

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20195 of 2019

1. Sudhir Kumar Son of Late Kamla Prasad Resident of Village-Makhnia Kuan, P.S.-Pirbahore, District-Patna.
2. Birendra Kumar Singh Son of Late Surya Nath Singh Resident of Village-Bankmais Colony, Police Station-Patrakar Nagar, Kankarbagh, District-Patna.

... .. Petitioner/s

Versus

1. The Union of India through Secretary Ministry Labour and Employment, Government of India, Shramashakti Bhaban, Rafi Marg, New Delhi-110001.
2. The Chairman, Central Board Yrustee, in rust Provident Fund Organization Ministry Organization, Government of India, New Delhi.
3. The Central Provident Fund, Employees Provident Fund Organization, Central Office, 14 Bikha Jee K.M. Place, New Delhi.
4. Regional Provident Fund Commissioner, Patna Employees Provident Fund Organization R. Block Road no6, Patna Bihar.
5. The Bihar State Food and Supplies Corporation through Managing Director, Khadya Bhaban, Daroga Rai Path, Patna, District-Patna.
6. THE Managing Director BIHar State Food and Supplies Corporation Ltd. Khadya Bhaban, Daroga Rai Path, Patna Bihar.
7. The Chief of Finance of Bihar BIHar State Food and Supplies Corporation Ltd. Khadya Bhaban, Daroga Rai Path, Patna Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Nirmal Kumar, Advocate
For the UOI : Dr. Anjani Pd. Singh, CGC
For the EPF : Mr. Prashant Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT

Date : 19-12-2024

This Court has heard Mr. Nirmal Kumar, learned Advocate for the petitioners, Mr. Prashant Sinha, learned Advocate for the Employees Provident Fund Organization, Mr. Sanjay Prasad, learned Advocate for the Bihar State Food and Civil Supplies Corporation Ltd. and the learned Advocate for



the Union of India.

2. The petitioners are the retired employees of Bihar State Food and Civil Supplies Corporation Ltd., have invoked the jurisdiction of this Court under Article 226 of the Constitution of India seeking a direction upon the respondents, especially the respondent Employees Provident Fund Organization for fixation of their pension on higher pensionable salary in terms of the judgment of the Hon'ble Supreme Court in the case of **R.C. Gupta & Ors. Vs. The Regional Provident Fund Commissioner, Employees Provident Fund Organization & Ors., (2018) 14 SCC 809 [(Civil Appeal No. (s) 10013-10014 of 2016)]**.

3. It is the case of the petitioners that they duly appointed as Assistant Accountants on the sanctioned and vacant post of the Bihar State Food and Civil Supplies Corporation Ltd. (Headquarter), Patna (hereinafter referred to as 'the Corporation'). Subsequently, on being found eligible, the petitioners were promoted to the post of Accountant and after serving so many years, they superannuated from the services of the Corporation. Upon their superannuation, the petitioners have been allowed admitted dues. However, despite the fact that the petitioners had been contributing excess amount to the



Employees Provident Fund Organization (hereinafter referred to as 'the EPFO') since 1997 for getting higher pension and similarly the employer had also been depositing the equivalent subscription from time to time, the pension of the petitioners was fixed at Rs.2458/- on the basis salary of Rs.6500/- in a most arbitrary manner. The petitioners stated that at the time of superannuation, the basic pay of the petitioner was Rs.13,500/- along with Dearness allowances of Rs.5535/-. Meaning thereby, the petitioners were getting Rs.19,035/- at the time of superannuation in the Corporation, but the respondent EPFO ignoring this fact fixed the pensionable salary @ Rs.6500/- in a most arbitrary manner.

4. Mr. Nirmal Kumar, learned Advocate for the petitioners contended that it is well settled principle of law and as has been decided by the Hon'ble Supreme Court that the pension is fixed on the basis of last pay scale with D.A., which was being withdrawn by the employee at the time of superannuation. On 22.02.2008 itself, the Corporation has furnished Form No. 2 to the Assistant Commissioner, Provident Fund for payment of pension in terms of Circular of the Corporation stating therein that the Corporation has already taken a decision to allow the pension on higher wages. The



aforesaid fact clearly suggests that the Corporation had never objected, if the petitioners shall be allowed pension on the full wages. The petitioners being retired employees of the Corporation, they have already submitted Form 10D-19 and 3AR through Corporation to EPFO. The matter has also been taken to the Managing Director of the Corporation, who after considering the request of the employees informed to the Provident Fund Commissioner vide letter dated 23.06.2009, as contained in Memo No.5210 that the contribution of the employee and the employer share are being deducted on higher wages, but despite the aforesaid fact the pension of the petitioners under the Scheme 1995 could not be fixed on the higher salary/wages of the petitioners.

