

TAX FLASH NEWS

25 April 2019

Supreme Court ruling on higher pension benefit to employees under the Employees' Pension Scheme, 1995

Background

- The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act) is an employee welfare legislation aimed *inter alia*, at securing the welfare of the employees upon termination of their employment. The following schemes have been established under the EPF Act:
 - The Employees' Provident Funds Scheme, 1952 (EPFS)
 - The Employees' Pension Scheme, 1995 (EPS)
 - The Employees' Deposit-Linked Insurance Scheme, 1976 (EDLIS).
- Under the EPF Act the statutory wage ceiling for enrolling employees, as well as for making contributions, was INR6,500 per month (except for some special classes of employees).
- The Ministry of Labour and Employment, Government of India, had issued a notification¹ which had amended the wage ceiling from INR6,500 to INR15,000 per month and omitted the proviso² for a higher contribution towards pension scheme, i.e., EPS.

¹ Notification G.S.R. 609(E) dated 22 August 2014

² Omitted Proviso under Para 11(3) of EPS: Provided that if at the option of the employer and employee, contribution paid on salary exceeding rupees six thousand and five hundred/ Rs 6,500 per month from the date of commencement of this Scheme or from the date salary exceeds six thousand and five hundred/ Rs 6,500 whichever is later, and 8.33 per cent share of the employers thereof is remitted into the Pension Fund, pensionable salary shall be based on such higher salary.

- The Kerala High Court³ had set aside the notification and held that any employee who is a member of the EPF may avail of the option to contribute towards EPS on a higher salary and thereby, become eligible for a higher monthly pension benefit post retirement.
- Recently, the Honorable Supreme Court has dismissed the Special Leave Petition (SLP) filed by the Employees' Provident Fund Organisation (EPFO) against the above Kerala High Court ruling.

Amendment in EPS in 2014

The following amendments were made under EPS, with effect from 1 September 2014.

- Wage ceiling for the purpose of contribution was revised from INR6,500 to INR15,000 per month
- New membership to the EPS would be applicable to employees whose pay is less than or equal to INR15,000 per month on the date of membership
- Maximum pensionable salary for the purpose of calculating monthly pension, earlier limited to wages of INR6,500 was increased to INR15,000
- The proviso in relation to higher contribution towards pension scheme was deleted. The option to contribute to pension on higher wages had to be exercised within six months from 1 September 2014 (extensible by the Employees' Provident Fund Organisation (EPFO) by an additional six months).

³ P. Sasikumar & others v. Union of India & others [WP(C).No. 13120 of 2015]

If the option was not so exercised, the contribution to the pension fund would be calculated only on the wage ceiling.

- The member can contribute towards pension fund over and above the wage ceiling, provided that the Government's share of contribution i.e. 1.16 per cent per month on the salary exceeding the statutory limit is also paid by such a member.

Supreme Court ruling in October 2016

The Supreme Court (SC) held⁴ that

- There is no cut-off date to determine the eligibility of employer and employee to indicate their option for a higher contribution towards a pension in view of the scheme being beneficial;
- Employees would be entitled to the benefit of deposit of 8.33 per cent of their actual salary, in Pension Fund irrespective of the ceiling limit.
- At the request of the member in relation to a higher pension benefit, the EPFO could seek a return of all EPF accumulations that the employees may have withdrawn and divert the funds to the EPS to provide higher pension to the member.

PF Circulars in 2017

- In **March 2017**, in order to comply with the above SC ruling, the EPFO issued a circular⁵ where a member contributing to Provident Fund (PF) on wages exceeding the statutory ceiling or who had contributed to the PF on the wages exceeding the statutory ceiling cannot be debarred from exercising the option to contribute on such higher wages to the pension fund.
- In **May 2017**, EPFO also issued a circular⁶ clarifying that the benefit of higher contribution towards pension fund would not be possible for employees working in exempted establishments.

⁴ R.C. Gupta & others vs. Regional Provident Fund Commissioner & others SLP(C) Nos. 33032-33033/2015, Dated 4 October 2016, 2017 LLR 866

⁵ EPFO Circular – Pension-I/12/33 EPS Amendment/96/ Vol.II 34007 dated 23 March 2017

⁶ EPFO Circular – Pension-I/12/33 EPS Amendment/96/ Vol.II/ 4432 dated 31 May 2017

Kerala High Court decision in October 2018

- The Kerala High Court set aside⁷ the Notification issued in 2014 in response to a writ petition challenging the amendment and held as under:
- All consequential orders and proceedings issued by the PF authorities/respondents on the basis of notifications shall also be set aside
- The various proceedings issued by the EPFO declining to grant opportunities to the petitioners to exercise a joint option along with other employees to remit contributions to the EPS on the basis of the actual salaries drawn by them are set aside.

