



ईपीएफओ, मुख्य कार्यालय
श्रम एवं रोज़गार मंत्रालय, भारत सरकार
EPFO, HEAD OFFICE
MINISTRY OF LABOUR & EMPLOYMENT, GOVERNMENT OF INDIA



No.Pension/PoHW/23/Circular-26(6)/139610/1648

Date: 14.06.2023

To,

14 JUN 2023

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

Subject: Implementation of Hon'ble Supreme Court Judgement dated 04.11.2022 - Applications for Validation of Option / Joint Options - Proof of joint option under 26(6) of the EPF Scheme, 1952 duly verified by the employer – list of admissible documents- reg.

Madam / Sir,

Reference is invited to the circular numbers Pension/2022/54877/15149 dated 29.12.2022, Pension/2022/54877/15238 dated 05.01.2023, Pension/2022/56259/16541 dated 20.02.2023, Pension/Supreme Court/judgement/HPM/2022/406 dated 23.04.2023 and online forms made available for filing of Applications for Validation of Option/Joint Options.

2. In this context, references have been received from all stakeholders as to the list of admissible document(s) that may be considered as Proof of joint option under Para 26(6) of the EPF Scheme, 1952 for the purpose of scrutiny and disposal of Applications for Validation of Option / Joint Options.

3. Whereas the Hon'ble Supreme Court had vide its judgment dated the 04th November, 2022, in Civil Appeal No. 8143-8144 of 2022 [SLP (C) Nos. 8658-8659 of 2019] in the matter of the Employees' Provident Fund Organisation and others versus Sunil Kumar B. and others, along with other tagged matters, held and directed in Para 44 (iv) of the judgement that:

"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."

4. Whereas in accordance with the provisions of the EPF & MP Act, 1952 and Schemes there under, the circulars and online Joint Option form provides for the following requirement as regards Para 26(6) of EPFS, 1952:

- (i) **"Proof of Joint option under 26(6) of the EPF Scheme duly verified by the employer"** in Para No. 7 (vi) (a) of Circular No. Pension/2022/54877/15149 dated 29.12.2022
- (ii) **"Proof of joint option under Para 26(6) of EPF Scheme duly verified by the employer"** in Para 6 (vii) of Circular No. Pension/2022/56259/16541 dated 20.02.2023.
- (iii) **"If Yes, please attach permission under Para 26(6) of EPF Scheme"** in Point no. 10 & 11 of online Joint Option Form.

5. Whereas a situation has arisen where joint request/ undertaking/ permission under Para 26(6) are not readily available with most of the applicants who have filed Applications for Validation of Option / Joint Options covered under Hon'ble Supreme Court judgment dated 04.11.2022.

6. Accordingly, only in case of applicants otherwise eligible for pension on higher wages as per the directions of the Hon'ble Supreme Court judgment dated 04.11.2022, for scrutiny regarding Para 26(6), following procedure may be followed:

- (i) Field Offices will verify that
 - a) Employer share of PF contribution has been remitted on employee's pay exceeding the prevalent statutory wage ceiling of Rs.5000/6500/15000 per month from the day the pay exceeded the wage ceiling or 16.11.95 whichever is later, till date/ till the date of retirement or superannuation as the case may be; and
 - b) Administrative charges payable by employer have been remitted on such higher wages; and

- c) Provident Fund account of employee has been updated with interest as per Para 60 of EPFS,1952 on the basis of such contribution received; and
- d) Any of the following documents have been submitted along with Applications for Validation of Option / Joint Options as proof of joint option and permission under Para 26(6).
- Wage Details submitted by the employer along with Applications for Validation of Option / Joint Options
 - Any salary slip / letter from employer authenticated by employer
 - Copy of joint request and undertaking from employer
 - Letter from PF office issued prior to 04.11.2022 indicating PF contribution on higher wages

(ii) The applicants who qualify (i) above and are already contributing/ have contributed till retirement/superannuation on actual (higher) pay, if they have not submitted their joint requests and undertaking of employer, can submit the same at the time of final claim settlement through their last employer. Joint Request and undertaking of employer for permission under Para 26(6) (pro forma enclosed) can be submitted by pensioners/members any time before the grant of pension on higher wages in accordance with decision of Hon'ble Supreme Court dated 04.11.2022.

