BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.07.2025

Pronounced on : 02.09.2025

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD)Nos.26987, 27186, 27187, 24457 to 24471 of 2024

W.P(MD).No.26987 of 2024

M.Balasubramanian ...Petitioner

Vs.

1.The Regional PF Commissioner-I
Regional Office
Employees Provident Fund Organisation
Bhavishya Nidhi Bhavan
1, Lady Doak College Road
Chokkikulam
Madurai 625 002

2.M/s.Sakthi Sugars Limited
Unit-II, Jothi Nagar, Padamathur
Sivagangai- 630 561 ...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a **Writ of Mandamus**, directing the 1st respondent to accept the joint option application for higher pension option along with arrears and interest dated 25.02.2023 submitted under Paragraph 11(3) of the Employees' Pension Scheme, 1995 as well as under Paragraph 11(4) of the Employees' Pension Scheme, 2014 in view of the order of the Hon'ble Supreme Court of India in

S.L.P(C).Nos.8658-8659 of 2019 dated 04.11.2022 and grant the benefits thereof.

For Petitioner : Mr.M.Kannan

For Respondents : Mr.Anwar Sameem
Standing Counsel for R1
: No appearance for R2

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COMMON ORDER

These 18 Writ Petitions have been filed by former employees of M/s.Sakthi Sugars Ltd., Sivagangai either seeking a mandamus to accept their joint request option or challenging the order passed by the authorities under Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (E.P.F.Act) rejecting their joint request option exercised by them along with their employer under paragraph 11(4) of the Employees' Pension Scheme 1995 (EPS).

2.W.P(MD).Nos.27186 and 27187 of 2025 have been filed seeking a mandamus as against the authorities under EPF Act to accept the joint option application presented by them on 25.02.2023 seeking higher pension on actual wages as contemplated under Paragraph 11(4) of the Employees' Pension Scheme based upon the judgment of the Hon'ble Supreme Court reported in ***(2023)12 SCC 701 (Employees Provident Fund Organisation & Anr. Vs. Sunil Kumar B. & Ors.)*** The other 15 writ petitions have been filed challenging the order passed by the respondent Employees' Pension Scheme authority dated 04.04.2024 wherein the joint option request exercised by the employees have been rejected by the authorities concerned citing non-exercise of option under Paragraph No.26(6) of the Employees' Provident Fund Scheme 1952.

3.W.P(MD).No.26987 of 2024 has been filed challenging the order passed by the respondent authority rejecting the request of joint option on the ground that the contributions have been made only on statutory basis ceiling from 01.10.2014 and not on higher wages. No option was exercised under proviso to Paragraph 11(3) amended pension scheme before 01.09.2014. It was further pointed out that there are no records to establish that the employee has exercised his option under Paragraph 26(6) of the Employees' Provident Fund Scheme.

4.M/s.Sakthi Sugars Limited is an establishment covered under Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The establishment has not been exempted under Section 17 of the Act. Therefore, the employees are covered only under the statutory Provident Fund Scheme and statutory Pension Scheme under EPS Act.

5.In the affidavit, the employees have claimed that the contribution were made by them based on actual wages and not on ceiling wages. After the amendment came on 01.09.2014, introducing Paragraph 11(4) in Employees'

Pension Scheme 1995. In such circumstances, the authorities were not right in rejecting the joint option request exercised by them in February 2023 on the ground that they have not exercised their option under Paragraph 26(6) of the Employees' Provident Fund Scheme.

6.In the counter, the respondent authorities, relying upon the ledger card of the concerned employees have contended that the contribution was made only as per the ceiling wage even after 01.10.2014 both under Provident Fund Scheme as well as under Pension Scheme. Option given to the employees and their employers under Paragraph 26(6) of the Provident Fund Scheme has not been exercised. In such circumstances, after attaining superannuation, the employees cannot suddenly file a joint option application, agreeing to pay contribution on actual wages and requesting for higher pension. According to the respondent authorities, unless an employee had exercised his option under Paragraph 26(6) of the Provident Fund Scheme, he cannot exercise his option either under proviso to pre-amendment Paragraph 11(3) of the Act or under amended Paragraph 11(4) of the Pension Scheme.

7. It was further contended on the side of the authorities that the judgment of the Hon'ble Supreme Court reported in ***(2018) 14 SCC 809 (R.C.Gupta and others Vs. Employees Provident Fund Organisation)*** and ***(2023)12 SCC 701 (Employees Provident Fund Organisation & Anr. Vs. Sunil Kumar B. & Ors.)***

both dealt with the cases where contributions have been made on actual wages either to Employees' Provident Fund Organisation directly or to the Trust fund in case of exempted establishments. These employees, having retired and received the entire P.F amount along with accrued interest and started receiving pension from the succeeding month, cannot now turn around and file an application for exercising joint option seeking higher pension.

7.The learned Counsel appearing for the respondents had further submitted that when the employees have withdrawn the entire Provident Fund amount and started receiving pension, the Provident Fund Organisation cannot be expected to receive the higher contribution belatedly, especially from the exited members, in order to pay higher pension. This is nothing but attempting to pay the insurance premium after the accident has taken place.

8.The learned Counsel appearing for the respondents has further submitted that the higher contribution amount based upon actual wages has not been received by the Employees' Provident Fund Organisation in time and it is not in the hands of the Trust also. Therefore, the employees cannot put the clock back, pay higher contribution and seek higher pension which would cause huge financial loss to the Provident Fund Organisation which handles the public fund. The remittance of the contribution by the employer and the employees are invested in securities and out of the profit earned, interest is paid and pension is also released. When lakhs and lakhs of employees have exited from the membership of the scheme, after receipt of the Provident Fund amount, with accrued interest and started receiving pension, suddenly they cannot become members again and attempt to pay higher contribution. The payment of higher contribution on a future date would not in any way set off the losses, that are likely to occur to the Employees' Provident Fund Organisation by entertaining the joint option. The learned Counsel appearing for the respondents has further submitted that many of them have submitted their option beyond 31.01.2025, and therefore, even assuming without admitting that they are eligible for higher pension, their applications are liable to be rejected. Hence, he prayed for dismissal of the Writ Petition.