PF Circulars in 2018 and 2019

- In **December 2018**, EPFO had issued a circular⁸ subsequent to the Kerala High Court ruling to instruct its offices to handle any situation arising out of the judgement in a sensitive manner as the EPFO filed an SLP¹¹ in the Hon'ble Supreme Court against the said judgement.
- In **January 2019**, EPFO had issued a circular⁹ directing that the additional contributions of 1.16 per cent would need to be collected from all employees who had opted for contribution to the pension fund on actual salary, with effect from 1 September 2014. However, in February 2019, the EPFO withdrew the circular¹⁰.

Supreme Court ruling in 2019

- In April 2019, the Supreme Court dismissed the SLP¹¹ filed by the EPFO as having no merit.

⁷ P. Sasikumar & others vs. Union of India & others - WP(C).No. 13120 of 2015

⁸ EPFO Circular – Pension I/ Judgement Kerala High Court/ 2018/ 13127 dated 27 December 2018

⁹ EPFO Circular – Pension-I/12/33 /96/ Vol.IV/ 16762 dated 22 January 2019

¹⁰ EPFO Circular – Pension-I/12/33 /96/ Vol.IV/ 17154 dated 7 February 2019

¹¹ The Employees Provident Fund Organisation and Ors. vs. Sunil Kumar B. and Ors - SPECIAL LEAVE PETITION (CIVIL) Diary No.9610/2019

Our comments

This is an important ruling which may have significant implications for employees / employers covered under the EPF Act.

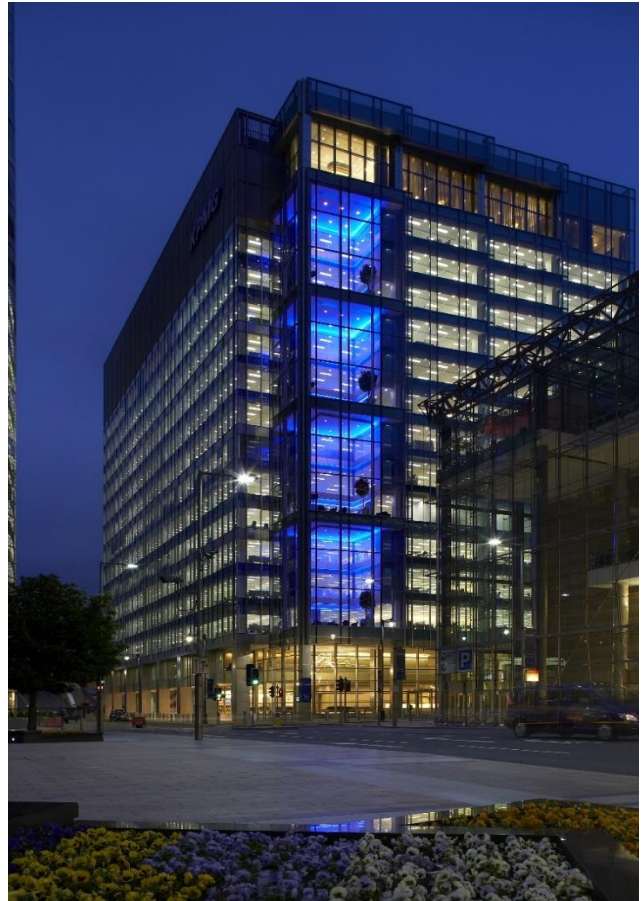
This ruling could help employees in contributing towards the pension fund on higher wages. A large number of employees/ employers may start approaching EPFO to enhance their contribution on EPS retrospectively in order to get the benefit of higher pension.

Another point for consideration is whether the following amendments made under the notification in 2014 and quashed by the Kerala High Court in 2018, shall be valid, including:

- Increase in wage ceiling and pensionable salary from INR6,500 to INR15,000 per month
- Non-coverage of new employees (including International Workers) under EPS if their monthly pay exceeds INR15,000.

A clarification on this aspect from the PF department would be helpful.

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