CGHC010360462023 2026:CGHC:32530

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 8965 of 2023

D R Dewangan S/o. R.S. Dewangan, Aged About 70 Years R/o. Mahadev Ghat Road, Ganesh Mandir Ke Pass, Ashish Petrol Pump, Raipur, District - Raipur, Chhattisgarh.

... Petitioner

versus

1 - Employees Provident Fund Organization Through Commissioner, Regional Office, Block -D, Scheme-32, Indira Gandhi Commercial Complex, Pandri, Raipur, District - Raipur, Chhattisgarh.

2 - Chhattisgarh Rajya Sahakri Samiti Bank Maryadit, Raipur, Chhattisgarh, Through Chief Executive Officer, Raipur, Chhattisgarh.

... Respondents

For Petitioner	:	Mr. S.P. Sannat, Advocate.
For Respondent No.1	:	Mr. Sunil Pillai, Advocate
For Respondent No.2	:	None.

Hon'ble Shri Justice Naresh Kumar Chandravanshi, J

Order on Board

(29th July, 2026)

The matter is listed for order on IA No.11, application for condonation of delay in payment of process fee.

02. Learned counsel appearing for both the parties would submit that

respondent No.2 is a formal party and relief sought for by the petitioner is against respondent No.1. Therefore, IA No.11/2026, application for condonation of delay in payment of process fee for issuance of notice to respondent No.2, is not required to be allowed.

03. In view of above, this Court proceeds to hear the matter finally with the consent of learned counsel appearing for both the parties.

04. This petition has been filed by the petitioner aggrieved by the order passed by the respondent authority i.e. Employees Provident Fund Organization, Raipur (for brevity,*"EPFO"*), whereby revised/higher monthly pension earlier fixed has been reduced from Rs. 9,299/- to Rs. 2,058/- without affording any opportunity of hearing to the petitioner.

05. Facts of the case, as projected by the petitioner, are that the Petitioner was working in Chhattisgarh Rajya Sahakari Samiti Bank Maryadit, Raipur (C.G.) since 01.05.1978 and attained the age of 58 years on 02.04.2011. He was working under the control of respondent No. 2, which falls within the ambit of the 'Employees' Provident Fund and Miscellaneous Provisions Act, 1952' (hereinafter referred to as the "Act of 1952"). As per the pension scheme of EPFO, the petitioner is entitled for pension after attaining the age of 58 years i.e. on 02.04.2011, hence, the respondent No. 1 had sanctioned monthly pension of Rs.2,058/- at the initial stage. Subsequently, in light of the judgment rendered by the Supreme Court in the case of **R.C. Gupta &**

Ors vs Regional Provident Fund Commissioner Employees Provident Fund Organization & Ors, reported in **(2018) 14 SCC 809**, respondent - EPFO issued Circular dated 23.03.2017 and based on that circular and the option given by the petitioner, higher pension was fixed for the petitioner according to actual pay scale of the petitioner. Consequently, the respondent - EPFO issued a revised P.P.O. for the petitioner and the pension was increased to Rs. 9,299/- with effect from 24.09.2018. Subsequently, Respondent No. 1-EPFO vide letter dated 25.02.2022 reduced the petitioner's pension to the lowest pension i.e. Rs.2,058/- without affording opportunity of hearing to the petitioner. Thus, Respondent No. 1 withheld the petitioner's higher pension and reduced it to Rs. 2,058/- with effect from March, 2023. Hence, the petitioner has filed instant petition seeking relief, as has been mentioned in opening paragraph of the order.

06. Learned counsel appearing for the petitioner submits that the petitioner, who is retired employee, had already submitted a joint option form under pre-amended paragraph 11 (3) of the Employees Pension Scheme, 1995 (for short, “Scheme of 1995”) subsequent to 1.9.2014. He further submits that the petitioner filed joint option form in the year 2018, however, he had attained the age of 58 years on 02.04.2011. It is next contended that since higher pension granted to the petitioner was reduced from Rs.9,299/- to Rs.2,058/- without affording due opportunity of hearing to him, hence, he submits that this petition may be allowed and respondent No. 1 be directed to grant higher pension to

the petitioner.

07. Learned counsel for respondent No. 1/EPFO, who is main contesting party to the case, has filed its reply. Referring to its reply, learned counsel for respondent No.1 vehemently opposes the submission of learned counsel for petitioner and submits that the petitioner attained the age of 58 years on 02.04.2011, thereafter, he was granted pension. He retired from the employment after attaining the age of 60 years on 30.04.2013. After attaining the age of 58 years, as per provisions contained in paragraph 2(ix) of Scheme of 1995, he ceases to be a member of employees pension fund. It is next contended that on the date of decision in case of **RC Gupta** (supra) as also in the case of **The Employees Provident Fund Organization and another vs. Sunil Kumar B.** reported in **(2023) 12 SCC 701,** petitioner was not the member of the Scheme of 1995, as he exited the scheme of pension after attaining the age of 58 years much before 1.9.2014 as also retired from service upon attaining age of superannuation, therefore, petitioner cannot be permitted to reap the benefit of judgment of RC Gupta (supra). Hon'ble Supreme Court in case of RC Gupta (supra) does not contemplate exercise of provisions of Paragraph 11(3) of the Scheme of 1995 for a retired employee which otherwise would frustrate the real import of the proviso to Paragraph 11(3), rendering the proviso redundant.

Benefit of exercise of option which is observed in case of Sunil

Kumar B (supra) is only for existing members on 1.9.2014. Referring to Para 50.7 of the decision in Sunil Kumar B (supra), it is submitted that Hon'ble Supreme Court in the aforementioned decision has clarified the position with regard to status of the employees who exited the membership/ scheme or stood retired prior to 1.9.2014.

08. He next contended that in Para 50 (7) of decision in Sunil Kumar B (supra), Hon'ble Supreme Court has clearly observed that the employees who had retired prior to 1.9.2014 without exercising any option under Para 11 (3) of the pre-amended scheme have already exited from the membership thereof and therefore, they would not be entitled to the benefit of this judgment. He also contended that according to the scheme, employee upon attaining age of 58 years exists from the scheme and on that date he is being paid entire deposits along with all other benefits of the scheme. Petitioner has also been granted all such benefits after attaining the age of 58 years and he has enjoyed said benefits. He further submits that under amended para 11.4 of the Scheme of Pension, it is clearly envisaged that benefit is extended only to existing members.

09. Referring to definition of 'member' given under sub-para (ix) of Para 2 of the Scheme of 1995, he pressed upon explanation appended to Para-2 (ix) to submit that employee after attaining the age of 58 years ceases to be a member of pension fund and therefore, subsequent amendment though beneficial to employees cannot be

extended to petitioner being ceased to be member of pension scheme and the benefit under the scheme and amended provision will be available only to existing members as on 1.9.2014.

10. He next contended that though respondent No.1 has issued circular and given higher pension and arrears thereof, but it was due to mistake as decision of Hon'ble Supreme Court could not be understood in appropriate manner. Said mistake was subsequently corrected. He submits that misconception with regard to the provisions as also misunderstanding of decision in case of RC Gupta (supra) is only because the Division Bench of High Court of Kerala has set aside Employees Pension Amendment Scheme 2014. However, amendment brought in Employees Pension Scheme has been held to be valid in case of Sunil Kumar B (supra) in Para 44 (I) by Hon'ble Supreme Court.

11. He also contended that retired employees of the Power Grid Corporation have approached Hon'ble Supreme Court for extending benefit of case of RC Gupta (supra), seeking implementation of direction given by Hon'ble Supreme Court in case of RC Gupta (supra) and upheld in Sunil Kumar B (supra), in the said proceeding Hon'ble Supreme Court has observed that the claim as made therein and the arguments to be misconceived. It is further observed that employees therein are ineligible for the reason that they had retired prior to 2014. It is also pointed out that in that case Hon'ble Court has further taken

note of the fact that petitioners therein attained age of 58 years prior to 1.9.2014 without exercising option under pre-amended scheme and dismissed the applications. Case of petitioner herein is squarely covered with the aforementioned decision of the Hon'ble Supreme Court.

12. Learned counsel for respondent No. 1 further submits that on similar facts, a bunch of writ petitions, the leading of which being WPS No. 7986 of 2024 (R.K. Chalisgaonkar vs. Employees Provident Fund Organizatoin & others) was dismissed, which has also been upheld by the learned Division Bench vide order dated 23.06.2026 passed in Writ Appeal No. 516 of 2026 {R.K. Chalisgaonkar vs. Employees Provident Fund Organization & others); one other bunch of writ petitions, the leading of which being WPS No. 7393 of 2024 {Virendra Kumar Saxena Vs. Central Board of Trustee Employees Provident Fund Office and another} and other connected cases involving same issue, has also been rejected by the learned Single Judge vide judgment dated 29.04.2026, hence, learned counsel submits that this petition deserves to be dismissed.