7. Further, as per direction of Hon'ble Supreme Court, the above shall apply to Applications for Validation of Option / Joint Options received from applicants from PF exempted establishment as well, in the same manner.

[This issues with the approval of the Central PF Commissioner]

Yours faithfully,

(Aprajita Jaggi)

Regional Provident Fund Commissioner-I (Pension)

Copy to:

- 1) PPS to Hon'ble LEM for kind information please
- 2) All CBT members for kind information please
- 3) PS to Secretary Labour, GOI
- 4) PS to CPFC
- 5) Sh Samir Kumar Das, Under Secretary to the GOI
- 6) FA & CAO, CVO, Director (PDNASS) & ZTIs
- 7) ACC (HQ) (Audit) for 100% audit of PPOs related to pension on Higher wages by the internal audit parties.
- 8) All ACC (HQ)s and ACCs at H.O for information & necessary action.
- 9) Rajbhasha Section for providing version in Hindi.

जारी किया
13/11/22

**PERFORMA FOR JOINT REQUEST UNDER PARAGRAPH 26(6) OF THE EPF
SCHEME 1952**

(For implementation of Hon'ble Supreme Court judgment, dated the 04th November, 2022, in Civil Appeal No. 8143-8144 of 2022 [SLP (C) Nos. 8658-8659 of 2019] in the matter of the Employees' Provident Fund Organisation and others versus Sunil Kumar B. and others)

To,

The Regional Provident Fund Commissioner

Regional Office...

Iam an existing member of the EPF Scheme, 1952 having UAN I have read and understood the provisions of paragraph 26(6) as well as the definition of 'pay' under paragraph 2 of the Scheme. I wish to contribute towards my EPF on actual (higher) pay exceeding the statutory wage ceiling (presently Rs 15,000/ per month) w.e.f.and accordingly, submit my option to contribute on my actual (higher) pay

OR

I..... having read and understood Para 26(6) and the definitions of 'pay', and 'excluded employee' as mentioned under Para 2 of EPF Scheme, 1952, hereby declare that I am an 'Excluded Employee' as per Para 2(f)(ii) of the Scheme and am not enrolled as a member of the Scheme as my 'pay' from the date of joining my establishmenthaving PF Code.....has been above the statutory wage ceiling (presently Rs.15,000/- per month).Now, I wish to become a member of the EPF Scheme, 1952 w.e.f.....and accordingly hereby exercise my option for the same. I undertake to contribute to Employees' Provident Fund on actual (higher) pay.

I....., being the employer as per the provisions of Section 2(e) of the EPF & MP Act 1952, in respect of the above-mentioned employee and am submitting a joint request for the purpose of enrolling the member/existing member who has been paying contribution on actual pay exceeding statutory wage ceiling/existing members whose actual pay exceeds statutory wage ceiling.

Place:
Employer
Name, Designation of the employer

Signature of

Name & Signature of the employee

(For implementation of Hon'ble Supreme Court judgment, dated the 04th November, 2022, in Civil Appeal No. 8143-8144 of 2022 [SLP (C) Nos. 8658-8659 of 2019] in the matter of the Employees' Provident Fund Organisation and others versus Sunil Kumar B. and others)

UNDERTAKING BY THE EMPLOYER

I....., being the employer as per the provisions of Section 2(e) of the EPF & MP Act 1952, in respect of the above-mentioned employee, hereby undertake to pay the administrative charges payable at prescribed rates towards EPF contribution made by/ in respect of the said employee, including his/ her contribution on pay exceeding the statutory wage ceiling.

I further undertake to comply with all the statutory provisions under EPF & MP Act, 1952 and Schemes framed there under in respect of such employee with effect from.....

Place:

Date:

Signature of Employer

Name, Designation of the employer

(For Office use)

OFFICE OF THE REGIONAL PROVIDENT FUND COMMISSIONER

The above Joint Request is accepted with effect from _____ with a direction to make necessary entries in the records of the establishment and the Account of the Employee/Member*.

DA

AO

APFC

To

The Employer (Establishment) for information to member