

## **Circular No – 020 / 2023**

Date: 09.02.2023

To  
All Members of The Association

### **PROCEDURE FOR CLAIMING HIGHER PENSION IN TERMS OF THE DECISION OF THE SUPREME COURT IN THE CASE OF EPFO VS. SUNIL KUMAR.B DECIDED ON 04.11.2022**

1. EPFO Head Office have released instruction for implementation of the judgement of the Supreme Court in the case of EPFO Vs. Sunil Kumar.B decided on 04.11.2022 vide its internal circular dated 29.12.2022. The same has been circulated to the members vide KEA Circular No.103/2022 dated 30.12.2022.
2. EPFO Head Office have issued further guidelines in case of pensioners who retired prior to 01.09.2014 through their internal circular dated 25.01.2023. The said guidelines have been circulated to the members vide KEA Circular no.17/2023 dated 30.01.2023.
3. The following are the implications of the judgment of the Supreme Court in the case of EPFO Vs. Sunil Kumar.B:-
  - The judgment will be applicable to those members of the provident fund who had given option to become members of pension scheme under

paragraph of 11.3 of the pension scheme prior to August 2014 and continue to be members after 01.09.2014 also.

- The members of the pension scheme who had joined on or after 01.09.2014 are not entitled to get higher pension and the judgment is not applicable to them.
  - The requirement of making additional contribution of 1.16% by the members of the Pension Scheme who have contributed over and above Rs.15,000/- per month has been struck down.
  - However, this portion of the judgment has been suspended the operation for a period of 6 months to enable the EPFO to make adjustment in scheme so that the additional contribution can be generated from other legitimate source within the scope of the Act, which would include enhancing the rate of contribution of the employers.
  - Time limit for exercising the option has been extended by four months effective from the date of judgment
  - The Members of Pension Fund who had joined on and after 01.09.2014 are not entitled to get higher pension and the above judgment is not applicable to them.
  - The directions of the Supreme Court in the case of R.C.Gupta and Others shall have to be followed by the Provident Fund Organization.
4. The table given below gives the category of the persons who would be eligible to claim higher pension in terms of the above judgment.

## THOSE WHO HAVE RETIRED

<b>Date of retirement</b>	<b>Contributions on higher wages by employee and employer</b>	<b>Option exercised or not</b>	<b>Acceptance by EPFO</b>	<b>Eligibility for pension on higher wages.</b>
Before 01.09.2014	Not paid	Never opted	-	Not eligible
Before 01.09.2014	Paid	Never opted	-	Not eligible
Before 01.09.2014	Paid	Exercised option before 01.09.2014	Rejected / not responded by EPFO	Eligible
Retired between 01.09.2014 and 04.11.2022	Paid	Never opted	Option can be given within 4 months (before 04.03.2023)	Eligible
Retired between 01.09.2014 and 04.11.2022	Paid	Exercised option between 01.09.2014 and 04.11.2022	Rejected / not responded by EPFO	Eligible
Retired between 01.09.2014 and 04.11.2022	Not paid	Never opted	-	Not eligible

<b>THOSE WHO CONTINUE IN SERVICE AFTER 01.09.2014 AND WHO JOINED SERVICE ON OR AFTER 01.09.2014</b>				
Joined before 01.09.2014 and continue in service	Paid	Never opted	Option can be given within 4 months (Before 04.03.2023)	Eligible
Joined before 01.09.2014 and continue in service	Paid	Exercised option between 01.09.2014 and 04.11.2022	Rejected / not responder by EPFO	Eligible
Joined before 01.09.2014 and continue in service	Not paid	Never opted		Not eligible
Joined on or after 01.09.2014 on basic wages of Rs. 15,000/- or above.	Not eligible for EPS membership	No option		Not eligible



5. Enclosed is the draft of notice which may be displayed on the notice board for the information of the employees. For retired employees if their addresses are available, the establishment may forward the notice as well as the joint declaration forms.
  
6. As and when applications are received, the establishment may forward the application to the EPFO concerned. It is for the concerned PF office to take further action.

**For, KARNATAKA EMPLOYERS' ASSOCIATION**

**Sd/  
[B C Prabhakar]  
President**

**PRINT ON THE LETTER HEAD OF THE COMPANY**

**Date: 00.02.2023**

**NOTICE**

**Judgment of the Supreme Court in the case of EPFO vs Sunil Kumar.B and others decided on 4.11.2022 in Civil Appeal No.008144/2022**

The above Judgment has implication for the Pensioners and Members of the Employees' Pension Scheme 1995. In the above judgment, the Hon'ble Supreme Court has upheld the amendment made to the Employees' Pension Scheme 2014 wherein it has been laid down that a monthly wage ceiling of Rs.15,000/- as the eligibility criteria for an employee to become member of the Employees' Pension Scheme 1995. The amendment required that the employees who are members of the Employees' Pension Scheme as on 1.4.2014 could make higher contribution upon making fresh option within 6 months from 1.9.2014.

