

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****CWP No.15543 of 2025****Date of Decision: 26.11.2025**

Sh. Pratap Chand		Petitioner
	Versus	
State of H.P. and Others		Respondents

*Coram:****Hon'ble Mr. Justice Sandeep Sharma, Judge.****Whether approved for reporting? ¹*

For the Petitioner: Mr. R.L. Verma, Advocate.**For the Respondents:** Mr. Vishal Panwar, Additional Advocate General, for respondents No.1 to 3/State.

Mr. Tek Ram Sharma, Advocate, for respondent No.4.

Sandeep Sharma, Judge *(oral)*:

Petitioner herein, who was initially appointed as a Peon on daily wage basis in the head office of H.P. State Cooperative Marketing & Consumers Federation Limited, was regularised as Class-IV on 01.01.1984. On 16.02.2008, services of the petitioner were taken over by the Department of Information Technology, Himachal Pradesh, on secondment basis and finally vide order dated 16.02.2008, he was absorbed in afore department and w.e.f. afore date till his superannuation on 31.10.2019, petitioner served as Peon in the Department of Information Technology, H.P.

¹Whether the reporters of the local papers may be allowed to see the judgment?



2. Government of Himachal Pradesh vide Notification dated 04.05.2023 issued by the Finance (Pension) Department provided that Government servants appointed/retired during the period w.e.f. 15.05.2003 to 31.03.2023 covered under Contributory Pension Scheme (National Pension System), may opt to shift to the Central Civil Services (Pension) Rules, 1972, as a result thereof, they shall get the pensionary benefits under afore rules subject to deposit of the Government contribution and dividend/return earned thereon, under the National Pension System, to the State Government.

3. On 08.02.2024, petitioner exercised option for Old Pension Scheme in terms of Notification dated 04.05.2023, but same came to be rejected vide communication dated 09.07.2024 (Annexure P-5) on the ground that option, which was to be exercised within a period of 60 days, in terms of Notification dated 04.05.2023, was not exercised. In the afore background, petitioner has approached this Court in the instant proceedings, praying therein for following main reliefs:

"i. That the rejection of pension case of the petitioner vide Annexure P-5, may kindly be quashed.

i. That this Hon'ble Court may kindly be pleased to direct the respondent to consider the case of the petitioner for coverage under the old pension rule by condoning the delay in submission for the option for Old Pension, in the interest of justice and equity.



ii. That the respondents may be ordered to pay pension to the petitioner as per notification dated 4.5.2023, under the Old Pension Rules, 1972 from the due date, with all benefits incidental thereof.”

4. Pursuant to notices issued in the instant proceedings, respondents/State has filed reply, wherein facts, as have been noticed hereinabove, have not been disputed, but an attempt has been made to refute the claim of the petitioner on the ground that in terms of Notification dated 04.05.2023, an employee desirous of availing benefit under Old Pension Scheme was required to exercise option within a period of 60 days, but in the case at hand, petitioner exercised such option after expiry of 60 days. Though in the petition, learned counsel representing the petitioner specifically referred to judgment passed by the Coordinate Bench of this Court in bunch of petitions i.e. CWP No.11004 of 2025, titled as ***Reshmo Devi Vs. State of Himachal Pradesh and Others***, along with connected matters, wherein similar issue came to be decided, but such fact has not been specifically denied by the respondents.

5. Having carefully perused judgment rendered by the Coordinate Bench of this Court in *Reshmo Devi* (supra), this Court is persuaded to agree with learned counsel representing the petitioner that issue otherwise sought to be decided in the instant proceedings is no more *res integra*, rather stands duly adjudicated in aforesaid case. Careful perusal of aforesaid judgment reveals that in similar