9.I have carefully considered the submissions made on either side and perused the materials available on record.

10.M/s.Sakthi Sugars Ltd., Sivagangai is not an exempted establishment under Section 17 of EPF Act. Therefore, they are covered by the statutory Provident Fund Scheme as well as Pension Scheme. A perusal of the ledger card of the writ petitioners produced by EPF authority reveals that the contribution have been made only on ceiling wage even after 01.10.2014 both to the provident fund scheme as well as pension scheme. These facts are not in dispute.

11.Paragraph No.26(6) under Employees' Provident Fund Scheme was introduced with effect from 01.11.1990. The said provision provides for a joint request to be made in writing on behalf of the employee and employer wherein they can agree to make contribution on the actual wages instead of ceiling wages. However, in the present case, the employer and the employees have not chosen to exercise that option under Paragraph No.26(6) of P.F.Scheme.

12.The Hon'ble Supreme Court in a judgment reported in ***(2018) 14 SCC 809 (R.C.Gupta and others Vs. Employees Provident Fund Organisation & others)*** in Paragraph Nos. 9 and 10 have held as follows:

> "*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). <u>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).</u> 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.*
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> *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 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."

13.A careful perusal of the judgment of the Hon'ble Supreme Court will clearly indicate that exercising option under Paragraph 26(6) is a necessary precursor to the exercise of option under un-amended Clause 11(3) of the Pension Scheme. That apart, if contribution have already been made on actual wages to EPF Organisation, it is only a case of adjustment of accounts by transferring the funds from P.F.Scheme to the Pension Scheme.

14.The Hon'ble Supreme Court in the judgment reported in ***(2023) 12 SCC 701 (Employees Provident Fund Organisation and another Vs. Sunil Kumar B. and others)*** while dealing with the exempted establishment in Paragraph Nos.45 and 49 has held as follows:

"45.One of the arguments against their inclusion into the scheme by exercising option is that the corpus of the contribution

for exempted establishments have been kept in separate coffers maintained by the trust created for such purpose and not with the authorities specified under the Act. Taking that factor into account, we are of the view that in order to be entitled to the benefits of the pension fund, the employer and the employee, simultaneously with exercising option in terms of the order of this Court, shall also have to give an undertaking of transferring the employers' contribution at the stipulated rate maintained by the trusts, which shall be equivalent to and not lower than the sum which would have been transferable, had such fund been maintained by the provident fund authorities. Such transfer shall take place, immediately after exercise of such option, within such period as may be directed by the administrators of the pension fund.

49........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 paragraph 11(4) of the pension scheme (post 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."

15.As rightly pointed out by the learned counsel appearing on behalf of EPF Organisation, the judgment of the Hon'ble Supreme Court in *R.C.Gupta's case* as well as in *Sunil Kumar's case* dealt with the cases wherein contribution were made on actual wages either to the Trust (exempted establishment) or to

EPF Organisation invoking Paragraph 26(6) of P.F.Act. However, due to uncertainty that was prevailing with regard to the validity of Paragraph 11(4) of Pension Scheme, the Hon'ble Supreme Court granted 4 months window period from the date of its judgment to enable the employer and employee to file a joint option application. In the case of exempted establishments, the funds have to be transferred from the trust to the statutory pension scheme administered by EPF Organisation.

16.As far as un-exempted establishments are concerned, the EPF Organisation itself has to carry out adjustment of accounts from the P.F.Scheme to the Pension Scheme. This adjustment of accounts or transfer of funds from the Trust can take place only if already contributions have been made based on actual wages instead of ceiling wages. No uncertainty was prevailing with regard to the exercise of option under Paragraph 26(6) of P.F.Rules which was introduced in the year 1990. The Hon'ble Supreme Court in *R.C.Gupta case* has categorically held that exercise of option under Paragraph 26(6) is a precursor for exercising option under the proviso to Paragraph No.11(3) of pension scheme.

17.In the present case, the employees have not chosen to exercise their option under Paragraph 26(6) of the Employees' Provident Fund Scheme which is in existence from the year 1990 onwards. The benefit of the judgment of the

Hon'ble Supreme Court in *Sunil Kumar's case* can be granted only to those employees who have already exercised their option under Paragraph No.26(6) of the P.F.Scheme. In case, if the employees are now permitted to exercise their option under Paragraph 11(4) of the Pension Scheme, based upon the judgment of the Hon'ble Supreme Court in *Sunil Kumar case,* it would lead to a situation wherein contribution would have been made on ceiling wages to the P.F.Scheme and permission is now been granted to pay contribution on actual wages to the Pension Scheme. This dichotomy is neither contemplated under statutory provisions or in the law laid down by the Hon'ble Supreme Court in *R.C.Gupta case* as well as *Sunil Kumar case.*

18.In such circumstances, the respondent authorities were right in rejecting the joint option application presented by the employees in February 2023 seeking higher pension as contemplated under Paragraph 11(4) of the Pension Scheme.

19.In view of the above said deliberations, there are no merits in the writ petitions and the writ petitions stand dismissed. No costs.

02.09.2025

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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R.VIJAYAKUMAR, J.

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Pre-delivery order made
in

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