The Supreme Court held that cut-off date of this nature went against the nature of the legislative framework. The judgment of the Supreme Court will apply only to those members who had become the members of the pension scheme under paragraph 11(3) of the EPF Scheme prior to August 2014 and continued to be members after 01.09.2014 also.

The members of the pension scheme who had applied for getting higher pensionary benefits on the basis of the contribution made by them over and above the statutory salary limits for coverage under EPF Scheme i.e. Rs.5,000/- or Rs.6,500/-, as the case may be prior to 1.9.2014 and continued to contribute on actual basic wages even after 1.9.2014 may apply for higher pension in terms of the judgment of the Supreme Court referred to above.

The requirement of making additional contribution of 1.16% by the members of the Pension Scheme who have contributed over and above Rs.15,000/- per month has been struck down. However, this portion of the judgment has been suspended the operation for a period of 6 months to enable the EPFO to make adjustment in scheme so that the additional contribution can be generated from other legitimate source within the scope of the Act.

The time limit for exercising the option has been extended by 4 months effective from the date of judgment i.e. from 4.11.2022.

The members of the provident fund who had joined on or after 1.9.2014 are not entitled to get higher pension and the judgment is not applicable to them.

All serving/retired employees of the company who are/were members of the EPS' 95 scheme as on 01.09.2014 and are willing to exercise option for contribution on actual/higher wages in pension fund under EPS'95 may fill and submit the relevant 'Joint Declaration Form' (**Annexure-A: for Serving employees & Annexure-B: for Retired employees**) in line with directives of the Hon'ble Supreme Court.

All those employees who had joined the company from any other organization in which he/she was a member of EPS'95 scheme should fill **Annexure-C** for every previous organization, if EPS contribution is not withdrawn in the past.

Further, new employees who have joined the company on or after 01.09.2014 and were members of EPS'95 before 01.09.2014 but subsequently withdrawn the EPS with reference to their previous employments are not eligible for filing the joint option form and hence are not required to exercise the Joint Declaration Form.

The employees should submit the duly-filled Joint Declaration Forms to the HR Department **on or before \_\_\_\_\_ without fail to enable the company to forward the application to the Provident Fund Department within the stipulated period in the judgment.**

**It may please be noted that the joint option forms shall be subject to acceptance by EPFO as per rules.**

**For- \_\_\_\_\_**

**Annexure-A**

**JOINT DECLARATION FOR HIGHER PENSION**  
***(For Serving Employees)***

**The Regional PF Commissioner,**  
Regional Office,  
XXXXXXXXXX

**Date:**\_\_\_\_\_

Dear Sir/Madam,

Sub: Joint Application/Option under paragraph 11 (3) of the EPS, 1995, as well as under paragraph 11(4) of the EPS, 2014 for contributing pension fund on actual salary/basic wages in view of the judicial directions of the Hon'ble Supreme Court in the following matters:

1. The EPFO & Anr. Etc. vs. Sunil Kumar B & Ors., SPJ (C) Nos. 8658-8659 of 2019
2. R C Gupta and others vs. Regional PF Commissioner and others in Civil Appeal No(s) 10013-10014 of 2016 arising out of SLP No. 33032-33033 of 2015, 2017 LLR 86 (SC)
3. Since no format for the Joint Option has been provided by EPFO and same is also not available on EPFO's website, based on similar formats issued by various ROs in the year 2017 and 2018 while implementing the RC Gupta judgement, in order to comply with the above requirement, we (employees and employer) are, hereby submitting the joint option form as required under erstwhile Para 11(3) & Para (4) of Employees Pension Scheme – 1995 for claiming pension on actual salary instead of ceiling limit of Rs. 15,000/-
4. The particulars of the applicant are as under:

1	Name of the Employee	
2	UAN	
3	EPF/EPS Member ID	
4	Name of the Establishment	
5	Establishment ID	
6	Mobile No. (linked to EPF)	
7	Email ID (linked to EPF)	
8	Aadhar No.	



**Declaration by the Employee**

1. I, ....., being an employee of the un-exempted establishment as well as member of the EPFS, 1952 & EPS, 1995, hereby opt to contribute to the pension fund on higher/actual basic wages and exercising option as per paragraph 11(3) of the EPS, 1995 read along with paragraph 11(4) of the EPS, 2014.
  
2. I, hereby exercise my higher pension option as per the latest Supreme Court's Judgement (supra) as per paragraph 11(3) & 11(4) of EPS, 1995 read along with paragraph 26(6) of the EPF Scheme, 1952 for deduction of the EPF contribution on actual salary/basic wages as per Section 6 of the EPF & Misc. Provisions Act, 1952.
  
3. I further hereby authorize the EPFO that for the previous period of my employment (member of the fund), the PF contribution which was deducted for earlier period on actual basic wages/salary or statutory ceiling limit and subsequently, the same was remitted in Account No. 01 and Account No. 10 (up to the statutory limit i.e., Rs. 6,500/- or Rs. 15,000/-), be adjusted by debit/credit system (i.e., from Account No. 01 to Account No. 10.), wherever applicable.
  
