

Ref No. 01/HR-EPS-95/

Date:10.02.2023

CIRCULAR

SUB: Hon'ble Supreme Court (the SC) judgement dated 04th November 2022 regarding Employees' Pension Scheme, 1995, (EPS-95) and availability of option to contribution to EPS-95 on actual salary for Pension on such Pensionable Salary.

- 1.0 This has reference to the captioned judgement of the Hon'ble SC regarding Employees' Pension Scheme-1995(EPS-95). As per paragraph 38, 39 & 44(ii) of the judgement, it is also applicable to the EPS-95 members from the exempted establishment.
- 2.0 NSPCL is an exempted establishment and the judgement is applicable to the employees/ex-employees of the NSPCL who are eligible as per the Hon'ble Supreme Court's Judgement dated 04th November 2022. All employees of NSPCL are member of the NSPCL Employees Provident Fund Trust (NSPCL EPF Trust) and contribute to the Provident Fund at prescribed contribution rate on their actual salary as applicable from time to time. NSPCL also makes matching employer's contribution on actual salary to the Trust. However, contribution to the EP5-95 has been made @ 8.33% of prescribed wage ceiling i.e. Rs. 5,000.00 till May-2001 Rs. 6500.00 w.e.f. June-2001 and Rs. 15000 w.e.f. Sept-2014. As per the rule, EPS-95 contribution is deducted from the employer's contribution to PF and is remitted to the concerned office of the Employees Provident Fund Organisation (EPFO). Pension payment under EPS-95 is also made by the concerned office of the EPFO.
- 3.0 EPFO has issued Circular No: Pension/2022/54877/15149 dated 29-12-2022 and corrigendum no: Pension/2022/54877/15238 dated 05-01-2023, in compliance of the Para-44(ix) read with Para-44(v) and (vi) of the SC Judgement. Para 5 of the EPFO circular specifies the employees who are eligible to exercise option as per the SC judgement in R.C. Gupta case.
- 3.1 Accordingly, it is hereby informed that all such Ex-Employees of NSPCL who are meeting the criteria specified in the EPFO circulars, if they so desire, may submit their option to the concerned Regional Office of the EPFO (From where they are drawing Pension under EP5-95) as per the procedures and along with the supporting documents as specified in para-6 & 7 of the EPFO circular dated 29.12.2022 and corrigendum 05-01-2023 and circular dt. 25.01.2023. As required under clause-iv of Para-7, necessary undertaking shall be provided by the Trustee of NSPCL EPF Trust. (Enclosed)
- 4.0 It is further informed that as per paragraph 43 read with paragraph 44(iv) of the SC judgement, all employees, who were Members of the EPS-95 as on 01-09-2014 i.e. were below 58 years of age and who could not exercise option, as contemplated in the proviso to paragraph 11(3) of the Pension Scheme to contribute to EPS-95 on actual salary instead of applicable wage ceiling, for getting pension on actual Pensionable Salary as defined in the EPS-95, would be entitled to exercise option now under paragraph 11(4) EPS-95 within a period of four months from the date of judgement i.e. on or before 3rd March, 2023.

