



IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 15459 of 2025

Anuradha Roy & Ors.

Vs

The Union of India & Ors.

With

WPA 10854 of 2025

Anil Kumar Rai & Ors.

Vs

The Union of India & Ors.

With

WPA 21136 of 2025

Ramesh Kumer Mundhra

Vs

The Union of India & Ors.

With

WPA 15534 of 2025

Subhas Chandra Mallik & Ors.

Vs

The Union of India & Ors.

With

WPA 11574 of 2025

Chanchal Kumar Banerjee & Ors.

Vs

The Union of India & Ors.

With



WPA 16097 of 2025
Pijush Kanti Chakraborty & Ors.
Vs
The Union of India & Ors.
With
WPA 18723 of 2025
Siddhartha Sankar Datta & Ors.
Vs
The Union of India & Ors.
With
WPA 11151 of 2025
Swapan Kumar Chattopadhyay & Ors.
Vs
The Union of India & Ors.
With
WPA 11226 of 2025
Pradip Kumar Ghosh & Ors.
Vs
The Union of India & Ors.
With
WPA 7700 of 2025
Sunith Kumar Roy & Ors.
Vs
The Union of India & Ors.
With
WPA 11349 of 2025
Subrata Kumar Baksi & Ors.
Vs
The Union of India & Ors.
With
WPA 11092 of 2025
Amit Basu & Ors.
Vs



The Union of India & Ors.
With
WPA 11596 of 2025
Arjun Kumar Sharma & Ors.

Vs
The Union of India & Ors.
With
WPA 11352 of 2025
Noton Samanta & Ors.

Vs
The Union of India & Ors.
With
WPA 11599 of 2025
Nitya Gopal Sarkar & Ors.

Vs
The Union of India & Ors.

For the Petitioners : **Mr. Soumya Majumder, Sr. Adv.**
In WPA 15459/2025 Mr. D. Sengupta,
WPA 10854/25 Mr. Ratikanta Pal.
WPA 21136/25 Mr. S.P. Tewary,
 Ms. Sanjukta Dutta.

For the Petitioners : Mr. Arjun Roy Mukherjee,
In WPA 15534/25 Mr. J. Medhi.

For the Petitioners : Mr. Samim Ahmed,
In WPA 11574/25 Mr. Arka Maiti,
In WPA 18723/25 Mr. Ambia Khatun.
In WPA 11151/25
In WPA 11226/25
In WPA 7700/25
In WPA 11349/25
In WPA 11092/25
In WPA 11596/25
In WPA 11352/25
In WPA 11599/25



For the Petitioners In WPA 16097/25	:	Mr. Asim Kumar Roy, Mr. Anirban Roy, Mr. Debjit Basu.
For the P.F. Authority In WPA 11574/25 In WPA 16097/25 In WPA 11349/25 In WPA 11092/25 In WPA 11596/25 In WPA 11352/25 In WPA 11599/25	:	Mr. Shiv Chandra Prasad.
For the Respondent/UOI In WPA 15459/25	:	Mr. Siddhartha Lahiri, Ms. J. Dhar Chakraborty.
For the Respondent/UOI In WPA 15534/25	:	Mr. Ajay Gaggar, Mr. Raunak Bose.
For the Respondent/UOI In WPA 11574/25 In WPA 11349/25 In WPA 11596/25	:	Mr. Nilanjan Bhattacharya, Sr. Adv. Ms. Mary Datta.
For the Respondent/UOI In WPA 18723/25	:	Mr. A. Dutta, Mr. Prodip Paul, Ms. R. Dey.
For the Respondent/UOI In WPA 11092/25 In WPA 11352/25	:	Mr. P. Bajpayee, Ms. Ranjana Chatterjee.
For the Respondent/UOI In WPA 7700/25	:	Mr. Subhankar Chakraborty, Ms. Sarda Sha, Ms. Sayani Gupta (through VC).
For the Respondent no. 5 In WPA 16097/25	:	Mr. Ritwik Pattanayak.
For the Respondent no.4 to 6: In WPA 18723/25 In WPA 11226/25 In WPA 7700/25	:	Mr. S.R. Saha.
For the Respondent no. 6 In WPA 15534/25	:	Ms. Sharmistha Ghosh, Mr. Ranit Ray.
For the Respondent no.2 to 5: In WPA 15534/25	:	Mr. Avijit Tewary.



For the Respondent nos.4 to 6:
In WPA 11574/25
In WPA 11596/25
In WPA 11599/25

Mr. Arjun Roy Mukherjee,
 Mr. Prantik Garai,
 Mr. D. Raj Basu,
 Mr. Avijit Kar,
 Mr. Dwip Raj Basu.

For the Steel Authority : Mr. Kaustav Banerjee,
In WPA 15459/2025 Ms. Ria Kundu.

For the P.F. Authority : Ms. Aparna Banerjee.
In WPA 15459/25

For the Respondent no. 10 : Mr. Arnab Chakraborty,
In WPA 10854/2025 Ms. Pragya Bhowmik.

For the EPFO/RPFO : Mr. Satyendra Agarwal,
In WPA 10854/2025 Mr. Goutam Malik,
In WPA 21136/25 Mr. Bijay Bag.
In WPA 11151/25
In WPA 11226/25
In WPA 7700/25

For the Respondent no. 1 : Mr. Rabindra Nath Bag, Sr. Adv.
In WPA 21136/25 Mr. Sk. Md. Wasim Akram,
 Mr. Piyas Chowdhury.

Judgment reserved on : 09.09.2025/17.09.2025

Judgment delivered on : 14.11.2025

Shampa Dutt (Paul), J.:

I. WPA 15459 of 2025

1. The writ application has been preferred praying for setting aside of the
 impugned rejection order bearing No.
 EPFO/WB/RO/PRB/PoHW/9057/7471 dated 5th February 2025 in
 respect of the abovenamed petitioners and direction upon the respondent
 no. 3 to disburse higher pension on higher wages on the basis of the joint



option exercised by the petitioners along with their employer as per Employees' Pension Scheme, 1995 and directing the respondents to immediately reverse the rejection of joint options submitted by the petitioners herein, issue demand letters for refund of the employer's share of EPF contributions on higher salary after netting off the arrears payable by EPFO and start disbursing higher pension based actual wages to each of the petitioners till the disposal of this application.

2. The petitioners' case is that the petitioners are all superannuated employees of a Maharatna PSU, Steel Authority of India Limited-Unit: Central Marketing Organisation (CMO) and **all were in service on 01.09.2014.**
3. The establishment SAIL-CMO (to whom the petitioners belonged at the time of their retirement from the EPF Scheme at age 58) **enjoys exemption** under section 17(1) of the said PF Act of 1952 from the operation of Employees' Provident Funds Scheme, 1952.
4. It is stated by the petitioners herein that there are about 1300 exempted establishments in India, including 16 in SAIL. The establishment SAIL-CMO (to whom the petitioners belonged at the time of their retirement from the EPF Scheme) enjoys exemption under Section 17(1) of the said PF Act of 1952 from the operation of Employees' Provident Funds Scheme, 1952.
5. The said exemption had been granted by the appropriate Government in compliance of the applicable conditions and rules under the PF Act, 1952 and EPF Scheme, 1952, that all rules must be approved by RPFC, and **that in the case of beneficial schemes there will be automatic**



application, irrespective of Trust Rules and subject to the condition that the benefits are not less than the benefits given by EPFO to unexempted establishments.

6. SAIL CMO PF Trust rules were duly approved by EPFO.
7. In respect of un-exempted establishments, the EPFO manages all aspects of both Provident Fund and Pension Fund. Based on the said Act and its amendments approved by parliament, “Model PF Trust Rules” have been prescribed by the EPFO authorities as a template for adoption by the exempted establishment. Every exempted establishment customizes the ‘Model Trust Rules’ as per their specific circumstances. The PF Trust rules applicable to SAIL-CMO were accordingly adopted from the ‘MODEL TRUST RULES of EPFO by its PF Trust, namely, Hindustan Steel Limited, Central Purchase Organization, Sales & Transport Calcutta Provident Fund Trust and duly submitted to EPFO for its approval, along with revisions in the said rules, if any, from time to time. In full compliance with the statutory provisions, the internal trust rules of SAIL-CMO also incorporated the same ceiling wages as mandated by the EPS.
8. **All employees of both exempted and unexempted establishments are considered to be the same as far as pension under EPS, 1995 is concerned and EPFO directly deals with pension matters for both classes of establishments.** For the purpose of contribution to Pension fund, employers only forward the requisite contribution every month to EPFO and they have no further role as employer under the EPS, 1995.
9. **Mr. Majumder** argues that after pronouncement of the judgment of the Hon’ble Supreme Court in the matter of higher pension based on actual



wages instead of ceiling wages (**EPFO & Anr. Vs. Sunil Kumar B. & Ors., (2023) 12 SCC 701**), joint options as submitted by the eligible member were duly vetted and uploaded by the employer on the EPFO site along with wage details through online system, for approval by EPFO.

10. While scrutinizing the joint applications, the **Regional EPFO** pointed out on 24th May 2024, the contradiction between the declaration of the employer while approving the joint option forms and the PF Trust rules where contribution was limited to ceiling wages. They further stated in the said letter that **the Board of Trustees of the SAIL-CMO PF Trust has not submitted any revised rule**, in light of the Hon'ble Supreme Court judgment dated 04.11.2022 in SLP 8658-8659.
11. In accordance with this, **SAIL-CMO PF Trust submitted the modified rules** for approval by EPFO on 04.10.2024.
12. After sitting on the issue for more than three months, they declined to approve the revision and stated in their letter dated 21.01.2025 that **any modification in trust rule after date of Supreme Court judgment dated 04.11.2022 cannot be allowed.**
13. From mid January 2025, the EPFO circulars took on a hostile tenor when they started **quoting Trust rules for rejecting joint options** for pension on actual wages and stating that this was in keeping with the Hon'ble Supreme Court judgment of 04.11.2022, **EPFO & Anr. Vs. Sunil Kumar B. & Ors., (2023) 12 SCC 701**, while the fact is that **there is not a single word in the said judgment about internal trust rules of the establishment.**



14. Mr. Majumder further argues that the petitioners' joint applications have been rejected by an order dated 05.02.2025 passed by the respondent no. 5, by referring to Rule 11(b) of the Provident Fund Trust Rules of the Employer/Establishment (SAIL-CMO).

15. It is stated that the Provident Fund Trust Rules in this case of an exempted establishment, also contain an **overriding safeguard** at **clause 31(A)** which provides as follows:-

“Statutory provisions to have overriding effect:

*(1) In the absence of any specific provision in these rules, if any provision of these rules is less beneficial than the corresponding provision of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 and the Employees' Provident Fund Scheme, 1952 framed there under, **the latter provision shall prevail**, mutatis mutandis.*

*(2) **Where any provisions of rules conflicts with any provisions of the E.P.F. Scheme, 1952, the latter shall always be deemed to prevail.***

16. It is stated that the respondent authorities have chosen to **ignore the overriding safeguard clause at 31(A)** while rejecting the joint applications for pension **on actual wages** based on Rule 11(b) alone.

17. On 28th April 2025, the rejection order of 5th February 2025 was uploaded.

18. The said order dated 5th February, 2025 is as follows:-



ENMASS REJECTION ORDER

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Annexure - P/10

G20

ই-মেল / ई-मेल / Email : ro.parkstreet@epfoindia.gov.in (PRO)

दूरभाष / Phone : (033) 2283-1949, 2280-1244

फैक्स / फैक्स / Fax : (033) 2280-4079

कर्मचारी अविविध निधि संगठन / कर्मचारी भविष्य निधि संगठन
EMPLOYEES' PROVIDENT FUND ORGANISATION

मंत्रालय, भारत सरकार / Ministry of Labour & Employment, Govt. of India

रिजिонаल ऑफिस / REGIONAL OFFICE

44, पार्क स्ट्रीट, कोलकाता-700016/44, Park Street, Kolkata-700016



Ref: EPFO/WB/RO/PRB/PoHW/9057/ 7471

Date: 5/2/2025

Order in the matter of applications received from Members/Pensioners (Annexure-I) of M/s Steel Authority of India Limited which is an exempted establishment and complying under the Trust, under the jurisdiction of Regional Office, Park Street.

- Ref: 1. Order dated 04-11-2022 of the Hon'ble Supreme Court of India in the matter of SLP (C) Nos. 8658-8659 of 2019.
2. HO Circular No. Pension/2022/54877/15149 dated 29-12-2022.
3. HO Circular No. Pension/2022/54877/15238 dated 05-01-2023.
4. HO Circular No. Pension/2022/55893/15785 dated 25-01-2023.
5. HO Circular No. Pension/PoHW/23/Circular-26(6)/139610/1648 dated 14-06-2023
6. HO Circular Nos. Pension/Supreme Court/judgement/HPM/2022/405 and 406 dated 23-04-2023.

Whereas online Joint Options forms has been received from the pensioners/applicants [as detailed for applicants in Annexure-I with their Member ID & UAN/PPF] for considering and accepting the option filed by them under the proviso of the Employees' Pension Scheme, 1995 for post facto remittance of contributions to the Employees' Pension Fund.

And Whereas in compliance with orders of the Hon'ble Supreme Court in the judgement dated 04-11-2022 in the matter of Special Leave Petition (C) Nos. 8658-8659 of 2019 and directions of the Central Government an online facility was deployed for submitting Joint Option forms from the eligible applicants through their employers.

And Whereas, the applicants as at Annexure-I have submitted their applications as stated above for grant of pension on the basis of their actual/full monthly wages/salaries higher than that the wages ceiling in terms of the judgement dated 04-11-2022 of the Hon'ble Supreme Court of India in Special Leave Petition (C) Nos. 8658-8659 of 2019. The applications in respect of members as per Annexure-I have been scrutinized in consideration of the Trust Rule.

Annexure P/10

To in paragraph 22

Foregoing Petition affirmed

by A. Roy

on this 27th Day of July, 2025

A. Roy

Commissioner of Affidavit

High Court, Appellate Side

Calcutta

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Whereas on going through the extant Trust Rule of M/s Steel Authority of India Limited (WBPRB0009057000) prima facie it appears that the EPS contribution beyond statutory ceiling to the Pension Fund is not allowed. Rule 11 of the said Trust Rule is reproduced below:-

"Rule 11-Employer's contribution to the Fund:-

- a) The employer shall not later than the fifteenth day of the succeeding month, in respect of each of the members of the fund, pay to the trustees as employer's contribution to the Fund a sum equal to the total of the member's compulsory contribution under Rule 10(a) hereinbefore.
- b) From and out of the contribution payable by the employer each month under Rule 11 above, a part of contribution representing 8.33% of the Employees pay shall be remitted by the employer to the Employees' Pension Fund within 15 days of the close of every month by a separate bank draft or cheque on account of Employees' pension fund contribution in such manner as may be specified in this behalf by the Regional Provident Fund Commissioner. The cost of remittance, if any, shall be borne by the employer. Provided that where the pay of the member exceeds Rs 6500/- per month the contribution payable by the employer be limited to the amount on his pay of Rs 6500/- only. The balance of employer's contribution after the remittance of contribution to the Employees' Pension Fund shall be credited to the member's individual account."

From the extant Trust Rules it is clear that the Pension Fund is contributed only up to the maximum of ceiling and there is no provision to contribute on higher wages in the Employees' Pension Fund.

