

W.P.No.2340 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)

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RESERVED ON : 24.04.2025
PRONOUNCED ON : 29.05.2025

PRESENT:

THE HON'BLE DR. JUSTICE A.D. MARIA CLETE

W.P.No. 2340 of 2021
and
W.M.P.Nos. 2649 & 2652 of 2021

AFT Panjalai Oivu Petra Oozhiyargal Sangam,
(Reg.No.1847 / 2018 / RTU)
Represented by its President,
B.Sathiyaseelan
No.93, Dr.Ambedkar Street,
Mudaliarpeta, Puducherry 605 004.

...Petitioner

Vs.

1.Union of India,
Rep. by the Secretary to Government of India,
Ministry of Labour & Employment,
New Delhi – 110 001.

2. Central Provident Fund Commissioner,
Employees Provident Fund Organisation,
Bhavishya Nidhi Bhawan,
14, Bhikaji Cama Palace,
New Delhi – 110 066.

3. Additional Central Commissioner (HQ) Legal
Employees Provident Fund Organisation,
Bhavishya Nidhi Bhawan,
14, Bhikaji Cama Palace,
New Delhi – 110 066.



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4. The Regional Provident Fund Commissioner – II,
Regional Office at No.101, 100 Ft. Road,
Venni Complex, Cholan Nagar, Mudaliyarpeta,
Puducherry 605 004.Respondents

Prayer in W.P.

To issue a Writ of Certiorari or Mandamus or any other Writ, Order or Direction in the nature of Writ, calling for the entire records pertaining to and pursuant to the proceedings of the 3rd Respondent in No. LC-E-file No. 15795/2/782, dated 09.08.2020 (16.09.2020) issued with the approval of the 2nd Respondent and the consequential proceedings of the 4th Respondent in TN/RO-PDY/Pension/Revision/2020-21, dated 24.12.2020, 30.12.2020 and 18.01.2021 issued to seven members of the Petitioner Sangam and to quash the same and to direct the Respondents to allow all the members of the Petitioner Sangam to continue to draw the pension on higher wages without any reduction and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Prayer in W.M.P.No. 2649 of 2021

To dispense with the production of the original impugned order being No. LC E-file No. 15795/2/782, dated 09.08.2020 (16.09.2020) issued by the 3rd respondent with the approval of the 2nd respondent and the consequential proceedings of the 4th respondent in TN/RO-PDY/Pension/ Revision / 2020-2021, dated 24/12/2020, 30/12/2020, and 18/01/2021 issued to seven members of the petitioner sangam, along with this writ petition.

Prayer in W.M.P.No. 2652 of 2021

To grant an interim stay of the operation of all further proceedings pursuant to the proceedings of the 3rd respondent in No.LC E - file No.15795/2/782, dated



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09/08/2020 (16/09/2020) issued with the approval of the 2nd respondent and the consequential proceedings of the 4th respondent in TN / RO -PDY / Pension / Revision / 2020 -2021, dated 24/12/2020, 30/12/2020 and 18/01/2021 issued to seven members of the petitioner Sangam so as to enable all the members of the petitioner Sangam to continue to draw pension on higher wages without any reduction, (in WP.No.2340 of 2021) pending disposal of this writ petition (in W.M.P.No.2652 OF 2021) .

Appearance of Parties:

For Petitioner : Mr.M.Ravi, Advocate
For Respondent 1 : No appearance.
For Respondents 2 to 4 : Mr.R. Vishnu, Advocate

J U D G M E N T

Heard.

2. When the matter was listed on 04.02.2021, this Court, while ordering notice, passed the following interim order: –

“The present Writ Petition is filed against withholding the payment of enhanced pension by the respondent - Employees Provident Fund Organisation.

2. The learned Senior Counsel appearing for the Provident Fund Organisation would submit that the matter is seized of by the Hon'ble Supreme Court and is listed for hearing on 26.02.2021.