- 4.1 It is expected that, EPFO may issue separate circular/guidelines specifying the mode and manner of deposit of amount, exercising option and for submission of joint declaration as per the paragraph-43 read with paragraph 44(iv) of the SC Judgement dated 04.11.2022, in respect of employees who were member of the EPS-95 as on 01-09-2014 (Eligible Employees).
- 4.2 Since the time to exercise option by the eligible employees is available only for a period of four (4) months from 04-11-2022, it is hereby informed to all eligible employees that as per the SC judgement they have a one-time chance to exercise their option to contribute to EPS-95 on actual salary instead of on applicable wage ceiling, for getting pension on actual Pensionable Salary, as defined in the EPS-95. Employee(s)/Ex-employee(s)/EPS-95 Pensioners, exercising the option now would be required to pay arrears of EPS-95 contribution i.e. difference between the contribution @8.33% on actual salary less contribution already deposited on applicable wage ceiling from the date of joining the EPS-95. Additionally, such employee's shall also be required to pay interest on due arrears at applicable rate till the month of remittance. Employees may also be required to contribute 1.16% of salary exceeding Rs. 15000.00 as additional contribution from September 2014. However, as per the SC judgement, additional contribution can be recovered maximum for a period of six months from the date of judgement i.e. only till April-2023 or till such time any amendments is made to generate additional contribution from some other legitimate source within the scope of the Act, whichever is earlier, as a stop gap measure. The said sum shall be adjustable based on alteration to the scheme that may be made.
- 5.0 Accordingly, to enable the employees/ex-employees to take an informed decision for exercising the option, actual EPF Basic salary of all eligible employees from their date of joining NSPCL till January 2023, has been collated/compiled. **The same is available for verification/ confirmation by the serving employees on ESS (under the path Employee Self-Service > Employee PF Details) and shall be mailed to separated employees.**
- 5.1 In case of any discrepancy in the salary data, employee may correct the same and attach relevant proof such as PF statement(s) or salary slip(s) for relevant period/months and e-mail to eps95@nspcl.co.in latest by **18th February 2023**.
- 6.0 All employees/ex-employees are requested to study the judgement of the SC dated 04-11-2022, EPFO Circulars dated 29.12.2022, corrigendum dated 05.01.2023 and Circular dated 25.01.2023, provision of the EPS-95 Scheme and other related information such as gazette notification for various amendments in the EPS-95 w.e.f. 01-09-2014 regarding method of computation of Pensionable Salary and other provisions of the EPS-95.
- 7.0 EPFO is yet to issue any format for Joint Option or any clarification/guidelines in this regard. Hence, it may be noted that arrears to be paid and pension payable cannot be ascertained as of now. As a precautionary compliance & to meet the deadline as stated in the Judgement, it has been decided that we may submit Joint Option form to our RPFC for those employees and ex-employees who are willing to opt for enhanced pension in the format enclosed.
- 7.1 All efforts shall be made to submit the joint declaration of willing employee with EPFO within the time- line prescribed in the SC judgement. As per the SC judgement, payment of arrears shall follow the submission of joint declaration and arrears shall have to be remitted within the timeline, if any, prescribed by EPFO, in this regard. Accordingly, ex-employees who would exercise the option now and who have already withdrawn the Provident Fund from NSPCL Employees Provident Fund Trust (NSPCL EPF Trust) shall have to arrange the fund for payment of arrears to EPFO, within the

prescribed time. Mode & manner of deposit of arrears shall be informed in due course in consultation with EPFO. Ex-employees/EPF-95 Pensioners may also note that revision in EPS-95 Pension may take considerable time as the pension payment under EPS-95 is done by the concerned office of the EPFO and is not in the control of the respective organization.

7.2 In case of serving employees, payment of arrears shall be made from the PF account of employee with the NSPCL EPF Trust.

8.0 **Joint Option:** In view of the above, Joint Option format(s) for serving employee(s) and for superannuated employee(s) (attained 58 years of age as on 01.09.2014 or after) are attached herewith as annexures Ann-I & Ann-II. The same may be printed, filled and submitted in triplicate in original to respective site HR.

8.1 Superannuated employees who are unable to visit respective site HR Office may send a scanned copy at eps95@nspcl.co.in and send the original by post to Sr. Manager (HR), NSPCL Corporate Office. While sending the email, superannuated employees should clearly mention - Joint Option Form, employee number and format no. in the subject matter.

Serving employees may submit their form to HR Deptt. at their present location.

8.2 **Format for Joint Option has to be submitted latest by 25.02.2023**

All the employees/ex-employees desirous of opting for higher pension may comply with the above. However, all are hereby informed as already stated, this is an advance action being taken by NSPCL due to absence of any guidelines from EPFO and further course of action will only be on acceptance of form by EPFO/RPFC.

The forms shall be submitted by CC HR at EPFO- Delhi (Dwarka).

The above is applicable only for employees/ex-employees who were members of EPS-95 as on 01.09.2014.

Forms to be filled up by serving/superannuating employees are as under:

Sl. No.	Form No.	Category
1	Annexure-I	Superannuated Employees
2	Annexure-II	Serving Employees

8.3 All concerned please note that this circular is being issued for implementation of Hon'ble Supreme Court judgement only to adhere to the time limit and is subject to any ratification(s)/guidelines that may be issued by EPFO from time to time. Including refilling of the format if issued by EPFO or filling On line format as may be prescribed by EPFO.

