

No. HQ-HR0WELF(HONR)/1/2022-HR-WELFARE/17072

Dated:21.02.2023

**CIRCULAR No. 08 /2023**

**Sub: Implementation of provision of exercising joint option by the Employer and Employees for higher Pension under Employee Pension Scheme-1995.**

- Ref: 1. Hon'ble Supreme Court judgment dated 04.11.2022 on EPS-1995.  
2. EPFO letter No. Pension/2022/54877/15149 Dt. 29.12.2022 issued by Addl. Central P.F. Commissioner (Pension) of EPFO.  
3. EPFO corrigendum No. Pension/2022/54877/15238 Dt. 05.01.2023 issued by Addl. Central P.F. Commissioner (Pension) of EPFO.  
4. EPFO letter no. Pension/2022/56259/16541 Dt. 20.02.2023 issued by RPFC-I (Pension) (Copy enclosed).

Hon'ble Supreme Court has passed judgment dated 04.11.2022 in the Civil Appeal titled the Employees Provident Fund Organisation. In this judgment Supreme Court has ordered EPFO to issue guidelines for implementation of the direction issued by the Hon'ble court.

2. EPFO has issued a letter No. Pension/2022/56259/16541 Dt. 20.02.2023 for exercising joint option for higher pension to the employees as detailed in para 5 of the letter. Though the Joint Option form has not yet been circulated by EPFO, a form has been prepared and is enclosed as **Annexure-A**. Eligible and willing employees may submit the joint option in the prescribed format. In case EPFO issue the joint option form at a later stage then only the employees who will be submitting this form by 01.03.2023 will be considered to submit the revised form.

3. New employees who are not member of EPS'95 i.e., who have joined service initially (PF membership) on or after 1<sup>st</sup> September 2014 are not required to exercise this joint option.

**4. Conditions for opting higher pension under EPS: -**

- a) DFCCIL has been contributing on higher wages exceeding the statutory wage ceiling of Rs.6500/- or 15000/- in the Provident Fund for its employees which makes it eligible for diversion of 8.33% of salary exceeding Rs.6500/- or 15000/- to the pension fund. If any employees/ex-employee willing to opt for higher pension on actual wages(basic pay+DA), then 8.33% share of employer's on such higher salary along with interest prescribed will be shifted/adjusted from EPF to the Pension Fund.
- b) The above provision is purely optional. The option exercise is irrevocable at later date and no change of option shall be entertained under any circumstances. The eligible willing employees/ex-employees may submit the option form, in triplicate, duly signed in original to AGM/HR/CO, DFCCIL Corporate Office, 5<sup>th</sup> Floor, Supreme Court Metro Station Building Complex, New Delhi-110001.
- c) The Joint option form duly filled in every manner should be submitted by concerned employee/ex-employee mentioned hereinabove latest by **01.03.2023**.

- 2-
- d) The joint option must contain the proof of remittance of employer's share in Provident Fund on higher wages exceeding the prevalent wage ceiling of Rs. 5,000/6,500 and proof of joint option under Para 26 (6) of EPF scheme duly verified by the employer.
  - e) The joint option form shall be subject to acceptance by EPFO as per rules.
  - f) On acceptance of options of the employees/ex-employees by the concerned Regional PF Commissioner, 8.33% share of employers on such higher salary along with interest prescribed will be shifted/adjusted from EPF to the Pension Fund.
  - g) Employees/ex-employees are liable to pay any shortfall in employer contribution to be remitted on account of opting joint option for higher pension under EPS' 95.
  - h) Every Employee/ex-employee who had joined DFCCIL from any other organization in which he/she was member of EPS-1995 scheme should fill **Annexure-B** for every previous organization along with valid documentary evidence i.e. PF slip, Annexure-K issued by Trust, UAN Passbook and Screen shot of UAN, as the case may be, as a proof of membership.
  - i) Every Employee/ex-employee who had joined DFCCIL from any other organization in which he/she was member of EPS'95 scheme should add their service in previous organization in current EPS number by filling Form 13-(Revised) only through online mode (UAN).
  - j) These instructions are subject to directions/instructions of EPFO and or decision of court of law (if any) issued from time to time in this regard.

5. A letter is being written to EPFO for providing the guidance & methodology for submission of joint declaration and adjustment/remittance of balance contribution along with interest. Any formality and obligation prescribed by the EPFO shall be complied by the employees/ex-employees opting option of pension on higher wages.

**Disclaimer:** In reference to judgement dated 4th November 2022 of Hon'ble Supreme Court, a letter is being written by DFCCIL to EPFO seeking guidelines for submission of joint option form for exercising the pension on higher wages under EPS'95. This circular is being issued for implementation of said judgement only to adhere the time limit and is subject to any ratification(s)/guideline(s) that may be issued by EPFO from time to time. Therefore, the joint option submitted by eligible employees does not confer any right to receive or obligation upon DFCCIL to pay higher pension to them.