3. The learned Senior Counsel appearing for the Writ



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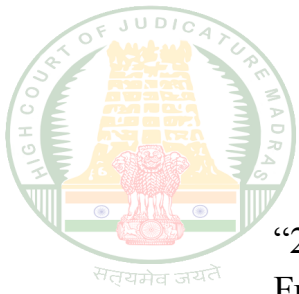
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Petitioner would submit that the Writ Petition is not connected to the matter pending before the Hon'ble Supreme Court. However, the learned Senior Counsel appearing for the Provident Fund Organisation would affirm that all these matters are connected to the matters pending before the Hon'ble Supreme Court as well as the Division Bench of this Court.

4. Therefore, recording the statement of the learned Senior Counsel appearing for the Provident Fund Organisation that in the event of the appeals and the petitions are allowed in favour of the pensioners, the withhold amount will be paid along with interest, this Court directs the Registry to tag all these matters with W.A.No.3501 of 2019 and batch. In cases, where the application is not processed, the respondents are directed to process the application except for disbursing the money.”

3. Upon notice being served, the standing counsel for the respondent EPFO entered appearance. It was brought to the attention of this Court that the subject matter of the present writ petition is covered by a common judgment delivered in a batch of writ petitions beginning with **W.P. No. 7851 of 2020, in M. Krishnamurthy & Others v. Union of India & Others, dated 10.03.2025.** This submission was not disputed by counsel for the petitioner. In the said common judgment, this Court issued the following directions, with the operative portion set out in paragraphs 10 to 16: –

“10. When Writ Petition No. 1630 of 2021 was presented before Justice M.Govindaraj on 03.02.2021, the following order was passed:



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“2. The learned Senior Counsel appearing for the Provident Fund Organisation would submit that the matter is seized of by the Hon'ble Supreme Court and is listed for hearing on 26.02.2021.

3. The learned Senior Counsel appearing for some of the Writ Petitioners would submit that the Writ Petitions are not connected to the matter pending before the Hon'ble Supreme Court. However, the learned Senior Counsel appearing for the Provident Fund Organisation would affirm that all these matters are connected to the matters pending before the Hon'ble Supreme Court as well as the Division Bench of this Court.

4. Therefore, recording the statement of the learned Senior Counsel appearing for the Provident Fund Organisation that in the event of the appeals and the petitions are allowed in favour of the pensioners, the withhold amount will be paid along with interest, this Court directs the Registry to tag all these matters with W.A.No.3501 of 2019 and batch. In cases, where the application is not processed, the respondents are directed to process the application except for disbursing the money.”

11. When several other writ petitions raising similar grounds came before different learned judges, and considering the pendency of the matter before the Supreme Court, a Division Bench took cognizance of the issue. The Division Bench, comprising the Hon'ble Chief Justice and Justice Subramonium Prasad, initially passed the following order on 10.12.2019 in Writ Appeal No. 3501 of 2019 and the batch cases:

“It has been stated at the bar that as per the directions given by the Division Bench in the order dated 07.11.2019, as continued in the order dated 12.11.2019, the processing of the applications shall be undertaken and the employers would be under an



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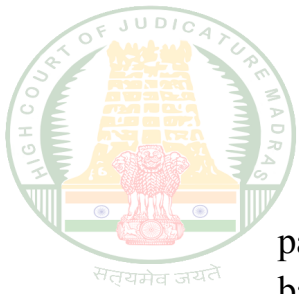
obligation to despatch such applications to the Provident Fund Commissioner for the same being processed as per the directions hereinabove, as expeditiously as the applications are received.”

12. Subsequently, another Division Bench, by its order dated 25.04.2023 in W.P. No. 20160 of 2019 and related batch cases, issued the following interim order:

“The employees concerned in these cases and similarly placed employees whose cases are pending before this Court, are entitled to submit their option form through online and through physical mode, since it is represented that the employees are unable to access the site to submit their option form online and that the date fixed by the Supreme Court expires on 03.05.2023. If the employees file hard copies, the same shall be processed by the Employees Provident Fund Organisation.”