Therefore. The joint option form submitted by eligible employees do not confer any right to receive or impose any obligation upon NSPCL to pay higher pension to them.

This issues with the approval of Competent Authority,


(V. Jayanarayanan)
General Manager (HR)

Distribution: All employees through Email & Digital Notice Board.

JOINT OPTION UNDER PARA 11(3) and 11(4) OF EPS, 1995

(Application by superannuated employees (attained 58 years) of NSPCL (Estt Code 26597) for contribution on actual wages under the EPS' 95 Scheme on actual wages exceeding the wage limit of ₹ 5,000.00 (16/11/1995 to 31/05/2001)/ ₹ 6,500.00 (01/06/2001 to 31/08/2014)/ ₹15,000.00 (w.e.f. 01/09/2014 & onwards) p.m. w.e.f. 16/11/1995.

To
The Regional Provident Fund Commissioner

(Through Employer_____)

Subject: JOINT OPTION UNDER PARA 11(3) and 11(4) OF EPS, 1995 based on the Hon'ble Supreme Court' order in C.A. No 008143-008144/2022 titled EPFO vs Sunil Kumar pronounced on 04.11.2022.

Hon'ble Supreme Court of India in the above cited judgement has allowed eligible employees and pensioners to opt for pension on actual salary on submitting joint option form by Employee/ Pensioner and Employer as per sec 11(3) & 11(4) of EPS 95 scheme.

In pursuance of the above order by Hon'ble Supreme Court, I opt for contribution on actual salary w.e.f. 16.11.1995/ date of commencement of service, whichever is later, with consent of my Employer_____.

1	Name of Pensioner	
2	EPF A/C No.	
3	EPS A/C/No.	
4	PPO No. (For pensioners)	
5	UAN No.	
6	Mobile No.	
7	Aadhaar No.	
8	Date of attaining 58yrs (For pensioners)	

Declaration by Employee

I,.....am pensioner of EPF and an amount @ 8.33% of the statutory ceiling amount i.e. ₹ 15,000.00 (earlier of ₹ 5,000.00 (16/11/1995 to 31/05/2001)/ ₹ 6,500.00 (01/06/2001 to 31/08/2014)/ ₹ 15,000.00 (w.e.f. 01/09/2014 & onwards) out of the Employer's contribution was being remitted towards Employees' Pension Scheme, 1995.

I had been contributing towards EPF on my actual salary from date of my joining EPF scheme, in compliance with 26(6) of the EPF & MP Act 1952.

I, do hereby opt for diverting/ depositing 8.33% of actual wages due /out of employer's contribution towards Pension Fund w.e.f. 16.11.1995/ date of commencement of service till my attaining the age of superannuation (58 yrs)

The differential amount of 8.33 % of actual wages for the period 16/11/1995 upto reaching the age of 58yrs shall be deposited by me through my Ex-employer along with its accrued interest in r/o previous contributions, thus making me eligible for drawing pension along with arrears after my attaining the age of superannuation (58 yrs) on the basis of Pensionable salary based on my actual wages instead of on statutory limit.

Place:

Signature: _____

Date:

Name and Address: _____

Undertaking by the Employer
(For pensioners)

I,.....(Name and Designation) being the authorized signatory of NSPCL (NTPC-SAIL Power Company Limited). do hereby certify that Mr./ Ms.....was an employee of the establishment with EPF A/C No..... and has attained age of 58 yrs on _____. He/ She has contributed towards Provident Fund on his/her actual salary, as per the terms of Para 26(6) of the EPF Scheme 1952. This establishment has no objection if Mr/Ms..... deposits an amount of 8.33% on his actual wages from his own sources/ divert from his Provident fund towards his Pension Fund w.e.f. 16/11/1995 i.e. from the date of commencement of the Scheme or when his salary exceeded the statutory limit whichever is later along with interest as declared under EPF Scheme, 1952 from time to time making him eligible for drawing pension on the basis of Pensionable salary based on his actual/ higher wages instead of on statutory limit as per Para 11(3)/ 11(4) of the EPS' 95 Scheme., w.e.f. reaching the age of 58 yrs.