5. In the aforesaid premise, the General Secretary of the Employees had also preferred C.W.J.C. No. 7822 of 2010 for extending the monthly pension to the employees of the Corporation on the basis of the proportionate contribution deducted from their salary even exceeding salary of Rs.6500/-. It was also prayed that the benefits of Employees Scheme, 1995 should extend up to the age of 60 years. The said writ petition came to be disposed of on 10.02.2012 with a direction that if the Corporation has not provided the relevant papers, it should



provide the same forthwith. In case, the Employees Provident Fund Organization wants any further papers, should write to the Corporation. The Learned Court finally directed the respondent nos. 1 to 5 to decide the issue and take a final decision. Despite the aforementioned direction, when no final decision has been taken, the petitioner of the said case preferred M.J.C. No. 4495 of 2012, which Contempt Petition has also been disposed of on 06.03.2013 with observation that the respondents would consider not accepting contribution in excess than what is statutorily provided, if it is not willing to deposit matching amount.

6. Learned Advocate for the petitioners further referring to the amended provision of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act, 1952') has contended that by virtue of amended Sub-Section 6A, as also Clause 11 of the Employees Pension Scheme, 1995, dealing with determination of pensionable salary, which subsequently enhanced to Rs.6500/- per month and further provided the employees to opt for contribution of salary exceeding Rs.5000/- or Rs.6500/-. Referring to the judgment of the Hon'ble Supreme Court passed in **R.C.Gupta** case (supra) it is contended that the issue has



already been set at rest, which also governs the case of the petitioners.

7. Admittedly, the employer and employees have contributed in excess to the ceiling limit of Rs.6500/-, which was duly accepted by the EPFO and, as such in view of the mandate of the Hon'ble Supreme Court in the case of **R.C. Gupta** (supra), as also the circulars issued by the EPFO, the respondent authorities are obligated to revise the pension of the petitioners and other similarly situated employees on the basis of higher wages by removing the salary limit of Rs.6500/-, is the contention of learned Advocate for the petitioner.

8. While opposing the prayer of the petitioners, a detailed counter affidavit as well as supplementary counter affidavits have been filed on behalf of the EPFO. It is primarily contended that the petitioners are retired employees of the Corporation, which was admittedly an exempted establishment under Section 17 of the EPF & MP Act, 1952 since January, 1987 to 31.03.2004 and as such, during the period of exemption, the Corporation had constituted a Board of Trustees through which contribution of the employees and employer were deposited. During the period of exemption, the statutory limit for depositing the contribution was Rs.5000/-, which later on



enhanced to Rs.6500/- in the year 2001. Seemingly, during the period of exemption of the Establishment, the Employees Pension Scheme, 1995 came into effect with effect from 16.11.1995. It is further contended that when the exemption was withdrawn, the Board of Directors of the Corporation resolved to give the employer's consent under the Employees Pension Scheme, 1995 in its meeting dated 22.07.2006.

9. Mr. Prashant Sinha, learned Advocate for the EPFO thus submitted that this consent was only limited to the Employees Pension Scheme, 1995, hence it cannot be accepted as a valid option. Nonetheless, the Employees Pension Scheme, 1995 (hereinafter referred to as 'the EPS, 1995') is a subsidiary scheme of the Employees Provident Fund Scheme, 1952 (hereinafter referred to as 'the EPF Scheme, 1952'). As per Paragraph 26(6) of EPF Scheme, 1952, the employer and the employee were required to make a joint request before the Provident Fund Commissioner, who has been vested with a discretion to allow such employee to contribute above the statutory limit of Rs.6500/-. In the case in hand, there is no such joint request under Paragraph 26(6). It is further contended that Resolution of the Board of Directors of the Corporation is also in teeth of the proviso of Paragraph 11(3) of the EPS, 1995,



which stipulates that the pensionable salary shall be treated to be higher than the statutory limit of Rs.6500/- only when if at the option of the employer and employee, contribution paid on salary exceeding Rs.6500/- per month from the date of commencement of this scheme or from the date salary exceeds Rs.6500/-, whichever is later; and 8.33% share of the employees thereof is remitted into pension fund. In view of the facts aforesaid, the petitioners cannot claim pension on the salary beyond the statutory limit.

