



W.P.(MD) No.22676 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.02.2025

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

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- 1.S.M.A.Syed Mohamed
- 2.S.Piramanayagam
- 3.R.Swaminathan
- 4.R.Surya Narayanasamy
- 5.N.Karthikeyan Nair
- 6.S.Shanmuga Sundaram
- 7.S.Thirumalai
- 8.S.Vaithilingam
- 9.N.Veerapandian Selvakumar
- 10.O.Ganesan
- 11.T.Ramasubramanian
- 12.M.Justin Arputham
- 13.S.Dhanuskodi
- 14.N.Sivabalan
- 15.K.Namasivayam
- 16.K.Manoharan
- 17.P.Azhagappan



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18.A.Muthupillai

19.N.Kuttalam

20.A.Ganesan

21.E.Ratnaraj

... Petitioners

Vs.

1.Union of India,

Rep., by the Secretary to the Government of India,
Ministry of Labour and Department of Employment,
New Delhi-110 001.

2.The Central Provident Fund Commissioner,
Employees Provident Fund Organization (EPFO),
14, Bhikaiji Cama Place,
New Delhi-110 066.

3.The Regional Provident Fund Commissioner,
Employees Provident Fund Organisation (EPFO),
37, Royapettah High Road,
Chennai-600 014.

4.The Assistant Provident Fund Commissioner,
Employees Provident Fund Organisation (EPFO).
Lady Doak College Road,
Madurai-625 002.

5.The Assistant Provident Fund Commissioner,
Employees Provident Fund Organisation (EPFO),
NGO B Colony, Perumalpuram, Palayamkottai.

6.The Managing Director,
The Tamil Nadu Handloom Weavers' Co-operative Society Ltd.,



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Co-op tex Head Office,
350, Pantheon Road, Egmore,
Chennai-600 008.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the respondents No.3 to 6 to revise the pension as per clause 11(3) of Pension Scheme 1995 based on full salary to the petitioners form their respective scale of pay and to permit the 6th respondent to collect the refund amount from the petitioners in which they have withdrawn the retirement benefits by way of proportionate amount of provident fund based upon the representation made by the petitioners dated 03.02.2018.

For Petitioners	:	Mr.K.K.Kannan
For R1	:	Mr.K.Manikannan
For R4	:	Mr.A.John Xavier
For R5	:	Mr.K.Muralisankar
For R6	:	Mr.R.Sethuraman
For RR2 & 3	:	No appearance



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ORDER

This writ petition has been filed seeking to issue Writ of Mandamus, to direct Respondents No.3 to 6 to revise the pension as per Clause 11(3) of Pension Scheme, 1995 based on full salary to the petitioners form their respective scale of pay and to permit Respondent No.6 to collect the refund amount from the petitioners in which they have withdrawn the retirement benefits by way of proportionate amount of provident fund based upon the representation made by the petitioners dated 03.02.2018.

2. When the matter is taken up for consideration, Mr.K.Manikannan, learned counsel for the first respondent and Mr.A.John Xavier, learned counsel for the fourth respondent brought to the notice of this Court that the very same issue has fallen for consideration before the Hon'ble Apex Court in the case of ***Employees Provident Fund Organisation & Anr vs. Sunil Kumar B. & Ors.*** reported in ***(2023) 12 SCC 701*** and the Hon'ble Apex Court has laid down certain guidelines and in terms of the said



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guidelines, the pension payable to the petitioners is required to be revised.

They also further submitted that Respondent No.4 having taken note of the order passed by the Hon'ble Apex Court, also addressed a letter dated 25.04.2023 to the learned counsel for the petitioners requiring the petitioners to submit the relevant application and other documents to enable Respondents No.1 to 4 to consider the case of the petitioners for revision of pension. However, the petitioners have not submitted any application for revision of their pension as on date.

3. Learned counsel for the petitioners having noted the contention of the learned counsel for Respondents No.1 and 4 submitted that the petitioners would submit necessary application and other relevant documents before Respondents No.1 to 4 within a period of four weeks from today.

4. In view of the same, this Court does not see any impediment for the disposal of the present writ petition.



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5. The Hon'ble Apex Court having considered the matter, laid down the guidelines at Paragraph 50 of the order dated 04.11.2022, which read as under:

“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 subparagraphs.

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 [R.C. Gupta v. EPFO, (2018) 14 SCC 809 : (2018) 2 SCC (L&S) 745] . 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



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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.

50.11. We agree with the view taken by the Division Bench in R.C. Gupta [R.C. Gupta v. EPFO, (2018) 14 SCC 809 : (2018) 2 SCC (L&S) 745] so far as interpretation of the proviso to Para 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 directions contained earlier in this paragraph.



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50.12. Contempt Petitions (C) Nos. 1917-18 of 2018 and Contempt Petitions (C) Nos. 619-20 of 2019 in Civil Appeals Nos. 10013-14 of 2016 are disposed of in the above terms.”

6. In the light of the guidelines laid down by the Hon'ble Apex Court and taking note of the letter dated 25.04.2023 of Respondent No.4, this Writ Petition is disposed of, permitting the petitioners to submit necessary applications individually in response to the letter dated 25.04.2023 within a period of four weeks from today and on submission of such individual application by the petitioners, Respondent No.4 shall consider the same and pass appropriate orders thereon for revision of pension in terms of the guidelines laid down by the Hon'ble Apex Court within a further period of six weeks from the date of submission of application by the individual petitioners. There shall be no order as to costs.

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NCC : Yes/No
Index : Yes/No
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Ministry of Labour and Department of Employment,
New Delhi-110 001.
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Employees Provident Fund Organization (EPFO),
14, Bhikaiji Cama Place,
New Delhi-110 066.
3. The Regional Provident Fund Commissioner,
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Chennai-600 014.
4. The Assistant Provident Fund Commissioner,
Employees Provident Fund Organisation (EPFO).
Lady Doak College Road,
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Employees Provident Fund Organisation (EPFO),
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MUMMINENI SUDHEER KUMAR, J.

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