



Circular No – 029 / 2023

Date: 21-02-2023

To
All Members of The Association

KEA LETTER TO THE CENTRAL PROVIDENT FUND COMMISSIONER, EPFO, REG SUPREME COURT JUDGEMENT ON CLAIM OF HIGHER PENSION IN THE CASE OF EPFO VS. SUNIL KUMAR B, DECIDED ON 04.11.2022 IN SPECIAL LEAVE PETITION (C) NOS.8658-8659 OF 2019

The Provident Fund Organization had released instructions for the implementation of judgement of Supreme Court in the case of EPFO vs. Sunil Kumar B. decided on 04.11.2022 vide Internal Circular No. Pension/ 2022/54877/15149 dated 29.12.2022. Further instructions have been issued on the above subject vide Internal Circular No. Pension/2022/56258/16541 dated 20.02.2023 for compliance with the orders contained in Paras 44(iii) & (iv) read with Para 44(v) of the Hon'ble Supreme Court judgment dated 04.11.2022.

The observations under paragraph 5 of the Circular dated 29.12.2022 of the EPFO, is not in accordance with the judgment of Supreme Court in the case of Sunil Kumar. Further, the Circular provides that proof of joint option under paragraph 26(6) of the EPF Scheme duly verified by the employer should accompany application for higher pension by the employees, is again not in accordance with judgement of the Supreme Court. Hence KEA has written a letter dated 21-02-2023 to the Central Provident Fund Commissioner, EPFO, requesting to have the matter reconsidered and revise the instructions by deleting para-5 of the Circular dated 29.12.2022 and direct that the



Department shall not insist on proof of exercise of option under paragraph 26(6) of the EPF Scheme. It may be clarified in clear terms that the benefit of higher pension can be claimed by all such employees who have contributed to the Provident Fund on higher salary/wages, subject to exercise of option as directed by the Hon'ble Supreme Court in the case of Sunil Kumar B. It may please be ensured that revised instructions conform to the directions issued by Supreme Court to avoid further litigation in the matter.

A copy of the letter dated 21-02-2023 is attached.

For, KARNATAKA EMPLOYERS' ASSOCIATION

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

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B.C. Prabhakar, B.A., B.L.,
President

Date : 21.02.2023

The Central Provident Fund Commissioner
Employees' Provident Fund Organization
Bhavishya Nidhi Bhawan
No.14, Bhikaji Cama Place
New Delhi - 110066.

Sub: Supreme Court Judgment on claim for higher pension in the case of EPFO Vs. Sunil Kumar B, decided on 04.11.2022 in Special Leave Petition (C) Nos.8658-8659 of 2019.

1. The Provident Fund Organization has released instructions for implementation of judgment of Supreme Court in the case of EPFO vs. Sunil Kumar B. decided on 04.11.2022 vide Internal Circular No. Pension/ 2022/54877/15149 dated 29.12.2022.
2. Further instructions have been issued on the above subject vide Internal Circular No. Pension/2022/56258/16541 dated 20.02.2023 for compliance with the orders contained in Paras 44(iii) & (iv) read with Para 44(v) of the Hon'ble Supreme Court judgment dated 04.11.2022.
3. The Circular dated 29.12.2022 after noting certain observations of the Supreme Court in its judgment in the case of R.C Gupta and others vs. Regional Provident Fund Commissioner, decided on 04.10.2016, stipulates as under:

“para-5 – Accordingly, the direction of the Hon’ble Supreme Court in R.C. Gupta judgment pertains to such employees who have 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”.

4. The Circular stipulates that exercise of option under para 26(6) of the EPF Scheme is necessary and the proof thereof is required to be submitted along with joint declaration by the employer as well as the employee for claiming higher pension in terms of the Supreme Court judgment. In case of those employees who had contributed on actual salary to the Provident fund both prior to 01.09.2014 and those who continued to make higher contribution even after 01.09.2014. In the Circular dated 20.02.2023 the same condition has been stipulated.

5. In this context, reference is invited to the EPFO Internal Circular No. Pen.I/12/33/96/Amendment/Vol.IV/16762 dated 22.01.2019 with regard to implementation of judgment of Supreme Court in the case of R.C. Gupta and others, wherein it was inter alia stipulated as under :

“However, if an employer and employee have contributed under the EPF Scheme, 1952 on wages higher than the statutory limit, without joint option of employee and employer, and the EPF account of the concerned employee has been updated by EPFO on the basis of such contribution received, then by action of employee, employer and EPFO, it can be inferred that joint option of employee and employer has been exercised and accepted by EPFO. Therefore, in such cases, for implementing the directions

issued vide Head Office Circular Pension-I/12/33/EPS Amendment/96/Vol.II/34007 dated 23.03.2017, formal joint option of employee and employer should not be insisted.

