2025:PHHC:143055

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 09.10.2025

1. CWP-28993-2025 (O&M)

Naresh Kumar Sharma and another

... Petitioners

Vs.

Employees Provident Fund Organization and others

... Respondents

2. CWP-28995-2025 (O&M)

Sudesh Kumar

... Petitioner

Vs.

Employees Provident Fund Organization and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Deepak Jindal, Advocate and
Mr. Abhijeet Singh Rawaley, Advocate
for the petitioners (in both cases).

Mr. Rajesh Hooda, Advocate
for respondents No.1 & 2 (in both cases).

Mr. Gaurav Tangri, Advocate
for respondent No.3 (in both cases).

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HARPREET SINGH BRAR, J.

1. This common judgment shall dispose of both the aforementioned writ petitions, as they arise from a similar factual matrix and pose an identical question of law. However, for the sake of brevity, the facts are taken from ***CWP-28993-2025***.

2. Present petition has been preferred under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* seeking quashing of the orders dated 03.07.2025 (Annexure P-10) passed by respondent No.2-Regional Provident Fund Commissioner, Chandigarh, whereby the petitioner(s) were denied higher pension calculable on the basis of higher/actual salary, over and above the wage ceilings stipulated under the Employees' Pension Scheme, 1995 (for short 'EPS, 1995').

3. Learned counsel for the petitioners, *inter alia,* contends that the petitioners were employees of respondent No.3-Punjab Scheduled Caste Land Development and Finance Corporation and they retired after 01.09.2014. Throughout their service, the petitioners had been contributing to the provident fund on the basis of their actual/higher wages and not the wage ceiling. The proof of salary of the petitioners is available at Annexure P-4 and a copy of the passbook is available at Annexure P-5. A perusal of the same would indicate that deductions towards pension were being made from the account of the petitioners on the basis of higher salary. As such, the respondents-EPFO cannot

deny the benefit of said deductions subsequently, by merely stating that they failed to submit the joint option online, as stated in impugned orders dated 03.07.2025 (Annexure P-10). Such an approach is also contradictory to the ratio as culled out by the Hon'ble Supreme Court in ***R.C. Gupta and others Vs. Regional Provident Fund Commissioner, Employees Provident Fund Organization and others, (2018) 14 SCC 809*** and ***The Employees Provident Fund Organisation and another Vs. Sunil Kumar B. and others,*** in ***SLP(C) Nos.8658-8659 of 2019,*** decided on 04.11.2022. He further contends that the petitioners could not submit the formal proofs of exercise of joint option under para 11(3) of the EPS, 1995 before their retirement, as the respondents-EPFO were not accepting the same at least for the period between 01.12.2004 and 23.03.2017. Lastly, the respondent-EPFO is duty bound to issue a demand letter and seek adjustment of accounts. Thus, the petitioners are entitled to receive higher pension based on their contributions.

4. *Per contra,* learned counsel for respondents No.1 & 2 submits that the petitioners became entitled to claim higher pension only after the decision was pronounced in ***Sunil Kumar B.***'s case (*supra*), wherein the Hon'ble Supreme Court had granted an additional 04 months' time to the employees to exercise their joint option under para 11(3) of the EPS (erstwhile) and para 11(4) of the amended EPS, as one time measure, because the joint option had been deleted w.e.f. 01.09.2014. The petitioners have prayed for acceptance of their alleged joint option dated 27.02.2023, however, as per record of the

department, no Joint Option was submitted by them online. Furthermore, multiple circulars (Annexure R-1 to R-8) were issued by the respondents-EPFO explaining the online facility as well as the procedure and requirements. The online facility was even extended up to 26.06.2023 in order to provide 04 months' time to the employees and was yet again extended to 11.07.2023 and ultimately to 31.01.2025. The extension granted by the Hon'ble Supreme Court cannot be interpreted as infinite. Mere deposit of contribution without submitting joint option is not sufficient to avail the benefits, as prayed. Moreover, contribution to the Provident Fund Scheme was paid on the basis of actual wages, while that to the Scheme was deposited on the basis of wage ceiling only. The amount over and above the wage ceiling was deposited to the provident fund account of the petitioners by their employer, as no Joint Option was exercised. Learned counsel further argues that para 11(4) was only added to the amended EPS for those employees, who had already exercised the joint option under para 11(3) of the original EPS. As such, the net result post 01.09.2014 is that the option to pay higher wages is not available to any employee. The petitioners retired after 01.09.2014, without submitting their Joint Option, therefore, they have not availed the benefits of ***Sunil Kumar B.***'s case (*supra*) by their own conduct.

5. Learned counsel for respondent No.3 submits that the petitioners did not submit the Joint Option form online through the EPFO portal even after obtaining the undertaking and disclaimer on it from the respondent-

Corporation. Therefore, the respondent-Corporation had no occasion to verify, process and forward the claim of the petitioners. The respondent-Corporation has duly discharged its statutory obligations as an employer by making provident fund contributions in accordance with the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for short 'EPF Act') and the Schemes framed thereunder.

6. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the petitioners retired from service post the amendment to the Scheme, that came into effect on 01.09.2014. The seminal issue involved in the present controversy revolves around whether the claim of the petitioners for higher pension based on proportional deductions can be allowed, even if they failed to submit their Joint Options within the stipulated time.

7. For just adjudication of the matter at hand, the following provisions ought to be studied:

> ***"The Scheme***
>
> ***"11(3)*** *The maximum pensionable salary shall be limited to Rupees six thousand five hundred per month.*
>
> *Provided that if* ***at the option of the employer and employee****, contribution paid on salary exceeding Rupees six thousand and five hundred per month from* ***the date of commencement of this Scheme or from the date salary exceeds Rupees six thousand and five hundred, 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."*

The Scheme (post amendment of the year 2014)

*"**11(4)** The existing members as on the 1st day of September, 2014, who at the option of the employer and employee, had been contributing on salary exceeding six thousand and five hundred rupees per month, **may on a fresh option to be exercised jointly by the employer and employee continue to contribute on salary exceeding fifteen thousand rupees per month and the pensionable salary for the existing members who prefer such fresh option shall be based on the higher salary:***

Provided that the aforesaid members have to contribute at the rate of 1.16 per cent on salary exceeding fifteen thousand rupees as an additional contribution from and out of the contributions payable by the employees for each month under the provisions of the Act or the rules made thereunder:

Provided further that the fresh option shall be exercised by the member within a period of six months from the 1st day of September, 2014:

Provided also that the period specified in the second proviso may, on sufficient cause being shown by the member, be extended by the Regional Provident Fund Commissioner for a further period not exceeding six months:

Provided also if no option is exercised by the member within such period (including the extended period), it shall be deemed that the member has not opted for contribution over wage ceiling and the contributions to the Pension Fund made over the wage ceiling in respect of the member shall be diverted to the Provident Fund account of the member along with interest as declared under the Employees' Provident Funds Scheme from time to time."

The Employees' Provident Fund Scheme, 1952

"26.Classes of employees entitled and required to join the fund

__(6)__ Notwithstanding anything contained in this paragraph [an officer not below the rank of an Assistant Provident Fund

> *Commissioner] may,* ***on the joint request in writing, of any employee of a factory or other establishment to which this Scheme applies and his employer, enroll such employee as a member or allow him to contribute more than rupees [fifteen thousand rupees] of his pay per month if he is already a member of the Fund*** *and thereupon such employee shall be entitled to the benefits and shall be subject to the conditions of the Fund, provided that the employer gives an undertaking in writing that he shall pay the administrative charges payable and shall comply with all statutory provisions in respect of such employee."*
>
> (emphasis added)

8. The Scheme is intended to be beneficial in nature to assist the petitioners in their life post-retirement. Acknowledging the same, a two-Judge Bench of the Hon'ble Supreme Court in ***R.C. Gupta***'s case (*supra*) opined that the date of commencement of the Scheme or the date, on which salary surpasses the prescribed limit, as mentioned in Para 11(3) of the Scheme, are only relevant for calculation of pensionable salary and are not to be read as cut-off dates to determine eligibility of an employee to opt for the higher pension benefit. Speaking through Justice Ranjan Gogoi, the following was opined:

> *"8. Reading the proviso, we find that* ***the reference to the date of commencement of the Scheme or the date on which the salary exceeds the ceiling limit are dates from which the option exercised are to be reckoned with for calculation of pensionable salary. The said dates are not cut-off dates to determine the eligibility of the employer-employee to indicate their option under the proviso to Clause 11(3) of the Pension Scheme.*** *A somewhat similar view that has been taken by this Court in a matter coming from the Kerala High Court, wherein the Special Leave Petition (C) No.7074 of 2014 filed by the Regional Provident Fund Commissioner was rejected by this Court by order dated 31.03.2016. A beneficial Scheme, in our considered view,*

ought not to be allowed to be defeated by reference to a cut-off date, particularly, in a situation where (as in the present case) the employer had deposited 12% of the actual salary and not 12% of the ceiling limit of Rs.5,000/- or Rs.6,500/- per month, as the case may be.

