



CIRCULAR

Ref. No. 160220

15th February, 2023

Sub: The Hon'ble Supreme Court Judgement dt.04-11-2022 regarding Employees' Pension Scheme, 1995 (EPS-95)

- 1) In light of the judgement of the Hon'ble Supreme Court read with EPFO Circulars dt.29-12-2022, 05-01-2023 & 25-01-2023, the following position emerges: -
 - (a) The Employees who had exited EPS-95 on attaining the age of 58 Years prior to 01-09-2014 and had not exercised the option for contributing on higher salary are not covered for the Pension on actual salary and thus cannot exercise the option.
 - (b) The Employees who had exited EPS-95 on attaining the age of 58 Years prior to 01-09-2014 and had exercised such option before 01-09-2014 and whose application was rejected by the concerned EPFO, are entitled to the benefit of Pension on actual salary subject to the fulfillment of the conditions.
 - (c) New Employees who are not member of EPS-95 i.e. who have joined Service initially on or after 1st September, 2014 with reckonable salary (exceeding Rs.15,000 per month) will not be eligible to exercise this Joint Option.
 - (d) All working/retired/superannuated Employees who are/were members of the EPS-95 Scheme as on 01-09-2014 and are willing to exercise Joint Option for contribution on actual wages in Pension Fund under EPS-95 are eligible for submission of "Joint Option Form" & Declaration to get the benefit of Pension on actual salary at the sole discretion of the employees.
 - (e) The contribution required to be made by the eligible Employees/Ex-Employees in order to get the benefit of higher Pension would be the differential amount as computed by EPFO. In case of eligible existing Employees exercising the above Option and in whose case the contribution as computed above falls short of the available P.F. accumulation, in such cases, the Employees would be required/liable to pay the short fall. In case of eligible Ex-Employee, who exercise the above Option, the differential amount computed by EPFO would be required to be remitted to the P.F. Authority.

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Page 1 of 2



(f) On acceptance of the Joint Option submitted by the eligible Employees/Ex-Employees by the Regional P.F. Commissioner, remittance of balance contribution along with the up-to-date interest will have to be paid by the concerned Employees in accordance with the guidelines/methodology to be provided in this regard by EPFO. The opting eligible Employees/Ex-Employees shall comply with any other formality and obligation as will be prescribed by the EPFO in this regard.

2) **Procedure for submission of Joint Option Form (Annexure-A):**

The eligible existing/retired Employees will exercise the Option by submitting the attached **Joint Option Form** to the concerned HR Head (Sri Siladitya Roy, Project Manager), MBL House, DD-18/8, Sector-I, Salt Lake City, Kolkata-700 064 who will report the concerned cases to the undersigned.

3) The Joint Option Form will be filled in triplicate by hand & duly signed by the concerned Employees and shall be sent to the HR Department of MBL House through personal submission or by Registered/Speed Post. The Joint Option Form as per Annexure-A is required to be submitted on or before 21st February, 2023. Once the option of higher pension is exercised, it cannot be withdrawn subsequently.

4) **Disclaimer:**

This Circular is being issued for implementation of the said Judgement of Hon'ble Supreme Court dt.04-11-2022 followed by the Circulars/Notifications as issued by the EPFO & as mentioned above to adhere to the directive and is subject to any ratifications/guidelines/instructions that may be issued by EPFO from time to time. Therefore, the Joint Option Form submitted by eligible Employees/Ex-Employees does not confer any right to receive or impose any obligation upon Mackintosh Burn Ltd. to pay higher Pension to them.

(D. DATTA)

GENERAL MANAGER (PERS. & ADMN.)

Attached: Annexure A & EPFO circulars
 CC: All Concerned

JOINT OPTION UNDER ERSTWHILE Para 11(3) & PARA 11(4) OF EMPLOYEES PENSION SCHEME 1995

To
Regional Provident Fund
Commissioner, Employees Provident
Fund Organization,

Sub.: Joint option under Para 11(3) and Para 11(4) of Employees' Pension Scheme, 1995 based upon the Hon'ble Supreme Court's Order in C.A. No. 008143 - 008144 / 2022 Titled EPFO vs Sunil Kumar pronounced on 04.11.2022

Reference is invited towards Para 43 and Para 44(iv) of the aforesaid judgement dt. 04.11.2022 of Hon'ble Supreme Court of India, in the above cited Civil Appeal wherein the eligible employee and his/her employer are required to submit a joint option under erstwhile Para 11(3) & para 11(4) of the EPS'95 within a period of 4 months from the date of judgement.

