

# M/o Labour & Employment issues notifications in compliance of judgement dated 4.11.22 of Hon'ble Supreme Court in the case pertaining to Pension on Higher Wages

Posted On: 03 MAY 2023 11:15PM by PIB Delhi

The Hon'ble Supreme Court, in its judgment dated 04.11.2022 in Civil Appeal No. 8143-8144 of 2022 titled the Employees Provident Fund Organisation & Anr. etc. Vs. Sunil Kumar B. and Ors. etc., while upholding the validity of the amendments made to the Employees' Pension Scheme, 1995 (EPS, 1995) vide G.S.R 609 (E) dated 22.08.2014 (effective from 01.09.2014) had also given certain directions along with deadlines for complying with the same. Ministry of Labour & Employment has promptly taken all actions within the stipulated deadlines to comply with the directions of the Hon'ble Supreme Court in the said order.

First direction of the Hon'ble Supreme Court of the said judgement was in respect of giving opportunity to pensioners who had retired before 1.9.2014 after exercising joint options under paragraph 11(3) of the EPS, 1995 but the joint options were rejected by the Employees' Provident Fund Organisation (EPFO) (on account of cut-off date). This was to be done within eight weeks. In compliance of this direction, the EPFO issued circular on 29.12.2022 for filing online applications for validation of joint options by the above pensioners. The last date for submission of applications was 03.03.2023. However, last date was extended up to 03.05.2023 which has been further extended up to 26.06.23.

Further, the Hon'ble Supreme Court held that all members who were in service prior to 01.09.2014 and continued to be in service on or after 01.09.2014 and who did not exercise joint option due to interpretation on cut-off date, but were entitled to do so ought to be given a further chance to exercise their option and the time for giving options was to be extended by a further period of four months. To comply with these directions, EPFO issued instructions on 20.02.2023 for online joint options to be filed by the above employees/pensioners. Joint options were to be filed on or before 03.05.2023. However, the date has been extended to 26.06.2023.

Further, Hon'ble Supreme Court held the requirement of the members to contribute at the rate of 1.16% of their salary to the extent such salary exceed Rs.15000/- per month as an additional contribution under the amended scheme to be *ultra vires* of the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (EPF & MP Act). The Hon'ble Court directed the authorities to make necessary adjustments in the Scheme within a period of six months.

For implementing the above direction, all aspects of the matter including legal and administrative were examined in detail. It was decided that since the Code on Social Security, 2020 (the Code) has already been notified, it would be appropriate to bring relevant provisions of the Code into effect. Earlier also section 142 of the Code was operationalised as a singular provision. The Code also provides for repeal of EPF & MP Act. Accordingly, certain provisions of the EPF & MP Act get repealed while giving effect to the relevant provisions of the Code. The spirit of the EPF & MP Act as well as the Code do not envisage contribution from the employees into the pension fund. Accordingly, keeping in mind the letter and spirit of the EPF & MP Act and the Code, it has been decided to draw 1.16% additional contribution from within the overall 12% of the contribution of the employers into the provident fund. This provision is retrospective in nature in line with the directions given by the Hon'ble Supreme Court. Accordingly, the Ministry of Labour & Employment has issued two notifications today i.e. 3 May, 2023 implementing the above.

With the issue of above notifications, all the directions of the Hon'ble Supreme Court contained in judgment dated 04.11.2022 have been complied with.

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**MJPS**

(Release ID: 1921830)