10. Mr. Prahsant Sinha, learned Advocate for the EPFO further contended that the Hon'ble Supreme Court in the case of **R.C. Gupta** (supra), particularly, in para. 8 and 9 has made it very clear that exercise of option under paragraph 26(6) of the EPF Scheme, 1952 is inevitable and necessary precursor to exercise option under paragraph 11(3) of the EPS, 1995, since there is no option to contribute on actual wages in the Provident fund in terms of paragraph 26(6) of the EPF Scheme, 1952, the petitioners cannot claim pension on higher wages. The employer consent to contribute on actual wages in the EPS, 1995 given in the year 2006, apart from being invalid act on account of non-extending of any option; this consent has also been withdrawn in the year 2012, in the meeting of the Board of Directors dated



17.07.2012, pursuant to objection raised by the Accountant General, Bihar.

11. It is further urged before this Court that the case of the Corporation was adjudicated by this Court in the case of **Ram Nandan Prasad Vs. The Union of India & Ors., 2014 (3) PLJR 98**, wherein the learned Court having considered all the relevant facts, held that the employees of the Corporation are entitled to get the benefit of pensionable salary restricted to the statutory limit. The learned Court while noted the fact that the Corporation resolved to give consent to contribute on higher wages under the EPS, 1995 on 22.07.2006, but the employer and the employees did not submit any joint request before the competent authority to contribute on higher wages, held that the excess contribution shall be treated as erroneous contribution and the pension shall be limited to the pensionable salary of the statutory ceiling.

12. It has also been apprised to this Court that during the period 2000 to 2014, many cases were filed in various Forums, including this Courts, praying for payment of pension on higher wages by allowing to contribute on higher wages under the Pension Scheme. On being aggrieved by the order passed by this Court, the EPFO preferred appeal before the



Hon'ble Supreme Court, which came to be dismissed. After disposal of the SLPs., various writ petitions were filed and orders were passed to allow option to contribute on higher wages retrospectively. Two SLPs were filed by the Employees of M/s Himachal Pradesh Tourism Development Corporation against the decisions of the learned Division Bench of the Hon'ble High Court of Himachal Pradesh disallowing the option for contributing to pension fund on higher wages, which came to be disposed of vide order dated 04.10.2016 (**R.C.Gupta & Ors Vs. Regional Provident Fund Commissioner, Employees Provident Fund Organization & Ors.**).

13. Referring to the judgments rendered by the Hon'ble Supreme Court in the case of **R.C. Gupta** (supra) on which reliance has been placed by the learned Advocate for the petitioners, it is contended that the Hon'ble Supreme Court ruled that exercise of option under paragraph 26(6) is a necessary precursor to the exercise of option under Clause 11(3). The judgment passed by the Hon'ble Supreme Court was placed before the Pension and EDLI Implementation Committee for ensuring compliance of the order and after detailed discussion, the Committee recommended to place the matter before the Central Board of Trustees, who made it clear that the



order of the Hon'ble Supreme Court is not applicable upon the exempted establishment. Finally the matter has travelled to the larger Bench of the Hon'ble Supreme Court in the case of **Employees Provident Fund Organization & Ors. Vs. Sunil Kumar B. & Ors.; 2023 (1) PLJR 104 (SC)** wherein it has been held that the employees, who have already retired prior to 01.09.2014 without exercising any option have already exited from the membership and therefore they are not entitled for the benefit of the larger Bench judgment. It is the admitted position that the petitioners had retired prior to 01.09.2014 without exercising any option under para.26(6) of the EPF Scheme, 1952 or paragraph 11(3) of the EPS, 1995 and, as such, they are not entitled for the relief, as prayed for, is the contention of learned Advocate for the EPFO.

14. Having heard the learned Advocate for the respective parties and after perusing the materials available on record as well as the relevant prescriptions of the Act and the Rule, this Court before parting with the present case, deems it proper to highlight the provisions, which are necessary for proper adjudication of the matter.