Since no format for the Joint Option has been provided by EPFO (also not available on EPFO's website), based on similar formats issued by various ROs in the year 2017 & 2018 while implementing the RC Gupta judgement; in order to comply with the above requirement, we (employee and employer) are, hereby submitting the joint option form as required under erstwhile Para 11(3) & Para 11(4) of Employees' Pension Scheme-1995 for claiming pension on actual salary instead of ceiling salary limit of Rs. 15,000/-

Particulars of the employee are as under

1.	Name & designation of Retired employee	
2.	EPF A/C No.	
3.	UAN Number	
4.	PPO No.	
5.	Mobile No.	
6.	Aadhaar No.	
7.	Date of retirement (on attaining 58 years)	

DECLARATION BY RETIREE/EMPLOYEE

It is certified that immediately after joining, _____ (name of the estt.), I had been contributing towards the Provident Fund on my actual salary/wages and an equal amount used to be contributed in my PF by the employer also as provided under Para 26(6) of EPF Scheme, 1952. It is to further certify that an amount @8.33% of the statutory ceiling amount i.e., Rs. 15,000 (earlier Rs. 5,000 / 6,500) out of the Employer's contribution had been remitted every month towards Employees' Pension Scheme, 1995 since 16.11.1995 onwards.

I, do hereby opt for diverting 8.33% of my actual salary/wages out of employer's contribution towards Pension Fund (after adjusting the amount already diverted in EPS'95 on ceiling wages) from the date of joining the EPS'95 till my attaining the age of 58 years/VRS/resignation. Since I have already withdrawn the entire Provident Fund on my retirement/VRS/resignation, I am ready to return the differential amount that I had taken/withdrawn after my exit/retirement thus making me eligible for drawing Pension on the basis of average of last 60 months salary/wages as Pensionable salary/wages i.e., based on my Actual salary/wages instead of being based on the statutory limit.

That I retired on attaining age of 58 years for the purpose of EPS 1995 after 1.9.2014 on_____.
I also undertake that if any other legal formality is required in this regard, I am ready to do accordingly.

Place: _____

Signature: _____

Date: _____

Name: _____

Address: _____

UNDERTAKING BY THE EMPLOYER

I, _____ (Name and Designation) being the authorized signatory on behalf of _____ (Name of the Estt.) do hereby certify that Mr. _____ was working with us as _____ and has retired on attaining age of 58 years/taken VRS/resigned on _____. His EPF A/c No. is _____. He had been contributing towards Provident Fund on his actual salary/wages, as per the terms of Para 26(6) of the EPF Scheme 1952. Equal share had been contributed by this establishment too. This establishment has no objection if he deposits/returns the due differential amount @ 8.33% of the employers share w.e.f. 16.11.1995 i.e. from the date of commencement of the Scheme or when his salary/wages exceeded the statutory limit, along with due interest as declared under EPF Scheme, 1952 from time to time, thus making him eligible for drawing pension on the basis of Pensionable salary based on his actual salary/wages, instead of on the statutory limit as per erstwhile Para 11(3) & Para 11(4) of the EPS'95 Scheme as permitted to do so by the aforesaid order of Supreme Court dt. 04.11.2022.

I certify that the particulars furnished above are correct as per the available record.

Place:

Date:

(Signature of authorized signatory with official



ईपीएफओ, मुख्य कार्यालय
श्रम एवं रोजगार मंत्रालय, भारत सरकार
भविष्य निधि भवन, 14, भीकाजी कामा प्लेस, नई दिल्ली 110066



EPFO, HEAD OFFICE
MINISTRY OF LABOUR & EMPLOYMENT, GOVERNMENT OF INDIA
BHAVISHYA NIDHI BHAWAN, 14, BHIKAJI CAMA PLACE, NEW DELHI 110066

www.epfindia.gov.in

No. Pension/2022/54877

15149

Date:

29 DEC 2022

To,

All Addl. CPFCs, Zonal Offices.
All RPFCs / OICs, Regional Offices.

Sub: Instructions in compliance of orders contained in Para 44 (ix) read with Para 44 (v) & (vi) of Hon'ble Supreme Court judgement dated 04.11.2022 in the matter of Special Leave Petition (C) Nos. 8658-8659 of 2019.

Madam/Sir,

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 directions contained in **para 44 (ix) of the judgment dated 04.11.2022** of the Hon'ble Supreme Court within the stipulated timelines. Government has further directed that adequate publicity may be made to the decisions taken by EPFO to implement the said directions.