facts and circumstances, where Class-IV employee had failed to exercise option within time stipulated in the Office Memorandum dated 04.05.2023, Coordinate Bench held that pension is right bestowed upon an employee for his/her having rendered service. Once such right gets activated by issuance of Notification dated 04.05.2023, the benefits flowing therefrom cannot be denied to an employee for want of his/her having exercised option within 60 days from the date of issuance of Office Memorandum dated 04.05.2023. While returning aforesaid finding, Coordinate Bench of this Court placed reliance upon judgment passed by this Court in CWP No.7097 of 2024, titled as **Smt. Phoolmati Vs. State of Himachal Pradesh and Others**, decided on 31.12.2024, wherein petitioner though was eligible for pension and had exercised her option for availing pension under the Old Pension Scheme i.e. CCS (Pension) Rules, 1972, but was not released pension on the ground that option exercised by her was not within the time set out in office memorandum dated 04.05.2023. Court in afore case held that rigours of memorandum dated 04.05.2023, qua the period mentioned therein for the exercise of option cannot be construed in a harsh manner against the petitioner, who is Class-IV employee, as he would hardly be aware that any memorandum stands issued by the Government, whereunder option is to be exercised within some set timeline.



6. Facts of the case at hand are akin to the judgments, taken note hereinabove. Admittedly, in the case at hand, petitioner after his having rendered more than 11 years service in the Department of Information Technology is entitled to pension in terms of CCS (Pension) Rules, 1972, but since he was not aware of issuance of office memorandum dated 04.05.2023, he was unable to exercise option within the stipulated time. As has been held in *Phoolmati* (supra), a Class-IV employee cannot be expected to be aware of all notifications/instructions issued by the Government from time to time. Once right to pension has accrued to the petitioner in terms of Notification dated 04.05.2023, same cannot be defeated on the ground of delay in exercising option. It would be apt to take note of following Paras of judgment passed by the Coordinate Bench of this Court in *Reshmo Devi* (supra), which reads as under:

“4(ii). In Smt. Phoolmati Vs. State of Himachal Pradesh and others, the petitioner though was eligible for pension and had exercised her option for availing pension under the Old Pension Scheme-CCS (Pension) Rules, 1972, but was not released pension on the ground that option exercised by her was not within the time set out in office memorandum dated 04.05.2023. The Court held that rigors of memorandum dated 04.05.2023, qua the period mentioned therein for the exercise of option cannot be construed in a harsh manner against the petitioner-Class-IV employee, as he would hardly be aware that any memorandum also stands issued by the Government, whereunder option is to be exercised within some set timelines. Respondents were directed to process petitioner's option



by treating it as validly exercised. Relevant part of the judgment reads as under:-

“4. Be that as it may, in view of the fact that the petitioner retired as a Class-IV employee, from the Agriculture Department of the Government of Himachal Pradesh, this Court is of the considered view that the rigors of memorandum dated 04.05.2023 qua the period mentioned therein for the exercise of option, cannot be construed in a harsh manner against an incumbent like the petitioner as a Class-IV employee would hardly be knowing that any memorandum also stands issued by the Government and an act has to be performed by her, in the light of said memorandum. The least that is expected from an employer with regard to Class-III and Class-IV employees is that they should inform such like employees of the memorandum and seek their options, within some reasonable time. If they do not do so within reasonable time, then the Department can proceed in the matter, in accordance with law.”

Kamaljeet Kaur Sidhu Vs. State of H.P. and Ors. was a case where the petitioner, otherwise, eligible for pension under the CCS (Pension) Rules, had not been granted pension on the ground of her having exercised option beyond the timelines stipulated in office memorandum dated 04.05.2023. The respondents-State took a fair stand that option exercised by the petitioner (therein) even though belatedly, would be processed and on completion of requisite formalities by both the parties, due and admissible pension shall be released to her.

4(iii) Petitioner a Class-IV employee had superannuated on 31.05.2016 that is much prior to the issuance of Notification dated 04.05.2023 and Office Memorandum dated 04.05.2023. She cannot reasonably be expected to be aware about the existence of Notification dated 04.05.2023 and Office Memorandum dated 04.05.2023 or that she is required to exercise option under the Office Memorandum dated 04.05.2023 for staking claim upon pension which otherwise had become admissible to her under the



CCS (Pension) Rules, 1972 in view of Notification dated 04.05.2023. Furthermore, pension is right bestowed upon the petitioner for the service rendered by her. Once such right gets activated by issuance of Notification dated 04.05.2023, the benefits flowing therefrom cannot be denied to the petitioner for want of her having exercised option within 60 days from the date of issuance of Office Memorandum dated 04.05.2023.