15. Initially under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, there was no provision



for any pension under the Act, 1952. For the first time, in the year 1971, the family pension scheme was introduced. The Act, 1952 was amended vide amended Act, 1996 whereby the earlier Section 6A and 6B were substituted by a new Sections 6A, which provides for Employees Pension Scheme. Section 6A(2) (a) of the EPF and MP Act, 1952 provides that 8.33% from the Employer's contribution under Section 6 is to be paid to the Pension fund. Proviso to Paragraph 26-A(2) of the EPF Scheme, 1952 further provides that the contribution payable by the Employer and the Employee shall be limited to the amount payable on monthly pay of Rs.6500/-, which was further enhanced to Rs.15,000/- from September, 2014. Paragraph 26(6) of the Employees Provident Fund Scheme, 1952 provides that an officer below the rank of an Assistant Provident Fund Commissioner may allow the Employer and the employees to contribute more than the statutory wage ceiling of Rs.6500/-, if a joint request is submitted by the Employer and the Employees. Paragraph 3(1) of the Employees Pension Scheme, 1995 provides for 8.33% of the employees contribution to be remitted to the pension fund, whereas paragraph 3(2) provides that the Central Government shall also contribute at the rate of 1.16% of the pay of the member into the Employees' Pension Scheme.



Further paragraph 11(3) and its proviso provided that the maximum pensionable salary shall be limited to Rs.6500/- per month provided at the option of the Employer and the Employee, contribution paid of salary exceeding Rs.6500/- per month from the date of commencement of this scheme or from the date of salary exceeds Rs.6500/-. Moreover, the aforesaid paragraph has later on amended on 01.09.2014 and the maximum pensionable salary is limited to Rs.15,000/- per month.

16. The amended paragraph 11(4) and its proviso further made it clear that the members, who are contributing on salary exceeding Rs.6500/- per month will have to exercise fresh option by the Employer and the Employees to continue to contribute on salary exceeding Rs.15,000/- per month and the pensionable salary for the existing members, who prefer such option based on higher salary. Such option has to be exercised within a period of six months from 01.09.2014. The Regional Provident Fund Commissioner has been empowered to extend the period to exercise such option for a further period not exceeding for six months on sufficient cause being shown by the members. If no option is exercised by the members within such period, it shall be deemed that the member has not opted for



contribution over the wage ceiling and contribution to the pension fund made over the wage ceiling in respect of the member shall be diverted to the provident fund account.

17. It is worth noticing here the 1st proviso to paragraph 11(4) of the EPS Scheme, 1952, which requires the members to contribute at the rate of 1.16% on salary exceeding Rs.15,000/- as an additional contribution has been declared ultra vires by the larger Bench of the Hon'ble Supreme Court in the case of **Sunil Kumar B** (supra).

18. In the premise of the aforementioned relevant Prescriptions, Act and the Rules/Schemes, now this Court comes to the facts of this case. Admittedly the corporation was exempted establishment and had been managing its own Provident Fund Trust since 1987 to 31.03.2014. During the period aforementioned, the petitioners and their Employer did not exercise any option to contribute on actual wages in the provident fund under paragraph 26(6) of EPF Scheme, 1952. Even, later on, the employer and the employee have not opted to contribute on actual wages in the provident fund under Paragraph 26(6) of the EPS Scheme, 1952. So far the contention of the petitioners that in the meeting of the Board of Directors of the Corporation vide Item no.119.16 dated 22.07.2006 resolved



to grant consent to contribute on actual wages under the Employees Pension Scheme, 1995, the same does not come to any succor to the petitioners firstly on account of the fact that it was not an option to contribute on actual wages in the provident fund scheme and secondly even if any decision was taken by the Board of Directors, the same was withdrawn on 17.07.2012, when the Accountant General raised an objection to such decision.

19. It is also worth noticing that petitioner nos. 1 and 2, on attaining the age of 58 years stood exited from the Employees Pension Scheme, 1995 in terms of Paragraph 6(a) of the Employees Pension Scheme, 1995.

20. This Court also finds that the identical issue has come up for consideration before this Court in the case of **Ram Nandan Prasad Vs. The Union of India & Ors.; 2014 (3) PLJR 98**. The petitioners in the said case have also prayed for higher pensionable salary in terms of proviso to paragraph 11 of the Employees Pension Scheme, 1995.