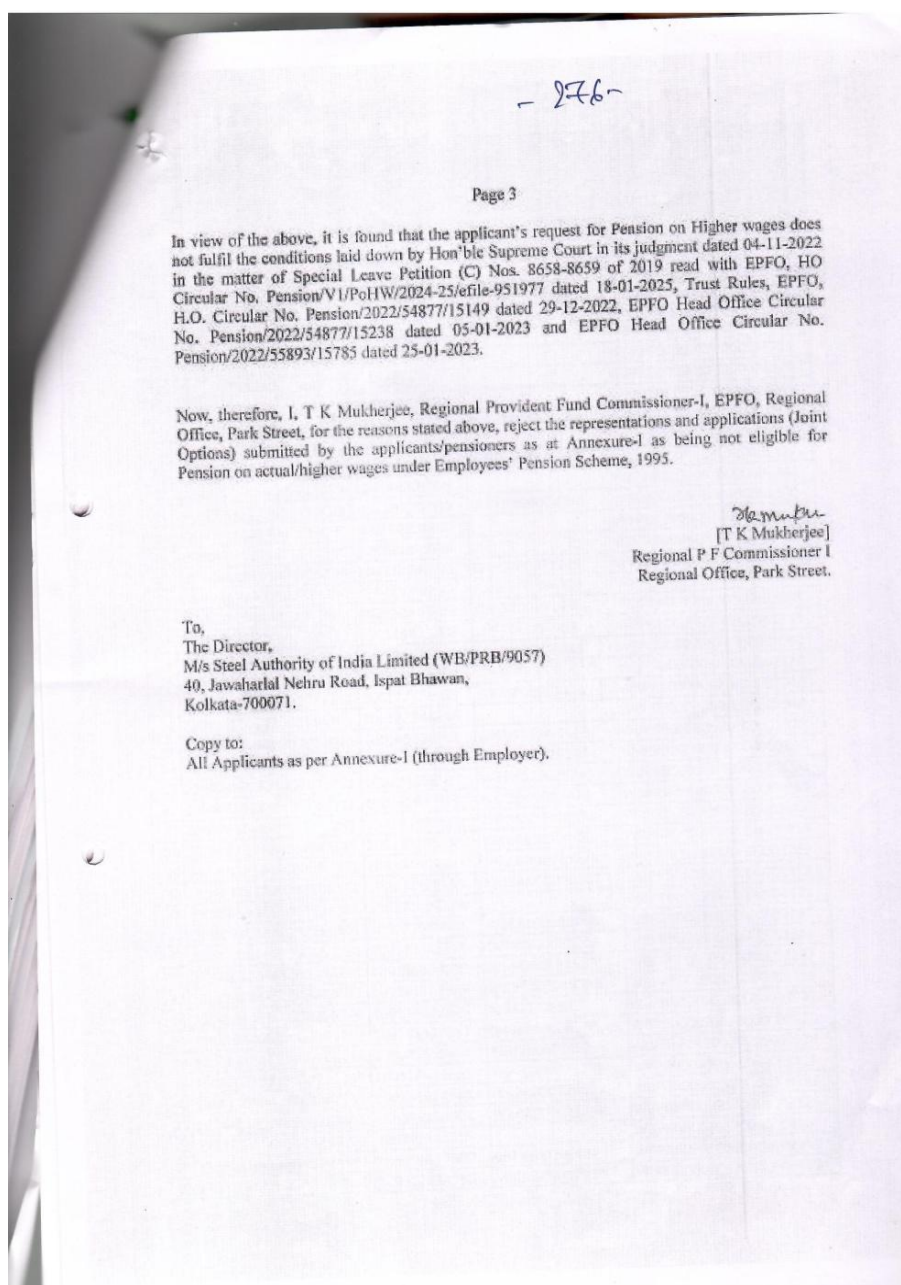
It is a fact that a proviso was added to Clause 11 (3) of EPS 1995 w.e.f 16-03-1996 after the implementation of EPS 1995 w.e.f. 16-11-1995 permitting an option to the employer and employee to contribute towards Pension Fund, per month, on salary exceeding the statutory wage ceiling. The Trust of the establishment never amended their Trust Rules incorporating the clause 11(3).

And whereas a Show Cause Notice was also issued to the establishment vide this office letter no A/ WB/ PRB/9057/Pension on Higher Wages/7445 dated 31.01.2025, through email.

A reply has been received from the establishment vide letter dated 04.02.2025 wherein the establishment has cited several provisions including certain provisions of the Trust Rules concluding that "where any provision of Trust Rules conflicts with any provisions of the EPF Scheme 1952 which is more beneficial the later shall always deem to prevail".

The said submission can't be considered as which provision is beneficial is subjective consideration. The fact is that the Trust Rules were never amended and any proviso corresponding to the Proviso Para 11(3) of EPS 1995 was never introduced in the said Trust Rules. Therefore such submission cannot be considered.

Contd. Page 3





members of the Pension Fund maintained by the Central Board of Trustees of the Employees' Provident Fund Organisation after the promulgation of the Employees' Pension Scheme, 1995.

20. The Provident Fund authorities had issued instructions on 22.01.2019 to allow members of EPS 1995, the benefits of pension on actual salary as per the orders of the Hon'ble Supreme Court in the matters of ***R.C. Gupta vs. Regional Provident Fund Commissioner reported in 2018 (14) SCC 809.***
21. The respondent Provident Fund Authorities in purported compliance of the said judgment delivered by the Hon'ble Supreme Court (***Sunil Kumar B. (Supra)***) on the issue started issuing various circulars, instructions and directions to their various officers to enable exercise of option for higher pension.
22. Through circular/instruction dated 29th December, 2022, corrigendum dated 05.01.2023, initial invitation was made to those employees who had retired after September, 2014 and had not exited from the membership to exercise option for higher pension.
23. **Mr. Majumder contends that the Supreme Court had considered the category/clarification of benefit for employees only on the basis of date of retirement (either before or after 01.09.2014) and not mentioned anything regarding 'exit' from membership of the scheme.**
24. The petitioners had all applied for registration of pension on higher wages with request made thereto by an undertaking to pay differential amount to RPFC through the employer on the basis of average of last 60 months'



actual salary. However, the portal of EPFO showed such request to be pending.

- 25.** The respondent Provident Fund Authorities by referring to paragraph 38 of the IRCON International Limited ECPF Trust Rules rejected the joint option applications on the ground that the intention of the establishment was to limit the contribution in the pension scheme to the prevailing ceiling of EPFO.
- 26.** Vide the order dated 04.02.2025, the authority on rejecting the joint option application of the petitioners held as follows:-

*“Hence, it is clear from the above reasoning that **the Trust rules itself are restricting the employer’s contribution on higher wages**, which is a prerequisite for eligibility for the pension on higher wages and these 688 online applications for Higher pension are not eligible for pension on Higher wages in light of Hon’ble Supreme Court Judgment dt. 04.11.2022. Hence these applications cannot be approved.*

In view of the above findings, I, Martand Singh Chandrawal, Regional Provident Fund Commissioner-II, R.O. Delhi West by virtue of powers conferred vide H.O. Circulars cited above, hereby declare that the 688 online applications (listed in Annexure ‘A’) received from the employees of M/s IRCON INTERNATIONAL LIMITED, PALIKA BHAWAN SEC 13, R K PURAM, NEW DELHI-110066 as invalid. Thus the applicants are declared ineligible for seeking Pension on Higher Wages.

Issued under my seal and signature on 01st February, 2025.

Regional Provident Fund Commissioner-II”

- 27. It appears that the authority herein completely overlooked Rule 84(iv) of the trust rules which lays down:-**



*“iv. In case the rules of the establishment are silent on any matter or are not in conformity with the provisions of the Employees’ Provident Fund and Miscellaneous Provisions Act, 1952 and the Scheme, **the provisions of later shall prevail.**”*

28. All the employees in this case were in service as on 01.09.2014.

29. Supplementary affidavit, affidavit-in-opposition/reply thereto along with written notes are on record.

30. As the issue in the present writ application is similar to the issue in WPA 15459 of 2025, the writ applications have been taken up for consideration together.

III. WPA 21136 of 2025

31. The writ petition has been preferred praying for quashing/setting aside of the order dated 18.06.2024 passed by the respondent/EPFO and direction upon the said respondent to process and approve the joint option forms for higher pension in strict compliance with the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952, the Employees’ Provident Funds Scheme, 1952, the Employees’ Pension Scheme, 1995 and the judgment dated 04.11.2022 passed by the Hon’ble Supreme Court in EPFO v. Sunil Kumar B. reported in (2023) 12 SCC 701 and other related reliefs.

32. The Establishment/respondent no. 6 was an Exempted Establishment having its own Provident Fund trust and its rules. The exemption was **withdrawn** on 31st March, 2010. On 29.08.2023 the petitioner duly filled up and submitted joint option form to the EPFO as per the stipulated instructions.



- 33. The petitioner retired on 22.01.2015. As such, he was in service on 01.09.2014** as required in ***EPFO vs Sunil Kumar B. (Supra)***.
- 34.** The petitioner further submits that the said joint option was to be exercised within a period of six months from the 1st day of September 2014. The Hon'ble Supreme Court in Employees' Provident Fund Organisation vs. Sunil Kumar B. (2022 SCC Online SC 1521) reaffirmed the decision in R.C. Gupta and directed that employees who were not allowed to exercise their joint option for higher pension due to **misinterpretation of the cut-off date** must be given a further opportunity to do so.
- 35.** On 29.08.2023 the petitioner duly filled up and submitted joint option form to the EPFO as per the stipulated instructions. The Assistant Provident Fund Commissioner (Higher Wages), EPFO, Regional Office arbitrarily by an order being no. A/015/RO/KOL/WBCAL 1138/F/1572/Pension on Higher Wages/10402/2025/3027 dated 18.06.2025, rejected the application of the petitioner for pension on higher wages ignoring the direction of the Hon'ble Supreme Court of India.
- 36.** Vide the order under challenge dated 18.06.2025, the respondent/EPFO rejected the petitioner's application exercising joint option, citing clause 11 of the trust rules, which does not permit contribution beyond statutory ceiling to the pension fund.
- 37.** The authority considered the Establishment/respondent no. 6 to be an **exempted Establishment** having its own trust rules and being governed



by it. The Calcutta High Court in WPA 10379 of 2021 on 12.12.2023 has also held that the establishment in this case, is **still an exempted one**.

38. A scanned copy of the order is as follows:-

Annexure - P-9 P-9
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कर्मचारी भविष्य निधि संगठन
EMPLOYEES' PROVIDENT FUND ORGANISATION
श्रम एवं रोजगार मंत्रालय, भारत सरकार
Ministry of Labour and Employment
Government of India



ORDER

Order in the matter of application received from Shri Ramesh Kumar Mundra (WB/CAL/1138/F/1572) of M/s ALBERT DAVID LIMITED (LAB.) (WB/CAL/1138/F) complying under the jurisdiction of Regional Office, Kolkata.

Ref: 1. Order dated 04-11-2022 of the Hon'ble Supreme Court of India in the matter of SLP (C) Nos. 8658-8659 of 2019.
2. HO Circular No. Pension/2022/54877/15149 dated 29-12-2022.
3. HO Circular No. Pension/2022/54877/15238 dated 05-01-2023.
4. HO Circular No. Pension/2022/55893/15785 dated 25-01-2023.
5. HO Circular No. Pension/PoHW/23/Circular-26(6)/139610/1648 dated 14-06-2023
6. HO Circular Nos. Pension/Supreme Court/Judgement/HPM/2022/405 and 406 dated 23-04-2023.

Whereas online Joint Options forms has been received from Shri Ramesh Kumar Mundra (WB/CAL/1138/F/1572) for considering and accepting the option filed by them under the proviso of the Employees' Pension Scheme, 1995 for post facto remittance of contributions to the Employees' Pension Fund.

And Whereas in compliance with orders of the Hon'ble Supreme Court in the judgement dated 04-11-2022 in the matter of Special Leave Petition (C) Nos. 8658-8659 of 2019 and directions of the Central Government an online facility was deployed for submitting Joint Option forms from the eligible applicants through their employers.

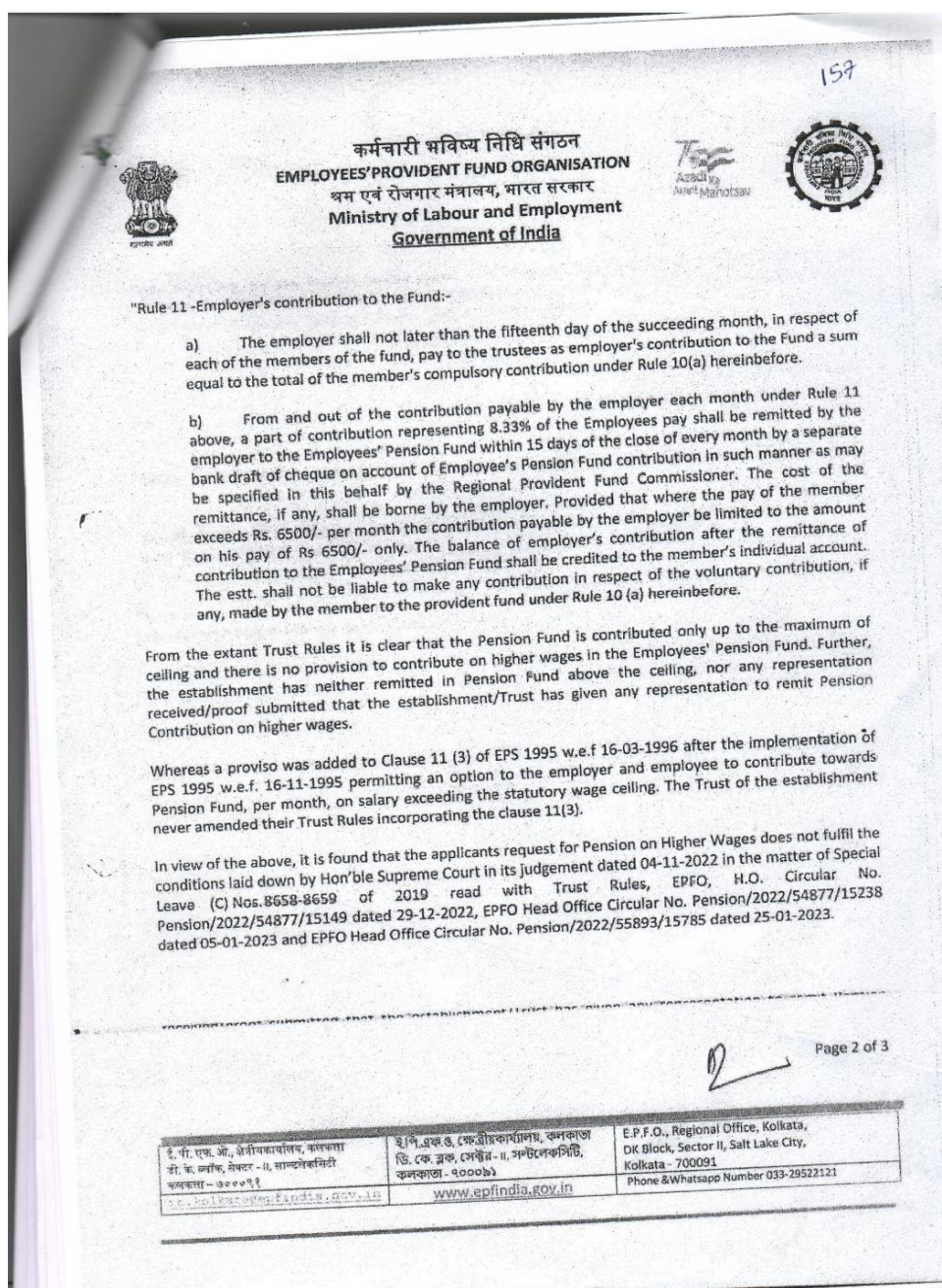
And Whereas, the applicant Shri Ramesh Kumar Mundra (WB/CAL/1138/F/1572) has submitted his application as stated above for grant of pension on the basis of their actual/full monthly wages/salaries higher than that the wages ceiling in terms of the judgement dated 04-11-2022 of the Hon'ble Supreme Court of India in Special Leave Petition (C) Nos. 8658-8659 of 2019.

Whereas the application in respect of Shri Ramesh Kumar Mundra (WB/CAL/1138/F/1572) has been scrutinized and it appears that the above employee was granted Exemption under Para 27 of the Employees Provident Fund Scheme, 1952 w.e.f 01.05.96 and the Trust is maintained in the name of "KOTHARI PRIVIDENT FUND" vide A/c No. M180027 for the period 1996-97 to 2009-10.

Whereas the extant Trust Rule of M/s KOTHARI PRIVIDENT FUND prima facie it is clear that the EPS contribution beyond statutory ceiling to the Pension Fund is not allowed. Rule 11 of the said Trust Rule is reproduced below:

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ई. पी. एफ. ऑ., क्षेत्रीय कार्यालय, कलकत्ता डी. के. ब्लॉक, सेक्टर - II, साल्ट लेक सिटी कलकत्ता - 700091	ई. पी. एफ. ऑ., क्षेत्रीय कार्यालय, कलकत्ता डी. के. ब्लॉक, सेक्टर - II, साल्ट लेक सिटी कलकत्ता - 700091	E.P.F.O., Regional Office, Kolkata, DK Block, Sector II, Salt Lake City, Kolkata - 700091
www.epfindia.gov.in	www.epfindia.gov.in	Phone & Whatsapp Number 033-29522121



39. It appears that the authority completely overlooked Rule 31A of the said trust rules which is as follows:-

Rule 31A

(1)

Statutory provisions to have overriding effect:-

In the absence of any specific provision in these rules of if any provision of these rules is less beneficial than the corresponding provision of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 and the Employees' Provident



Fund Scheme, 1952 framed there under the latter provision shall prevail, mutatis mutandis.