13. Subsequently, all the writ petitions and writ appeals were heard by a Division Bench comprising Justices S. Vaidyanathan and K. Rajasekar in Writ Appeal No. 2621 of 2023 and the batch cases. The matters were disposed of by an order dated 07.02.2024. In their ruling, the Bench considered both R.C. Gupta’s case and Sunil Kumar’s case and, in paragraphs 13 to 17, held as follows:

“13. The Miscellaneous Applications prayed, seeking modifications and clarifications of the paragraph 44-V as to declare to the effect that the employees, who were retired prior to 01.09.2014 without exercising any option but whose provident fund contribution was on their actual salary (above the ceiling limit under paragraph 26(6) of the EPF, 1952) covered by the Apex Court judgment of the RC Gupta vs. EPFO and they are entitled to jointly exercise the option with their employees under paragraph 11(3) of the preceding



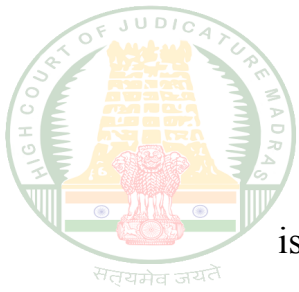
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paragraph IV. Hon'ble Apex Court after considering all those batches of Miscellaneous petitions has dismissed all in limine.

14. Now, in this appeal, the Writ petitioners are seeking further direction to declare that their case falls within paragraph 44(VI). Batch of cases relating to Food Corporation of India pensioners and Handicrafts and Handlooms Exports Corporation (HHEC) pensioners, it is submitted by their counsel that they have already executed joint option and it was provisionally accepted by the EPFO for revision of pension and the EPFO has sought for certain clarifications from the employees and he has also circulated the above clarification letter. The EPFO has sought for various proof and this letter/circular shows that the EPFO is processing the application of the certain employees, who are already claimed that they had exercised their option for payment of pension as per actual salary. The Hon'ble Apex Court in Sunil Kumar case after considering the reasons given by the EPFO for issuance of their circular dated 31.05.2017 and after detailed discussion, has given the steps, to be taken by the EPFO regarding the grant of pension as per their actual salary paid by the employees as pension. Since these petitioners claims that they have already exercised their options, they have to satisfy the EPFO regarding the queries raised by them. In this appeal, they shall not seek, dispensing the answer to the queries, raised to them by the EPFO.

15. The Hon'ble Apex Court has categorically directed the EPFO to extend the benefit to the employees of exempted establishment and they could not seek indulgence of this Court to exempt them from satisfying the queries of the EPFO and we are not inclined to go into the above factual aspects, and burden is on them to satisfy that they are eligible to get benefit on actual salary paid by them as per the various direction



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issued in the Apex Court in paragraph 44.

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16. As submitted by the EPFO, since various clarifications and modifications petitions filed seeking applicability of, paragraph 44-VI to the persons, who are retired prior to 01.09.2014 based on the option exercised by them, under paragraph 26(6) of Provident Fund scheme, to get pension on the basis of actual salary paid by them has been rejected by the Apex Court, this Court need not go into very same issue again. Hon'ble Apex Court has categorically held in paragraph 44(V) and 44(VI), that the employees who are retired prior to 01.09.2014 without exercising any option under 11(3) of the Pre-amendment scheme, are not entitled to the benefit of this judgment and employees who have retired before 1 st September 2014 upon exercising option under paragraph 11(3) of 1995 scheme shall be covered by the provision of the paragraph 11(3) of the Pension scheme as stood prior to amendment - 2014, we are of the view that, this Court has no authority to clarify or modify the same. Accordingly, this Court is not inclined to pass any Orders in this regard. Though the contention of the pensioners appears to have force, unless the Larger bench of the Apex Court takes a different view, we are bound by the decision of the Apex Court in Sunil Kumar's case cited supra, in the light of the law of the precedent. We have also expressed our view at the time of hearing that it is for the Larger Bench of the Apex Court to take a different view when all the pleas have been answered.