21. The petitioners were employees of the Corporation where the Employees Pension Scheme, 1995 had been implemented. The petitioners made their distribution towards the aforesaid scheme. In course of time, the petitioners started



receiving salary excess to Rs.6500/- per months and the Corporation had been contributing the prescribed amount of salary exceeding Rs.6500/- per month into pension fund but the petitioners were denied their pension on higher salary. The Managing Director of the Corporation raised protest against the act of the respondents. Similar protest has also been made through the Union of the Employees of the Corporation. However, their requests were turned down by the EPFO. The learned coordinate Bench of this Court having taken note of admitted position that the Corporation was exempted establishment since January, 1987 to 31.03.2004 and, therefore, it is apparent that between the aforesaid period contributions of the employer or employee were deposited before the Board of Trustee. Moreover, the statutory limit for depositing the contribution was only up to Rs.5000/-, which was later on enhanced up to Rs.6500/- in the year 2001. The Court further finds that there is nothing on record to show that between the aforesaid period, the Corporation gave its consent to deposit contribution above the said statutory limit. On being found that no option was given by the establishment as well as the concerned employee nor any comment was given by the Provident Fund Commissioner, thus, the learned Court opined



that according to the guidelines excess distribution shall be treated as erroneous distribution and the petitioners shall only be entitled to get the benefit of pensionable salary restricted to the limited the ceiling and thus dismissed the writ petition.

22. Since the similar issue has been agitated before this Court, which has already been answered by the learned Coordinate Bench of this Court, it would be prudent to quote para. 14 to 17 of the judgment in the case of **Ram Nandan Prasad** (supra) hereinbelow:

“14. In the present case, it has specifically been averred at paragraph 4 to the counter affidavit that the concerned Corporation did not submit its return for several years despite of several reminders sent by the Provident Fund Commissioner and therefore, it can not be said that at the time of deduction and deposit, the Provident Fund Commissioner did not raise any objection. Furthermore, I find that Accountant General, Bihar, Patna has also raised objection before the Bihar State Food and Civil Supplies Corporation Limited regarding making contributions beyond the statutory limit and in the light of the above stated objection, Board of Directors of the concerned Corporation took a decision in its meeting held on 17.7.2012 to ensure the compliance of the direction of AG, Bihar, Patna.



15. Annexure- F series to the counter affidavit reveals that the Employees' Provident Fund Organization issued guidelines to Regional Provident Fund Commissioner's office as well as sub-regional Offices and according to the aforesaid guidelines, in the cases where no option was given and consequently no permission was given but contribution on higher salary was deposited by the Establishment/employees on their own, such excess contribution will be considered as erroneous contribution and the pensionable salary will be restricted to the statutory ceiling existing from time to time.

16. In the present case, admittedly, no option was given by Establishment as well as the concerned employees nor any acceptance was given by the Provident Fund Commissioner and therefore, in my view, according to the aforesaid guidelines, excess contribution shall be treated as erroneous contribution and the petitioners shall only be entitled to get benefit of pensionable salary restricted to the statutory ceiling.

17. No doubt, the Employees' Pension Scheme, 1995 is a beneficiary legislation but the aforesaid scheme is subsidiary scheme of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and when the statutory limit for making contribution has specifically been made in the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, in my view,



the aforesaid statutory limit of contribution cannot be stretched by the court. So far as proviso of para 11(3) of the Employees' Pension Scheme, 1995 is concerned, the said proviso only describes the modality of calculation of pensionable salary and the aforesaid proviso is applicable only when the contribution beyond the statutory limit is made in accordance with the rules. In the present case, the contribution beyond the statutory limit has not been made in accordance with rule as there was no valid option and acceptance for making contribution beyond the statutory limit. Therefore, proviso of para 11(3) of the Employees' Pension Scheme, 1995 is not applicable in this case.”

23. Now coming to the judgment of the Hon'ble Supreme Court in the case of **R.C. Gupta (supra)** wherein the Hon'ble Supreme Court has considered the claim of the employees of M/s Himachal Pradesh Tourism Development Corporation, who at the point of their retirement exercised option in paragraph 11 of the Employees Provident Fund Scheme for transfer of higher contribution to their pension fund account before their retirement so that they can get enhanced pension benefits. The Hon'ble Supreme Court having considered the submissions advanced on behalf of the parties and taking note of Clause 11(3) of the Pension Scheme as well as paragraph 26(6) of the Employees Provident Fund Scheme



held in paragraph nos. 7, 9 and 10 as follows:

“7. 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 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. We do not see how exercise of option under Para 26 of the Provident Fund Scheme can be construed to estop the



employees from exercising a similar option under Para 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 Para 26 of the Provident Scheme is inevitable. Exercise of the option under Para 26(6) is a necessary precursor to the exercise of option under Clause 11(3). 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.

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 employees concerned



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.”

24. On perusal of the aforementioned judgment, with utmost humility, this court is of the opinion that the prescription to the retired employees to exercise such option was not *ad infinitum* even after ceasing to be the members of the pension fund, as the Hon'ble Supreme Court specifically ruled that exercise of such option under paragraph 26(6) of the EPF Scheme was 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. The Hon'ble Supreme Court mandated in clear terms that exercise of the option under paragraph 26(6) of the EPF Scheme is a necessary precursor to the exercise of option under Clause 11(3) of the Pension Scheme.