9. A further argument has been made on behalf of the Provident Fund Commissioner that the appellant-employees had already exercised their option under paragraph 26(6) of the Employees' Provident Funds Scheme. Paragraph 26(6) is in the following terms:

> *26. Classes of employees entitled and required to join the fund*
>
> *xxx xxx xxx*
>
> *(6) Notwithstanding anything contained in this paragraph, an officer not below the rank of an Assistant Provident Fund Commissioner may, on the joint request in writing, of any employee of a factory or other establishment to which this Scheme applies and his employer, enroll such employee as a member or allow him to contribute more than 3[six thousand five hundred rupees] of his pay per month if he is already a member of the fund and thereupon such employee shall be entitled to the benefits and shall be subject to the conditions of the fund, provided that the employer gives an undertaking in writing that he shall pay the administrative 3 Sub-section By Notification No.S-350/2/2/96-SS II, dated 4th May, 2001, for "rupees five thousand".*
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> *Earlier the words "rupees five thousand were substituted by G.S.R. 718(E), dated 23rd September, 1994, for the words "rupees three thousand and five hundred" (w.e.f. 1-10-1994). charges payable and shall comply with all statutory provisions in respect of such employee].*

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 option under paragraph 26 of the Provident Scheme is***

> ***<u>inevitable.</u>*** *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</u>****.”*
>
> (emphasis added)

9. Further still, a three-Judge Bench of the Hon'ble Supreme Court in ***Sunil Kumar B.***'s case (*supra*), while upholding the validity of the amendment of 2014, recognized that many employees could not exercise their Join Option, as the EPFO had taken a stand that the same was not permissible. In view of the same, 04 months' time was granted for the eligible employees to actually submit their option. Speaking through Justice Anirudhha Bose, the following was observed:

> *"41. … our opinion is that* ***<u>the eligibility for enhancement cannot be restricted to those employees only who had exercised the option to remain in the scheme once their salary went beyond the capping of Rs. 6500/- per month.</u>*** *As we have already discussed, in case of R.C. Gupta (supra), it has been specifically held that* ***<u>there was no cutoff date in proviso to paragraph 11(3) as it stood before the 2014 amendment</u>****. In our opinion, the interpretation given to the proviso to paragraph 11(3) prior to 2014 amendment does not require any reconsideration. We agree with the reasoning of the two-judge Bench of this Court on this point, as expressed in the said judgement.* ***<u>We are not holding that no option was required to be exercised as per proviso to paragraph 11(3) of the scheme, as it stood prior to 2014 amendment. As held in the case of R.C. Gupta (supra), there was no time-limit for exercising such option.</u>***
>
> *42. The dual option, as is contemplated in paragraph 11(4) of the pension scheme (post 2014 amendment), has to be merged into*

*one**. In the event the employer and employee jointly opt for coverage beyond the salary limit of Rs. 15000/-, without giving an earlier option under the unamended Clause 11(3) of the pension scheme, they would not be automatically excluded from their right to exercise option under paragraph 11(4) of the scheme, post amendment.***

*43. The other condition for enhanced coverage relates to the date within which such fresh option is to be exercised by a member, which is stipulated to be within a period of six months from 1st September 2014. **It would be legitimate to proceed on the basis that several members did not exercise such option earlier because of the stand taken by the Provident Fund authorities that option under proviso to paragraph 11(3) of the scheme (prior to 2014 amendment) has to be exercised within a specified date, which stand was negated in the decision of R.C. Gupta (supra). 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.*

44. We accordingly hold and direct:-

xxx xxx xxx

*(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 judgement 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 cutoff date and thus those members shall be entitled to exercise option in terms of paragraph11(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 judgements 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.

xxx xxx xxx"

(emphasis added)

10. Reliance can also be placed on the judgment rendered by a Coordinate Bench of this Court in ***Rohtash Singh and others Vs. Union of India and others, CWP-6500-2020,*** decided on 03.10.2024, wherein a similar objection was raised by the respondents-EPFO. In the said case, this Court observed as follows:

"The petitioners exercised option in 2018 which was rejected in 2019. The petitioners cannot be denied the benefit of revised pension on the sole ground that respondent rejected their option. The respondent at its sweet will accepted option of most of the employees and rejected in a few cases. This Court does not find any substance in the contention of the respondent to distinguish

case of present petitioners from case of petitioners in the aforesaid writ petition."

11. In view of the benevolent and beneficial objective behind the creation of the Scheme as well as the interpretations put forth by the Constitutional Courts, this Court is of the considered opinion that the cause of justice will be upheld, if the petitioners are allowed to submit their Joint Option, especially since they had already been paying their contribution in terms of their actual/higher salary.

12. Accordingly, both the aforementioned petitions are disposed of with a direction to the respondents/competent authority to consider the case of the petitioners in terms of the judgment in ***Inderjit Singh Kaknian and others Vs. Union of India and others,*** rendered by this Court in ***CWP-5378-2024,*** decided on 12.09.2024 and ***Rohtash Singh***'s case (*supra*), within a period of three months from the date of receipt of certified copy of this order.

13. All the pending miscellaneous application(s), if any, shall stand disposed of.

14. Photocopy of this order be placed on the file of connected case.

[HARPREET SINGH BRAR]
JUDGE

09.10.2025
vishnu

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No