**DA: As above**

  
(R.S. Rawat)  
Addl. General Manager (HR)

**Copy:**

1. Secy. to MD for kind information of MD.
2. Director/Infra, Director/OP&BD, Director/PP, Director/Finance and CVO.
3. All Executive Directors.
4. All GGMs/GMs/CGMs-for kind information to all employees.
5. Notice Boards/Intranet/Website.



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](http://www.epfindia.gov.in)

No. Pension/2022/56259/ 16541

Date: 20.02.2023

To

20 FEB 2023

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

**Sub: Instructions in compliance of orders contained in Para 44 (iii) & (iv) read with Para 44(v) 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,

In compliance of the above said orders of the Hon'ble Supreme Court and directions of the Central Government, it is directed as under:

2. The field offices should implement the directions contained in Para 44(iii) & (iv) read with Para 44(v) of the judgement dated 04.11.2022 of the Hon'ble Supreme Court within the stipulated timeline.

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 the above-mentioned subject are as follows:

**"44 (iii) The employees who had exercised option under the proviso to paragraph 11(3) of the 1995 scheme and continued to be in service as on 1st September 2014, will be guided by the amended provisions of paragraph 11(4) of the pension scheme".**

**"44(iv) The members of the scheme, who did not exercise option, as contemplated in the proviso to paragraph 11(3) of the pension scheme (as it was before the 2014 Amendment) would be entitled to exercise option under paragraph 11(4) of the post amendment scheme. Their right to exercise option before 1st September 2014 stands crystallised in the judgment of this Court in the case of R.C. Gupta (supra). The scheme as it stood before 1st September 2014 did not provide for any cut-off date and thus those members shall be entitled to exercise option in terms of paragraph 11(4) of the scheme, as it stands at present. Their exercise of option shall be in the nature of joint options covering pre-amended paragraph 11(3) as also the amended paragraph 11(4) of the pension scheme. There was uncertainty as regards validity of the post amendment scheme, which was quashed by the aforesaid judgments of the three High Courts. Thus, all the employees who did not exercise option but were entitled to do so but could not due to the interpretation on cut-off date by the authorities, ought to be given a further chance to exercise their option. Time to exercise option under paragraph 11(4) of the scheme, under these circumstances, shall stand extended by a further period of four months. We are giving this direction in exercise of our jurisdiction under Article 142 of the Constitution of India. Rest of the requirements as per the amended provision shall be complied with".**

*"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."*

4. Accordingly, **the employees who did not exercise option** as contemplated in the proviso to paragraph 11(3) of the Pension Scheme (as it was before the 2014 Amendment) would be entitled to exercise joint option under erstwhile para 11(3) & existing para 11(4) within the aforesaid extended period of four months. The employees who had exercised option under Para 11(3) of EPS 1995 and continued to be in service on or after 01.09.2014 will be guided by the amended provisions of paragraph 11(4) of the pension scheme, i.e. if they had not exercised the option within the time specified under Para 11(4), such employees shall not be eligible to exercise option within the extended period of four months.

5. Therefore, in compliance of the Hon'ble Supreme Court judgement dated 04.11.2022, following employees with their employers may submit joint option under para 11(3) and 11(4) to the concerned Regional Office:

- i. The employees and employers who had contributed under paragraph 26(6) of EPF Scheme on salary exceeding the prevalent wage ceiling of Rs 5000/- or 6500/-; and
- ii. did not exercise joint option under the proviso to Para 11(3) of the pre-amendment scheme (since deleted) while being members of EPS,95; and
- iii. were members prior to 01.09.2014 and continued to be a member on or after 01.09.2014.

6. The manner in which such employees 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 joint option will contain the disclaimer and declaration as may be specified therein.
- iii. In case of share requiring adjustment from Provident Fund to Pension Fund, and if any re-deposit to the fund, explicit consent of the employee will be given in the joint option 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. In case of employees of unexempted establishments, refund of requisite employer's share of contribution, the same shall be deposited with interest at the rate declared under Para 60 of EPF Scheme, 1952, till the date of actual refund.
- vi. **The method of deposit and that of computation of pension will follow through subsequent circular.**
- vii. Aforesaid joint option must contain the proof of remittance of employer's share in Provident Fund on higher wages exceeding the prevalent wage ceiling of Rs. 5,000/6,500 and proof of joint option under Para 26(6) of EPF Scheme duly verified by the employer.

7. The above application forms when received in the time period specified in the Joint Option Form will be dealt with in the following manner by the Regional P.F. Commissioner:

- i. A facility will be provided for which URL will be informed shortly. Once received, the Regional P. F. Commissioner shall put up adequate notice on the notice board and banners 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 the employer's login whose verification with Digital Signature/ 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 concerned 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 concerned SS / AO will mark out discrepancies, if any and send it after due examination, with the rule position to APFC / RPFC-II for deciding the case.
- vii. The concerned APFC/RPFC-II shall examine each case of joint option on higher salary and the decision shall be intimated to the applicant through e-mail/post. Efforts will be made to intimate them through telephone/SMS also.