4. I also make self-declaration that during my service in previous organizations, there was deduction on full salary/statutory ceiling limit towards PF. The details are as under:

Sl. No.	Name of the Organization	Name of the trust OR concerned PF office	Period of Service		Previous employment details are attached.
			From	To	

*(Pl. furnish as applicable, else strike off the rest rows)*

Place:

Date: \_\_\_\_\_/02/2023

Signature of Employee

**Undertaking by the Employer**

I, \_\_\_\_\_ being the authorized signatory as per Form 5A of M/s. \_\_\_\_\_, that above said employee of this establishment with PF A/c. No. \_\_\_\_\_ & UAN \_\_\_\_\_ during his/her service, as an employer have deducted his/her EPF on actual salary i.e., more than statutory limit every month during his/her service period in this establishment and remitted the same as per paragraph 38 of the EPFS, 1952 along with administrative charges in compliance of the paragraph 26(6) of the EPFS, 1952 in the member's account every month.

**Place:**

**Date:** \_\_\_\_\_/02/2023

**Signature with Office Seal**

**Annexure-B**

**JOINT DECLARATION FOR HIGHER PENSION**  
***(For Retired Employees)***

**The Regional PF Commissioner,**

**Date:** \_\_\_\_\_

Regional Office,  
XXXXXXXX

Dear Sir/Madam,

Sub: Joint Application/ Option under paragraph 11 (3) of the EPS, 1995, as well as under paragraph 11(4) of the EPS, 2014 in view of the judicial directions of the Hon'ble Supreme Court in the following matters:

1. The EPFO & Anr. Etc. vs. Sunil Kumar B & Ors., SPJ (C) Nos. 8658-8659 of 2019
2. R C Gupta and others vs. Regional PF Commissioner and others in Civil Appeal No(s) 10013-10014 of 2016 arising out of SLP No. 33032-33033 of 2015, 2017 LLR 86 (SC)

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

The particulars of the applicant are as under:

1	Employee Name	
2	UAN	
3	EPF/EPS Member ID	
4	Establishment Name	
5	Establishment ID	
6	PPO No.	
7	Monthly Pension Amount (Rs.)	
8	Name of Bank & address	

9	Bank Account No. & IFSC	
10	Mobile No.	
11	Email ID	
12	Aadhar No.	
13	Date of Retirement (on attaining age of 58/60 years)	

**Declaration by the Ex-Employee**

1. I, ....., being an ex-employee of the above un-exempted establishment as well as member of the EPFS, 1952 & EPS, 1995, hereby say that I had already contributed to the pension fund on higher/actual basic wages and exercised option as per paragraph 11(3) of the EPS, 1995 during my service **but, it was declined by the Regional Office of the EPFO. (Include this if necessary)**
2. I further hereby say that as per the latest Supreme Court’s Judgement (supra), I am entitled to get a higher pension. Therefore, kindly do adjustment between the Account No. 01 (EPF) and Account No.10 (EPS) by debit/credit system, else let me know details for remittance of differential amount to avail higher pension.
3. I further say that I am getting pension Rs. \_\_\_\_\_ per month, and the same may kindly be adjusted, if required, while making the higher pension/arrear as per the verdict of the Hon’ble Supreme Court judgements (supra).
4. I also make self-declaration that during my service in my previous organizations, there was deduction on full salary/statutory ceiling limit towards PF. The details are as under:

Sl. No.	Name of the Organization	Name of exempted trust OR concerned PF office	Period of Service		Previous employment details furnished as Annexure  C-1/C-2/C-3/C-4.....
			From	To	

*(Pl. furnish as applicable, else strike off the rest rows)*

Place:

Date:

Signature of Employee

**Undertaking by the Employer**

I, \_\_\_\_\_, being the authorized signatory as per Form 5A of M/s. \_\_\_\_\_, that the above said ex-employee of this establishment with PF A/c. No. \_\_\_\_\_ & UAN \_\_\_\_\_ during his/her service, as an employer have deducted his/her EPF on actual salary i.e., more than statutory limit every month during his service period in this establishment and remitted the same as per paragraph 38 of the EPFS, 1952 along with administrative charges in compliance of the paragraph 26(6) of the EPFS, 1952 in the member's account every month.

Place:

Date:

Signature

**Annexure-C**

***ANNEXURE – to indicate every previous organization in which the employee was a member of EPS'95 (separate sheet for each employment)***

<b>Sl. No.</b>	<b>Particulars</b>	<b>Details</b>
1	Employee Name	
2	Establishment Name	
3	Establishment Address	
4	Establishment ID / Establishment PF Code	
5	PF Account is held by: (Name of EPF Office / PF Trust)	
6	EPF Member ID	
7	EPS No.	
6	Date of Joining	
7	Date of Exit	
9	UAN, if any	
10	PF deducted on actual salary / statutory ceiling limit	

The above particulars are correct and are self declaration, and I am liable to bear any consequence arises based on the above declared facts.

Signature of the employee/ex-employee

Name:

Date:

Place: