



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13752 OF 2026**

Amit Gunvantrai Mehta

...Petitioner

V/s.

The Employees' Provident Fund
Organisation (EPFO)

...Respondent

**WITH
WRIT PETITION NO.13962 OF 2026**

Vinayak Devram Salunke

...Petitioner

V/s.

The Employees' Provident Fund
Organisation (EPFO)

...Respondent

**WITH
WRIT PETITION NO.13955 OF 2026**

Keepdanda Basappa Monnappa

...Petitioner

V/s.

The Employees' Provident Fund
Organisation (EPFO)

...Respondent

**WITH
WRIT PETITION NO.12957 OF 2026**

1. Purushottam Jagannath Kulkarni
2. K.A. Balasubramanian

...Petitioners

V/s.

The Employees' Provident Fund
Organisation (EPFO)

...Respondent

**WITH
WRIT PETITION NO.12873 OF 2026**

1. Narayana Billa
2. Mrs. Seshu Narayana Billa

...Petitioners

V/s.

The Employees' Provident Fund
Organisation (EPFO)

...Respondent

WITH

WRIT PETITION NO.12869 OF 2026

1. Shivanand Baburao Doddannavar
2. Sudam Shantaram Patole
3. Sakharam Shankar Deulkar
4. Gulabrao Pitamber Chaudhari
5. Komal Narayan Chaudhari
6. Hanamanrao Kondiba Shendage
7. Pravin Vilas Ranavare
8. Vishwanath Bhaurao Raut
9. Prakash Baban Dalal
10. Ramesh Kashinath Thorat
11. Dayanand Maruti Surve
12. Bhaskar Madhukar Patil
13. Ravindra Vasant Shingne
14. Suresh Ananda Pawar
15. Chandrashekhar Sudhakar Badkas
16. Chandrakant Shankar Birajdar
17. Eknath Sadashiv Chaudhari
18. Ayubkhan Yusufkhan
19. Deepak Narayan Prabhu
20. Shankar Bapurao Lande
21. Udaykumar Yeshwantrao Vajandar
22. Sandesh Ratnakant Patil
23. Sanjay Shankar Sakhalkar
24. Anil Tryambak Patil
25. Sunil Ramchandra Deshpande
26. Kishor Madhukar Kulkarni
27. Manohar Gopal Patil
28. Suhas Sarvottam Neglur
29. Suresh Shripati Kumbhar
30. Sambhaji Narayan Kumbhar
31. Tanaji Baburao Jadhav
32. Harshad Vasant Vagal

33. Mohammed Arshad Akbar Ali
Qureshi
34. Shrikant Shankarrao Pasalkar
35. Anand Baburao Kandage
36. Sumant Mukteshwar Sirmokadam
37. Tanaji Maruti More
38. Parag Krishna Bansode
39. Narain Ghanshyamdas Ramnani

...Petitioners

V/s.

The Employees' Provident Fund
Organisation (EPFO)

...Respondent

Mr. Satyam Surana *for the Petitioners in all the Petitions.*

Ms. Payoja Gandhi *(through vc) for the Respondent.*

CORAM: SANDEEP V. MARNE, J.

DATED: 19 OCTOBER 2026.

JUDGMENT:

1) The common issue of law which is involved in these Petitions is whether private trust rules of a provident fund trust of an exempted establishment under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (**EPF Act**) can govern the contribution to the Employees' Pension Fund of employers or restrict the exercise of Joint Option under paragraph 11(3) /11 (4) of Employees Pension Scheme, 1995 (**EPS, 1995**). To paraphrase whether Respondent-Employees Provident Fund Organisation (**EPFO**) can reject the application for Joint Option for pension on higher wages on the ground that the applicable Trust Rules of the establishment did not provide for contribution to the pension fund or where the applicable Trust Rules restrict employer's pension side contribution to a particular limit.

2) Writ Petition Nos. 13752 of 2026 and 13955 of 2026 are filed by two employees of Abbott India Limited which was formerly known as ‘The Boots Company (India) Limited’, thereafter as ‘Boots Pharmaceuticals Limited’ and thereafter as ‘Knoll Pharmaceuticals Limited’. In the year 2002, name of the employer was changed to Abbott India Limited. The Boots Company India Limited was an exempted establishment until the year 2005. The Petitioners are members of the Employees’ Pension Scheme, 1995. Pursuant to the judgment of the Apex Court in *Employees Provident Fund Organisation & Ors. Vs. Sunil Kumar B. & Ors.*¹ the Petitioners applied for exercise of joint option for pension on higher wages. The Applications were rejected by orders dated 8 April 2025 on the ground of non-submission of certain records, forms challans, etc. The Petitioners approached this Court by filing Writ Petitions and by order dated 18 April 2026, this Court remanded the proceedings for fresh consideration by examining all the available material. The Petitioners’ employer resubmitted all the supporting documents of the Petitioners to the Respondent. The Respondent also sought various documents from the employer including copy of the Trust Rules/Deeds during the exemption period. The employer by its reply dated 22 June 2026 clarified *inter-alia* that there was only change in name from Knoll Pharmaceuticals Ltd. to Abbott India Limited, that the employers were exempted under paragraph 27 of the Employees’ Provident Fund Scheme, 1952, that exemption was surrendered w.e.f. 1 April 2005 and that past accumulations alongwith statement thereof were submitted to the Respondent. It was further communicated that the Provident Fund Trust was no longer in existence. Thereafter hearing was conducted, during

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which the Respondent once again enquired of Trust Rules. By letter dated 17 July 2026, the employer once again informed the Respondent that Trust Rules are more than 20 years old and will not readily available. By order dated 11 September 2026 the Respondent has rejected the application for pension on higher wages submitted by the Petitioners. It is held that though Petitioners are not held ineligible on the ground stated in paragraph 44(v) of the judgment in *Sunil Kumar B.* (supra), they are not entitled to pension on higher wages on account of express limits put on employer's pension side contribution as per Trust Deed/Rules.

3) Writ Petition No.12869 of 2026 is filed by 39 retired employees of Brihanmumbai Electric Supply & Transport (**BEST**) Undertaking challenging order dated 29 January 2025 rejecting prayer of the Petitioners for exercise of option under paragraph 11(3) /11(4) of the EPF Scheme, 1995 on the ground that the Trust Rules of the establishment restricted EPF contribution on wage ceiling.

4) Writ Petition No.13962 of 2026 is filed by a retired employee of Raymond Steel Limited, who was working with it during the period from 1994 to 2000. The establishment where the Petitioner worked has been a part of restructuring and at the time of Petitioner's retirement on 23 October 2022, the same was known as Thyssenkrupp Electrical Steel India Pvt. Ltd., which has been later taken over by JSW JFE Electrical Steel Private Limited w.e.f. 30 January 2025. The Petitioner was member of the EPS, 1995. The Petitioner is presently drawing pension computed on the ceiling wages vide PPO dated 10 February 2023. During initial period of his service from 1 February 1995 to 31 March 2000, his provident fund contributions were made to the provident fund trust of Raymond Limited

at Thane, which was an exempted establishment under Section 17 of the EPF Act from the operation of the Employees Provident Funds Scheme, 1952. After judgment of the Apex Court in ***Sunil Kumar B.*** (supra) the Petitioner exercised joint option for payment of pension on higher wages, which was approved by the employer. However, by impugned order dated 11 August 2025 the Assistant Provident Fund Commissioner, RO, Nashik has rejected Petitioner's application on the ground that the extant Trust Rules of Raymond Limited Employees Provident Fund Trust restrict the employer's contribution to the pension fund upto statutory wage ceiling.

5) Writ Petition No.12957 of 2026 is filed by the two employees of Tata Communications Ltd. Their applications for pension under paragraph 11(3) /11(4) of the EPS, 1995 for availing pension on higher wages is rejected by the Assistant Provident Fund Commissioner, on the ground that the establishment had restricted the pension contribution on wage ceiling.

6) Writ Petition No.12873 of 2026 is filed by the two Petitioners, who were initially employed with Tata Communications Ltd. and thereafter were employed by Tata Communication Transformation Service Ltd. Their applications for payment of pension on higher wages have been rejected *inter-alia* on the ground that the Trust Rules of M/s. Tata Communications Ltd. did not make Petitioners eligible for pension on higher wages. Additional grounds of non-production of 6A form, Challans, 3A form, etc. are also recorded in the impugned order dated 31 March 2025.

7) Since the central issue involved in all the six Petitions is with regard to entitlement of the Petitioners to draw pension on higher wages despite existence of ceiling limit for contributions under the Trust Deed/Rules, the same are taken up for analogous hearing and decision.

8) I have heard Mr. Surana, the learned counsel appearing for the Petitioners, who submits that the issue is conclusively answered by the judgment of the Apex Court in ***Sunil Kumar B.*** (supra), which holds that an exempted and unexempted establishments stand on par. He submits that the Trust Rules operate only in the field of provident fund and that the same has no bearing on employee's entitlement for pension on higher wages. He further submits that the issue is no longer *res integra* and covered by the judgment of the Madras High Court in ***D. Chandirasegar and Ors. Vs. Union of India and Ors.***² in which it is held that Trust Rules cannot be cited to deny benefits under the EPS. That the Karnataka High Court in ***Bharath Earth Movers & Ors. Vs. Union of India and Ors.***³ has also held that it is impermissible to reject application for pension on higher wages on the ground that applicable Trust Rules of the establishment did not provide for contribution to the pension fund. He also relies on judgments of Calcutta High Court in ***Anuradha Roy & Ors. Vs. The Union of India and Ors.***⁴ and of Allahabad High Court in ***Sunil Kumar Mehrotra and 24 others Vs. Central Board of Trustees, EPFO***⁵. He submits that Trust Rules cannot apply once exemption is ceased.

9) So far as the ground of rejection of non-production of relevant forms/records is concerned, he relies on orders passed by this Court in

² WP(MD) No.29573 of 2024 decided on 2 September 2025

³ WP 19985 of 2025 decided on 30 April 2026

⁴ WPA No.15459 of 2025 decided on 14 November 2025.

⁵ Writ A No.504 of 2026 decided on 8 May 2026.

Kiran Rajaram Jadhav Vs. The Employees Provident Fund Organisation (EPFO) THR the ASST PF Commissioner and Anr.⁶ and Durga Srinivas Kallakuri Vs. The Employees Provident Fund Organisation (EPFO) THR the ASST PF Commissioner. He accordingly prays for setting aside the impugned orders.

10) *Per contra*, Ms. Gandhi, the learned counsel appearing for the Respondent-EPFO submits that the Applications of the Petitioners are rightly rejected by the Competent Authority after duly applying its mind to the entire material on record. She submits that in many cases, Petitioners/employers have failed to produce either the rules of the Trust or the relevant form /records for the purpose of deciding the entitlements of the Petitioners.

11) Ms. Gandhi submits that the issue involved in Writ Petition No.12957 of 2026 (Purushottam Kulkarni) is entirely different. She submits that in that case, the employer- Tata Communication Ltd has not deposited PF contribution on all eligible heads of salary. She relies on Gazette Notification dated 3 May 2023 in support of her contention that in respect of eligible higher pension optees, their employer needs to contribute 9.49% of the basic wages, dearness allowance and retaining allowance of each member to the pension fund w.e.f. 1 September 2014. She also relies on Circular dated 14 June 2023 issued by Head Office of the Respondent in support of her contention that the regional offices of the EPFO need to verify whether employer's share towards PF contribution is remitted on employee's pay exceeding the prevalent statutory wage ceiling from the day the pay exceeded the wage ceiling or 16 November 1995, whichever is later till the date of retirement.

⁶ Writ Petition No.632 of 2026 decided on 26 March 2026.

12) In respect of other Petitions, Ms. Gandhi submits that the Division Bench judgment of Madras High Court in **Central Provident Fund Commissioner and 2 ors. Vs. M. Tamil Nambi**⁷ is challenged by the EPFO in SLP (C) No.31613 of 2026 and by order dated 8 September 2026, contempt proceedings have been stayed. She further submits that judgment of Single Judge of this Court in **Anuradha Roy** (supra) has been stayed by the Division Bench of Calcutta High Court by orders dated 13 February 2026 and 9 March 2026. She accordingly prays for dismissal of the Petitions.

13) Rival contentions urged on behalf of the parties now fall for my consideration.

14) The Employees' Pension Scheme came into effect in the year 1995 pursuant to an amendment and inclusion under Section 6A of the EPF Act. Rule 11 of the EPS originally provide for a ceiling limit of Rs.5,000/- for contributions to the pension fund. Thereafter by way of statutory amendments the limit was increased to Rs.6,500/- and thereafter to Rs.15,000/-. In the year 2014 an option/provision was introduced under Rule 11 of the Pension Scheme, which allows employers and employees to exercise joint option to avail pension on their higher wages /actual wages by making appropriate contributions as specified. The amendment was later applied with retrospective effect. The same was challenged before various High Courts and the issue got finally settled by the

⁷ WA.(MD)Nos.3129,decided on 9 July 2026WA.(MD)Nos.3129,

judgment of the Apex Court in ***Sunil Kumar B.*** (supra). The salient features of judgment in ***Sunil Kumar B.*** are that the Apex Court has upheld the validity of the amendments made to the Employees' Pension Scheme vide Notification dated August 22, 2014 (effective September 1, 2014), including the enhancement of the maximum pensionable salary ceiling to 15,000/- per month. It is further held that an employee who contributed to the Provident Fund on actual wages exceeding the statutory ceiling (under Paragraph 26(6) of the EPF Scheme) cannot be debarred from exercising the option to contribute on actual higher wages toward the pension fund under Paragraph 11(3) of the EPS. It is further held that the proviso to Paragraph 11(3) (as it stood prior to the 2014 amendment) did not stipulate any cut-off date. Insisting on a rigid cut-off date to reject joint options for higher pension is held to be unjustified, applying the principles established in ***R.C. Gupta v. Regional Provident Fund Commissioner.***⁸ It is further held that the requirement under the 2014 amendment for employees who opt to contribute on salaries exceeding Rs. 15,000 to make an additional contribution of 1.16% on salary exceeding the ceiling is *ultra vires* the parent Act. Employees who have retired prior to September 1, 2014 who had exercised the option or were refused the option improperly were granted a fresh window to validate joint options.

15) In the present cases, it appears that a common ground for rejection of joint options made by the Petitioners is non-availment of Trust Rules of exempted establishment at par with the pension scheme. The Respondents have relied upon EPFO Head Office Circular dated 18 January 2025, paragraph 2 whereof directed that the eligibility for pension on higher wages should be determined on the basis of extant

⁸ (2018) 14 SCC 809

Trust Rules of the exempted establishments. The Circular further suggested that in case the Trust Rules are amended post the decision of the Apex Court in ***Sunil Kumar B.*** (supra) application of members of such Trust may not be considered. Paragraph 2 of the Circular dated 18 January 2025 reads thus:-

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 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.

16) The issue involved in the Petitions appear to be no more *res integra*. In ***D. Chandirasegar*** (supra) the Madras High Court has decided a batch of Petitions filed by 86 former employees of B.H.E.L. challenging order of the EPFO by which joint option request submitted by employees to avail benefits of higher pension were rejected primarily relying on Trust Rules applicable to the exempted organizations of B.H.E.L. The Petitioners had also challenged EPFO Circular dated 18 January 2025 not permitting exempted establishment to amend the Trust Rules with retrospective effect so as to bring the same in consonance with the judgment of the Apex Court in ***Sunil Kumar B.*** (supra). Madras High Court has held that it was impermissible for EPFO to rely on Trust Rules providing for ceiling for contribution of employer. It is further held that Trust Rules are applicable only to PF scheme and that when the statute provides for beneficial scheme of receiving higher pension based on remittance of actual wages, the same cannot be taken away from the employees unless there is statutory bar from claiming the same. It is further held that even if there is prohibition in the Trust Rules for

making higher contribution (based on actual wages) to the Pension Scheme, the same could only be construed to be a contract in violation of statutory provision which would be void in the eyes of law. Madras High Court accordingly set aside the Circular dated 18 January 2025 treating the same as in violation of order passed by the Apex Court. The Madras High Court held in paragraphs 30, 31, 33, 34, 35, 36, 37 and 42 as under:

30.Relying upon the above said Trust Rules, the respondents have contended that the Trust Rules fixes the wage ceiling of Rs.15,000/- for the contribution of the employer and out of the said Rs.15,000/-, 8.33% shall be diverted to the pension fund. He has further pointed out that, in case, the salary of the employee exceeds Rs.15,000/-, the contribution would be limited to a sum of Rs.15,000/- only. Relying upon such clause in the Trust deed, the respondents authorities are contending that the Trust Rules prohibit making any higher contribution by the employee either to the Provident Fund account or to the Pension Scheme. Hence, the joint option application presented by the employer and employees would be in violation of the Trust Rules which has been mutually agreed by them. In view of the circular issued by the head office of the Employees' Provident Fund Organisation dated 18.01.2025, the joint option application submitted by the exempted establishment, have to consider only in the light of the Trust Rules.

