



2024:KER:61200

W.P.(C) No.24987/2024

: 1 :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

WEDNESDAY, THE 7TH DAY OF AUGUST 2024/16TH SRAVANA, 1946

WP(C) NO. 24987 OF 2024

PETITIONER:

SAJU PAUL,
AGED 60 YEARS,
S/O T.P.PAULOSE,
THEKKEKARA HOUSE, PONJASSERY P.O.,
MUDICKEL, PERUMBAVOOR, PIN - 683547

BY ADVS.
P.P.JACOB
MARIYAM JACOB

RESPONDENTS:

- 1 THE EMPLOYEES PROVIDENT FUND ORGANIZATION,
REGIONAL OFFICE, KOCHI-682 017,
BHAVISHYA NIDHI BHAVAN NO 36/685 NEAR 7TH
ADVENTIST P O 1895 KALOOR, KOCHI,
REPRESENTED BY ITS REGIONAL COMMISSIONER,
PIN - 682017
- 2 THE REGIONAL PROVIDENT FUND COMMISSIONER,
REGIONAL OFFICE,
EMPLOYEES PROVIDENT FUND ORGANIZATION,
BHAVISHYA NIDHI BHAVAN NO. 36/685,
NEAR 7TH ADVENTIST P.O. 1895, KALOOR,
KOCHI., PIN - 682017
- 3 THE KERALA INDUSTRIAL AND TECHNICAL
CONSULTANCY ORGANIZATION LIMITED,
MM GARDENS, P B NO:1820, CHURCH LANDING ROAD,
NEAR KERALA FINE ARTS HALL, ERNAKULAM,
REPRESENTED BY ITS MANAGING DIRECTOR,
PIN - 682016



2024:KER:61200

W.P.(C) No.24987/2024

: 2 :

BY ADV.

SRI.SAJEEV KUMAR K. GOPAL, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 07.08.2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



2024:KER:61200

W.P.(C) No.24987/2024

: 3 :

JUDGMENT

Dated this the 7th day of August, 2024

The petitioner is an employee who retired from service on 31.07.2023 and who entitled to the benefit of Supreme Court judgment in ***Employees Provident Fund Organisation and another v. Sunil Kumar B. and others*** [2022 (7) KHC 12].

2. Employees of the 3rd respondent are covered by the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the Employees' Provident Fund Scheme, 1952 and the Employees' Pension Scheme, 1995. The Act, the Employees' Provident Fund Scheme, 1952 and the Scheme, 1995 are welfare legislations framed for the benefit of the employees like petitioner.



3. This writ petition is filed by the petitioner seeking direction to respondents 1 and 2 to process the Joint Option Form preferred by the petitioner within a time frame to be fixed by this Court and to pay interest to petitioner on their pensionary benefits as contemplated under Section 17 A of the Scheme 1995.

4. The culpable delay in processing the claim of petitioner for higher pension benefit is violative of the dictum laid down by the Hon'ble Supreme Court in the judgment dated 04.11.2022 in ***Employees Provident Fund Organisation and another*** (Supra), whereby it is directed that the directives contained in ***R.C.Gupta and others v. Regional Provident Fund Commissioner, Employees Provident Fund Organisation and others*** [(2018) 14 SCC 809] shall be implemented within a period of 8 weeks. In W.P.(C) No.24205 of 2024, a direction was granted by this Court to process the Joint Option submitted by the petitioners therein. The petitioner is a person similarly situated as the petitioners in W.P.(C) No.24205 of 2024 and



therefore entitled to similar relief as granted in the said judgment. Hence, the petitioner has filed this writ petition.

5. Standing Counsel entered appearance on behalf of respondents 1 and 2 and resisted the writ petition. On behalf of respondents 1 and 2, it is submitted that the Joint Option Form can be considered in the light of the judgment of Hon'ble Apex Court in ***Employees Provident Fund Organisation and another*** (Supra). The Standing Counsel further submitted that certain details are required from the employer of the petitioner and the Employees Provident Fund Organisation has sought information / material from the 3rd respondent.

6. I have heard the learned counsel for the petitioner and the learned Standing Counsel appearing for respondents 1 and 2.

7. The Hon'ble Apex Court has held in the judgment in the ***Employees Provident Fund Organisation and another*** (Supra) as follows:



“We accordingly hold and direct:-

i) The provisions contained in the notification no. G.S.R. 609(E) dated 22nd August 2014 are legal and valid. So far as present members of the fund are concerned, we have read down certain provisions of the Scheme as applicable in their cases and we shall give our findings and directions on these provisions in the subsequent sub-paragraphs.

(ii) Amendment to the pension Scheme brought about by the notification No.G.S.R. 609(E) dated 22nd August 2014 shall apply to the employees of the exempted establishments in the same manner as the employees of the regular establishments. Transfer of funds from the exempted establishments shall be in the manner as we have already directed.

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

(iv) The members of the scheme, who did not exercise option, as contemplated in the proviso to paragraph 11(3) of the pension scheme (as it was before the 2014 Amendment) would be entitled to exercise option under paragraph 11(4) of the post amendment Scheme. Their right to exercise option before 1st September 2014 stands crystallised in the judgment of this Court in the case of **R.C. Gupta** (supra). The scheme as it stood before 1st September 2014 did not provide for any 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 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 ₹15,000/- per month as an additional contribution under the amended Scheme is held to be ultra vires the provisions of the 1952 Act. But for the reasons already explained above, we suspend operation of



this part of our order for a period of six months. We do so to enable the authorities to make adjustments in the Scheme so that the additional contribution can be generated from some other legitimate source within the scope of the Act, which could include enhancing the rate of contribution of the employers. We are not speculating on what steps the authorities will take as it would be for the legislature or the framers of the Scheme to make necessary amendment. For the aforesaid period of six months or till such time any whichever is amendment is made, 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.”

In view of the judgment of the Hon'ble Apex Court, the petitioner's Joint Option Form need to be processed by the respondents.



2024:KER:61200

W.P.(C) No.24987/2024

: 9 :

The writ petition is therefore disposed of directing respondents 1 and 2 to process the Joint Option Form preferred by the petitioner in accordance with the judgment of the Hon'ble Apex Court in ***Employees Provident Fund Organisation and another*** (Supra) within a period of five months.

Sd/-
N. NAGARESH
JUDGE

SR



2024:KER:61200

W.P.(C) No.24987/2024

: 10 :

APPENDIX OF WP(C) 24987/2024

PETITIONER'S EXHIBITS:

Exhibit P1	TRUE PHOTOCOPY OF THE ORDER DATED 10.1.23 ISSUED BY THE FIRST RESPONDENT
Exhibit P2	TRUE PHOTOCOPY OF THE JOINT OPTION FORM SUBMITTED BY THE PETITIONER TO THE ACKNOWLEDGEMENT OF RESPONDENTS 1 & 2 DATED 24.4.23
Exhibit P3	TRUE PHOTOCOPY OF THE JUDGMENT IN W.P.(C) 30579/23 DATED 05.01.2024
Exhibit P4	TRUE PHOTOCOPY OF THE JUDGMENT IN W.P.(C) 7437/2024 DATED 19.6.24
Exhibit P5	TRUE PHOTOCOPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT DATED 21.6.24.