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

Place:

Date:

(Signature with Official Seal)

JOINT OPTION UNDER PARA 11(3) and 11(4) OF EPS, 1995

(Application by serving employees (executives) of NSPCL (Estt Code 26597) for contribution on actual /higher wages under the EPS' 95 Scheme on actual/ higher wages exceeding the wage limit of ₹ 5,000.00 (16/11/1995 to 31/05/2001)/ ₹ 6,500.00 (01/06/2001 to 31/08/2014)/ ₹ 15,000.00 (w.e.f. 01/09/2014 & onwards) p.m. w.e.f. 16/11/1995.

To
The Regional Provident Fund Commissioner,

(Through Employer- _____.)

Subject: JOINT OPTION UNDER PARA 11(3) & 11(4) OF EPS, 1995 based on the Hon'ble Supreme Court' order in C.A. No 008143-008144/2022 titled EPFO vs Sunil Kumar pronounced on 04.11.2022.

Hon'ble Supreme Court of India in the above cited judgement has allowed eligible employees and pensioners to opt for pension on actual salary on submitting joint option form by Employee/ Pensioner and Employer as per sec 11(4) of EPS 95 scheme.

In pursuance of the above order by Hon'ble Supreme Court and in exercise of relief granted by Hon'ble Supreme Court in the said judgement, read para 44 (iv) along with para 43, I opt for contribution on actual salary w.e.f. Date of Joining the EPS 1995 scheme, with consent of my Employer _____.

1	Name of Employee	
2	EPF A/C No.	
3	EPS A/C/No.	
4	UAN No.	
5	Mobile No,	
6	Aadhaar No.	
7	Date of birth	
8	Date of Joining	

Declaration by Employee

I.....am a member of EPF and an amount @ 8.33% of the statutory ceiling amount i.e. ₹ 15,000.00 (earlier of ₹ 5,000.00 (16/11/1995 to 31/05/2001)/ ₹ 6,500.00 (01/06/2001 to 31/08/2014)/ ₹ 15,000.00 (w.e.f. 01/09/2014 & onwards) out of the Employer's contribution is being remitted towards Employees' Pension Scheme, 1995.

I have been contributing towards EPF on my actual salary from date of my joining EPF scheme, in compliance with 26(6) of the EPF & MP Act 1952.

I, do hereby opt for diverting/ depositing 8.33% of actual wages out of employer's contribution towards Pension Fund w.e.f. date of my joining the EPS 1995 scheme, till my attaining the age of superannuation (58 yrs)

The differential amount may be diverted from my Provident Fund account to Pension Fund account along with its accrued interest in r/o previous contributions and henceforth, similar amount i.e. 8.33% of actual wages out of employer share be remitted towards Pension Fund, thus making me eligible for drawing pension after my attaining the age of superannuation (58 yrs) on the basis of Pensionable salary based on my actual wages instead of on statutory limit.

Place:

Signature: _____

Date:

Name and Address: _____

Undertaking by the Employer

(For serving employee)

I,.....(Name and Designation) being the authorized signatory of NSPCL (NTPC-SAIL Power Company Limited) do hereby certify that Mr./ Ms.is an employee of the establishment with EPF A/C No..... He/ She is contributing towards Provident Fund on his actual salary, as per the terms of Para 26(6) of the EPF Scheme 1952. This establishment has no objection if an amount of 8.33% on his actual wages is diverted from his Provident fund towards his EPS 95 Pension Fund w.e.f. 16/11/1995 i.e. from the date of commencement of the Scheme or when his salary exceeded the statutory limit/ date of joining the scheme, whichever is later along with interest as declared under EPF Scheme, 1952 from time to time making him eligible for drawing pension on the basis of Pensionable salary based on his actual/ higher wages instead of on statutory limit as per Para 11(3)/ 11(4) of the EPS' 95 Scheme.

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

Place:

Date:

(Signature with Official Seal)



सत्यमेव जयते

ईपीएफओ, मुख्य कार्यालय
श्रम एवं रोज़गार 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 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.”

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

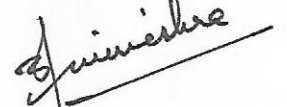
will be monitored by the Officer in-Charge of Regional Office and Zonal Office.

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.
5. Rajbhasha section for providing Version in Hindi.



ईपीएफओ, मुख्य कार्यालय
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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/2022/54877/15238

Date: 05.01.2023

05 JAN 2023

CORRIGENDUM

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

To

25 JAN 2023

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 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."

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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