IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 24535 of 2025

Sudhamay Maiti & Ors.

Vs.

Central Provident Fund Commissioner & Ors.

For the Petitioners	:	Mr. Soumya Majumder, Sr. Adv. Mr. Rati Kanta Pal.
For the Respondent No. 6-7/A.A.I.	:	Mr. Dipankar Das.
For the EPFO/P.F. Authority	:	Mr. Satyendra Agarwal.
Judgment reserved on	:	17.03.2026
Judgment delivered on	:	10.04.2026

Shampa Dutt (Paul), J.:

1. The writ application has been preferred praying for direction upon the respondent provident fund authorities to refund excess amount to the petitioners with interest which has been withheld by the provident fund authorities illegally.

2. The petitioners case in short is that they are the employees and ex-employees of Airports Authority of India and are seeking refund of excess pension contributions deposited under the Employees' Pension

Scheme, 1995 (EPS-95) on actual salary beyond the statutory wage ceilings.

3. The petitioners further state that by Notification G.S.R. 609(E) dated 22.08.2014, effective from 01.09.2014, the Ministry of Labour & Employment, amended EPS-95, requiring employees contributing on higher wages to exercise a fresh joint option, failing which the excess contribution was to be refunded to the member's Provident Fund account with interest.

4. The Petitioners, who thereafter contributed only on ceiling wages of ₹15,000/- from 01.04.2015, are now receiving pension on ceiling wages, but the **excess contributions made from 16.11.1995 to 31.03.2015** have not been refunded. Despite repeated representations from 2016 onwards, the Employees' Provident Fund Organisation (EPFO) has failed to act.

5. It is stated that the inaction of the Respondents is arbitrary, illegal, and contrary to Paragraph 11(4) of EPS-95, resulting in unlawful deprivation of the Petitioners' property and violation of Articles 14, 21 and 300A of the Constitution of India. Hence, this Writ Petition.

6. Both parties have filed their respective written notes. The petitioners state that:-

For the period from 1st April, 1995 to March, 2015, they had deposited contributions on higher salaries (actual Basic + DA), even to the Pension Fund maintained by the RPFC.

On and from 1st September, 2014 various provisions of EPS, 1995 were amended.

The Higher Pension Contribution of the Petitioners has been withheld by the RPFC, in spite of rejecting the joint option form submitted by petitioners.

The amount of higher/excess contribution deposited in the Pension Fund by the Petitioners has been indicated by the PF Authorities in their report (Page 5 of the Report).

After judgment of the Hon'ble Supreme Court in Sunil Kumar B., petitioners were allowed to apply for higher pension in joint option forms countersigned by the employer.

The joint option exercised by the Petitioners for higher pension were rejected by order dated 19th February, 2025.

Petitioners have accepted the rejection order. Therefore, they do not claim higher pension, any more.

Petitioners seek refund of the excess amount which had been deposited by them with the Pension Fund along with interest, on the strength of amended Para 11(4), 3rd Proviso of EPS, 1995.

Petitioners seek refund of additional Pension contributions. The Petitioners had deposited Higher pension from 16th November, 1995 to 31st March, 2015. Although 3rd Proviso to Para 11(4) of EPS, 1995 requires the excess pension contribution in the Pension Fund to be diverted to PF Account.

However in this case the petitioners who had retired have already settled their PF dues and closed the accounts. So the excess pension contributions with interest be directed to be released directly to the retired petitioners. For the in service petitioners, the excess Pension contribution be diverted to PF accounts with 12% interest.

7. It is submitted by the petitioners that as the petitioners have accepted the rejection order for higher pension, the question of not releasing such higher amount of pension excess contribution deposited with the EPF does not arise at all.