2. Accordingly, the field offices are directed to implement the directions contained in **para 44 (ix) of the judgment dated 04.11.2022** of the Hon'ble Supreme Court within the stipulated timeline and to ensure adequate publicity of the decisions taken by EPFO to implement the said directions.

3. As may be seen, the Hon'ble Supreme Court has pronounced judgement dated 04.11.2022 in the matter of Special Leave Petition (C) Nos. 8658-8659 of 2019. The relevant directions of the court with respect to above-mentioned subject are as follows.

"44 (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.

44 (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.

44 (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."

4. In this context, factual position as narrated in R.C. Gupta & ors etc. vs Regional Provident Fund Commissioner, Employees' Provident Funds Organisation & ors etc. dated 04.10.2016 is as follows: -

4.1 Paragraph 4 of the above judgement states:

" The appellant-employees on the eve of their retirement i.e. sometime in the year 2005 took the plea that the proviso brought in by the amendment of 1996 was not within their knowledge and, therefore, they may be given the benefit thereof, particularly, when the employer's contribution under the Act has been on actual salary and not on the basis of ceiling limit of either Rs.5,000/- or 6,500/- per month, as the case may be. This plea was negated by the Provident Fund Authority on the ground that the proviso visualized a cut-off date for exercise of option, namely, the date of commencement of Scheme or from the date the salary exceeded the ceiling amount of Rs.5,000/- or 6,500/- per month, as may be. As the request of the appellant-employees was subsequent to either of the said dates, the same cannot be acceded to."

4.2 Relevant portion of Paragraph 8 of the above judgement states:

"... The said dates are not cut off dates to determine the eligibility of employer employee to indicate their option under the proviso to clause 11(3) of the pension scheme"

4.3 Relevant portion of Paragraph 10 of the above judgement states:

"...If both the employer and the employee opt for deposit against the actual salary and not the ceiling amount, the exercise of the option under paragraph 26 of the provident fund scheme is inevitable. Exercise of the option under paragraph 26(6) is a necessary precursor to the exercise of the option to the Clause under 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"

5. Accordingly, the direction of the Hon'ble Supreme Court in R.C. Gupta judgement pertains to such employees who contributed on higher wages under paragraph 26(6) of EPF Scheme, and had further exercised their option under the proviso to erstwhile para 11 (3) prior to their retirement, but their option request under the proviso to paragraph 11(3) was explicitly denied by concerned office of the RPFC and /or contribution on higher salary was refunded / diverted back to provident fund accounts.

6. The following pensioners may apply digitally/ online at www.epfindia.gov.in for validating their options, if any, by the concerned Regional Office:

- i. the pensioners who as employees had contributed under paragraph 26(6) of EPF Scheme on salary exceeding the prevalent wage ceiling of Rs 5000/- or 6500/-; and
- ii. exercised joint option under the proviso to Para 11(3) of the pre-amendment scheme while being members of EPS,95; and
- iii. their exercise of such option was declined by PF authorities,

7. The way such pensioners would apply to the concerned Regional Office is as follows:

- i. The request will be made in such form and manner, as may be specified by the Commissioner.
- ii. The application form for validation will contain the disclaimer as ordered in the aforesaid government notification.
- iii. In case of share requiring adjustment from Provident Fund to Pension Fund and if any, re deposit to the fund, the explicit consent of the pensioner will be given in the application form.
- iv. In case of transfer of funds from exempted provident fund trust to pension fund of EPFO, an undertaking of the trustee shall be submitted. The undertaking shall be to the effect that due contribution along with interest-up to the date of payment, will be deposited within the specified period.
- v. The method of deposit of such funds will follow through subsequent circulars.
- vi. Aforesaid application form must contain the following specified documents for evidence and for further processing :-
 - a. Proof of joint option under Para 26(6) of the EPF Scheme duly verified by the employer; and
 - b. Proof of joint option under the proviso to erstwhile Para 11(3) duly verified by the employer; and
 - c. Proof of remittance in Provident Fund on higher wages exceeding the prevalent wage ceiling of ₹5000/6500; and
 - d. Proof of remittance in Pension Fund on higher wages exceeding the prevalent wage ceiling of ₹5000/6500, if any; and
 - e. Written refusal of APFC or any other higher authority of EPFO to such requests / remittance.