13. I have heard learned counsel for the respective parties and perused the documents available on record of writ petition.

14. A proviso came to be inserted in Paragraph 11 (3) of the Scheme of 1995 w.e.f. 16.03.1996, whereby an option was given to

the employer and employee to contribute beyond ceiling limit i.e. Rs. 6,500/- per month from the date of commencement of the scheme or from the date salary exceeds Rs.6500/-, whichever is later. Pursuant to above amendment, when some employees covered under the Scheme of 1995 have not been allowed to exercise the option under Section 11 (3) by the provident fund authorities on the ground that the employees who want to contribute beyond ceiling were bound to exercise option within stipulated time and whosoever had not filed option within time is not eligible to contribute beyond the ceiling, they preferred a writ petition before the High Court of Himachal Pradesh, which was decided in favour of petitioner-employees therein, against which an *intra* court appeal was filed by the Department before the Division Bench and the order passed by learned Single Judge was set aside by the Division Bench upholding the view of the Provident Fund Authority that under the proviso to Clause 11(3) of the Pension Scheme there was a cut-off date. Thereafter the matter went up to the Supreme Court in an appeal, which came to be registered as Civil Appeal (S) No.10013-10014/2016 (RC Gupta and others Vs. Regional Provident Fund Commissioner Employees Provident Fund Organization and Others). Said appeal came to be decided on 4.10.2016 and the cut off date which was fixed by the department was set aside. Relevant paragraph of the decision in RC Gupta’s case (supra) is extracted herein below for ready reference:-

> “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.

15. Pursuant to judgment in R.C. Gupta’s case (supra), the respondent EPFO vide Circular dated 23.03.2017 invited applications for exercising option and the employees as per said judgment returned contribution received from provident fund, they also filed option, which was accepted and acted upon by respondent authorities in terms of provision of Paragraph 11 (3) of the Scheme of 1995. Respondent EPFO thereafter revised pension as well as released arrears to employees across the country. Pension payable to the petitioner herein

also stood revised after obtaining additional contribution from the petitioner which was deposited with respondent No.1.

16. In the interregnum, respondent No.1 vide Notification dated 22.8.2014, enhanced the wage ceiling from Rs.6,500/- to Rs.15,000/- by amending Para-11 of the Scheme of 1995; deleted the proviso thereto and also inserted sub-para (4) in Para-11, which reads as under:-

> "(4) The existing members as on the 1st day of September, 2014, who at the option of the employer and employee, had been contributing on salary exceeding six thousand and five hundred rupees per month, may on a fresh option to be exercised jointly by the employer and employee continue to contribute on salary exceeding fifteen thousand rupees per month and the pensionable salary for the existing members who prefer such fresh option shall be based on the higher salary]:
>
> Provided that the aforesaid members have to contribute at the rate of 1.16 per cent on salary exceeding fifteen thousand rupees as an additional contribution from and out of the contributions payable by the employees for each month under the provisions of the Act or the rules made thereunder:
>
> Provided further that the fresh option shall be exercised by the member within a period of six months from the 1st day of September, 2014:
>
> Provided also that the period specified in the second proviso may, on sufficient cause being shown by the member, be extended by the Regional Provident Fund Commissioner for a further period not exceeding six months:
>
> Provided also if no option is exercised by the member within such period (including the extended period), it shall be deemed that the member has not opted for contribution over wage ceiling and the contributions to the Pension Fund made over the wage ceiling in respect

> of the member shall be diverted to the Provident Fund account of the member along with interest as declared under the Employees' Provident Funds Scheme from time to time."

17. As per the amendment brought to the Employees Pension Scheme 1995, which came into effect from 01.09.2014, the ceiling of maximum pensionable salary provided in Paragraph 11 (3) was raised to Rs.15,000/- per month. Proviso appended to Paragraph 11 (3) has been deleted with effect from 01.9.2014 and sub-para (4) is introduced in Paragraph 11 which provides that existing members as on 1.9.2014, who at the option of the employer and employee, had been continuing on salary exceeding six thousand and five hundred rupees per month, may on a fresh option to be exercised jointly by the employer and employee continue to contribute on salary exceeding Rs.15,000/- per month and pensionable salary for the existing members who prefer such fresh option shall be based on the higher salary. The option could be submitted within further period of six months, in case the authority under the Act found sufficient reasons therefor. This amendment also introduced a deeming clause whereby failure to exercise the option within the stipulated period of six months from 01.09.2014, further extended by six months on showing sufficient cause by the existing member, shall result in automatic exclusion from the benefit of higher pension, with excess contribution being diverted back to Provident Fund.

18. Issue of applicability of paragraph 11(4) of the Scheme of 1995, which came into force with effect from 01.09.2014, came up for consideration before the Hon'ble Supreme Court in EPFO & Anr. Vs. Sunil Kumar B. & Ors., (2023) 12 SCC 701. It was observed as under:-

> "50.4. The members of the Scheme, who did not exercise option, as contemplated in the proviso to Para 11(3) of the Pension Scheme (as it was before the 2014 Amendment) would be entitled to exercise option under Para 11(4) of the post amendment Scheme. Their right to exercise option before 1-9-2014 stands crystallized in the judgment of this Court in R.C. Gupta. The Scheme as it stood before 1-9-2014 did not provide for any cut-off date and thus those members shall be entitled to exercise option in terms of Para 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 Para 11(3) as also the amended Para 11(4) of the Pension Scheme.
>
> 50.7. The employees who had retired prior to 1-9-2014 without exercising any option under Para 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.
>
> 50.8. The employees who have retired before 1-9-2014 upon exercising option under Para 11(3) of the 1995 Scheme shall be covered by the provisions of Para 11(3) of the Pension Scheme as it stood prior

to the amendment of 2014."

19. From perusal of above quoted portion of decision in case of Sunil Kumar B (supra) it is clear that the members of the Scheme of 1995, who did not exercise option, as contemplated in the proviso to Para 11(3) of the Scheme of 1995 (as it was before 2014 Amendment) would be entitled to exercise option under Para 11(4) of the post amendment Scheme and the employees who had retired prior to 1-9-2014 without exercising any option under Para 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. In other words, all the employees who without filing option under proviso to Para 11 (3) of the Scheme of 1995 had retired prior to 01.09.2014 but have filed option after the decision of Hon’ble Court in case of R.C. Gupta (supra) are not entitled to revised higher pension.

20. Relying on the observation of Hon’ble Supreme Court in Para 44 (v) and (vi) of the judgment rendered in case of Sunil Kumar B’s case (supra), the respondent No.1 decided that the employees who retired prior to 1.9.2014 without exercising option under Paragraph 11 (3) are not entitled to higher amount of pension. Accordingly, circular dated 29.12.2022 and 20.2.2023 have been issued calling upon the employees to apply online/digitally for validation of their option. Requirements for validation of joint option are that it must contain the proof of remittance of employer’s share in Provident Fund on higher

wages exceeding the prevalent wage ceiling of Rs.5,000/ Rs.6500 and proof of joint option under para 11 (3) of 1995 scheme as also Para 26 (6) of the Scheme of 1952 duly verified by the employer. Since petitioner-employee, who retired prior to 1.9.2014, did not submit proof of the exercise of joint option under erstwhile para 11 (3) of the Scheme of 1995 and also proof of remittance in provident fund on higher wages exceeding the prevalent wage ceiling despite above repeated circulars, respondent No.1 reopened the case of petitioner-employee and vide impugned order reduced monthly pension of the petitioner.

21. Hence, the question arises for determination in this petition is whether an employee, who attained age of 58 years prior to 01.09.2014, without having exercised a joint option under the proviso to Paragraph 11 (3) of pre-amendment Scheme of 1995, during his/her service, is entitled to the benefit of higher pension ?

22. The Employees' Pension (Amendment) Scheme, 2014 was notified on 22.8.2014 and brought into force with effect from 01-09-2014. Effect of the amendment in 2014 was that maximum pensionable salary was increased from Rs.6500/- to 15000/-; proviso to sub-para (3) of Para 11 enabling members to contribute in excess of the contribution due on the maximum pensionable salary was deleted and a new sub-para (4) was added to Para-11 to deal with cases of existing members who had been contributing on actual salary as on 01.09.2014

by providing them an option (to be exercised in the manner prescribed) to continue to pay contributions with reference to their actual salary.

23. At this stage, it is necessary to have a look at the definition of ‘existing member’ and ‘member’ provided in the Scheme of 1995. ‘Existing Member’ is defined in Section 2 (vi) of the Scheme of 1995, which reads as under:-

> “(vi) “existing member” means an existing employee who is a member of the Employees’ Family Pension Scheme, 1971.”

24. ‘Member’ is defined under Section 2 (ix), which reads as under:-

> “(ix) ‘member’ means an employee who becomes a member of the Employees Pension Fund in accordance with the provisions of this Scheme:
>
> Explanation:- An employee shall cease to be the member of Pension Fund from the date of attaining 58 years of age or from the date of vesting admissible benefits under the Scheme, whichever is earlier.”

25. From perusal of explanation appended to the definition of ‘member’ given in Para-2 (ix) of the Scheme of 1995 it is clear that, an employee shall cease to be the member of Pension Fund from the date of attaining 58 years of age or from the date of vesting admissible benefits under the Scheme, whichever is earlier. Thus, it is clear that amendment brought in the Scheme of 1995 in the year 2014 by which proviso to Clause 11(3) of the Scheme of 1995 was deleted w.e.f.

01/09/2014**,** was in relation to the existing members i.e. those who had not attained age of 58 years as on 01.09.2014 and not retired. Hence, benefit of proviso cannot be extended to any employee after 01/09/2014 if he had not exercised the option earlier and ceases to be a member of the Pension Fund.

26**.** In case of **Sunil Kumar B** (supra), Hon'ble Supreme Court, while dealing with issue of applicability of amendment made in the year 2014, has held that those employees who had retired prior to 1.9.2014 without exercising any option under paragraph 11 (3) of pre-amended scheme, besides had already exited from the membership thereof, they would not be entitled to benefit of the judgment passed in R.C. Gupta's case (supra) nor they would become entitle to the pension scheme (amended) of 2014. It was further held that the existing members of the scheme or those who had not superannuated at the time of coming into force of 2014 amendment, if they had earlier not exercised option in terms of the proviso to paragraph 11 (3) of the Scheme of 1995, they would be entitled to exercise option under paragraph 11 (4) of the post amended scheme.

27. Recently, in Writ Petition (Civil) No.97 of 2025, parties being Powergrid Retired Employees' Association (PREA) vs Union of India and others, decided on 19.3.2025, Hon'ble Supreme Court has reiterated that the employees, who retired prior to 01.09.2014 without exercising their option under paragraph 11(3) of the pre-amendment

scheme, are not entitled to the benefits of amendment brought in 2014.

28. In case at hand, from the pleadings and submissions made on behalf of respective parties, it transpires that the petitioner herein retired before 01.09.2014 without exercising the option under Para 11 (3) of the Scheme of 1995. Para 11 (3) of the Scheme of 1995 which relates to joint option for higher contribution for pension funds stood deleted w.e.f. 1.9.2014. Petitioner submitted option admittedly only after decision in case of R.C. Gupta (supra), in the year 2018. Para 11 (4) of the Scheme of 1995, introduced on 1.9.2014, provides that fresh option shall be exercised by the existing member within a period of six months from 01.09.2014. Petitioner also failed to produce any material before the respondent department or this Court indicating that petitioner submitted option being member under the Scheme or prior to 1.9.2014, under Para 11 (3) of the Scheme of 1995 and pursuant thereto, there was remittance in pension fund on higher wages exceeding the prevalent wage ceiling of Rs.5000-6500/-. Thus, in the considered opinion of this Court, withdrawal of benefit of higher pension of the petitioner on the ground that he had retired prior to 01.09.2014 without filing his option, does not call for any interference in light of decision of Hon'ble Supreme Court in cases of Sunil Kumar B. (supra) and Powergrid Corporation (supra).

29. For the foregoing reason and discussions, in the considered opinion of this Court, the writ petition has no merits, the same is liable

to be and is hereby dismissed. No cost(s).

30. Pending interlocutory application (s), if any, also stands disposed of.

(Naresh Kumar Chandravanshi)
Judge

MOHD AKHTAR KHAN Digitally signed by MOHD AKHTAR KHAN Date: 2026.07.29 16:03:45 +0530

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