8. Officer-in charge of the concerned Regional Office will send a weekly monitoring report to the respective zonal office. Zonal Office will also report the aggregate position of the zones weekly to the Pension Division at Head Office.

9. Any grievance by the applicant can be registered on EPFiGMS after submission of his joint option 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.

10. These directions are issued in compliance of the judgement dated 04.11.2022 of Hon'ble Supreme Court for immediate implementation.

11. This circular is being issued in addition to earlier instructions dated 29.12.2022 & 05.01.2023 issued on this subject.

[This issues with the approval of CPFC.]

Yours faithfully,

(Aprajita Jaggi)

Regional PF Commissioner-I (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 & Employment with reference to letter No. R-15011/03/2022-SS-II dated 15.02.2023.
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.
5. Rajbhasha section for providing Version in Hindi.

**Joint Option under Erstwhile Para 11 (3) & Para 11 (4) of EPS'95**

To,

The Regional Provident Fund Commissioner,  
Employees Provident Fund Organization,  
28 Community Centre,  
Wazipur Industrial Area,  
Delhi-110052

**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 SLP No. 8658-8659 year 2019 Titled EPFO Vs Sunil Kumar pronounced on 04th November 2022- Reg.**

**Ref:** EPFO letter no. Pension/2022/56259/16541 Dt. 20.02.2023 issued by RPFC-I (Pension).

Reference is invited towards Para 43 and Para 44 (ii) & (iv) of the aforesaid Order dated 04<sup>th</sup> November 2022 of Hon'ble Supreme Court of India, in the above cited Civil Appeal wherein the eligible employees/ex-employees and his/her employer are required to submit a joint option under erstwhile Para 11 (3) & 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 R C Gupta judgement; in order to comply with the above requirement, we (employee/ex-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. 15000/-

Particulars of the employee are as under:-

Sl.	Particular	Details
1.	Name	
2.	UAN	
3.	EPS Account Number	
4.	EPS Account Number Previous Organization (if any)	
5.	Aadhar number	
6.	PPO Number (if any) attach copy	
7.	Date of Leaving service or attained the age of 58 years which was earlier (if applicable)	
8.	Correspondence Address	
9.	Mobile number	
10.	Email-ID	

### Declaration by Employee/Ex-employee

It is certified that immediately after joining in DFCCIL, 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 EPS Scheme 1952. It is to further certify that an amount @ 8.33% of the statutory ceiling amount i.e. Rs. 15000 (earlier Rs. 5000/- or Rs. 6500/-) out of the employer's contribution had been remitted every month towards Employees' Pension Scheme 1995 since 16 November 1995 or the date of joining whichever is later 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.

(Tick ✓ whichever is applicable)

☐ Since I have already withdrawn entire Provident Fund on my retirement/VRS/resignation, I am ready to pay the differential amount that had taken/withdrawn after my exit/retirement.

☐ In case my Provident Fund amount (Employer) becomes short on a/c of non-refundable advance, I am ready to pay the differential amount that I had taken / withdrawn.

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 the age of 58 years for the purpose of EPS 1995 after 01.09.2014 on .....(Strike out if not applicable)

I also undertake that if any other legal formality is required in this regard, I am ready to do accordingly.

Place:

Date:

Signature-

Name-

E. Code:-

## UNDERTAKING BY THE EMPLOYER

I (Name and Designation) being the authorized signatory on behalf of M/s. (Name of the Estt.) do hereby certify that Mr/Ms. \_\_\_\_\_ is working with us as \_\_\_\_\_ and has retired for the purpose of EPS-95 on attaining age of 58 years on \_\_\_\_\_. His EPF A/c/ No. is \_\_\_\_\_. He/she had been contributing towards Provident Fund on his/her 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 judgment dt. 04.11.2022 of the Hon'ble Supreme Court of India.

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

Place:

Date:

For DFCCIL

(Signature of authorized signatory with official seal)  
Authorised Signatory

**Annexure-B**

**To be filled by the employee/ex-employee who joined DFCCIL from any other organization in which they were member of EPS'95 Scheme: -**

(Separate Sheet should be filled for every previous organization in which employee was member of EPS'95)

<b>Sl.</b>	<b>Particulars</b>	<b>Details</b>
1.	Name of the Employee	
2.	Previous Establishment Name	
3.	Previous Establishment Address	
4.	Details of concerned officials of previous Establishment, who is dealing with PF matters	Name- Designation- Email id- Mobile No.-
5.	Previous Establishment PF Code	
6.	Previous Establishment Employee Code	
7.	PF Account is held by: (Name of EPF Office/ PF Trust)	
8.	Date of Joining EPS'95 in Previous Establishment	
9.	Date of Exit EPS'95 in Previous Establishment	
10.	EPS number of Previous Establishment	
11.	UAN of Previous Establishment	
12.	Whether new UAN has been allotted by the present employer, if Yes ,then new UAN -	

- Supporting PF Slip, Annexure-K, screen shot of UAN indicating EPS number and membership joining date should be attached.

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

Signature of the employee/ex-employee

Name of the Employee .....

Employee Code .....