8. The above application forms when received in the specified time period will be dealt with in the following manner by Regional PF Commissioner:

- i. A facility will be provided for which URL will be informed shortly. Once received, the Regional PF Commissioner shall put up adequate notice and banners on the noticeboard for wider public information.
- ii. Each application will be registered and digitally logged. The receipt number will be provided to the applicant.
- iii. The application will land into employer's login whose verification with e-sign will be essential for further processing.
- iv. RPFC will cause each application to be converted into e-file, as far as possible.
- v. The concerning dealing assistant will examine the papers including the note on receipt of due amount in the Pension Fund, and mark the case to Section Supervisor / Account Officer.
- vi. The concerning SS / AO will mark out any discrepancies and send it with the rule position to APFC / RPFC-II who after due examination will put the case to Officer-in charge of RO.
- vii. The OIC shall examine each case of pension on higher salary and dispose it by passing a speaking order that shall be intimated to the applicant through e-mail/post. Efforts will be made to intimate them through telephone/SMS.

9. Officer in-Charge of the concerned Regional office will send a weekly monitoring report to the respective Zonal Office. The monitoring format will be specified by the ACC-HQ Pension. Zonal office will also report the aggregate position of the zones weekly to the Pension Division at Head Office.

10. Any grievance by the applicant can be registered on EPFiGMS after submission of his request form and payment of due contribution, if any. The registration of such grievance shall be under specified category of higher pension with reference to Supreme Court Judgment dated 04.11.2022. All such grievances shall be addressed and disposed of at the level of Nominated Officer. Grievances

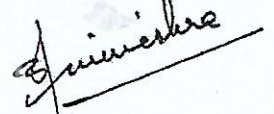
will be monitored by the Officer in-Charge of Regional Office and Zonal Office.

11. These directions are issued in compliance of the judgement dated 04.11.2022 of Hon'ble Supreme Court and notification of the MoL&E for immediate implementation.

12. This circular is being issued in supersession of all earlier instructions issued on this subject.

[This issues with the approval of CPFC.]

Yours faithfully,



(Animesh Mishra)

Addl. Central P.F. Commissioner (Pension)

Copy to: -

1. PS to Secretary to the Government of India, Ministry of Labour and Employment.
2. Under Secretary to the Government of India, Ministry of Labour and Employment with reference to letter No. R-15011/03/2022-SS-II dated 22.12.2022.
3. PS to CPFC.
4. All ACCs HQ and ACCs at H.O for information & necessary action. Further for online applications, URL may please be informed to field offices by ISD.
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www.epfindia.gov.in

No. Pension/2022/54877/15238

Date: 05.01.2023

CORRIGENDUM

05 JAN 2023

To,

All Addl. CPFCs, Zonal Offices.
All RPFCs / OICs, Regional Offices.

Sub: Instructions in compliance of orders contained in Para 44 (ix) read with Para 44 (v) & (vi) of Hon'ble Supreme Court judgement dated 04.11.2022 in the matter of Special Leave Petition (C) Nos. 8658-8659 of 2019.

Madam/Sir,

This refers to the Head Office Circular No. Pension/2022/54877/15149 dated 29.12.2022 on the above cited subject.

Sub para ii of Para 7 of the above mentioned circular may be read as:

"ii. The application form for validation will contain the disclaimer as may be specified therein."

Further, Para 11 of the above mentioned circular may be read as:

"11. These directions are issued with reference to communication of MoLE as referred above and for implementation of the judgement dated 04.11.2022 of Hon'ble Supreme Court."

[This issues with the approval of CPFC.]

Yours faithfully,

(Animesh Mishra)

Addl. Central P.F. Commissioner (Pension)

Copy to: -

1. PS to Secretary to the Government of India, Ministry of Labour and Employment.
2. Under Secretary to the Government of India, Ministry of Labour and Employment with reference to letter No. R-15011/03/2022-SS-II dated 22.12.2022 & letter no. R-15011/3/2022-SS-II dated 04.01.2023
3. PS to CPFC.
4. All ACCs HQ and ACCs at H.O for information & necessary action. Further for online applications, URL may please be informed to field offices by ISD without further delay.
5. Rajbhasha section for providing Version in Hindi



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www.epfindia.gov.in



No. Pension/2022/55893/15785

Date: 25.01.2023

25 JAN 2023

To

All Addl. CPFCs, Zonal Offices
All RPFCs / OICs, Regional Offices

Sub: Re-examination of cases of pension on Higher Wages, of employees who had retired upto 1st September 2014 without exercising any option under Para 11(3) of pre-amended EPS'95, in light of directions contained in Para 44(ix) read with Para 44(v) and (vi) of Hon'ble Supreme Court judgement dt. 04.11.2022 in the matter of Special Leave Petition (C) No. 8658-8659 of 2019.