- (2) **Where any provisions of rules conflicts with any provisions of the E.P.F. Scheme, 1952, the latter shall always be deemed to prevail.**
- (3) Question whether a particular rule is beneficial or not shall be decided by the Regional Provident Fund Commissioner whose decision shall be final.
- (4) In case of any change of legal status of the establishment, which has been granted exemption, as a result of merger, demerger, acquisition, sale, amalgamation, formation of a subsidiary, whether wholly owned or not, etc., the exemption granted shall stand revoked and the establishment should promptly report the matter to the RPFC concerned for grant of fresh exemption.
- (5) In case, there are more than one unit/establishment participating in the common P.F. trust which has been granted permission, all the trustees shall be jointly and separately liable/responsible for any default committed by any of the trustees/employer of any of the participating units.

40. The issue in this case being similar to the issue in WPA 15459/2025, the writ applications have been taken up for consideration together.

IV. WPA 15534 of 2025

41. The writ application has been preferred praying for quashing of the impugned order dated 07.02.2025, along with corrigendum dated 21.02.2025, the order dated 14.02.2025 and the final rejection order dated 12.03.2025, thereby denying the petitioners of their rightful pension benefits and directing the respondents to process and approve the joint option forms for higher pension in strict compliance with the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the Employees' Provident Funds Scheme, 1952, the Employees' Pension



Scheme, 1995 and the judgment dated 04.11.2022 passed by the Hon'ble Supreme Court in EPFO vs. Sunil Kumar B. reported in (2023) 12 SCC 701.

42. The petitioners' case is that they are retired employees of Hindustan Cables Limited, respondent no. 6 herein and **were in service on 01.09.2014.**
43. The concerned employer was an exempted organization as per the said Act, due to it having its own provident fund trust, which meant that the concerned employer was exempted from the operation of certain provisions/Schemes under the said Act. However, such exemption continued only till 17.10.2011 when it was withdrawn.
44. The petitioners duly filled up and submitted their joint option forms with the EPFO as per the stipulated instructions.
45. Despite having all the requisite details/documents, the Regional Provident Fund Commissioner (Gr.II), EPFO, Regional Office arbitrarily by an order dated 07.02.2025, (along with corrigendum dated 21.02.2025) and another order dated 14.02.2025, rejected the applications of the ex-employees of the concerned employer including that of the petitioners for pension on higher wages.
46. Aggrieved by the aforesaid orders of rejection, the concerned employer by a letter dated 28.02.2025 clarified as to how the said orders were bad in law and requested the Regional Provident Fund Commissioner (Gr.II), EPFO, Regional Office and the EPFO to reconsider its decision.
47. However, the Regional Provident Fund Commissioner (Gr.II), EPFO, Regional Office by an order dated 12.03.2025, on similar grounds as the



previous rejection orders, rejected the concerned employer's prayer for reconsideration and thus held the ex-employees of the concerned establishment ineligible for pension on higher wages.

48. Report in the form of affidavit along with affidavit-in-opposition and written notes of argument filed by the respondents/EPFO are on record.
49. Exception to the report, affidavit-in-reply and written notes of argument have also been filed by the petitioners herein.
50. The final order of rejection dated 12.03.2025 is as follows:-

ANNEXURE P-11- 139



কর্মচারীভবনসংস্থাপন
কর্মচারীভবন সংস্থা
EMPLOYEES' PROVIDENT FUND ORGANISATION
(শ্রম-এবং-রাজস্ব-মন্ত্রক, ভারতসরকার)
(Ministry of Labour & Employment, Government of India)

কম্পিউটার-প্রোগ্রামিং, সফটওয়্যার-ডেভেলপার, সিস্টেম-ইন্টিগ্রেশন, ইন্টারনেট-সিকিউরিটি, ইন্টারনেট-সিকিউরিটি, ইন্টারনেট-সিকিউরিটি, ইন্টারনেট-সিকিউরিটি - ৭১৩২১৬
Regional Office, Red Cross Road, City Centre, Durgapur, PaschimBurdwan, Pin-713216, (W.B.)
ro.durgapur@epfindia.gov.in Ph: 0343-2544375-78/Fax: 254437478



No. WB/DGP/0001651/Higher Wages/Gr.II/ 332 Date: 12/03/2025

Order in the matter of Joint Option applications received from Members/Pensioners of M/s Hindustan Cables Limited

M/s Hindustan Cables Limited having PF code no. WBDGP0001651000 was having relaxation under Para 79 of EPS Scheme which later withdrawn with effect from 17/10/2011. The establishment stopped functioning in 2017.

Joint option application under para 11(3) of EPS'95 in respect of 413 employees of the said establishment was received in this office directly, as the establishment was closed.

And whereas in compliance with orders of the Hon'ble Supreme Court in A. B. S. the judgment dated 04.11.2022 in the matter of Special Leave Petition (C) Nos.8658-8659 of 2019 and directions of the Central Government, an online facility was deployed for submitting Application forms for Validation of Joint Options from the eligible applicants through their employers.

And whereas, the applicants have submitted the applications as stated above for grant of pension on the basis of their actual/full monthly wages/salaries higher than the statutory wage ceiling in terms of the judgment dated 04.11.2022 of the Hon'ble Supreme Court of India.

This office forwarded the 413 joint option applications to the employer over email on 08.12.2023 for verifying joint option and forwarding wages details in respect of these employees depending on the merits of the case.

Page 1 of 6

P-11
to in paragraph 24
foregoing petition, affirms:
by S. C. Prasad
on the 2nd Day of July 2025
Commissioner of Affidavits
High Court, Appellate Side
Calcutta



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Thereafter the establishment submitted the physical copy of its approval to the joint options in respect of 399 employees(who had exited after 31.08.2014) alongwith the wage details vide its letter dated 29.05.2024.

Subsequently, this office vide letter no. WB/DGP/1651/Higher Wages/Gr II/27 dated 04.06.2024 called for the Trust Rules of the establishment, among others, to examine their eligibility for Pension on Higher Wages as per the extant EPFO Head Office guidelines. :

The establishment vide its letter dated 12.09.2024 submitted the Trust Rules, which pertain to the year 1979. The Trust Rules available in our records pertains to 1985 and contains similar provisions in Para 15. On examining the Trust Rules of Hindustan Cables Employees Provident Fund, the Para 15 (a), (b), (c) of the Trust Rule of Hindustan Cables Employees Provident Fund, states that each member whose salary & wages does not exceed Rs. 1600/- per month shall contribute to the Fund every month a sum equal to 8% of his Salary & Wages (hereinafter called the Compulsory Contribution). In addition to the compulsory contribution @8% each Member may contribute any sum voluntarily to the Fund every month. There will, however, be no matching contribution from the employers for such corresponding voluntary contribution by the Members.

The above clause in the Trust Rules submitted by the establishment, renders the members of the Trust ineligible for contribution beyond statutory wage ceiling. The same was intimated to the establishment vide this office letter No.WB/DGP/1651/Higher Wages/A/c. Gr.II/117 dated 26.12.2024, further calling for supporting documents in support of eligibility along with submission of updated Trust Rules.

the establishment letter dated 28.01.2025 submitted another set of Trust Rules of Hindustan Cables Employees' Provident Fund along with its Deed of variation dated 09.02.1990.

The establishment was requested to confirm whether any updation of Trust Rules was done after 15.11.1995 i.e. after introduction of Employees Pension



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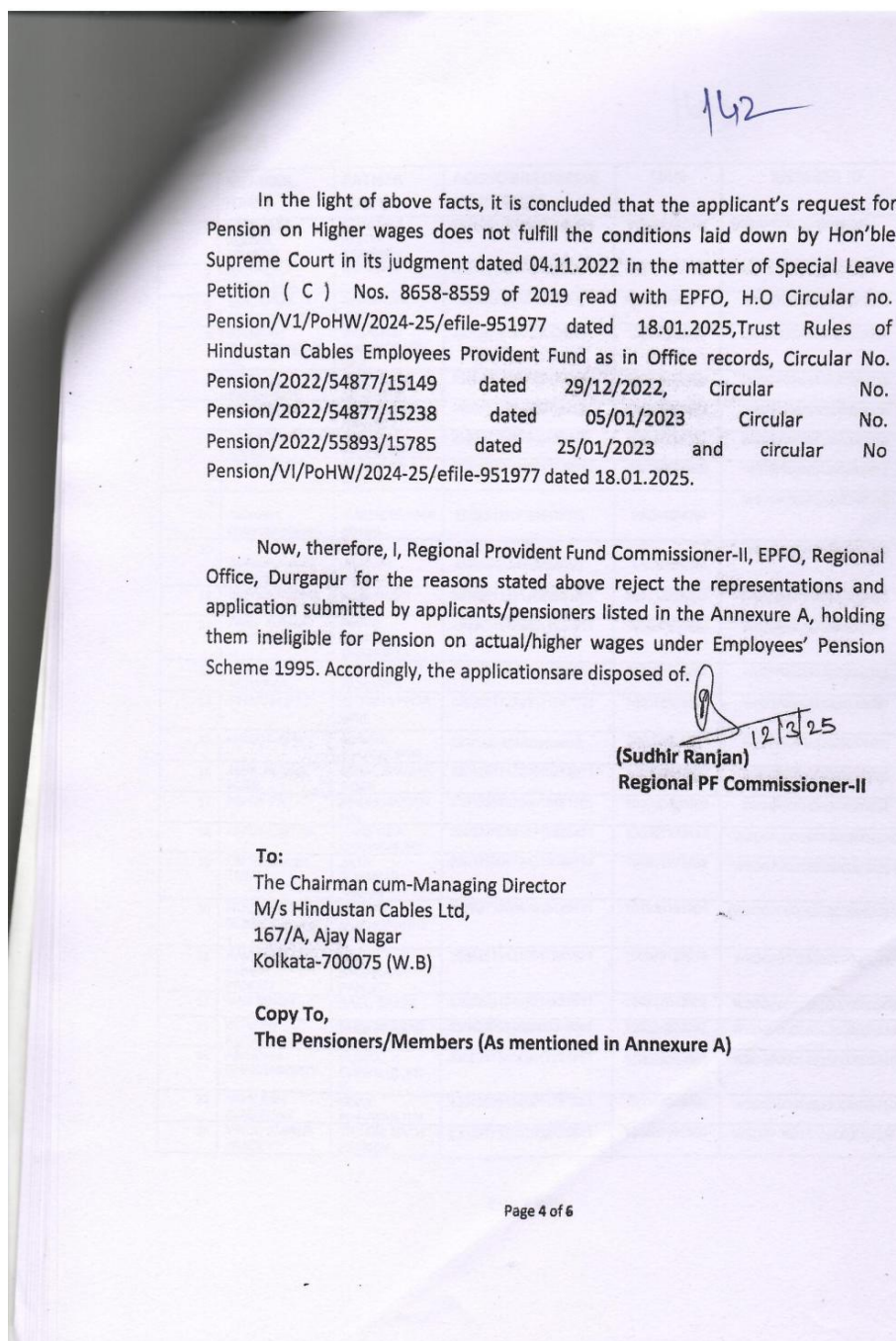
scheme 1995. In response thereof the establishment submitted vide its letter dated 05.02.2025, that Trust Rules were last updated on 09.02.1990.

The Deed of Variation of Trust Rules submitted by the establishment vide its letter dated 28.01.2025 could not be relied upon as the establishment could not establish whether the same had the approval of RPFC. An opportunity in this regards was also given to the establishment vide email dated 03.02.2025. But the establishment failed to submit any such approval in this regards.

So this office was constrained to rely upon the Hindustan Cables Employees Provident Fund Trust Rules of 1985 available on record. These Trust Rule contains a limiting clause under Para 15 (a),(b),(c) regarding wages on which contribution was to be paid, thereby rendering the employees of Hindustan Cables Limited, ineligible for exercising the option under erstwhile Para 11(3) or the present para 11(4) of the Employee's Pension Scheme 1995.

The Employees' Provident Funds Organisation, upon examination of various issues involved had issued the circular Pension/VI/PoHW/2024-25/efile-951977/ dated 18.01.2025, wherein it has been held that *the eligibility for (Pension on Higher Wages) PoHW cases should be determined on the basis of the extant trust rules of the exempted establishments, in consonance with the directions of Hon'ble Supreme Court in Sunil Kumar case. Further, in case the Trust rules are amended post decision dated 04.11.2022 in Sunil Kumar Case, applications of members of such Trusts may not be considered.*

Further, the employees of the establishment could not be treated differently and categorized in two different sets of staff and officers (as intimated by the establishment) for the purpose of Employees Provident Funds & Miscellaneous Provisions Act 1952 and its Schemes, as till 16/10/2011, the establishment was having relaxation under Para 79 of EPF Scheme, for the establishment as a whole and not for any specific category of employees. This relaxation under Para 79 of EPF Scheme was later withdrawn w.e.f. 17/10/2011.



51. The respondent no. 6/Establishment closed down in the year 2017.
52. All the petitioners were in service on 01.09.2014.
53. The issue in this case being similar to the issue in WPA 15459/2025, the writ applications have been taken up for consideration together.

**V. WPA 11574 of 2025**

- 54.** The writ application has been preferred praying for quashing of the impugned order dated March 5, 2025 and February 25, 2025, and all actions taken pursuant thereto, as being arbitrary, ultra vires, and in violation of statutory provisions, thereby denying the petitioners and other similarly situated persons their rightful pension benefits and direction, quashing the impugned clarification dated January 18, 2025, and all actions taken pursuant thereto, as being arbitrary, ultra vires, and in violation of statutory provisions, thereby denying the petitioners and other similarly situated persons their rightful pension benefits and directing the respondents to process and approve the joint option forms for higher pension in strict compliance with the statutory provisions of Sections 17 and 27A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, and the Employees' Provident Funds Scheme, 1952.
- 55.** The petitioners' case is that they are retired employees of M/s IISCO Steel Plant under the Steel Authority of India Limited (SAIL). M/s. IISCO Steel Plant and SAIL are exempted organization in terms of the Employees Provident Fund Act, 1952 inasmuch as they have their own provident fund Trust.
- 56. All the petitioners were in service on 01.09.2014.**
- 57.** The petitioners joint option applications were rejected by the respondent/EPFO vide the impugned order under challenge.



58. Written notes of argument has been filed by the Establishment/respondent no. 4 and affidavit-in-opposition by the respondent nos. 2 to 3.

59. The order of rejection dated 25.02.2025 is as follows:-

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कर्मचारीमविष्य निधि संगठन
EMPLOYEES' PROVIDENT FUND ORGANISATION
श्रम व रोजगारमंत्रालय, भारत सरकार
(Ministry of Labour & Employment: Government of India)
क्षेत्रीय कार्यालय, रेडक्रॉसरोड, सिटीसेंटर, दुर्गापुर, बर्दवान- 713216
Regional Office, Red Cross Road, City Centre, Durgapur Dist: Pashchim Burdwan, Pin-713216, (W.B.)
www.epfindia.gov.in, durgapur@epfindia.gov.in Ph. 0343-2544375-78

Date 25/02/2025

No.EPF/WB/DGP/POHW/161/4626

ORDER

The entitlement to higher pension under the proviso to paragraph 11(3) of the Employees' Pension Scheme, 1995 prior to its amendment with effect from 01.09.2014, was decided by the Hon'ble Supreme Court in its judgment dated 04.11.2022 in Special Leave Petition © No. 8658 - 8659 of 2019 Employees' Provident Funds Organisation v. Sunil Kumar B. and others. The order of the Hon'ble Court is contained in the para 44 of the judgement, which is extracted below verbatim:-

" 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 crystallized 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 cutoff 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 pre-amended paragraph 11(3) as also the amended paragraph 11(4) of the pension

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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 cut-off 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 pre-amendment 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 suspended 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) (pre-amendment) 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.1917-1918 of 2018 and contempt Petition [C] Nos. 619-620 of 2019 in Civil Appeal Nos. 10013-10014 of 2016 are disposed of in the above terms."

1. The above matter was referred to the Central Government for issuing directions. The Central Government vide letter dated 22.12.2022 has directed that requisite action may be taken by EPFO to implement the



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directions contained in Para 44(ix) of the judgement dated 04.11.2022 of the Hon'ble Supreme Court within the stipulated time lines.