17. In view of the categorical pronouncement of the Apex Court and directions issued under paragraph 44, these batch of Writ Appeals filed herein stands disposed of in terms of the judgment of the Apex Court in The Employees Provident Fund Organisation and Ors. Vs. Sunil Kumar B. and Ors. [2002 SCC online] (SLP C.No.8658, 8659 of 2019).”



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Notwithstanding the ruling of the Division Bench, the counsel for the petitioners reiterated that all the petitioners fall under the category of superannuation pension cases, having rendered the requisite eligible service of 10 years or more upon attaining the age of 58 years. As per the EPS 1995, superannuation is defined as reaching the age of 58 years.

14. The learned counsel submitted an additional affidavit dated 19.02.2025, wherein the petitioners presented their case in paragraphs 4 to 6 as follows:

“4. Hence in view of the said judgments dated 24.8.2021 read in conjunction with judgement dated 4.11.2022 of the Hon’ble Supreme Court of India and further in view of the fact that the Petitioner herein along with the other Petitioners of my HHEC Corporation having continued in service with HHEC beyond 1.9.2014 we are as such passing this eligibility qualification pronounced by the Hon’ble Supreme Court of India by those Judgements and as such our Writ Petitions and prayers contained therein may graciously be granted by this Hon’ble Court.

5. This Petitioner was humbly submits that I have continued in service with the Handloom & Handicrafts Corporation Limited (HHEC), under the control of the Ministry of Textiles, Government of India even after 1.9.2014.

6. The said HHEC was would up by the decision taken by the Government of India and as a result of which this Petitioner and others who served the said HHEC were all granted Voluntary Retirement as on 30.09.2021 only and by means of such VRS we got superannuated from the said HHEC after putting the Employees’ Pension Fund Qualifying Service of 10



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years or more, and, thereafter after 30.09.2021 attained the age of superannuation of 58 years for being eligible to received Employees' Pension.”

15. However, this Court is not inclined to examine the issues raised by the petitioners for the first time or to determine the extent to which they are covered by the Supreme Court's judgment in Sunil Kumar's case. The EPF authorities are bound to comply with the directions issued by the Supreme Court in Sunil Kumar's case. Accordingly, in line with the order passed by the Division Bench in Writ Appeal No. 2621 of 2023 and batch cases dated 07.02.2024, a similar direction will be issued in the present matter.

16. Hence, all the writ petitions are disposed of with a direction to the authorities to implement the directives set forth in Paragraph 44 of the Supreme Court's judgment in Employees Provident Fund Organisation & Anr. v. Sunil Kumar B. & Ors., reported in 2022 SCC Online SC 1521. However, there shall be no order as to costs. Consequently, all miscellaneous petitions stand dismissed.”

4. In light of the above, this writ petition is also disposed of in terms of the direction contained in paragraph 16 of the order dated 10.03.2025. Accordingly, the writ petition stands disposed of with a direction to the authorities to implement the directives set out in paragraph 44 of the judgment of the Hon'ble Supreme Court in **Employees Provident Fund Organisation & Another v. Sunil Kumar B. & Others**, reported in 2022 SCC OnLine SC 1521. There shall be no order as to costs. Consequently, both the connected miscellaneous petitions stand dismissed.



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NCC : Yes / No

Index : Yes / No

Speaking Order / Non-speaking Order

To

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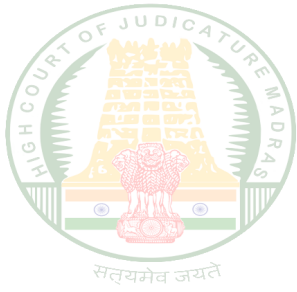
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DR. A.D. MARIA CLETE, J

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Pre-Delivery Judgment made in
W.P.No. 2340 of 2021
and
W.M.P.Nos. 2649 & 2652 of 2021

29.05.2025