8. The Respondent Provident Fund Authorities in their report filed by way of an affidavit have stated as follows:-

a) That M/s Airport Authority of India(AAI) had approached EPFO vide their letter dated 16.01.2007 with request to extend coverage to AAI Employees w.e.f. 01.04.1995 under EPF & MP Act, 1952 and exemption under section 17 of the Act to manage the CPF. The Board of the AAI in its 98th Meeting held on 27.04.2006 and 99th Meeting held on 12.07.2006 approved to cover AAI employees under EPF & MP Act, 1952 w.e.f. 01.04.1995.

b) The establishment M/s Airport Authority of India (AAI) was covered on 22.08.2007 (w.e.f 01/04/1995) i.e. retrospectively under section 1(3) (b) EPF and MP Act 1952 and was allotted EPF code DL/CPM/36478.

c) That the establishment did not pay the statutory dues and had attracted damages and interest for the period 04/1995 till 02/2006.

d) The establishment M/s AAI informed that the said Interest U/s 7Q has been deposited. However, the damages amount (Rs 1,92,06,05,720/-) is yet to be remitted by AAI as the stay is operating on the same granted by the High Court at Delhi.

9. The respondent further stated that though M/s Airport Authority of India has requested to refund of excess contributions in respect of 1513 cases, the reconciliation of accounts is a necessary prerequisite to move forward, as it is observed that for few hundreds (265 as of now and further reconciliation of accounts is going on) of these 1513 employees the statutory dues for several months have not been remitted by the establishment. For this a Show Cause Notice dated 18.12.2025 (AnnexureA) has been sent to the establishment. Onus is now upon the establishment to clarify the details of members for whom the establishment paid in lump sum.

10. It is stated by the respondents that this situation presents a predicament, wherein the excess amount with interest is required to be returned to AAI, whereas the statutory interest under Section 7Q to be paid by AAI is yet to be remitted to EPFO.

11. It is further stated that it has been brought to the notice of the establishment that for large number of employees either the dues have not been deposited or partially deposited or deposited in lumpsum i.e. overlooking the statutory provisions of the EPF & MP Act, 1952 and schemes framed there under. For this a Show Cause Notice dated 18.12.2025 has been sent to the establishment.

12. The respondent Provident Fund authorities have then in their report, have provided a statement showing the **computation of excess contribution made by the petitioners** herein, which is as follows:-

EPS NO	MEMBER NAME	Amount in Excess
DLCPM/36478/02788	SUDHAMAY MAITI	793017
DLCPM/36478/00053	AJAY KUMAR KAPUR	788498
DLCPM/36478/10578	UTPAL KUMAR BHATTACHARYA	514734
DLCPM/36478/11143	ARINDAM CHAKRABORTY	393448
DLCPM/36478/002054	ANOOP KUMAR GUPTA	574453
DLCPM/36478/00302	JYOTI TEHLAN	328721
DLCPM/36478/16215	PARSHURAM NORESHWAR THAKUR	315884
DLCPM/36478/02803	SUNIL KUMAR MISHRA	520949
DLCPM/36478/16274	PRAMOD KUMAR	606764
DLCPM/36478/08290	SHOBHY K K	755049
DLCPM/36478/7298	SHARDA VIJA SAWANT	341580
DLCPM/36478/9023	VNKATESHWAR L	628866
DLCPM/36478/6700	NALINI NARHARI PHULWAKAR	355140

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13. It is thus submitted by the respondents that in view of non-production of records leading to non-reconciliation of accounts and non-payment of statutory dues on behalf of Airport Authority of India, the petitioners' establishment, it is not feasible or possible to refund the amount in respect of the 1513 cases. **The number of petitioners in the present case are 13 in number.**

14. The **4th proviso to paragraph 11 (4)** in the notification dated 22nd August, 2014 at New Delhi, which relates to amendment of the employees' pension scheme, 1995, is as follows:-

> ***"Provided also that 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 Fund Scheme from time to time."***

15. Vide an order dated 14.02.2025 the Assistant Provident Fund Commissioner pension on Higher Wages Cell (at page 124 of the writ application being annexure P 11) has passed an order as follows:-

> *"……………….On further scrutiny of all these applications of pension on higher wages following facts have been emerged:*
> *(i) Joint option u/p 11(3) (pre-deleted) had earlier been exercised by the member as well as establishment in r/o 406 applications.*
> *(ii) EPS contributions had been deposited on higher wages from the date of joining to 03/2015.*
> *(iil) Both members and establishment had requested to contribute to EPS fund upto statutory wage ceiling.*

iv) Consequently, EPS contribution post 03/2015 deposited up to statutory wage ceiling till date of exit of EPS membership.

It may be noted that all 406 members (as per annexure-A) falls under category of Para 44 (ii) of Hon'nte Court order dated 04 11.2022. According to para 11 (4) of EPS scheme 1995, the existing member 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 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.