2. EPFO, Head Office vide its circulars No. Pension/2022/54877/15149 dated 29.12.2022, No. Pension/2022/54877/15238 dated 05.01.2023, No. Pension/2022/55893/15785 dated 25.01.2023 and No. Pension/2022/56259/16541 dated 20.02.2023 had directed the field offices to implement the directions contained in Para 44 of the judgement dated 04.11.2022 of the Hon'ble Supreme Court within the stipulated timeline.
3. EPFO, Head Office deployed an online facility and the facility was available upto 11.07.2023 for receipt of Application forms for validation of joint options from the employees and employers who desired to apply for Pension on Higher Wages.

The establishment had submitted the Model Rules of IISCO Steel Plant in the name of (i) "THE INDIAN IRON & STEEL CO. LTD. WORKS PROVIDENT FUND" [PF TRUST OF "SAIL-IISCO STEEL PLANT"] and (ii) THE INDIAN IRON & STEEL CO LTD, PROVIDENT INSTITUTION" [PF TRUST OF "SAIL-IISCO STEEL PLANT"] Provident Fund, IISCO Steel Plant vide letter dated 22.02.2011.

The relevant Para 11(b) of the said Trust Rules is enumerated below: -

11(b):-From and out of the contribution payable by the employer each month under Rule 11 above, a part of contribution representing 8.33% of the Employees pay shall be remitted by the employer to the Employee's Pension Fund within 15 days of the close of every month by a separate bank draft of cheque on account of Employee's Pension Fund contribution in such manner as may be specified in this behalf by the Regional Provident Fund Commissioner. The cost of the remittance, if any, shall be borne by the employer. **Provided that** where the pay of the member exceeds Rs. 6500/- per month the contribution payable by the employer be limited to the amount on his pay of Rs 6500/- only. The balance of employer's contribution after the remittance of contribution to the Employees' Pension Fund shall be credited to the member's individual account. The estt. shall not be liable to make any contribution in respect of the voluntary contribution, if any, made by the member to the provident fund under Rule 10(a) hereinbefore.



4. The EPFO Head Office, New Delhi issued clarification vide letter No: **149**
Pension/V1/PoHW/2024-25/efile-951977/ dated 18.01.2025, that: -

"The eligibility for PoHW cases should be determined on the basis of the extant trust rules of the exempted establishment, in consonance with the directions of Hon'ble Supreme Court in Sunil Kumar case. Further, in case Trust rules are amended post decision dated 04.11.2022 in Sunil Kumar Case applications of members of such Trusts may not be considered".

5. It is evident that the above mentioned trust rule of the establishment restricts the contribution to Employees Pension Scheme to that on the statutory ceiling. The same was intimated to the establishment vide letter no. Ref. No.- WB/RO/DGP/PoHW/9528/4146 dated 18.02.2025.

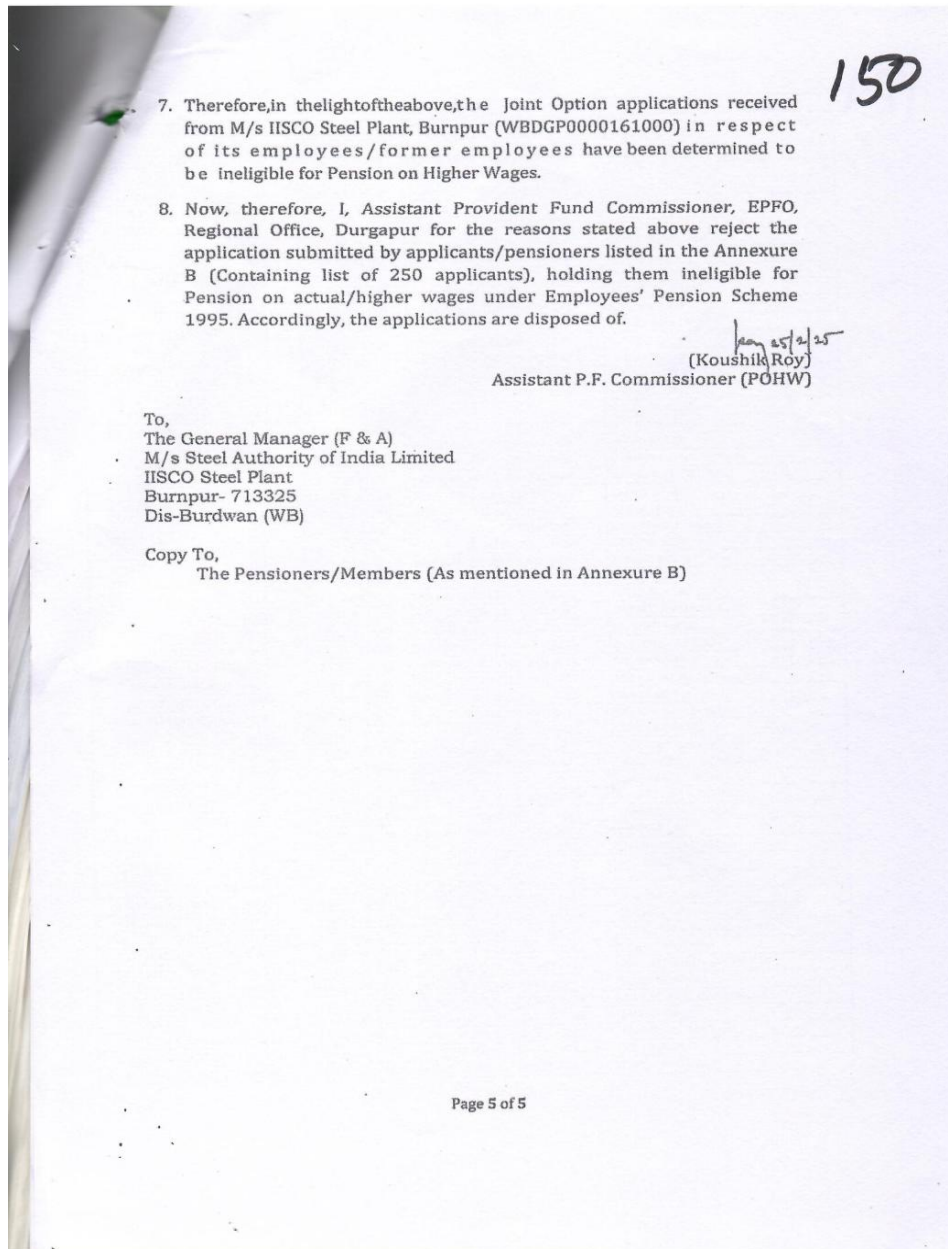
6. In this regard, a clarification was sought from IISCO Steel Plant, Burnpur through mail vide letter no. WB/RO/DGP/PoHW/161/4277 dated 19.02.2025.

In response of that the establishment clarified via mail dated 24.02.2025 stating that

- (a) employer's contribution was remitted up to the statutory limit to the Pension Fund and over and above of statutory limit of employer's contribution was remitted to the Provident Fund.
- (b) Further the establishment has given reference to rule 31A of the trust rule which provides for statutory provisions to have over reading effect.

In this regard the followings are observed: -

- (a) The provision laid down in rule 11(b) categorically states that where the pay of the member exceeded Rs. 6500/- per month, the contribution payable by the employer to the Pension Fund be limited to the amount of existing pay of Rs. 6500/- only. The balance of employer's contribution after remittance of contribution to the Employees' Pension Fund shall be credited to the member's individual account. Therefore, this provision is applicable to all in general.
- (b) With respect to Rule 31A of the Trust Rule, it is stated that main provision in trust rule as reflected in rule 11(b) will prevail. Wherever Trust Rule contravene statutory Act and Scheme, statutory provision will prevail. But here it is not the case of contravention, rather it relates to the issue of exercising option, where the Trust Rule clearly debarred employees to contribute on actual salary to Pension Fund. Hence, the justification given by the employer is not acceptable.



60. The issue in this case being similar to the issue in WPA 15459/2025, the writ applications have been taken up for consideration together.

VI. WPA 16097 of 2025

61. The writ application has been preferred praying for direction upon the respondents to release higher pension as well as arrear higher pension to the petitioner no. 2, Gopal Chandra Bhowmik and petitioner no. 3, Ramgopal Jana and arrear higher pension to other six petitioners on the basis of actual salary in accordance with the Employees' Pension Scheme



1995 and in accordance with the judgment of the Hon'ble Supreme Court reported in 2022 SCC Online SC 1521.

- 62.** The petitioners' case is that the petitioners are retired employees of Contai Cooperative Bank Ltd. an Urban Cooperative Bank.
- 63.** The respondent no. 5, namely Contai Cooperative Bank Ltd. **an exempted category organization under Section 17 of the Employees' Provident Fund and Miscellaneous Provision Act 1952 deducted towards P.F. from employer and employees and deposited by creating trust with due permission from employees provident fund organization.**
- 64.** All the petitioners are retired employees of an exempted establishment of respondent no. 5 and all **the petitioners are constituted to be in service as on 1st September, 2014.**
- 65.** The petitioner no. 1 submitted before the authority, the joint option form under para 11(3) of Employees Provident Fund Scheme 1995, on 15.06.2023 along with permission certificate in lieu of para 26(6) of EPF Scheme, 1952, joint undertakings by employer and employee along with PPO before the authority and after satisfying the case of the petitioner no. 1 for entitlement of higher pension, the authority concerned issued a demand letter in favour of the petitioner no. 1 by demand letter no. 170420248072829 dated 18.04.2024 and the petitioner no. 1 deposited the entire demanded amount of Rs.14,26,544.00/- on 22.04.2024 in consonance with the judgment delivered by Hon'ble Supreme Court reported in 2022 SCC Online SC 1521.



- 66.** The respondent authorities in spite of acceptance of demanded amount long before one year failed to disburse the higher pension as well as arrear higher pension to the petitioner no. 2, Gopal Chandra Bhowmik and petitioner no. 3, Ramgopal Jana and arrear higher pension to other six petitioners and as such all the petitioners by representation dated 07.03.2025 requested the authority to release the higher pension/arrear higher pension but in spite of receipt of the said representation dated 07.03.2025, the respondent authority failed to disburse the higher pension/arrear higher pension.
- 67.** After the failure on the part of the respondent authorities to release higher pension/arrear higher pension, all the petitioners filed separate representation before the authority on 15.05.2025 for release of higher pension/arrear higher pension, but the authority failed to redress the grievance of the petitioners.
- 68. The petitioners now claim parity as per the judgment dated 16.05.2023 passed in WPA 2243 of 2020 of a Single Bench of this Court, which has been affirmed by the Division Bench in MAT 1916 of 2023.**
- 69.** It appears from the judgment in WPA 2243 of 2020, that the issue in the present writ application was not before the said Court in WPA 2243 of 2020.
- 70.** The issue raised by EPFO being that employees of an exempted establishment could not get the benefit of the judgment in **Sunil Kumar B. (Supra)** if the trust rules did not permit the same and any amendment



to that extent made after the judgment in **Sunil Kumar B. (Supra)** was not acceptable to the EPFO.

- 71.** This is the issue which is being considered by this Court in this bunch of writ petitions. As such judgment in WPA 2243 of 2020 is not applicable in this case.
- 72.** The petitioners humbly submit that by 97th amendment of the Constitution Part IX-B containing Article 243-ZH to Article 243-ZT was incorporated by constitutional 97th Amendment Act, 2011 with effect from 15th February, 2012 and the Cooperative Societies has been given the Constitutional status governed under entry no. 32 of list-II of 7th scheduled read with Article 245 of the Constitution of India.
- 73.** Report in the form of affidavit filed by the respondents/EPFO and exception thereto filed by the petitioners are on record.
- 74.** The petitioners have also filed their written notes of argument.
- 75.** The issue in this case being similar to the issue in WPA 15459/2025, the writ applications have been taken up for consideration together.

VII. WPA 18723 of 2025

- 76.** The petitioners have challenged a letter dated March 19, 2025 issued by the respondents/EPFO authorities and pray for a direction, directing the respondents to process and approve the joint option forms for higher pension in strict compliance with the statutory provisions of Sections 17 and 27A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, and the Employees' Provident Fund Scheme, 1952.



77. The petitioners' case is that they are retired employees of the Bharat Petroleum Corporation Limited (BPCL). BPCL is an exempted organization in terms of the Employees Provident Fund Act, 1952.

78. The petitioners were all in service on 01.09.2014.

79. Petitioners state that all the petitioners and other similarly situated persons filled up and submitted joint option forms for higher pension. In terms of the said option form individual demand notices were issued to the petitioners for deposit and/or transfer of contribution with interest into pension fund. All of the petitioners and other similarly situated persons deposited the amount indicated in their respective demand notices.

80. Petitioners state that it is under such a situation when the Provident Fund Authorities issued the impugned letter dated March 19, 2025 by which the options exercised by the petitioners and other similarly situated persons were rejected on the ground that BPCL's provident fund trust rules restrict pension contributions to the statutory ceiling and do not allow contributions on higher wages.

81. The order dated 19.03.2025 of the Employees' Provident Fund

Organization reads as follows:-

".....Whereas in the present case, as per the extant Trust Rules none of the members contributed in Pension Fund on Higher Wages. Further, the establishment has not contributed in Pension Fund on Higher Wages.

And Whereas by consenting to restrict EPS contribution upto statutory wage ceiling, Employees/Employer considered larger benefits by way of retention of accumulation in Provident Fund. In this regard, the establishment has not contributed on the higher wages in EPS, 1995 since 16.03.1996 (on insertion of provision of 11(3) under EPS' 95) or date of joining,



whichever is later. It was the conscious decision of the establishment to limit the EPS contribution on the statutory ceiling limit.

It is important to mention that employees of the trust were well aware of the provisions of the Trust rules that restrict the contribution on statutory wage ceiling. Further, it is an admitted fact that the contribution in Employees' Pension Scheme 1995 in respect of an applicant has been received on the prevailing wage ceiling limit and not on actual wages.

The Trust rules restrict the Pension contribution up to statutory ceiling limit. That means employer/employee weighed large EPF benefits vis-à-vis benefits under EPS Scheme.

Now, therefore, I, Krishna Shanker, Regional Provident Fund Commissioner-I, EPFO, Regional Office, Kolkata for the reasons stated above reject the representations and applications (Joint Options) submitted by the applicants/pensioners as at (Annexure I & II enclosed) as being not eligible for Pension on actual/higher wages under Employees' Pension Scheme, 1995.

**Sd/-
Regional P F Commissioner
Regional Office, Kolkata."**

- 82.** Written notes filed by the respondents/EPFO is on record.
- 83.** The issue in this case being similar to the issue in WPA 15459/2025, the writ applications have been taken up for consideration together.

VIII. WPA 11151 of 2025

- 84.** The petitioners have prayed for quashing of an impugned order dated February 27, 2025 issued by the respondents/EPFO authorities and directing the respondents to process and approve the joint option forms for higher pension in strict compliance with the statutory provisions of Section 17 and 27A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, and the Employees' Provident Funds Scheme, 1952 and to extend the benefits of higher pension to the



petitioners and other similarly situated persons, in accordance with binding judicial precedents, including the Hon'ble Supreme Court's decision in Employees' Provident Fund Organization & Anr. vs. Sunil Kumar B. & Ors. and to refrain from imposing any arbitrary restrictions on such entitlement.

85. The petitioners' case is that they are retired employees of M/s Durgapur Steel Plant under the Steel Authority of India Limited (SAIL). M/s Durgapur Steel Plant and SAIL are exempted organization in terms of the Employees Provident Fund Act, 1952.

86. All the petitioners were in service on 01.09.2014.

87. Petitioners state that all of the petitioners and other similarly situated persons filled up and submitted joint option forms for higher pension. One Swapan Kumar Chattopadhyay filled up Joint Option Form on April 16, 2023. However, the respondent Provident Fund Authorities sat upon the said option form and neither accepted nor rejected the same.

88. Petitioners state that subsequently demand notices were issued on different dates in 2024 by the provident fund authorities calling upon the petitioners to make payment for grant of higher pension in terms of the judgment of the Hon'ble Supreme Court. Therefore, the options exercised by the petitioners were duly accepted by the Provident Fund Authorities. In fact the petitioners were also sanctioned higher pension in terms of the judgment of the Hon'ble Supreme Court.

