Central PF Commissioner, (HQ) (Pension),
   NBCC Centre, Block 2,
   Ground Floor – 4th floor,
   East Kidwai Nagar, New Delhi – 110 023.

5. The Regional Provident Fund Commissioner (Tamil Nadu),
   Employees' Provident Fund Organisation,
   20, Royapettah High Road, Chennai – 600 014.
6. The Regional Provident Fund Commissioner

Employees' Provident Fund Organisation,
Steel Plant Road,
Dalavaipalli, Salem.

7. The Management of Ashok Leyland Ltd.
77, Sipcot Electricals Complex, Phase – II,
Kumudepalli, Hosur – 635 109.

8. Ashok Leyland Employees Hosur Provident Fund (Trust),
Ashok Leyland Ltd., Unit 1,
175, Sipost, Industrial Complex,
Hosur – 635 126. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for records pertaining to the impugned order of the proceedings of the 4th respondent in file No:Pension/VI/POHW/2024-25/efile-951977/09 dated 18.01.2025 insofar as the clarification with regard to the eligibility of the members of the exempted PF trusts to get higher pension and the consequential rejection order issued by the 6th respondent in Proceeding No.CB/SLM/POHW/POST/Order/11726/2025 dated 05.02.2025 rejecting and refusing to consider and process the applications of the employees of Ashok Leyland Ltd., quash the same and consequently direct the respondents 1 to 6 to accept the joint option forms and process the same and to issue orders and proceedings with regard to the difference and contributions payable by each of the members for the past period; to receive pension contributions hereafter based on the actual salary and to sanction monthly pensions based on the actual salary from the date of retirement.

For Petitioner : Ms.V.Porkodi

For Respondents : Mr.S.V.D.Rajendra Prasad, for R1
: Mr.S.M.Deenadayalan, for R2 to R6

ORDER

This Writ Petition has been filed seeking quashment of the proceedings of the 4th respondent in file No:Pension/VI/POHW/2024-25/efile-951977/09 18.01.2025 insofar as the clarification with regard to the eligibility of the members of the exempted PF trusts to get higher pension and the consequential order passed by the 6th respondent in Proceeding No.CB/SLM/POHW/POST/Order/11726/2025 dated 05.02.2025 rejecting and refusing to consider and process the applications of the employees of the Ashok Leyland Ltd., and to consequently direct the respondents 1 to 6 to accept the joint option forms and process the same and to issue orders and proceedings with regard to the difference and contributions payable by each of the members for the past period; to receive pension contributions hereafter based on the actual salary and to sanction monthly pensions based on the actual salary from the date of retirement.

2. The matter was initially listed on 28.04.2025, on which date, this

Court disposed of the matter by passing orders. However, at the time when the matter was placed for signature, a perusal of the records revealed certain documents, which were not brought to the notice of this Court and, therefore, the matter has been listed today under the caption "For Clarification".

3. When this Court pointed out the documents, which were noticed by this Court, the learned counsel on either side submitted that the matter may be heard on the said materials, which were noticed by this Court and the order, which was passed on 28.04.2025, which is yet to be signed shall be recalled. Accordingly, the order, which was dictated on 28.04.2025 and which is yet to be signed is recalled and the following order is passed.

4. Mr.S.V.D.Rajendra Prasad, learned counsel takes notice on behalf of the 1st respondent, Mr.S.M.Deenadayalan, learned counsel takes notice on behalf of the respondents 2 to 6. In view of the consent expressed by the learned counsel on either side, this Writ petition is taken up for final disposal at the admission stage itself. Since no adverse order is being passed against the 7th respondent, notice to the 7th respondent is dispensed with.

5. The case of the petitioner is that the petitioner joined the services of the 7th respondent's unit-1 at Hosur on 19.05.1989 and was enrolled as a member of the PF with effect from 01.08.1989. Following the introduction of the Employees' Pension Scheme (EPS), 1995 by amending and inserting of section 6A of the EPF Act, the 7th respondent has been contributing 8.33% of the basic wages, DA and retaining allowance in respect of each member to the PF. After the ruling of the Hon'ble Supreme court in the case of *RC Gupta and Sunil Kumar*, the petitioner exercised the joint option for higher pension based on actual wages, which was forwarded by the employer. However, the 6th respondent rejected his request, vide respective impugned orders, citing lack of provisions in the trust rules as per clarification No.2 of the 4th respondent's impugned clarification. Challenging the same, this Writ Petition has been filed.

6. Learned counsel appearing for the petitioner submitted that the issue is covered by the decision of the Apex Court in ***EPFO & Anr. - Vs – Sunil Kumar B. & Ors. (2023 (12) SCC 701)***, wherein the Apex Court had permitted persons similarly placed by the petitioner to exercise

option and, therefore, prays that similar relief may be granted to the petitioner as well.

7. Per contra, the learned counsel appearing for the respective respondents submit that the decision would not be applicable to the case of the petitioner as the issue before the Apex Court did not take into consideration the employer and employees, who are governed by the Trust Rules and as the establishment in which the petitioner was working is governed by the Trust Rules, the petitioner cannot claim parity as granted in the said judgment.

8. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record as also the decision of the Apex Court in *EPFO case (supra).*

9. The facts in the present case are not in dispute. The ground on which the respondents have rejected the plea of getting higher pension stems from the fact that the Trust Rules of the 7th respondent does not provide for contribution in excess of what is provided for in the Trust

Rules. In this regard, it is necessary for this Court to peruse the decision in *EPFO case (supra),* wherein the Apex Court had passed a slew of directions, which is quoted hereunder :-

> *"**50.** We accordingly hold and direct:*
>
> ***50.1.** The provisions contained in Notification No. GSR 609(E) dated 22-8-2014 are legal and valid. So far as present members of the fund are concerned, we have read down certain provisions of the Scheme as applicable in their cases and we shall give our findings and directions on these provisions in the subsequent sub-paragraphs..*
>
> ***50.2.** Amendment to the Pension Scheme brought about by Notification No. GSR 609(E) dated 22-8-2014 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.*
>
> ***50.3.** The employees who had exercised option under the proviso to Para 11(3) of the 1995 Scheme and continued to be in service as on 1-9-2014, will be guided by the amended provisions of Para 11(4) of the Pension Scheme.*
>
> ***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 crystallised 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.*

50.6. *Rest of the requirements as per the amended provision shall be complied with.*

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.*

50.9. *The requirement of the members to contribute @ 1.16% of their salary to the extent such salary exceeds Rs.15,000 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 stopgap measure. The said sum shall be adjustable on the basis of alteration to the Scheme that may be made.*

50.10. *We do not find any flaw in altering the basis for computation of pensionable salary."*

10. The basis on which the claim of the petitioner has been rejected by the authority as is evident from the impugned order dated 5.2.2025, is as under :-

"4. Whereas on a perusal of the Exempted trust rules of the exempted trust particularly Clause 4(b) (1) of the approved trust rules which were last amended in the year 2004, the said rule specifically restricts the pension contribution to Rs.541/- i.e. contribution payable on the wage ceiling, when the pay of the member exceeds statutory celling limit.

The relevant provision 4(b) (1)is reproduced below:

"In respect of all employees who have become members of this Provident Fund on or after 1st March 1971, and those who being members of the Provident Fund as on 28.2.1971, have opted for Employee's Family Pension Scheme, 1971 and/or the employees' Pension Scheme 1995, the employees' and employers' shares of the contribution towards the Provident Fund shall be balance of 12% of basic wages, Dearness Allowance and cash value of food concession and retaining allowance, if any; payable to them after deducting 8.33% of the basic wages and dearness allowance and cash value of food concession and retaining allowance rounded to Rs. 541/- in respect of each member belug the contributions towards the Employees' Pension Fund."

4. It is pertinent to mention that only the employer's share of contribution (8.33 %) goes in the pension fund and the entire employee contribution goes in the PF fund. As per the provisions of EPS, 1995 it is the employers' contribution that goes to the pension fund. However, in the instant case the employer contribution is restricted to the wage celling by the Trust Rules, ruling out any possibility of Pension contribution on higher wages. There is a specific restriction imposed on the approved trust rules, the same has been agreed by the employer and the employee till date. When there is a direct restriction or bar which prevents contribution on actual wages to the pension fund, it is not permissible to permit you from exercising the option as per the Judgment of the Hon'ble Apex court. In fact, the Judgment of the Hon'ble Apex court does not deal with a situation where the trust rules prohibit contribution of pension on actual salary. In this regard the EPFO, Head Office, upon further examination, has also issued a clarification vide Letter No. File No. Pension/V1/PolHW/2024-25/efile-951977/dated 18-01-2025. Para 2 Point no 2 of the said circular reads thus:

"The eligibility for PoHW cases should be determined on the basis of the extant trust rules of the exempted establishment, in consonance with the directions of the Hon'ble Supreme Court in Sunil Kumar Case. *Further, in case the trust rules are amended post decision dated*

04/11/2022 in Sunll Kumar Case, applications of members of such trusts may not be considered"

11. As Trust rules in respect of the exempted establishment CB/SLM/11726 M/s. Ashok Leyland Ltd. specifically deny the employer to contribute on higher wages towards Pension Fund, the Joint Option approved by the employer is in violation of the said Trust Rules and is hence found to be invalid. Since the joint option itself was found to be invalid, no further verification of joint option vis-à-vis wages etc., was carried out."

11. The specific ground on which the case of the petitioner has been rejected is because, there is an explicit bar in the Trust Rules with regard to the employers' contribution to the pension fund. In the light of the aforesaid rejection, a perusal of the decision of the Apex Court reveals that the issue where there is an explicit bar in view of the Trust Rules has not been deliberated by the Apex Court. In such view of the matter, the authority has rejected the claim of the petitioner. The said rejection cannot be said to be erroneous.

12. When the Trust Rules have explicitly barred increase in the employers' contribution, without the Trust Rules being amended to raise

the employers' contribution, the petitioner cannot seek the benefit of the aforesaid decision. Therefore, the impugned order rejecting the case of the petitioner by not granting the benefit of the aforesaid decision cannot be found fault with.

13. For the reasons aforesaid, this Court does not find any error or infirmity in the impugned orders passed by the respective respondents and, accordingly, this Writ petition fails and the same is dismissed. No costs. Consequently, the connected Miscellaneous petition is closed.

03.07.2025

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Index : Yes / No
Speaking order : Yes / No
NCC : Yes / No

To

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M.DHANDAPANI, J.

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