Madam / Sir,

This is in the continuation of the Circular No. Pension/2022/54877 dated 29.12.2022 and 05.01.2023.

2. The Hon'ble Supreme Court has pronounced judgement dated 04.11.2022 in the matter of Special Leave Petition (C) Nos. 8658-8659 of 2019. The relevant directions of the court with respect to above-mentioned subject are as follows.

"44 (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.

44 (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.

44 (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."

3. In this context, the factual position as narrated in R.C. Gupta & ors etc. vs Regional Provident Fund Commissioner, Employees' Provident Funds Organisation & ors etc. dated 04.10.2016 is as follows: -

3.1 Paragraph 4 of the above judgement states:

" The appellant-employees on the eve of their retirement i.e. sometime in the year 2005 took the plea that the proviso brought in by the amendment of 1996 was not within their knowledge and, therefore, they may be given the benefit thereof, particularly, when the employer's contribution under the Act has been on actual salary and not on the basis of ceiling limit of either Rs.5,000/- or 6,500/- per month, as the case may be. This plea was negatived by the Provident Fund Authority on the ground that the proviso visualized a cut-off date for exercise of option, namely, the date of commencement of Scheme or from the date the salary exceeded the ceiling amount of Rs.5,000/- or 6,500/- per month, as may be. As the request of the appellant- employees was subsequent to either of the said dates, the same cannot be acceded to."

3.2 Relevant portion of Paragraph 8 of the above judgement states:

"... The said dates are not cut off dates to determine the eligibility of employer employee to indicate their option under the proviso to clause 11(3) of the pension scheme".

3.3 Relevant portion of Paragraph 10 of the above judgement states:

"...If both the employer and the employee opt for deposit against the actual salary and not the ceiling amount, the exercise of the option under paragraph 26 of the provident fund scheme is inevitable. Exercise of the option under paragraph 26(6) is a necessary precursor to the exercise of the option to the Clause under 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".

4. Accordingly, the direction of the Hon'ble Supreme Court in *R.C. Gupta* judgement pertains to such employees who had contributed on higher wages under paragraph 26(6) of EPF Scheme, and had further exercised their option under the *proviso* to erstwhile Para 11 (3) prior to their retirement, and their joint option request under the *proviso* to paragraph 11(3) was explicitly denied by concerned office of the RPFC and /or contribution on higher salary was refunded / diverted back to provident fund accounts.

5. Meanwhile, in order to stop over payment, if any, in respect of employees who had retired prior to 1st September 2014 without exercising any option under Para 11(3) of the pre amended scheme, and have been granted pension on higher wages, their cases need to be re-examined to ensure that they are not given higher pension from the month of January 2023 onwards. Pension in such cases may be immediately restored to pension on wages up to the ceiling of Rs. 5000/- or Rs. 6500/-.

6. However, before revising any pension entitlement, an advance notice should be issued to the pensioner so that he / she has an opportunity to prove the exercise of option

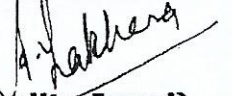
under Para 11(3) before his retirement prior to 1st September 2014. Further, any recovery which may arise after such revision should be done in a staggered and persuasive manner. The RPFC-I / officer incharge of the region will be the competent authority to re-determine the pension entitlement and initiate recovery, if any.

8. ACC Zones and RPFCs of the regions are advised to ensure that pension on wages exceeding wage ceiling of Rs. 5000/- or Rs 6500/- is sanctioned/ continued only in cases which fall within the directions contained in Para 44(ix) read with Para 44 (vi) of Hon'ble Supreme Court judgement dated 04.11.2022. Accordingly, if in any case, pension was revised erroneously, such pension may be immediately stopped and restored to pension on wages up to the ceiling of Rs. 5000/- or Rs 6500/- only, in accordance with directions contained in Para 44 (ix) read with Para 44 (v) of Hon'ble Supreme Court judgement dated 04.11.2022.

9. Utmost care should be taken to identify such cases where higher pension was granted on account of judgement of any Court. In such cases a favourable order shall be obtained from the concerned Court citing the order of Hon'ble Supreme Court dated 04.11.2022 before going ahead with stopping/ restoration of pension to wages up to ceiling of Rs. 5000 or Rs 6500/-.

[This issues with the approval of CPFC]

Yours faithfully,



(Aprajita Jaggi)

Regional P.F. commissioner-I (Pension)

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