It is well settled that pension is not a bounty. In R.C. Gupta & Ors. vs. Regional Provident Fund Commissioner, EPFO & Ors. the appellant-employees' employer had contributed 12% of their actual salary (not restricted to the statutory ceiling) to the Provident Fund, and the employees sought pension benefits on this higher salary. The authorities denied this, citing a cut-off date under the proviso to Clause 11(3) of the Pension Scheme. The Hon'ble Supreme Court in paragraph 7, clarified that the dates mentioned in the proviso – such as the scheme's commencement or when salary exceeds the ceiling – are only for calculating pensionable salary, not as cut-off dates for exercising the option to contribute on a higher salary. The Court emphasized that a beneficial social welfare scheme should not be defeated by technicalities, especially where actual salary contributions had already been made, thereby upholding the welfare intent of the scheme. The Court held as under:-

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



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

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

26. Classes of employees entitled and required to join the fund . – (1) – (5) xxx xxx xxx

(6) Notwithstanding anything contained in this paragraph, an officer not below the rank of an Assistant Provident Fund Commissioner may, on the joint request in writing, of any employee of a factory or other establishment to which this Scheme applies and his employer, enroll such employee as a member or allow him to contribute more than six thousand five hundred rupees of his pay per month if he is already a member of the fund and thereupon such employee shall be entitled to the benefits and shall be subject to the conditions of the fund, provided that the employer gives an undertaking in writing that he shall pay the administrative charges payable and shall comply with all statutory provisions in respect of such employee.

9. We do not see how exercise of option under paragraph 26 of the Provident Fund Scheme can be construed to estop the employees from exercising a similar option under paragraph 11(3). If both the employer and the employee opt for deposit against the actual salary and not the ceiling amount, exercise of option under paragraph 26 of the Provident Scheme is inevitable. Exercise of the option under paragraph 26(6) is a necessary precursor to the exercise of option under Clause 11(3). Exercise of such option, therefore, would not foreclose the exercise of a further option under Clause 11(3) of the



Pension Scheme unless the circumstances warranting such foreclosure are clearly indicated.

10. The above apart in a situation where the deposit of the employer's share at 12% has been on the actual salary and not the ceiling amount, we do not see how the Provident Fund Commissioner could have been aggrieved to file the L.P.A. before the Division Bench of the High Court. All that the Provident Fund Commissioner is required to do in the case is an adjustment of accounts which in turn would have benefitted some of the employees. At best what the Provident Commissioner could do and which we permit him to do under the present order is to seek a return of all such amounts that the concerned employees may have taken or withdrawn from their Provident Fund Account before granting them the benefit of the proviso to Clause 11(3) of the Pension Scheme. Once such a return is made in whichever cases such return is due, consequential benefits in terms of this order will be granted to the said employees."

5. In view of above, this petition is disposed of by directing the respondents to consider the case of the petitioner for grant of pension under the Old Pension Scheme and the CCS (Pension) Rules, 1972 in terms of Notification dated 04.05.2023 and Office Memorandum dated 04.05.2023 within a period of four weeks. While considering the case, observations made above shall be kept in view. The case of the petitioner for grant of pension under the Old Pension Scheme shall not be rejected only for the reason that she could not exercise her option within the cut-off period mentioned in the Office Memorandum dated 04.05.2023. Copy of decision so taken be communicated to the petitioner.

CWP Nos. 11005, 11007, 948 and 8678 of 2025

Learned counsel for the petitioners appearing in these matters submitted that their cases are covered by the decision rendered in the above writ petition being CWP No. 11004 of 2025 (Reshmo Devi vs. State of Himachal Pradesh & Ors.) . Hence, there



shall be a direction to the respondents to consider the cases of the petitioners in light of directions issued in the aforesaid writ petition.”

7. Consequently, in view of the above, this Court finds merit in the present petition and accordingly the same is allowed. Respondents are directed to consider the case of the petitioner for grant of pension under Old Pension Scheme and Central Civil Services (Pension) Rules, 1972, in terms of Notification dated 04.05.2023 as well as judgments detailed hereinabove, within a period of four weeks.

The present petition is disposed in the above terms, so also the pending miscellaneous application(s), if any.

**(Sandeep Sharma),
Judge**

November 26, 2025
(Rajeev Raturi)