However, all 406 members had opted to contribute upto statutory wage ceiling and contribution to the EPS Fund had been deposited restricting upto statutory wage ceiling with effect from 01.04.2015 which is contrary to provisions contained in Para 11(4) of EPS scheme 1995.

In this regard, it is informed that the employees who had exercised option under Para 11(3) of EPS, 1995 and continued to be in service on or after 01.09.2014 will be guided by the amended provisions of paragraph 11(4) of the pension scheme.

In view of above all these 406 applications have not been found eligible for pension on higher wages. Hence all joint option for PoHW have been rejected.

Sd/-
Assistant Provident Fund Commissioner
Pension on Higher Wages Cell"

16. Thus, on hearing the learned counsel appearing for the parties, the written notes filed, the materials on record and the documents as discussed, it is found that admittedly 406 applications (which includes the application of the petitioners) being the joint option forms, praying for pension on higher wages having been found to be not eligible for pension or higher wages, the same has been rejected vide the said order dated 14.02.2025.

17. The said fact has also been admitted by the provident fund authorities in their report.

18. Admittedly the petitioners herein have paid contribution on higher wages and after their joint option form has been rejected, the petitioners have accepted the same and have prayed for refund of the excess amount deposited by them with the pension fund along with interest, relying upon the amended Para 11(4) 4^{th} proviso of EPS scheme 1995.

19. It appears that though the respondent authorities have been stating repeatedly that without production of documents and reconciliation of accounts, the matter cannot be settled or refund made as prayed for, it appears that **the respondents have computed the excess contribution made by each of the petitioners herein.**

20. The said computation has been duly noted in the report submitted in Court and also in the status report dated 19.12.2025, submitted by the Regional Provident Fund Commissioner-I, Regional Office, Delhi (Central).

21. The (specified) excess amount (contribution) which has been deposited in excess with the respondent authorities, is not disputed and is lying with the respondent authorities.

22. Any outstanding claim by way of dues, damages or penal interest, against an establishment, cannot be adjusted and or realized from

the dues of its employees. Such act is not only against the principle of natural justice but gross abuse of the process of law.

23. The contention of the respondent authorities is that contribution in respect of 1513 cases having not been deposited by the establishment, **is not the case in respect of the petitioners (13) herein, as it appears** from the documents filed by the respondent authorities, including the report filed, that the respondents have duly calculated the excess (contribution) amount lying in the custody of the respondent authorities in respect of all 13 petitioners. **As such in their cases, no further documents are required, nor any re-conciliation of accounts is necessary, as the computation of excess amount in respect of each of the petitioners herein, having already been assessed (Para 12 herein) by the respondent authorities themselves. It is their admitted calculation.**

24. Thus, the submission of the respondent authorities, refusing to pay the excess amount to which the petitioners are entitled is also against the principle of natural justice and an abuse of the process of law.

25. The respondent authority cannot retain the excess amount of the petitioners herein on the ground that there are outstanding dues of the petitioner's establishment as the amount to be refunded (deposited from wages) are the dues/entitlement of the petitioners herein in their personal capacity and is not in any way connected to the establishment.

26. Admittedly, as the excess amount in respect of the petitioners herein was deposited by the establishment with the respondent authorities, the excess amount could be assessed by the authorities (Para 12 herein).

27. As the excess contribution has been made from 16.11.1995 to 31.03.2015 and the said contribution on actual wages was duly accepted by the respondent authorities and not refunded in spite of rejecting the petitioners prayer for higher pension and also repeated prayers for refund of the excess amount by the petitioner on accepting the order of rejection, the writ application is disposed of with the direction that the respondent authorities shall refund the excess amount to each of the petitioners herein as computed by them (Para 12) within 30 days from the date of this order along with interest at the statutory rate from the date of deposits, considering that the said deposits have accrued interest while being retained illegally by the respondent authorities.

28. WPA 24535 of 2025 stands disposed of.

29. Applications, if any, connected thereto stand disposed of consequently.

30. Interim order, if any, stands vacated.

31. Photostat certified copy of this Judgment, if applied for, be given to the parties on priority basis upon compliance of all formalities.

(Shampa Dutt (Paul), J.)