89. Suddenly by an order dated February 27, 2025, the Regional Provident Fund Commissioner-II, EPFO, Regional Office, Durgapur, issued the impugned order rejecting the joint option applications of 289 applicants



from M/s Durgapur Steel Plant, citing ineligibility for pension on higher wages on the ground that the Trust Rules of the Provident Fund Trust contained a limiting clause under Rule 11, which restricted the employer's contribution to the Employees' Pension Scheme to the statutory wage ceiling.

- 90.** The relevant extract of the impugned order dated February 27, 2025 is as follows:-

".....5. It is evident that the above mentioned proviso to Rule 11(b) of the Model Rules (Revised) of the Durgapur Steel Plant Provident Fund, Durgapur Steel Plant, that it provides for restricting the contribution to Employees Pension Scheme to that on the statutory wage ceiling. The same was intimated to the establishment vide letter no. Ref.No.-WB/RO/DGP/PoHW/9528/4264 dated 19.02.2025, further intimating it that the said limiting clause under proviso to rule 11(b) read with EPFO Head Office letter no: Pension/VI/PoHW/2024-25/efile-951977/dated 18.01.2025 renders its employees/former employees ineligible for Pension on Higher/Actual Wages.

6. In response the establishment has in its various correspondences submitted that the Trust Rules submitted by the establishment vide its email dated 14.02.2025 is the existing Trust Rules. However, the Trust Rules being quoted by the establishment is in the name of Hindustan Steel Limited, which shows that the Trust Rules are quite old. On the other hand, the Model Rules (Revised) of the Durgapur Steel Plant Provident Fund submitted on 05.02.2025, bears the name of Durgapur Steel Plant, which has been granted exemption under Sec.17(1)(a) of EPF & MP Act. Consequently, this office is constrained to rely on the Model Rules (Revised) of the Durgapur Steel Plant Provident Fund, Durgapur Steel Plant submitted by the establishment on 05.02.2025, as the extant Trust Rules of the establishment.

7. Therefore, in the light of the above, the Joint Option applications received from M/s Durgapur Steel Plant (WBDGP0009528000) in respect of its employees/former employees have been determined to be ineligible for Pension on Higher Wages.



8. Now, therefore, I, Regional Provident Fund Commissioner-II, EPFO, Regional Office, Durgapur for the reasons stated above reject the application submitted by applicants/pensioners listed in the Annexure A (containing list of 289 applicants), holding them ineligible for Pension on actual/higher wages under Employees' Pension Scheme 1995.

9. In view of the above, the Demand Notice issued to the applicants/pensioners listed in the Annexure A are void-ab-initio and therefore stand cancelled.

Sd/

Regional P.F. Commissioner-II"

91. Affidavit-in-opposition filed by the respondents no. 2 and 3 is on record.
92. The issue in this case being similar to the issue in WPA 15459/2025, the writ applications have been taken up for consideration together.

IX. WPA 11226 of 2025

93. The petitioners have prayed for quashing the impugned letter dated March 19, 2025 and directing the respondents to process and approve the joint option forms for higher pension in strict compliance with the statutory provisions of Sections 17 and 27A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, and the Employees' Provident Funds Scheme, 1952 and to extend the benefits of higher pension to the petitioners and other similarly situated persons, in accordance with binding judicial precedents, including the Hon'ble Supreme Court's decision in **Employees' Provident Fund Organization & Anr. vs. Sunil Kumar B. & Ors.** and to refrain from imposing any arbitrary restrictions on such entitlement.
94. The petitioners' case is that they are retired employees of the Bharat Petroleum Corporation Limited (BPCL). BPCL is an exempted organization in terms of the Employees Provident Fund Act, 1952.



95. All the petitioners were in service on 01.09.2014.

96. Petitioners state that all of the petitioners and other similarly situated persons filled up and submitted joint option forms for higher pension. In terms of the said option form individual demand notices were issued to the petitioners for deposit and/or transfer of contribution with interest into pension fund. All of the petitioners and other similarly situated persons deposited the amount indicated in their respective demand notices. One Pradip Kumar Ghosh filled up Joint Option Form on August 18, 2023. In response demand notice was issued on March 21, 2024 and the said Pradip Kumar Ghosh deposited the sum demanded with interest on April 23, 2024.

97. Petitioners state that in fact 47 persons of the present petitioners and other similarly situated persons also received arrears of higher pensions subsequent to the deposit of their contribution for higher pension and all of the petitioners and other similarly situated persons received higher pension. Therefore, the respondent authorities are deemed to have accepted the said options executed jointly by the petitioners and other similarly situated persons and their employer.

98. The Provident Fund Authorities then issued the impugned letter dated March 19, 2025 by which the options exercised by the petitioners and other similarly situated persons were rejected on the ground that BPCL's provident fund trust rules restrict pension contributions to the statutory ceiling and do not allow contributions on higher wages.

99. The relevant extract of the impugned order dated 19.03.2025 is as follows:-



“.....Whereas in the present case, as per the extant Trust Rules none of the members contributed in Pension Fund on Higher Wages. Further, the establishment has not contributed in Pension Fund on Higher Wages.

And Whereas by consenting to restrict EPS contribution upto statutory wage ceiling, Employees/Employer considered larger benefits by way of retention of accumulation of Provident Fund. In this regard, the establishment has not contributed on the higher wages in EPS, 1995 since 16.03.1996 (on insertion of provision of 11(3) under EPS' 95) or date of joining, whichever is later. It was the conscious decision of the establishment to limit the EPS contribution on the statutory ceiling limit.

It is important to mention that employees of the trust were well aware of the provisions of the Trust rules that restrict the contribution on statutory wage ceiling. Further, it is an admitted fact that the contribution in Employees' Pension Scheme 1995 in respect of an applicant has been received on the prevailing wage ceiling limit and not on actual wages.

The Trust rules restrict the Pension contribution up to statutory ceiling limit. That means employer/employee weighed large EPF benefits vis-à-vis benefits under EPS Scheme.

Now, therefore, I, Krishna Shanker, Regional Provident Fund Commissioner-I, EPFO, Regional Office, Kolkata for the reasons stated above reject the representations and applications (Joint Options) submitted by the applicants/pensioners as at (Annexure I & II enclosed) as being not eligible for Pension on actual/higher wages under Employees' Pension Scheme, 1995.

**Sd/-
Regional P F Commissioner I
Regional Office, Kolkata”**

- 100.** Affidavit-in-opposition filed by the respondent nos. 3 and 4/EPFO is on record.
- 101.** The issue in this case being similar to the issue in WPA 15459/2025, the writ applications have been taken up for consideration together.

**X. WPA 7700 of 2025**

- 102.** The writ application has been preferred praying for direction upon the respondents/EPFO to process and approve the joint option forms for higher pension in strict compliance with the statutory provisions of Section 17 and 27A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, and the Employees' Provident Funds Scheme, 1952, including the Hon'ble Supreme Court's decision in Employees' Provident Fund Organization & Anr. vs. Sunil Kumar B. & Ors. and praying for quashing of the order/letter dated March 19, 2025.
- 103.** The petitioners' case is that they are retired employees of the Bharat Petroleum Corporation Limited (BPCL). BPCL is an exempted organization in terms of the Employees Provident Fund Act, 1952.
- 104. All the petitioners were in service on 01.09.2014.**
- 105.** Petitioners state that all of the petitioners and other similarly situated persons filled up and submitted joint option forms for higher pension. In terms of the said option form individual demand notices were issued to the petitioners for deposit and/or transfer of contribution with interest into pension fund. All of the petitioners and other similarly situated persons deposited the amount indicated in their respective demand notices. For example, one Gouri Shankar Sukul filled up Joint Option form on April 10, 2023. In response demand notice was issued on March 21, 2024 and the said Gouri Shankar Sukul deposited the sum demanded with interest on May 14, 2024.
- 106.** Petitioners state that in fact 52 persons out of the present petitioners and other similarly situated persons also received arrears of higher pensions



subsequent to the deposit of their contribution for higher pension and all of the petitioners and other similarly situated persons were receiving higher pension.

107. Petitioners state that it is under such a situation when the Provident Fund authorities issued the impugned letter dated March 19, 2025 by which the options exercised by the petitioners and other similarly situated persons rejected on the ground that BPCL's provident fund trust rules restrict pension contributions to the statutory ceiling and do not allow contributions on higher wages.

108. Supplementary affidavit filed by the respondent nos. 2 and 3/EPO and written notes filed by the petitioners are taken for consideration.

109. The relevant extract of the order dated 19.03.2025 is as follows:-

".....Whereas in the present case, as per the extant Trust Rules none of the members contributed in Pension Fund on Higher Wages. Further, the establishment has not contributed in Pension Fund on Higher Wages.

And Whereas by consenting to restrict EPS contribution upto statutory wage ceiling, Employees/Employer considered larger benefits by way of retention of accumulation of Provident Fund. In this regard, the establishment has not contributed on the higher wages in EPS, 1995 since 16.03.1996 (on insertion of provision of 11(3) under EPS' 95) or date of joining, whichever is later. It was the conscious decision of the establishment to limit the EPS contribution on the statutory ceiling limit.

It is important to mention that employees of the trust were well aware of the provisions of the Trust rules that restrict the contribution on statutory wage ceiling. Further, it is an admitted fact that the contribution in Employees' Pension Scheme 1995 in respect of an applicant has been received on the prevailing wage ceiling limit and not on actual wages.

The Trust rules restrict the Pension contribution up to statutory ceiling limit. That means employer/employee



weighed large EPF benefits vis-à-vis benefits under EPS Scheme.

Now, therefore, I, Krishna Shanker, Regional Provident Fund Commissioner-I, EPFO, Regional Office, Kolkata for the reasons stated above reject the representations and applications (Joint Options) submitted by the applicants/pensioners as at (Annexure I & II enclosed) as being not eligible for Pension on actual/higher wages under Employees' Pension Scheme, 1995.

**Sd/-
Regional P F Commissioner I
Regional Office, Kolkata.”**

- 110.** The issue in this case being similar to the issue in WPA 15459/2025, the writ applications have been taken up for consideration together.

XI. WPA 11349 of 2025

- 111.** The petitioners have challenged an order dated 25th February, 2025, 18th January, 2018 and praying for direction upon the respondents to process and approve the joint option forms for higher pension in strict compliance with the statutory provisions of Sections 17 and 27A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the Employees' Provident Fund Scheme, 1952 and directing the respondents to extend the benefits of higher pension to the petitioners and other similarly situated persons, in accordance with binding judicial precedents, including the Hon'ble Supreme Court's decision in Employees' Provident Fund Organization & Anr. vs. Sunil Kumar B. & Ors. and to refrain from imposing any arbitrary restrictions on such entitlement.
- 112.** The petitioners' case is that they are retired employees of M/s Durgapur Steel Plant under the Steel Authority of India Limited (SAIL). M/s



Durgapur Steel Plant and SAIL are exempted organization in terms of the Employees Provident Fund Act, 1952.

113. It is stated that the petitioners were in service on 01.09.2014.

114. Petitioners state that all of the petitioners and other similarly situated persons filled up and submitted joint option forms for higher pension. One Subrata Kumar Rakshit filled up Joint Option Form on April 16, 2023. However, the respondent Provident Fund Authorities neither accepted nor rejected the same.

115. Suddenly by an order dated February 25, 2025, the Regional Provident Fund Commissioner-II, EPFO, Regional Office, Durgapur, issued the impugned order rejecting the joint option applications of 256 applicants from M/s Durgapur Steel Plant, citing ineligibility for pension on higher wages on the ground that the Trust Rules of the Provident Fund Trust contained a limiting clause under Rule 11, which restricted the employer's contribution to the Employees' pension Scheme to the statutory wages ceiling of Rs.6,500/- per month.

116. The relevant extract of the order dated 25.02.2025 is as follows:-

".....5. It is evident that the above mentioned proviso to Rule 11(b) of the Model Rules (Revised) of the Durgapur Steel Plant Provident Fund, Durgapur Steel Plant, that it provides for restricting the contribution to Employees Pension Scheme to that on the statutory wage ceiling.

The same was intimated to the establishment vide letter no. Ref.No.-WB/RO/DGP/PoHW/9528/4264 dated 19.02.2025, further intimating it that the said limiting clause under proviso to rule 11(b) read with EPFO Head Office letter no: Pension/VI/PoHW/2024-25/efile-951977/dated 18.01.2025 renders its



employees/former employees ineligible for Pension on Higher/Actual Wages.

6. In response the establishment has in its various correspondences submitted that the Trust Rules submitted by the establishment vide its email dated 14.02.2025 is the existing Trust Rules. However, the Trust Rules being quoted by the establishment is in the name of Hindustan Steel Limited, which shows that the Trust Rules are quite old. On the other hand, the Model Rules (Revised) of the Durgapur Steel Plant Provident Fund submitted on 05.02.2025, bears the name of Duragapur Steel Plant, which has been granted exemption under Sec.17(1)(a) of EPF & MP Act. Consequently, this office is constrained to rely on the Model Rules (Revised) of the Durgapur Steel Plant Provident Fund, Durgapur Steel Plant submitted by the establishment on 05.02.2025, as the extant Trust Rules of the establishment.

7. Therefore, in the light of the above, the Joint Option applications received from M/s Durgapur Steel Plant (WBDGP0009528000) in respect of its employees/former employees have been determined to be ineligible for Pension on Higher Wages.

8. Now, therefore, I, Regional Provident Fund Commissioner-II, EPFO, Regional Office, Durgapur for the reasons stated above reject the application submitted by applicants/pensioners listed in the Annexure A (containing list of 256 applicants), holding them ineligible for Pension on actual/higher wages under Employees' Pension Scheme 1995. Accordingly, the applications are disposed of.

Sd/-

Regional P. F. Commissioner II.”

117. Affidavit-in-opposition filed by the respondent nos. 2 and 3 are on record.

118. The issue in this case being similar to the issue in WPA 15459/2025, the writ applications have been taken up for consideration together.

**XII. WPA 11092 of 2025**

- 119.** The petitioners have challenged an order dated February 27, 2025 and an order dated January 18, 2025 and prayed for direction upon the respondents to process and approve the joint option forms for higher pension in strict compliance with the statutory provisions of Sections 17 and 27A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the Employees' Provident Funds Scheme, 1952 and directing the respondents to extend the benefits of higher pension to the petitioners and other similarly situated persons, in accordance with binding judicial precedents, including the Hon'ble Supreme Court's decision in Employees' Provident Fund Organization & Anr. vs. Sunil Kumar B. & Ors. and to refrain from imposing any arbitrary restrictions on such entitlement.
- 120.** The petitioners' case is that they are retired employees of M/s Alloy Steel Plant under the Steel Authority of India Limited (SAIL). M/s Alloy Steel Plant and SAIL are exempted organization in terms of the Employees Provident Fund Act, 1952 inasmuch as they have their own provident fund trust by the name of Sail Alloy Steel Plant Provident Fund Trust. Petitioners are entitled to Higher Pension from the Employees Pension Scheme, 1995 in terms of the law laid down by the Hon'ble Supreme Court. However, their joint option for higher pension has been rejected on arbitrary ground that the provident fund trust rules of the company does not permit contribution more than the ceiling limit.
- 121. It is stated that all the petitioners were in service on 01.09.2014.**



- 122.** Petitioners state that all of the petitioners and other similarly situated persons filled up and submitted joint option forms for higher pension. One Amit Basu filled up joint option form on April 19, 2023. However, the respondent Provident Fund Authorities sat upon the said option form and neither accepted nor rejected the same.
- 123.** Subsequently by an order dated February 27, 2025 before any meaningful response could be made to the communication dated February 13, 2025, the Regional Provident Fund Commissioner-II, EPFO, Regional Office, Durgapur, issued the impugned order rejecting the joint option applications of 372 applicants from M/s Alloy Steel Plant, citing ineligibility for pension on higher wages on the ground that the Trust Rules of the Provident Fund Trust contained a limiting clause under Rule 11, which restricted the employer's contribution to the Employees' Pension Scheme to the statutory wage ceiling of Rs.6,500/- per month.
- 124.** Affidavit-in-opposition filed by the respondents/EPFO authorities and the written notes filed by the petitioners are on record and duly considered.
- 125. The relevant extract of the order dated 27.02.2025 is as follows:-**

".....In this regard the following are observed:-

(a) The proviso to rule 11 categorically states that where the pay of the member exceeded Rs. 6500/- per month the contribution payable by the employer to the Pension Fund be limited to the amount on his pay of Rs. 6500/- only. The balance of employer's contribution after remittance of contribution to the Employees' Pension Fund shall be credited to the member's individual account . Therefore, this provision is applicable to all in general and the said proviso acts as the limiting clause on contribution to Employees Pension Scheme beyond that on the statutory wage ceiling.

b) With respect to Rule 31A of the Trust Rule, it is stated that main provision in trust rule as reflected in rule 11 will prevail.