31.As per the paragraph No.26(6) of the Employees' Provident Fund Scheme, the employer and the employees can exercise the joint option for payment of contribution on actual wages instead of ceiling wages. This provision is more beneficial than the Trust Rules as far as the Provident Fund Scheme is concerned.”

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33.In view of the above said condition, if any amendment is introduced to the Provident Fund Scheme and it is more beneficial to the employees, it becomes automatically applicable to the employees, even without a formal amendment of the Trust Rules. The respondents authorities have pointed out that unamended Trust rules which do not provide for exercising the joint option for remittance of higher contribution to the Provident Fund. As per the paragraph 27-AA cited supra, even without amendment of the Trust Rules, an amendment made to the Provident Fund Scheme is automatically applicable to the members of the scheme. In fact, in the present case, admittedly, even without formal amendment of the Trust Rules, the Employees' Provident Fund Organisation had received higher contribution on actual wages from the employer and the employee. This fact is not disputed in the counter. In such circumstances, the respondents cannot rely upon the

unamended Trust Rules which is clearly in violation of the statutory condition No.10 under Appendix 'A' in paragraph 27-AA of the Provident Fund Scheme.

34.The Trust has been receiving higher contribution on the actual wages (instead of ceiling wages) and the same has been credited to the Trust funds. However, in view of the non-exercising of joint option alone, 8.33% of the employer contribution(restricted to ceiling wages) was diverted to Pension Scheme. The remittance of lesser amount to the Pension Scheme by the employer was attributable only to the non-exercising of joint option and it is not traceable to the bar in the Trust Rules. Therefore, the contention of the respondents that the Trust Rules prohibit the remittance or diversion of 8.33% on actual wages to the Pension Scheme is factually incorrect.

35.That apart, the Trust rules framed under the Employees' Provident Fund Scheme cannot be cited to deny the benefits under the Employees' Pension Scheme. Admittedly, the 5th respondent establishment has not been exempted under the Employees' Pension Scheme as contemplated under Rule 39 of the said scheme. The conditions for the exemption granted to the PF Scheme cannot be invoked to deny the benefits to an employee under the Statutory Pension Scheme. The conditions imposed while granting exemption to one scheme cannot be kalideoscoped into another scheme for which no exemption has been granted under the statute.

36.It is an admitted fact that right from the beginning the establishment is governed under the Statutory Pension Scheme. **The benefits of the said Statutory Pension Scheme cannot be denied citing the Trust Rules, which are applicable only to the Provident Fund Scheme. When the statute provides for a beneficial scheme(receiving higher pension based on remittance on actual wages) the same cannot be taken away from the employee unless there is a statutory bar for claiming the same.**

37.Even assuming that there is a prohibition in the Trust Rules for making higher contribution (based on actual wages) to the Pension Scheme, the same could only be construed to be a contract in violation of the Statutory provision, which would be void in the eye of law. Therefore, the reliance placed upon by the respondent authorities on the Trust Rules is not legally sustainable in the eye of law.

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42.The circular issued by the respondents on 18.01.2025 cannot be a violation of the order passed by the Hon'ble Supreme Court in Sunil Kumar case. Hence, the same is liable to be set aside.

(Empphasis added)

17) In ***Bharath Earth Movers Employees Association*** (supra) the issue before the learned Single Judge of the Karnataka High Court was whether EPFO can deny exercise of joint option to contribute to actual fund on the premise that Trust Rules do not enable contribution of pension fund on higher wages. Answering the issue, the Karnataka High Court held in paragraphs 52, 53, 54, 55 and 61.4 of the judgment as under:

52. **The contention that the Trust Rules do not provide for contribution on wages exceeding the ceiling cannot, by itself, defeat the statutory right recognised under the Scheme, 1995.** The paragraph 39 of the Scheme 1995, which deals with exemption from the Scheme 1995, provides for such exemption from the application of Scheme 1995, only if the other pension scheme to which the employee is a member is on par with the Scheme, 1995 or more favourable to the employee.

53. When the Scheme 1995, provides, under paragraphs 11(3) and 11(4) that the employer and employee are entitled to exercise the joint option, for contribution on actual wages, to the pension fund, in excess of ceiling wages, the respondents cannot deny the right of the employer and employee to exercise the joint option.