25. Moreover, in the case of **R.C. Gupta** joint option was exercised during the service period of the petitioner therein and the order to divert the contribution to the pension scheme



was made by the Hon'ble Supreme Court considering the fact that the petitioner had retired during the continuation of the case.

26. Since inception, the matter relating to the Employees Pension Fund Scheme were litigated in various Fora and Courts, finally the Hon'ble Supreme Court in the case of the **Employees Provident Fund Organization & Ors. Vs. Sunil Kumar B.**, vide its order dated 24.08.2021 referred the matter to the larger Bench to answer the question as to whether the decision in the case of **R.C. Gupta** (supra) would be governing the principle on the basis of which the case could be disposed of. The Larger Bench of Hon'ble Supreme Court has in its penultimate paragraph held as follows:

“44. We accordingly hold and direct:

(i) The provisions contained in the notification no. G.S.R. 609(E) dated 22nd August 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.

(ii) Amendment to the pension



scheme brought about by the notification no. G.S.R. 609(E) dated 22nd August 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.

(iii) The employees who had exercised option under the proviso to paragraph 11(3) of the 1995 Scheme and continued to be in service as on 1st September 2014, will be guided by the amended provisions of paragraph 11(4) of the pension scheme.

(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 crystallised in the judgment 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 cut-off date and thus those members shall be entitled to exercise option in terms of paragraph 11(4) of the scheme, as



it stands at present. Their exercise of option shall be in the nature of joint options covering preamended 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 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 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.

(v) The employees who had retired prior to 1st September 2014 without exercising any option under paragraph 11(3) of the preamendment scheme have already exited from the membership thereof. They would not be entitled to the benefit of this judgment.



(vi) The employees who have retired before 1st September 2014 upon exercising option under paragraph 11(3) of the 1995 Scheme shall be covered by the provisions of the paragraph 11(3) of the pension scheme as it stood prior to the Amendment of 2014.

(vii) The requirement of the members to contribute at the rate of 1.16 per cent of their salary to the extent such salary exceeds Rs.15000/ 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 stop gap measure.



The said sum shall be adjustable on the basis of alteration to the scheme that may be made.

(viii) We do not find any flaw in altering the basis for computation of pensionable salary.

(ix) We agree with the view taken by the Division Bench in the case of **R.C. Gupta** (supra) so far as interpretation of the proviso to paragraph 11(3) (preamendment) 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.

(x) The Contempt Petition (C) Nos.19171918 of 2018 and Contempt Petition (C) Nos. 619620 of 2019 in Civil Appeal Nos. 1001310014 of 2016 are disposed of in the above terms.

Emphasis supplied

27. From the reading of the aforementioned rulings and the mandate of the Hon'ble Supreme Court, it would be axiomatic that the employees, who had retired prior to 01.09.2014 without exercising any option under paragraph 11(3) of the pre-amendment scheme have already exited from the membership thereof. They would not be entitled to the benefits of this



judgment.

28. Admittedly in the case in hand, the petitioners have already superannuated after attaining the age of superannuation way back in the year 2007-2008 itself without exercising the joint option under paragraph 26(6) of the Employees Provident Fund Scheme, 1952, which is ruled to be necessary precursor to exercise option under proviso to Clause 11(3) of the Pension Scheme. No such step had ever been taken by the petitioners along with the Management of the Corporation, as such the decision of the Board of Directors of the Corporation to contribute of higher wages held to be not a valid option; similarly any correspondence in this regard by the Employees Provident Fund Organization, Head Office has also got no applicability upon the case of the petitioners.

29. In view of the aforesaid facts, circumstances and the position obtaining in law, this Court does not find any merit in the present writ petition and, accordingly, the same stands dismissed.

30. However, in the interest of justice, it would be appropriate to observe that in case any excess contribution has either been realized by the Corporation and deposited to the EPFO from the wages/salary of the petitioners, the same shall



be immediately refunded to the petitioners preferably within a period of eight weeks from the date of receipt/production of a copy of this order along with the statutory interest at the rate of 6% per annum.

(Harish Kumar, J)

uday/-

AFR/NAFR	NAFR
CAV DATE	17.09.2024
Uploading Date	21.12.2024
Transmission Date	NA

