

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

Background

- 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 higher contribution towards Employees' Pension Scheme, 1995 (EPS).

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 calculation of average pensionable salary was extended from 12 months to 60 months.
- The proviso [Para 11(3)] in relation to higher contribution towards pension scheme was deleted. Proviso to Para 11(3) of the EPS allows an employer and an employee to avail the option to contribute towards EPS on higher salary and not limit such contributions on the wage ceiling.

- A new provision of Para 11(4) was inserted under EPS. Under this provision, the option to contribute to pension on higher wages had to be exercised within six months from 1 September 2014. If the option was not so exercised, the contribution to pension fund would be calculated only on the wage ceiling.
- In a similar provision, it was provided that 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 required to be paid by such a member.

Litigation on the amendment

- 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.
- The Honorable Supreme Court dismissed the Special Leave Petition (SLP)⁴ filed by Employees' Provident Fund Organisation (EPFO) against the Kerala High Court ruling.

For details, please refer to our earlier Flash News dated 25 April 2019 by accessing the following link:

<http://www.in.kpmg.com/TaxFlashNews-INT/KPMG-Flash-News-ruling-on-higher-pension-benefit-under-EPS-1995.pdf>

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.

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

⁴ The Employees Provident Fund Organisation and Ors. v. Sunil Kumar B. and Ors - SPECIAL LEAVE PETITION (CIVIL) Diary No.9610/2019

Multiple petitions have also been filed by employees belonging to both exempted and unexempted establishments under Article 32 of the Constitution of India before the Supreme Court seeking invalidation of the notification of 22 August 2014.

Key findings - Supreme Court ruling

The Supreme Court in its ruling⁵ has examined and discussed the following points:

- There is no cut-off date to determine the eligibility of employer and employee to indicate their option for higher contribution towards pension in view of the scheme being beneficial.
- The provisions contained in the notification dated 22 August 2014 are legal and valid.
- The Court has held that the 2014 amendment shall also apply to the employees of exempted establishments in the same manner as the employees of regular establishments.
- The employees who had exercised option to contribute towards EPS on higher salary (and not limit such contributions on the wage ceiling) under the proviso of paragraph 11(3) of the EPS and continued to be in service as on 1 September 2014 will now be guided by the new inserted provision i.e. paragraph 11(4) of EPS.
- All the employees who did not exercise option but were entitled to do so but could not due to the interpretation on cutoff 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 from the date of the judgement i.e., 4 November 2022.
- The employees who had retired prior to 1 September 2014 without exercising any option under paragraph 11(3) of the pre-amendment provision under EPS and have already exited from the membership thereof, would not be entitled to the benefit of this judgment.

- The employees who have retired before 1 September 2014 upon exercising option under paragraph 11(3) of the EPS shall be covered by the provisions of paragraph 11(3) of the EPS as it stood prior to the amendment of 2014.
- The requirement to contribute 1.16% of the salary to the extent that such salary exceeds INR 15,000 per month as an additional contribution made under the amendment scheme is held to be ultra vires to the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. However, the court suspended operation of this part of its order for six months to enable the authorities to make adjustments in the scheme so that additional contribution can be generated from some other legitimate source, which could include enhancing the rate of contribution of the employers. For the six months or till such time any amendment is made, whichever is earlier, the employees' contribution shall be as a stop gap measure and the said sum shall be adjustable on the basis of alteration to the scheme that may be made.
- The Court has held that there is no flaw in altering the basis for computation of pensionable salary.
- The Court further held that it has agreed with the judgment in R.C. Gupta v. Regional Provident Fund Commissioner⁶ which held that the dates specified in the pre-amended scheme for joining the scheme cannot be construed as cut-off dates.

Our comments

This is an important ruling which may have significant implications for employees / employers covered under the EPF Act. A large number of employees/ employers of exempted and un-exempted establishments may start approaching EPFO to rectify their contribution on EPS retrospectively.

⁵ Employees Provident Fund Organisation. And ANR ETC. vs. Sunil Kumar B and Ors. Arising out of the Special Leave Petition (C) Nos. 86588659 of 2019

⁶ R.C. Gupta and Others vs. Regional Provident Fund Commissioner, Employees Provident Fund Organisation and Other [(2018) 14 SCC 809]

KPMG in India addresses:

Ahmedabad

Commerce House V, 9th Floor,
902, Near Vodafone House, Corporate Road,
Prahlad Nagar,
Ahmedabad – 380 051.
Tel: +91 79 4040 2200

Bengaluru

Embassy Golf Links Business Park,
Pebble Beach, 'B' Block,
1st & 2nd Floor,
Off Intermediate Ring Road, Bengaluru – 560071
Tel: +91 80 6833 5000

Chandigarh

SCO 22-23 (1st Floor),
Sector 8C, Madhya Marg,
Chandigarh – 160 009.
Tel: +91 172 664 4000

Chennai

KRM Towers, Ground Floor,
1, 2 & 3 Floor, Harrington Road,
Chetpet, Chennai – 600 031.
Tel: +91 44 3914 5000

Gurugram

Building No.10, 8th Floor,
DLF Cyber City, Phase II,
Gurugram, Haryana – 122 002.
Tel: +91 124 307 4000

Hyderabad

Salarpuria Knowledge City,
6th Floor, Unit 3, Phase III,
Sy No. 83/1, Plot No 2, Serilingampally
Mandal,
Ranga Reddy District,
Hyderabad – 500 081.
Tel: +91 40 6111 6000

Jaipur

Regus Radiant Centre Pvt Ltd.,
Level 6, Jaipur Centre Mall,
B2 By pass Tonk Road,
Jaipur – 302 018.
Tel: +91 141 - 7103224

Kochi

Syama Business Centre,
3rd Floor, NH By Pass Road,
Vytila, Kochi – 682 019.
Tel: +91 484 302 5600

Kolkata

Unit No. 604,
6th Floor, Tower – 1,
Godrej Waterside,
Sector – V, Salt Lake,
Kolkata – 700 091.
Tel: +91 33 4403 4000

Mumbai

2nd Floor, Block T2 (B Wing),
Lodha Excelus, Apollo Mills Compound, N M
Joshi Marg, Mahalaxmi, Mumbai- 400011
Tel: +91 22 3989 6000

Noida

Unit No. 501, 5th Floor,
Advant Navis Business Park,
Tower-A, Plot# 7, Sector 142,
Expressway Noida,
Gautam Budh Nagar,
Noida – 201 305.
Tel: +91 0120 386 8000

Pune

9th floor, Business Plaza,
Westin Hotel Campus, 36/3-B,
Koregaon Park Annex,
Mundhwa Road, Ghorpadi,
Pune – 411 001.
Tel: +91 20 6747 7000

Vadodara

Ocean Building, 303, 3rd Floor,
Beside Center Square Mall,
Opp. Vadodara Central Mall,
Dr. Vikram Sarabhai Marg,
Vadodara – 390 023.
Tel: +91 265 619 4200

Vijayawada

Door No. 54-15-18E,
Sai Odyssey,
Gurunanak Nagar Road, NH 5,
Opp. Executive Club, Vijayawada,
Krishna District,
Andhra Pradesh – 520 008.
Tel: +91 0866 669 1000

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KPMG Assurance and Consulting Services LLP, Lodha Excelus, Apollo Mills Compound, NM Joshi Marg, Mahalaxmi, Mumbai - 400 011 Phone: +91 22 3989 6000, Fax: +91 22 3983 6000

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