Wherever Trust Rule contravenes statutory Act and Scheme, statutory provision will prevail. But here it is not the case of contravention, rather it relates to the issue of exercising option, where the Trust Rule clearly debarred employees to contribute on actual salary to Pension Fund. Hence, the justification given by the employer is not acceptable.

7. Therefore, in the light of the above, the joint Option applications received from M/s Alloy Steel Plant, (WBDGP0012646000 & WBDGP001264600A) in respect of its employees/former employees have been determined to be ineligible for Pension on Higher Wages.

8. Now, therefore, I, Regional Provident Fund Commissioner-II, EPFO, Regional Office, Durgapur for the reasons stated above reject the application submitted by applicants/pensioners listed in the Annexure A (Containing list of 372 applicants), holding them ineligible for Pension on actual/higher wages under Employees' Pension Scheme 1995. Accordingly, the applications are disposed of.

Sd/-

Regional P.F. Commissioner-II"

126. The issue in this case being similar to the issue in WPA 15459/2025, the writ applications have been taken up for consideration together.

XIII. WPA 11596 of 2025

127. The petitioners have challenged an order dated March 4, 2025/17th March, 2025 and clarification dated 18th January, 2025 and prayed for direction upon the respondents to process and approve the joint option forms for higher pension in strict compliance with the statutory provisions of Sections 17 and 27A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the Employees' Provident Funds Scheme, 1952 and direct the respondents to extend the benefits of higher pension to the petitioners and other similarly situated persons, in accordance with binding judicial precedents, including the Hon'ble Supreme Court's decision in Employees' Provident Fund Organisation &



Anr. vs Sunil Kumar B & Ors. and to refrain from imposing any arbitrary restrictions on such entitlement.

128. The petitioners' case is that they are retired employees of M/s IISCO Steel Plant under the Steel Authority of India Limited (SAIL). M/s IISCO Steel Plant and SAIL are exempted organization in terms of the Employees Provident Fund Act, 1952. Inasmuch as they have their own provident fund trust. Petitioners are entitled to Higher Pension from the Employees Pension Scheme, 1995 in terms of the law laid down by the Hon'ble Supreme Court. However, their joint option for higher pension has been rejected on arbitrary ground that the provident fund trust rules of the company does not permit contribution more than the ceiling limit.

129. The petitioners state that all the petitioners were in service on 01.09.2014.

130. Affidavit-in-opposition filed by the respondent nos. 2 and 3 and written notes of argument filed by the respondent nos. 4 and 5 (Establishment) are on record.

131. Vide order dated 04.03.2025 the EPFO authority held as follows:-

".....In this regard the following are observed:

(a) The provision laid down in rule 11(b) categorically states that where the pay of the member exceeded Rs.6500/- per month, the contribution payable by the employer to the Pension Fund be limited to the amount of existing pay of Rs.6500/- only. The balance of employer's contribution after remittance of contribution to the Employees' Pension Fund shall be credited to the member's individual account. Therefore, this provision is applicable to all in general.

(b) With respect to Rule 31A of the Trust Rule, it is stated that main provision in trust rule as reflected in rule 11(b) will prevail. Wherever Trust Rule contravene statutory Act



and Scheme, statutory provision will prevail. But here it is not the case of contravention, rather it relates to the issue of exercising option, where the Trust Rule clearly debarred employees to contribute on actual salary to Pension Fund. Hence, the justification given by the employer is not acceptable.

7. Therefore, in the light of the above, the Joint Option applications received from M/s IISCO Steel Plant, Burnpur (WBDGP0000161000) in respect of its employees/former employees have been determined to be ineligible for Pension on Higher Wages.

8. Now, therefore, I, Assistant Provident Fund Commissioner, EPFO, Regional Office, Durgapur for the reasons stated above reject the application submitted by applicants/pensioners listed in the enclosed annexure (Containing list of 30 applicants), holding them ineligible for Pension on actual/higher wages under Employees' Pension Scheme 1995. Accordingly, the demand notice which already been issued in favour of them is stand revoked.

Further the amount received by this office from those listed applicants as per enclosed annexure is to return to those individual concerned. As the amount already been realized by this office, the amount received by this office has to return back through NEFT. Hence each of the applicant whose name are in the list annexed with this letter is requested to forward their preferred bank account with documentary evidence through return mail within three days, otherwise the said received amount may be return through pension account which is available with this office.

Sd/-
Assistant P.F. Commissioner (POHW)."

132. The issue in this case being similar to the issue in WPA 15459/2025, the writ applications have been taken up for consideration together.

XIV. WPA 11352 of 2025

133. The petitioners have challenged an order dated 27.02.2025 and 18.01.2025 issued by the respondents/EPFO and have prayed for quashing the impugned order dated February 27, 2025 and all actions



taken pursuant thereto, as being arbitrary, ultra vires, and in violation of statutory provisions, thereby denying the petitioners and other similarly situated persons their rightful pension benefits and to extend the benefits of higher pension to the petitioners and other similarly situated persons, in accordance with binding judicial precedents, including the Hon'ble Supreme Court's decision in Employees' Provident Fund Organisation & Anr. vs Sunil Kumar B & Ors., and to refrain from imposing any arbitrary restrictions on such entitlement.

134. The petitioners' case is that they are retired employees of M/s Durgapur Steel Plant under the Steel Authority of India Limited (SAIL). M/s Durgapur Steel Plant and SAIL are exempted organization in terms of the Employees Provident Fund Act, 1952 inasmuch as they have their own provident fund trust by the name of Durgapur Steel Plant Provident Fund Trust. Petitioners are entitled to Higher Pension from the Employees Pension Scheme, 1995 in terms of the law laid down by the Hon'ble Supreme Court. However, their joint option for higher pension has been rejected on arbitrary ground that the provident fund trust rules of the company does not permit contribution more than the ceiling limit.

135. All the petitioners were in service on 01.09.2024.

136. Petitioners state that all the petitioners and other similarly situated persons filled up and submitted joint option forms for higher pension. One Noton Samanta filled up joint option form on April 18, 2023. However, the respondent Provident Fund Authorities sat upon the said option form and neither accepted nor rejected the same.



137. By an order dated February 27, 2025, the Regional Provident Fund Commissioner-II, EPFO, Regional Office, Durgapur, issued the impugned order rejecting the joint option applications of 291 applicants from M/s Durgapur Steel Plant, citing ineligibility for pension on higher wages on the ground that the trust rules of the provident fund trust contained a limiting clause under rule 11, which restricted the employer's contribution to the Employees' Pension Scheme to the statutory wage ceiling.

138. Affidavit-in-opposition filed by the respondents/EPFO is on record.

139. Vide the order dated 27.02.2025 EPFO authorities held as follows:-

".....5. It is evident that the above mentioned proviso to Rule 11(b) of the Model Rules (Revised) of the Durgapur Steel Plant Provident Fund, Durgapur Steel Plant, that it provides for restricting the contribution to Employees Pension Scheme to that on the statutory wage ceiling. The same was intimated to the establishment vide letter no. Ref.No.-WB/RO/DGP/PoHW/9528/4264 dated 19.02.2025, further intimating it that the said limiting clause under proviso to rule 11(b) read with EPFO Head Office letter no: Pension/VI/PoHW/2024-25/efile-951977/dated 18.01.2025 renders its employees/former employees ineligible for Pension on Higher/Actual Wages. 6. In response the establishment has in its various correspondences submitted that the Trust Rules submitted by the establishment vide its email dated 14.02.2025 is the existing Trust Rules. However, the Trust Rules being quoted by the establishment is in the name of Hindustan Steel Limited, which shows that the Trust Rules are quite old. On the other hand, the Model Rules (Revised) of the Durgapur Steel Plant Provident Fund submitted on 05.02.2025, bears the name of Duragapur Steel Plant, which has been granted exemption under Sec.17(1)(a) of EPF & MP Act. Consequently, this office is constrained to rely on the Model Rules (Revised) of the Durgapur Steel Plant



Provident Fund, Durgapur Steel Plant submitted by the establishment on 05.02.2025, as the extant Trust Rules of the establishment.

7. Therefore, in the light of the above, the Joint Option applications received from M/s Durgapur Steel Plant (WBDGP0009528000) in respect of its employees/former employees have been determined to be ineligible for Pension on Higher Wages.

8. Now, therefore, I, Regional Provident Fund Commissioner-II, EPFO, Regional Office, Durgapur for the reasons stated above reject the application submitted by applicants/pensioners listed in the Annexure A (containing list of 291 applicants), holding them ineligible for Pension on actual/higher wages under Employees' Pension Scheme 1995.

9. In view of the above, the Demand Notice issued to the applicants/pensioners listed in the Annexure A are void-ab-initio and therefore stand cancelled.

Sd/-

Regional P.F. Commissioner-II."

140. The issue in this case being similar to the issue in WPA 15459/2025, the writ applications have been taken up for consideration together.

XV. WPA 11599 of 2025 with CPAN 1238 of 2025

141. The petitioners have challenged an order dated 17.03.2025 and clarification dated 18.01.2025 and pray for direction upon the respondents to extend the benefits of higher pension to the petitioners and other similarly situated persons, in accordance with binding judicial precedents, including the Hon'ble Supreme Court's decision in Employees' Provident Fund Organization & Anr. vs. Sunil Kumar B. & Ors. and to refrain from imposing any arbitrary restrictions on such entitlement.



142. The petitioners' case is that they are retired employees of M/s IISCO Steel Plant under the Steel Authority of India Limited (SAIL). M/s IISCO Steel Plant and SAIL are exempted organization in terms of the Employees Provident Fund Act, 1952 inasmuch as they have their own provident fund trust. Petitioners are entitled to higher pension from the Employees Pension Scheme, 1995 in terms of the law laid down by the Hon'ble Supreme Court. However, their joint option for higher pension has been rejected on arbitrary ground that the provident fund trust rules of the company does not permit contribution more than the ceiling limit.

143. All the petitioners were in service on 01.09.2025.

144. Petitioners state that all the petitioners and other similarly situated persons filled up and submitted joint option forms for higher pension. One Nitya Gopal Sarkar filled up joint option form on April 9, 2023. However, the respondent Provident Fund Authorities sat upon the said option form and neither accepted nor rejected the same.

145. By an order dated March 17, 2025, the Assistant Provident Fund Commissioner, EPFO, Regional Office, Durgapur, issued the impugned order rejecting the joint option applications of 54 applicants from M/s IISCO Steel Plant, citing ineligibility for pension on higher wages on the ground that the Trust Rules of the Provident Fund Trust contained a limiting clause under Rule 11, which restricted the employer's contribution to the Employees' Pension Scheme to the statutory wage ceiling.

146. Affidavit-in-opposition filed by the respondents/EPFO is on record along with the written notes filed by the respondent /Establishment.

**147. Vide the order dated 17.03.2025 the authority held as follows:-**

“.....In this regard the following are observed:-

(a) The provision laid down in rule 11(b) categorically states that where the pay of the member exceeded Rs.6500/- per month, the contribution payable by the employer to the Pension Fund be limited to the amount of existing pay of Rs.6500/- only. The balance of employer's contribution after remittance of contribution to the Employees' Pension Fund shall be credited to the member's individual account. Therefore, this provision is applicable to all in general.

(b) With respect to Rule 31A of the Trust Rule, it is stated that main provision in trust rule as reflected in rule 11(b) will prevail. Wherever Trust Rule contravene statutory Act and Scheme, statutory provision will prevail. But here it is not the case of contravention, rather it relates to the issue of exercising option, where the Trust Rule clearly debarred employees to contribute on actual salary to Pension Fund. Hence, the justification given by the employer is not acceptable.

(c) Therefore, in the light of the above, the Joint Option applications received from M/s IISCO Steel Plant, Burnpur (WBDGP0000161000) in respect of its employees/former employees have been determined to be ineligible for Pension on Higher Wages.

(d) Now, therefore, I, Assistant Provident Fund Commissioner, EPFO, Regional Office, Durgapur for the reasons stated above reject the application submitted by applicants/pensioners listed in the enclosed annexure (Containing list of fifty four applicants), holding them ineligible for Pension on actual/higher wages under Employees' Pension Scheme 1995. Accordingly, the demand notice which already been issued in favour of them is stand revoked.

As a consequences of the above, the revised PPO on higher wages is being cancelled and restoration of original pension is under process.

**Sd/-
Assistant P.F. Commissioner (POHW)”**

**Respondent's EPFO's Case:-**

148. The case of the respondent/establishment (EPFO), vide their affidavit-in-opposition, is that the diversion from Provident Fund to the Pension Fund is straightforward in respect of mandatory members. An amount representing 8.33% is transferred monthly to the Pension Fund, leaving an amount equal to 15.67% of their basic wages in the Provident Fund. In contrast, the option members who opt to enroll in their Provident Fund Scheme under paragraph 26(6) of the Provident Fund Scheme, are required to exercise a second option between either contributing an amount equal to 8.33% of their entire basic wages to the Pension Fund, or contributing an amount equal to 8.33% of their basic wages only up to the threshold. This second option was offered under the proviso to paragraph 11(3) of the Employees Pension Scheme, 1995 until the proviso was omitted by an amendment to the Employees Pension Scheme, 1995 with effect from 1st September, 2014. This amendment was challenged by option members who had during their membership of the Provident Fund Scheme and Employees Pension Scheme, 1995 exercised their option under paragraph 26(6) of the Provident Fund Scheme, but did not exercise the second option under the proviso to the unamended paragraph 11(3) of the Employees Pension Scheme, 1995. The consequence of not exercising the second option was that they had contributed to a larger Provident Fund instead of a larger pension. Hence they were disentitled to claim pension computed on their entire basic wages. They, however argued that exercising the second option contained in the proviso to the unamended paragraph 11(3) of the Employees



Pension Scheme, 1995 had no legal value and thus they were entitled to claim a larger pension without exercising the second option. They contended that once they had exercised the first option and contributed an amount equal to 24% of their entire basic wages, it was immaterial if that contribution was made to the Provident Fund Scheme or the Employees Pension Scheme, 1995. They contended that both the Schemes were managed by Employees Provident Fund Organisation which could internally adjust the amounts between the two Schemes and pay either the Provident Fund or Pension by the employees. Consequently they contended that:-

- a. Those who had retired from the Employees Pension Scheme, 1995 without exercising the option under the proviso to Paragraph 11(3) and had withdrawn their Provident Fund accumulations could still claim a larger pension if they refunded their Provident Fund withdrawals.
- b. Those who were still members of the Employees Pension Scheme, 1995 would remain unaffected by the omission of the proviso to Paragraph 11(3) of the Employees Pension Scheme, 1995 if they had exercised the option under paragraph 26(6) of the Provident Fund Scheme.

149. It is further stated that the Provident Fund Scheme merely accumulates the contributions with the return earned on them and pays the resulting accretion as a one-time lump sum on retirement from the Provident Fund Scheme. In contrast, paragraph 12(2) of the Employees Pension Scheme requires monthly contributions. The Employees Pension Scheme is



predicted on the formula contained in paragraph 12(2), which states thus:-

Monthly Pension = (pensionable salary/70) x pensionable service.

In this formula, pensionable salary is defined under paragraph 11 of the Employees Pension Scheme, 1995 as the average basic wages in the last 60 months and pensionable service is defined in paragraphs 2(xv) and 10 as the service period for which monthly contributions are received or receivable in the Pension Fund. Thus, under the formula monthly pension is the pensionable salary that accrues at the rate of 1/70 per month throughout the member's pensionable service.

150. Thus, the Employees Pension Scheme, 1995 plans the amount received during an employee's membership for the payment of pension for their entire life post membership. In contrast, the Provident Fund Scheme pays the entire amount as a lump sum, resulting in the completion of the liabilities under the Provident Fund Scheme.

151. This fundamental difference between the two Schemes makes the second option contained in the proviso to the unamended paragraph 11(3) of the Employees Pension Scheme, 1995 significant. The contributions of the employees who exercised the second option were actuarially planned annually under paragraph 32 of the Employees Pension Scheme, 1995 to sustain their Pension post retirement under the Employees Pension Scheme, 1995. **Those who did not exercise this second option clearly preferred a larger Provident Fund instead of a larger Pension and hence their contributions were not considered while planning the Pension Fund.** The necessity of exercising the second option under the



proviso to the unamended paragraph 11(3) of the Employees Pension Scheme, 1995 has been upheld by the Hon'ble Supreme Court in **R.C. Gupta vs. Regional Provident Fund Commissioner reported in 2018 (14) SCC 809** and in **Employees Provident Fund Organization vs. Sunil Kumar B. reported in 2022(11) SCR 959**.