As per Proviso to Para 11(3) of EPS, 1995 (as it stood prior to amendment of EPF, 1995 w.e.f. 01.09.2014) joint option of employee and employer was required for remittance of contribution on wages higher than the statutory wage limit for treating such higher salary for the purpose of pensionable salary. Therefore, to implement the directions given under H.O. Circular dated 23.03.2017, joint option of employee and employer for remitting contribution under EPS, 1995 on wages higher than the statutory wage limit is required. However, it has come to the notice of Head Office that in respect of some establishments, pension contribution on higher wages was already remitted into the Pension Fund at the relevant period of contribution prior to 01.09.2014, in such cases joint option of employer and employee need not be insisted for.”

6. The above instructions were not given effect on account of the fact that Special Leave Petitions against judgments of Rajasthan and other High Courts were pending before the Hon'ble Supreme Court including issue relating to decision in the of R.C. Gupta and others.

7. In the judgment dated 04.11.2022 the Hon'ble Supreme court has upheld its decision in the case of R.C. Gupta and others. Consequently, directions issued by the EPFO in its Internal Circular dated 22.09.2019 **holds good and shall have to be complied with.**

8. Essence of the judgment of Hon'ble Supreme Court, in the case of Sunil Kumar, is that the validity of amendment of 2014 is upheld and the following directions were given:

- Fresh option for having contributed to the Pension fund on higher salary could be made within four months from the date of judgment.
- Such option is available for employees who had earlier not opted for contribution on actual salary and were members of the Pension fund on or before 01.09.2014 and continued to be Member of Pension Scheme after 01.09.2014.
- Employees must have contributed to the Provident fund on actual salary to exercise option.
- The benefit of the judgment is available to exempted establishments.

10. There is no direction that the employees who had contributed to the Provident fund on actual salary should have exercised option under paragraph 26(6) of the EPF Scheme either as on 16.11.1995 or on the date on which they had crossed the statutory salary limit for contributing to the provident fund.

11. We may submit here that the actual practice in the industries –

- The employees who joined service of the company on a salary below the statutory salary limit for coverage under the EPF Scheme would continue to be members of the Scheme even after they cross statutory salary limit. In their case also, the establishment would continue to contribute on the higher wages to the Provident Fund as well as to the pension fund. The PF department accepts remittance. They might or might not have exercised option under paragraph 26(6) of the EPF Scheme.
- Another category of employees is that on the date of their appointment with the establishments covered under the EPF

Scheme, they continue to be covered under the Scheme even though they are appointed on a salary over and above statutory limit having regard to fact that they were already covered under the EPF Scheme. In their case also, the establishments as well as the employees continue to contribute to the Provident fund as well as Pension fund on higher salary. They might or might not have exercised option under paragraph 26(6) of the EPF Scheme.

- There are also establishments in which all the employees draw the salary above the statutory limit and the establishment extends the benefit of EPF Scheme to all such employees who were either covered or not covered under the EPF Scheme earlier. They might or might not have exercised option under paragraph 26(6) of the EPF Scheme.

12. In all the above three categories, the PF department have accepted the contributions made to the EPF Scheme as well as Employees' Pension Scheme without raising any objection with regard to exercise of option under Section 26(6) of EPF Scheme.

13. Essence of the judgment in the case of EPFO vs. Sunil Kumar is that the employees must have contributed to the Provident Fund on actual salary to exercise the option under paragraph 11(4) of the Employees' Pension Scheme. There is no specific provision either under paragraph 11(4) or under the judgment of the Supreme Court that for exercising option under paragraph 11(4), the employees should have exercised the option under paragraph 26(6) of the EPF Scheme.

14. Under the above circumstances, the observations under paragraph 5 of the Circular dated 29.12.2022 of the EPFO, is not in accordance with the judgment of Supreme Court in the case of Sunil

Kumar. Further, the Circular provides that **proof of joint option** under paragraph 26(6) of the EPF Scheme duly verified by the employer should accompany application for higher pension by the employees, is again not in accordance with judgment of the Supreme Court.

15. Karnataka Employers' Association, therefore, requests your goodself to have the matter reconsidered and revise the instructions by deleting para-5 of the Circular dated 29.12.2022 and direct that the Department shall not insist proof of exercise of option under paragraph 26(6) of the EPF Scheme. It may be clarified in clear terms that the benefit of higher pension can be claimed by all such employees who have contributed to the Provident Fund on higher salary/wages, subject to exercise of option as directed by the Hon'ble Supreme Court in the case of Sunil Kumar B. It may please be ensured that revised instructions conform to the directions issued by Supreme Court **to avoid further litigation in the matter.**

For Karnataka Employers' Association

B. C. Prabhakar

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President

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