54. **In addition, both in R.C. Gupta and Sunil Kumar (supra), the Apex Court did not stipulate that the exercise of joint option is permissible for contribution for pension fund on actual salary, only if the Trust Rules provide for such contribution. The Trust Rules even if, does not specifically provide for such contribution to the pension fund, Paragraph No.39 of the Scheme, 1995, comes to the aid of the employees.** However, if the authorities under the Scheme, 1995, are able to establish that despite insistence to contribute on higher wages, the employee has refused to contribute on higher wages to the pension fund, then conclusion may differ.

55. **It is also well settled that in the event of conflict between the Trust Rules and Scheme, 1995, one which is favourable to the employee will prevail. Since the Scheme, 1995 provides for contribution on actual wages to the pension fund, on establishing the contribution to the provident fund, on actual wages, the right will be available to the employee to exercise joint option, subject to any other eligibility criteria.**

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61.4 The rejection of the application on the ground that the **applicable Trust Rules of the establishment did not provide for** contribution to the pension fund is impermissible, except in a situation where employers and employees refused to transfer the funds credited on actual wages in the provident fund to the pension fund.

(Emphasis added)

18) Again in *Anuradha Roy* (supra), the learned Single Judge of the Calcutta High Court has decided the same issue. The Calcutta High Court has held that internal provident fund trust rules of exempted establishments cannot override or restrict the statutory provisions of the EPF Act and the EPS, 1995. It is held in paragraphs 189(ii) to (v) and 198 as under:

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

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(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 unexempted/regular similarly to both exempted and 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.

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198. Accordingly, the order dated **18.01.2025** and the order dated 05.02.2025 are hereby quashed and set aside.

(Emphasis added)

Ms. Gandhi has placed on record Order of Division Bench of Calcutta High Court in ***EPFO Vs. Pradip Kumar Ghosh & Ors.***⁹ submitting that the implementation of judgement of the Single Judge in ***Anuradha Roy*** is stayed by the Division Bench.

19) Allahabad High Court in ***Sunil Kumar Mehrotra*** (supra) has held that the internal rules of the PF trust cannot curtail beneficial statutory provisions and has reaffirmed eligibility for higher pensions based on actual salary contributions. It is held in paragraphs 25 to 29 of the judgment as under:-

25. From bare perusal of the aforesaid provision, it culled out that while framing Trust Rules, the framers were aware of focusing to adopt the more beneficial scheme for the members/employees and further in case of any less beneficial provision of the Rules than the scheme, there is deeming provision that the provision of scheme shall prevail.

26. In fact, the Act of 1952 as well as the scheme of 1995, amended time to time, envisage the beneficial provisions to the employees of the respondent department and the other establishments. The ceiling, which has been prescribed, under the Rules of the Trust, made under the Act, if contrary to the object of the beneficial scheme, would be unsustainable to that extent as the same is less beneficial.

27. It is also relevant in this regard that the Hon'ble Apex Court in the case of R.C. Gupta (supra) and EPFO versus Sunil Kumar B (supra) has allowed the joint option scheme with higher contribution, and the cut-off date, as was made in the amendment, in the scheme, was found unsustainable. Therefore, if any provision is contrary to the

settled proposition of law, as is apparent from the Trust Rules, which curtails the beneficial right of the employees, it would be a nullity to that extent. Even otherwise the scheme of 1995 has also got the statutory strength and the provisions of the Trust rules would have no overriding effect over, to the sphere of the intent and object of promulgation of the Act of 1952 and the scheme of 1995.

28. In view of the aforesaid submissions and discussions, this Court finds merit in the writ petition. Ergo, the present writ petition, including the connected writ petitions having identical issues, are hereby allowed, and the orders under challenge, in all the connected writ petitions, are quashed.

29. It is directed that the respondent no.2 shall take fresh decision, in light of the observations made herein above and the prevalent laws.

20) Thus, various High Courts across the country have consistently held that it is impermissible to deny the benefit of exercising joint option to contribute to the pension fund in actual wages by citing the Trust Rules. In the present case, the EPFO has rejected applications of Petitioners by citing the Trust Rules and by relying on the Circular dated 18 January 2025, which is already set aside by the various High Courts as observed above. In my view, therefore impugned orders passed by the EPFO are clearly unsustainable and liable to be set aside.

21) Ms. Gandhi, submits that judgment of Division Bench of Madras High Court in ***Central Provident Fund Commissioner and 2 ors. Vs. M. Tamil Nambi*** (supra) is challenged by the EPFO in SLP (C) No.31613 of 2026 and by order dated 8 September 2026, contempt proceedings have been stayed. Mr. Surana submits that what is challenged in the pending SLP is not judgment dated 2 September 2025 and EPFO has challenged order passed in Contempt Petition filed by the employees for non-implementation of judgment dated 2 September 2025. Be that as it may. Pendency of SLP cannot be a ground for keeping the present Petitions pending indefinitely. It must be borne in mind that all the Petitioners

before this Court are retired employees and therefore, it would not otherwise be appropriate to keep their Petitions pending when several other High Courts across the country have already decided the issue involved in the Petitions.

22) Ms. Gandhi submits that the applications of the Petitioners in Writ Petition No.12873 of 2026 (Narayana Billa and Anr.) and Writ Petition No.12957 of 2026 (Purushottam Jagannath Kulkarni and Anr.) are not rejected only on account of ceiling limit prescribed in Trust Rules. She submits that even basic documents are not supplied by Petitioners' employers in those cases. However, this Court in *Kiran Rajaram Jadhav and Durga Srinivas Kallakuri* (supra) has held that if employer fails to produce record or where records are otherwise not available, alternative means of verification, including giving an opportunity to the employees to be heard should be adopted. In my view, therefore, even this ground of rejection is clearly unsustainable.

23) According to Ms. Gandhi, in Writ Petition No.12957 of 2026 (*Purushottam Kulkarni & anr*) the employer- Tata Communication Ltd has not deposited PF contribution on all eligible heads of salary. She has relied on Gazette Notification dated 3 May 2023 in support of her contention that in respect of eligible higher pension optees, their employer needs to contribute 9.49% of the basic wages, dearness allowance and retaining allowance of each member to the pension fund w.e.f. 1 September 2014. However, even in the case of those Petitioners, their employee deducted PF contributions on the basic pay, which were higher than the statutory ceiling wage. Therefore, non-deduction of PF contributions on other elements of pay such as DA, residual special

allowance, other allowances, etc. does not make any difference. The fact of the matter is that PF contributions exceeding the ceiling wage limit is made by the employer of these Petitioners as well. Ms. Gandhi has relied on Circular dated 14 June 2023 issued by Head Office of the Respondent in support of her contention that it needs to be verified whether employer's share towards PF contribution is remitted on employee's pay exceeding the prevalent statutory wage ceiling from the day the pay exceeded the wage ceiling or 16 November 1995, whichever is later till the date of retirement. However beyond quoting the Circular, she has not demonstrated as to how the said Circular comes in the way of these Petitioners in claiming the pension on higher wages. In my view there is no reason to draw any distinction in Writ Petition No.12957 of 2026 (*Purushottam Kulkarni & anr*) as the central reason for rejection is that the Trust Rules did not permit PF contribution on actual wages.

24) In my view therefore all the Petitions deserve to be allowed. As consistently held by various High Courts, the rules/deeds of provident fund trusts of an exempted establishment operate only in respect of the provident fund, unless an exemption under Section 17(1)(c) of the EPF Act read with paragraph 39 of the EPS, 1995, including joint option, applies to the employees in same manner as the employees of unexempted establishments. Therefore, a joint option cannot be rejected on the ground that the Trust Rules either envisage a cap /ceiling or employer's contribution or that Trust Rules did not provide for joint option on higher pension on the ground that employer did not remit pension contribution on the wages exceeding the ceiling.

25) In view of the above discussion, in my view the impugned orders passed by the EPFO in these Petitions are clearly unsustainable and liable to be set aside.

26) The Petitions accordingly succeed and I proceed to pass the following order:-

- (i) Impugned orders passed by the EPFO rejecting applications filed by the Petitioners for availing benefit of pension on higher wages under paragraph 11(3) /11(4) of the Employees' Pension Scheme, 1995 are set aside.
- (ii) The Respondents are directed to process and allow Petitioners' applications for exercising joint options for pension on higher wages within a period of eight weeks.

27) With the above directions, Petitions are allowed and disposed of. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]