- 152.** In the instant case, the petitioners are the employees of the establishment, M/s Steel Authority of India Limited, which is an exempted establishment under Section 17(1) of the Act, permitted to set up a Provident Fund Trust under the Act, which is exempted from the provisions of the Provident Fund Scheme except those provisions that pertain to the exempted Provident Fund Trusts.
- 153.** It is further stated that the Trust Rule of the establishment, M/s Steel Authority of India Limited itself has restricted the employer to contribute its share by limiting to Rs.15,000/- only. The Rule 11(b) of the Trust Rule provides that:-

“Provided that where the pay of the member exceeds Rs.15,000/- per month the contribution payable by the employer be limited to the amount on his pay of Rs.15,000/- only.”

So from the Trust Rule it is clear that the Pension Fund is contributed only up to the maximum of ceiling and there is no provision to contribute on higher wages in the Employees' Pension Scheme, 1995. Furthermore Clause 11(3) of Employee's Pension Scheme 1995 was also included with effect from 16th March 1996 permitting an option to the employer and employee to contribution towards Pension Fund, per



month, on salary exceeding the statutory wage ceiling. The Trust Rules of the establishment, M/s Steel Authority of India Limited was never amended incorporating the Clause under 11(3) of the Employees' Pension Scheme, 1995, mentioned above.

154. The petitioners in the present case have framed and opted to be governed by Rules that circumscribe the rates of contribution to the Pension Scheme to ensure larger contribution to the Provident Fund Scheme. Hence the petitioners cannot exercise the second option contained in the proviso to the unamended paragraph 11(3) of the Employees Pension Scheme, 1995.

155. The respondents further state that the Hon'ble Supreme Court in **R.C. Gupta's case** held that a member of the Pension Scheme ought to exercise both the options distinctly and affirmatively to be eligible for the larger pension, which is as follows:-

"9. We do not see how the exercise of the option under paragraph 26 of the Provident Fund Scheme can be construed to stop 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 Fund Scheme is inevitable. Exercise of 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."

156. In the present cases, the circumstances foreclosing the exercise of the second option referred to in above quoted para of R.C. Gupta are clearly



indicated in Rules of exempted Provident Fund Trust Rules framed with the consent of the employees themselves.

- 157.** Hence, it is stated by respondent/EPFO that the petitioners are estopped from exercising the second option. Further, in the case of **Sunil Kumar B and Ors. (Supra)**, it is held in paragraph 44(iii) that those who had exercised the second option, either in favour of a larger Provident Fund or a larger Pension, were bound by that option under the Post Amendment Scheme, which is as follows:-

“44. We accordingly hold and direct:-

.....

.....

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

- 158. The respondents argue** that the employees like the petitioners who opted in favour of larger Provident Fund over larger pension, remain bound by that choice post amendment. They cannot now alter their commitment retrospectively either by amending exempted Provident Fund Trust Rules or exercising fresh options inconsistent with the existing Provident Fund Trust Rules.

- 159.** It is also stated that in Paragraph 44(iv) of Sunil Kumar B. & Ors. case permitted under the extraordinary powers of Article 142 of the Constitution of India, a one time opportunity to those who were members of the Employees Pension Scheme, 1995 on 1st September, 2014.

- 160.** It is further stated by the EPFO that in paragraph 44(iv) would not apply to the petitioners in the instant case because they were disentitled to opt



for larger pension **in view of the prohibition contained in their Provident Fund Trust Rules.** It is important to note that the options for a higher pension have been rejected only where the exempted Provident Fund Trust Rules prohibit the exercise of the second option in favour of the larger pension. In all other exempted Provident Fund Trusts where such a prohibition does not exist higher pension has been sanctioned. Hence the allegation that Employees Provident Fund Organisation has disobeyed paragraph 44(iv) of Sunil Kumar B.'s case is not correct.

- 161.** The respondent no. 3 issued show cause notice being no. A/WB/PRB/9057/Pension on Higher Wages/7445 dated 31st January, 2025 to the establishment, M/s. Steel Authority of India Limited before issuing the order of rejection. The establishment, M/s. Steel Authority of India Limited after receiving the said show cause notice dated 31st January, 2025 from the respondent no. 3 gave a reply to the said show cause notice dated 4th February, 2025. The respondent no. 3 after considering the reply of the establishment, M/s Steel Authority of India has issued the order of rejection dated 5th February, 2025.
- 162.** As per guideline from Employees Provident Fund Organisation Head Quarter vide file no. Pension/VI/PoHW/2024-25/e-file 951977 dated 18th January 2025-“the eligibility for PoHW cases should be determined on the basis of the extent Trust Rule of the exempted establishment”, which is in consonance with the judgment of the Hon’ble Supreme Court in Sunil Kumar B’ case. In case the Trust Rules are amended after the judgment delivered by the Hon’ble Supreme Court on 4th November, 2022



in Sunil Kumar B's case, the applications of members of such trust may not be considered.

163. Report in the form of affidavit has also been filed by the respondent nos. 2 & 3 (EPFO), contents of which are part of their opposition as discussed above.

164. Exception to the report has been filed by the petitioners reiterating their case in the writ petition and denying the case of the EPFO and it has been specifically stated that in all the cases of rejections, no such opportunity has ever been given to the pensioners/members and accordingly, action of rejection is without authority and beyond the procedures as laid down in the EPFO Circular No. 405 dated 23rd April, 2023.

165. The EPFO Circular dated 18th January, 2025 clarifies that the cases of the exempted establishments are to be processed based on the extent Trust Rules. The said Circular never prescribed that the cases are to be rejected based on the ceiling wages in the Trust Rules. In fact, the Trust Rules contain safeguard provisions for supremacy of the EPF Act and Schemes thereunder over the internal Trust Rules to decide the beneficial schemes for the members. Accordingly, rejection of the applications for PoHW based on ceiling wages in the internal Trust Rules while overlooking the safeguard provisions about supremacy of EPF Act and Schemes, are beyond the Authority of Law and also goes against the clarifications as per EPFO Circular dated 18th January, 2025.

166. The latest judgment of the Hon'ble Supreme Court passed in Vijay Kumar vs. Central Bank of India dated 15th July, 2025 also mandates that right



to pension can be denied only under the Authority of Law. Authority of Law is derived from EPF Act, EPF Scheme, EPS 1995 and mandates of the Apex Court which do not stipulate determination of PoHW based on internal Trust Rules. Appropriation of judicial powers by executive action of EPFO in rejecting the applications on Trust Rules grounds is, therefore, beyond the Authority of Law.

167. The Apex Court also mandated that if the employees of the exempted establishments are not considered for PoHW, it will amount to artificial classification between the employees of exempted and unexempted establishments.

168. Grant of PoHW to a class of exempted establishments (without any reference to the ceiling wages in their internal Trust Rules) and rejection of application for PoHW to another class of exempted establishments (those with occasional reference of ceiling wages in the internal Trust Rules) amounts to sub-classification between exempted establishments. This treatment is in utter disregard to the mandate of the Apex Court, violating Article 14 of the Constitution of India.

169. Written notes filed by all the parties are on record.

Findings:-

170. The petitioners other than their case as made out herein have stated that the Provident Fund authorities have used an affidavit-in-opposition depicting that the Joint Option Forms for exercise of higher pension on higher wages were rejected after giving opportunity of hearing to the employer. **The persons affected are the employees, and they were not heard.**



171. The Hon'ble Supreme Court in the case of **R.C. Gupta reported in (2018) 14 SCC 809**, clearly held in para 9 that exercise of option under para 26(6) of the EPF Scheme could not be construed to estop the employee from exercising a similar option under para 11(3) of the EPS. If both the employer and the employee opt for depositing against the actual salary and not the ceiling amount, exercise of option under para 26 of the EPF Scheme is ineligible. The deposit and acceptance of contributions on actual salary in the PF Scheme without any documentation of exercise of option has been construed to be a deemed exercise of option.
172. **Contributions on higher salary had already been deposited by the petitioners and employer in the Trust Fund, and on exercise of option, the said higher amount is only to be remitted/transferred from the Trust Fund or by the superannuated petitioners to the pension fund.**
173. It is further argued by the petitioners that the Hon'ble **Madras High Court Madurai Bench**, on 02.09.2025, in W.P.(MD) Nos. 29573 to 29578 of 2024 and others (**BHEL, NLC, MADURA COATS Vs. UOI and Ors.**), in the judgment pronounced on 2nd September, 2025 has held in para 34 that remittance of lesser amount to the Pension Scheme by the employer was attributable to non-exercise of Joint Option and it is not traceable to the bar in the Trust Rules.
174. In para 35 of the same judgment it has been held that the Trust Rules framed under the EPF Scheme cannot be cited to deny the benefits under the EPS 1995, since the establishment has not been exempted under the EPS 1995 in terms of para 39 thereof the conditions while granting



exemption to one Scheme cannot be kaleidoscoped into another for which no exemption had been granted under the statute.

- 175.** EPS 1995 having provided for a beneficial Scheme, the same cannot be taken away from the employees unless there is a statutory bar for claiming the same.
- 176.** The petitioners thus pray for higher pension on higher wages on permitting them to refund the higher portion of PF with interest to be deposited in the Pension Fund.
- 177.** The respondents (EPFO) have once again reiterated their stand in their written notes as taken in their report and objection.
- 178. The EPFO has justified their orders of rejection** claiming that they have been issued as per Guideline from Employees Provident Fund Organization, Head Quarter vide file no. Pension/VI/PoHW/2024-25/e-file 951977 dated **18th January 2025 "the eligibility for PoHW cases should be determined on the basis of the extent Trust Rule of the exempted establishment"**, which is in consonance with the Judgment of the Hon'ble Supreme Court in ***Sunil Kumar B. (Supra)***. In case the Trust Rules are amended after the Judgment delivered by the Hon'ble Supreme Court on 4th November, 2022 in ***Sunil Kumar B. (Supra)***, the applications of members of such trust may not be considered.
- 179.** Mr. S. Agarwal learned counsel for the EPFO has relied upon the judgment of Kerala High Court in ***The Employees Provident Fund Organisation & Ors. vs A. Chandrakumaran Nair & Ors., WPA 852 of 2022 dated 28.03.2022, which is prior*** to the judgment in ***Sunil Kumar B. (Supra)***.



180. Para 9 of the said judgment is as follows:-

“9. We have heard the counsel for both sides in detail and have considered the contentions put forth. The primary question to be considered is whether, sans the determination of money due from the employer as envisaged under Section 7A of the Act, the learned Single Judge could have directed CIAL to produce a DD towards the purported deficiency and arrears and then proceed to direct the EFPO to encash the same and undertake a computation as envisaged under Sections 7Q and 14B of the Act. It is not in dispute that CIAL had limited the contribution to both the provident fund and the pension fund to the statutory limit till 06.06.2003. Even as per the EPFO, there was no deficiency or shortfall in the remittance of the contribution towards the provident fund by CIAL.

*Further, respondents 1 to 67 have already superannuated and have received the emoluments that follow without demur. **It is the specific contention of the EPFO that the EPF scheme stipulates that, if so desired, the employer and the employee could jointly opt for making contributions on the actual salary, which is higher than the ceiling limit of the salary in terms of para 26.6 of the EPF Scheme, 1952.** It would be relevant to reproduce paragraph 26.6 of the EPF Scheme, 1952, as it stands now. It reads as follows:*

"Notwithstanding anything contained in this paragraph, an officer not below the rank of an Assistant Provident Fund Commissioner may, on the joint request and writing of any employee of a factory or other establishment to which the scheme applies and his employer, enroll such employee as a member or allow him to contribute on more than Rs.15,000/- 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 employees."

Thus, the provision envisages a joint request for contributing more than the stipulated amount, as well as



an undertaking in writing from the employer for opting to make contributions on the actual salary, which is higher than the ceiling limit of the salary. As regards respondents 1 to 67, there had been no joint request with CIAL for payment of contributions on higher wages by complying with the procedure as stipulated under para 26.6 of the EPF Scheme, 1952. The respondents never exercised the option to pay, nor actually paid the higher contribution on their actual salary exceeding the wage ceiling. They, who are no longer members of the pension fund, and have already superannuated and as of now are termed by EPFO as not to be 'employees' as envisaged in the Pension Scheme, had all along been aware of the fact that the employer's share of contribution, is restricted to the statutory ceiling and had accepted the EPF and the pension fund benefits as per their entitlement without protest. Neither respondents 1 to 67 nor the CIAL has produced any evidence to prove the contrary."

181. It appears that the Court in ***The Employees Provident Fund Organisation & Ors. vs A. Chandrakumaran Nair & Ors. (Supra)*** held that to get such benefits there has to be a joint request (option), which in the present writ petitions have been duly preferred.

182. On hearing the parties at length the following is evident:-

- i) All the petitioners** in the writ petitions have exited from the scheme and also **retired after 01.09.2014 and as such were in service on 01.09.2014.**
- ii)** The employer and employee have **exercised their joint option** for higher pension which has been rejected en masse by the EPFO relying upon guidelines from Employees Provident Fund Organization, Head Quarter vide file no. Pension/VI/PoHW/2024-25/e-file 951977 dated 18th January 2025.



“On holding that the eligibility for PoHW cases should be determined on the basis of the extent Trust Rule of the exempted establishments, which is in consonance with the judgment of the Hon’ble Supreme Court in Sunil Kumar B’ case. In case the Trust Rules are amended after the judgment delivered by the Hon’ble Supreme Court on 4th November, 2022 in Sunil Kumar B’s case, the applications of members of such trust may not be considered.”

- iii)** The provident fund authorities have used an affidavit-in-opposition depicting that that Joint Option Forms for exercise of higher pension on higher wages were rejected after giving opportunity of hearing to the employer. **The persons affected are the employees, and they were not heard.**
- iv)** Contributions on higher salary had already been deposited by the petitioners and employer in the Trust Fund, and on exercise of option, the said higher amount is only to be remitted/transferred from the Trust Fund or by the superannuated petitioners to the pension fund.

183. Vide an order dated 18.01.2025, the EPFO issued the following clarification in respect of exempted establishments:-

Issue	Clarification/Approval
Exempted Establishment’s eligibility for PoHW to be based on Trust Rules.	The eligibility for PoHW cases should be determined on the basis of the extant trust rules of the exempted establishment, in consonance with the directions of the Hon’ble Supreme Court in Sunil Kumar case. Further, in case the Trust rules are amended post decision dated 04.11.2022 in Sunil Kumar Case, applications of members of such Trusts may not be considered.



184. The order of rejection dated 05.02.2025, under challenge is as follows:-

ENMASS REJECTION ORDER
- 274- Annexure - P/10

G20

ই-মেল / ई-मेल / E-mail : ro.parkstreet@epfindia.gov.in **দুরমাথ / Phone :** (033) 2283-1949, 2281
(PRC) **ফ্যাক্স / फैक्स / Fax :** (033) 2280-4079

 **কর্মচারী ভবিষ্য নিধি সংগঠন / কর্মচারী भविष्य निधि संगठन**
EMPLOYEES' PROVIDENT FUND ORGANISATION
প্রথম এবংরোজগার মহালয়, ভারত সরকার / প্রথম एवं रोजगार महालय, भारत सरकार
Ministry of Labour & Employment, Govt. of India
রিজিওনাল অফিস / क्षेत्रीय कार्यालय / REGIONAL OFFICE
44, পার্ক স্ট্রীট, কোলকাতা-700016/44, पार्क स्ट्रीट, कोलकाता-700016/ 44, Park Street, Kolkata-700016



Ref: EPFO/WB/RO/PRB/PoH/W/9057/ 7471 Date: 5/2/2025

Order in the matter of applications received from Members/Pensioners (Annexure-I) of M/s Steel Authority of India Limited which is an exempted establishment and complying under the Trust, under the jurisdiction of Regional Office, Park Street.

Ref: 1. Order dated 04-11-2022 of the Hon'ble Supreme Court of India in the matter of SLP (C) Nos. 8658-8659 of 2019.
2. HO Circular No. Pension/2022/54877/15149 dated 29-12-2022.
3. HO Circular No. Pension/2022/54877/15238 dated 05-01-2023.
4. HO Circular No. Pension/2022/55893/15785 dated 25-01-2023.
5. HO Circular No. Pension/PoH/W/23/Circular-26(6)/139610/1648 dated 14-06-2023
6. HO Circular Nos. Pension/Supreme Court/judgement/HPM/2022/405 and 406 dated 23-04-2023.

Whereas online Joint Options forms has been received from the pensioners/applicants [as detailed for applicants in Annexure-I with their Member ID & UAN/PPG] for considering and accepting the option filed by them under the proviso of the Employees' Pension Scheme, 1995 for past facto remittance of contributions to the Employees' Pension Fund.

And Whereas in compliance with orders of the Hon'ble Supreme Court in the judgement dated 04-11-2022 in the matter of Special Leave Petition (C) Nos. 8658-8659 of 2019 and directions of the Central Government an online facility was deployed for submitting Joint Option forms from the eligible applicants through their employers.

And Whereas, the applicants as at Annexure-I have submitted their applications as stated above for grant of pension on the basis of their actual/full monthly wages/salaries higher than that the wages ceiling in terms of the judgement dated 04-11-2022 of the Hon'ble Supreme Court of India in Special Leave Petition (C) Nos. 8658-8659 of 2019. The applications in respect of members as per Annexure-I have been scrutinized in consideration of the Trust Rule.

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Annexure P/10
To in paragraph. All
Foregoing Petition affirmed
by A. Roy
on this 05th Day of July, 2025
Commissioner of Affidavit
High Court, Appellate Side
Calcutta



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Whereas on going through the extant Trust Rule of M/s Steel Authority of India Limited (WBPRB0009057000) prima facie it appears that the EPS contribution beyond statutory ceiling to the Pension Fund is not allowed. Rule 11 of the said Trust Rule is reproduced below:-

*Rule 11-Employer's contribution to the Fund:-

- a) The employer shall not later than the fifteenth day of the succeeding month, in respect of each of the members of the fund, pay to the trustees as employer's contribution to the Fund a sum equal to the total of the member's compulsory contribution under Rule 10(a) hereinbefore.
- b) From and out of the contribution payable by the employer each month under Rule 11 above, a part of contribution representing 8.33% of the Employees pay shall be remitted by the employer to the Employees' Pension Fund within 15 days of the close of every month by a separate bank draft or cheque on account of Employees' pension fund contribution in such manner as may be specified in this behalf by the Regional Provident Fund Commissioner. The cost of remittance, if any, shall be borne by the employer. Provided that where the pay of the member exceeds Rs 6500/- per month the contribution payable by the employer be limited to the amount on his pay of Rs 6500/- only. The balance of employer's contribution after the remittance of contribution to the Employees' Pension Fund shall be credited to the member's individual account."

From the extant Trust Rules it is clear that the Pension Fund is contributed only up to the maximum of ceiling and there is no provision to contribute on higher wages in the Employees' Pension Fund.

It is a fact that a proviso was added to Clause 11 (3) of EPS 1995 w.e.f 16-03-1996 after the implementation of EPS 1995 w.e.f. 16-11-1995 permitting an option to the employer and employee to contribute towards Pension Fund, per month, on salary exceeding the statutory wage ceiling. The Trust of the establishment never amended their Trust Rules incorporating the clause 11(3).

And whereas a Show Cause Notice was also issued to the establishment vide this office letter no A/ WB/ PRB/9057/Pension on Higher Wages/7445 dated 31.01.2025, through email.

A reply has been received from the establishment vide letter dated 04.02.2025 wherein the establishment has cited several provisions including certain provisions of the Trust Rules concluding that "where any provision of Trust Rules conflicts with any provisions of the EPF Scheme 1952 which is more beneficial the later shall always deem to prevail".

The said submission can't be considered as which provision is beneficial is subjective consideration. The fact is that the Trust Rules were never amended and any proviso corresponding to the Proviso Para 11(3) of EPS 1995 was never introduced in the said Trust Rules. Therefore such submission cannot be considered.

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In view of the above, it is found that the applicant's request for Pension on Higher wages does not fulfil the conditions laid down by Hon'ble Supreme Court in its judgment dated 04-11-2022 in the matter of Special Leave Petition (C) Nos. 8658-8659 of 2019 read with EPFO, HO Circular No. Pension/V1/PolHW/2024-25/efile-951977 dated 18-01-2025, Trust Rules, EPFO, H.O. Circular No. Pension/2022/54877/15149 dated 29-12-2022, EPFO Head Office Circular No. Pension/2022/54877/15238 dated 05-01-2023 and EPFO Head Office Circular No. Pension/2022/55893/15785 dated 25-01-2023.

Now, therefore, I, T K Mukherjee, Regional Provident Fund Commissioner-I, EPFO, Regional Office, Park Street, for the reasons stated above, reject the representations and applications (Joint Options) submitted by the applicants/pensioners as at Annexure-I as being not eligible for Pension on actual/higher wages under Employees' Pension Scheme, 1995.

[T K Mukherjee]
 Regional P F Commissioner I
 Regional Office, Park Street.

To,
 The Director,
 M/s Steel Authority of India Limited (WB/PRB/9057)
 40, Jawaharlal Nehru Road, Ispat Bhawan,
 Kolkata-700071.

Copy to:
 All Applicants as per Annexure-I (through Employer).

185. The following paragraphs of the said order being relevant are reproduced herein:-

"A reply has been received from the establishment vide letter dated 04.02.2025 wherein the establishment has cited several provisions including certain provisions of the Trust Rules concluding that "where any provision of Trust Rules conflicts with any provisions of the EPF Scheme 1952 which is more beneficial the later shall always deem to prevail".



The said submission can't be considered as which provision is beneficial is subjective consideration. The fact is that the Trust Rules were never amended and any proviso corresponding to the Proviso Para 11(3) of EPS 1995 was never introduced in the said Trust Rules. Therefore such submission cannot be considered."

186. Rule 31A of the Trust Rules is as follows:-

Rule 31A Statutory provisions to have overriding effect:-

- (1) In the absence of any specific provision in these rules of if any provision of these rules is less beneficial than the corresponding provision of the Employees' Provident Funds Scheme, 1952 framed there under the latter provision shall prevail, mutatis mutandis.
- (2) Where any provisions of rules conflicts with any provisions of the E.P.F. Scheme, 1952, the latter shall always be deemed to prevail.
- (3) Question whether a particular rule is beneficial or not shall be decided by the Regional Provident Fund Commissioner whose decision shall be final.
- (4) In case of any change of legal status of the establishment, which has been granted exemption, as a result of merger, demerger, acquisition, sale, amalgamation, formation of a subsidiary, whether wholly owned or not, etc., the exemption granted shall stand revoked and the establishment should promptly report the matter to the RPFC concerned for grant of fresh exemption.
- (5) In case, there are more than one unit/establishment participating in the common.

187. The Regional Provident Fund Commissioner exercising his power provided under Rule 31A(3) of the Trust Rules, decided the same by holding *"The said submission can't be considered as which provision is beneficial is subjective consideration. The fact is that the Trust Rules were never amended and any proviso corresponding to the Proviso Para 11(3) of*



EPS 1995 was never introduced in the said Trust Rules. Therefore such sub mission cannot be considered.”

188. The parties (both) have relied upon the judgments in:-

- (a) *R.C. Gupta & Ors. vs. Regional Provident Fund Commissioner, Employees Provident Fund Organisation & Ors. (2018) 14 SCC 809;***
- (b) *Employees Provident Fund Organisation & Anr. vs. Sunil Kumar B. & Ors., (2023) 12 SCC 701;***
- (c) *Madurai Bench of Madras High Court dated 02.09.2025, in W.P.(MD) Nos. 29573 to 29578 of 2024 and others (BHEL, NLC, MADURA COATS Vs. UOI and Ors.).***

189. The grounds of rejection by the respondent/EPFO in the order dated 05.02.2025 are decided as follows:-

A) EPFO's stand : The establishments in these cases enjoy **exemption** and internal trust rules do not permit contribution beyond ceiling limit. **No amendment of the rules** were made, **which permitted an option** to the employer and employee to contribute toward pension fund beyond statutory wage ceiling/actual salary.

(i) The Supreme Court in EPFO vs. Sunil Kumar B. (Supra) held as follows:-

“42. We shall now address the question as to **whether the members from an exempted establishment under the 1952 Act would be entitled to the benefits of enrolling in the Scheme beyond the ceiling limit.** We would point out here that before us no argument has been advanced as regards members of the Pension Scheme of exempted establishments in terms of Para 39 of the said Scheme. Thus, in this judgment, we are not addressing the cases of that



category of members. We find from Section 17(A) of the Act that **the investment of the provident fund for the trust fund are also to be as per the directions of the Central Government.** In quashing the Circular dated 31-5-2017, the Delhi High Court has held that the employees of unexempted establishments and exempted establishments form a homogeneous group. **Section 6-A of the Act also envisages coverage of employees of exempted establishments under Section 17(6) of the Act within the Pension Scheme.”**

43. Section 17(6) of the Act stipulates :

“17.(6) Subject to the provisions of sub-section [(1-C)] the employer of an exempted establishment or of an exempted employee of an establishment to which the provisions of the [Pension] Scheme apply, shall, notwithstanding any exemption granted under sub-section (1) or sub-section (2), pay to the [Pension] Fund such portion of the employer’s contribution to its provident fund within such time and in such manner as may be specified in the [Pension] Scheme.”

44. Further, Clause 1(3) of the Pension Scheme contemplates keeping within its fold the establishments to which the 1952 Act applies. These establishments would include exempted establishments as well. **The employees of exempted establishments are integrated into the Pension Scheme and we are of the opinion that the employees of an exempted establishment should not be deprived of the benefit of getting option to remain in the Pension Scheme while drawing salary beyond the ceiling limit, in situations where similarly situated employees of unexempted establishments can exercise such option. In the event the Scheme is construed in a way which would exclude them, that would lead to artificial classification of otherwise same categories of employees. Thus, the Pension Scheme ought to apply to the employees of the exempted establishments in the same manner as this Scheme applies to the employees of unexempted or regular establishments.**

45. One of the arguments against their inclusion into the Scheme by exercising option is that the corpus of the contribution for exempted establishments has 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 employees, 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."

- (ii) It is clear that the **Hon'ble Supreme Court** considered the status of an employee of an exempted Establishments and clarified that *"In the event the Scheme is construed in a way which would exclude them, that would lead to artificial classification of otherwise same categories of employees. Thus, the Pension Scheme ought to apply to the employees of the exempted establishments in the same manner as this Scheme applies to the employees of unexempted or regular establishments"*.
- (iii) The Supreme Court while considering (if any) the provisions excluding such employees, was of the view that it would lead to artificial classification of otherwise, same categories of employees and thus directed that the pension scheme ought to apply similarly to both exempted and unexempted/regular Establishment.
- (iv) It further appears that the EPFO completely overlooked the trust Rules of the Establishments, which clearly provide that the more



beneficial corresponding provisions of the Act and Scheme shall prevail.

- (v) Thus, the contention of the EPFO that without amendment of trust rules, the benefit is not applicable to the petitioners is **not maintainable**, in view of the fact that the Supreme Court did not observe or direct that the trust rules of an exempted establishment had to be amended in order to extend the benefit to its employee.
- (vi) The EPFO has also in a very unjust manner rejected any prayer for amendments of trust rules after the judgment in **Sunil Kumar B. (Supra)** thus putting in all efforts to deprive the employees of an exempted establishment the benefits of **Sunil Kumar B. (Supra)**.
- (vii) The only requirement in such cases is the due compliance of directions in para 45 **Sunil Kumar B. (Supra)** regarding transfer of funds.

B) EPFO further contends that while enforcing their power under Rule 31A(3) of the trust Rules, the authority rightly held:-

“The said submission can’t be considered as which provision is beneficial is subjective consideration. The fact is that the Trust Rules were never amended and any proviso corresponding to the Proviso Para 11(3) of EPS 1995 was never introduced in the said Trust Rules. Therefore such submission cannot be considered.”



- (i) **This Court** finds that the said consideration by the authority is clearly not in accordance with law and also against the principles of natural justice considering that:-

A **subjective consideration** is a judgment or assessment that is based on an individual's personal feelings, experiences, and beliefs rather than on objective facts or evidence. This type of consideration is **influenced** by a person's unique perspective, **biases**, and **emotional state**, making it open to personal interpretation.

- (ii) **Such exclusive power to consider as to which of the provisions is beneficial is to be applied with great responsibility**, considering facts and on proper application of mind and under no circumstances can it be said to be "a subjective consideration" and such observation is clearly beyond the scope of law. Taking the plea of trust rules being not amended has already been discussed earlier.

- (iii) **The authority** is given the power under Rule 31A(3) of the trust Rules, to decide **only** as to which provisions is more beneficial. No power has been given to the authority to decide as to why the benefit shall be given or not given.

- (iv) Thus the authority in the order under challenge dated 04.02.2025 has also travelled beyond his power. **The said observations also being not in accordance with law is set aside.**

190. Further observations in the order dated 04.02.2025 is as follows:-



“.....In view of the above, it is found that the applicant's request for Pension on Higher wages does not fulfil the conditions laid down by Hon'ble Supreme Court in its judgment dated 04-11-2022 in the matter of Special Leave Petition (C) Nos. 8658-8659 of 2019 read with EPFO, HO Circular No. Pension/VI/PoHW/2024-25/efile-951977 dated 18-01-2025, Trust Rules, EPFO, H.O. Circular No. Pension/2022/54877/15149 dated 29-12-2022, EPFO Head Office Circular No. Pension/2022/54877/15238 dated 05-01-2023 and EPFO Head Office Circular No. Pension/2022/55893/15785 dated 25-01-2023.

Now, therefore, I, T.K. Mukherjee, Regional Provident Fund Commissioner-I, EPFO, Regional Office, Park Street, for the reasons stated above, reject the representations and applications (Joint Options) submitted by the applicants/pensioners as at Annexure-I as being not eligible for Pension on actual/higher wage under Employees' Pension Scheme, 1995.

Sd/-

**Regional P.F. Commissioner I
Regional Office, Park Street.”**

191. This order dated 04.02.2025 also being not in accordance with law is also set aside.

192. The cut-off date as extended by the Supreme Court in *Sunil Kumar B. (Supra)* has been extended from time to time, the last being till 31.01.2025, (BHEL MCL (Supra)).

193. The clarification in its (EPFO) order dated 18.01.2025, relating to exempted Establishment relying on the judgment in *Sunil Kumar B. (Supra)* is totally against the directions of the Supreme Court.

194. The authority has given its own interpretation, which is in complete contradiction/violation of the judgment in *Sunil Kumar B. (Supra)*. There are no such directions/observations of the Court in the said judgment. Vide the said clarification, the EPFO has also closed all



avenues for getting the benefits by directing that the trust rules if amended after the judgment in **Sunil Kumar B. (Supra)** on 04.11.2022, the applications of such members would not be considered.

- 195.** Such clarifications/directions is not only in complete violation of the directions of the Supreme Court in **Sunil Kumar B. (Supra)** but also against the principles of natural justice considering that the EPFO has not only denied the benefit to the members of the Exempted Establishment, citing trust rules not permitting the same but has gone all out to deny the benefit by issuing the **clarification dated 18.01.2025** stating that even if trust rules are amended, after the judgment, granting benefit, the same would not be available to members of exempted Establishment.
- 196.** As to how is EPFO aggrieved, if an employer agrees (by filing joint Section form, there being no burden on the authorities (EPFO). **In denying the same the PF authorities are acting against the purpose of a beneficial legislation.**
- 197.** Such thought process and conduct of the authorities who are to implement these beneficial legislations, is not acceptable by this Court, as the same is not only against the principle of natural justice, but is clearly an abuse of the process of law, being not in accordance with law.
- 198.** Accordingly, the order dated 18.01.2025 and the order dated 05.02.2025 **are hereby quashed and set aside.**
- 199. a) Any joint option application presented on or before 31.01.2025, or before any other further extension of time by**



the authority considered, if any shall be accepted by the respondents.

- b) On remittance of the differential contribution amount to the pension scheme, to the Employees' Provident Fund Organisation, by the employees, along with applicable interest, higher pension shall be disbursed to them from the succeeding month of their remittance.**

200. The writ petitions are allowed.

201. There will be no order as to costs.

202. Connected application, if any, stands disposed of.

203. Interim order, if any, stands vacated.

204. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously after due compliance.

(Shampa Dutt (Paul), J.)