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भारत संचार निगम लिमिटेड
(भारत सरकार का उपक्रम)
BHARAT SANCHAR NIGAM LIMITED
(A Govt. of India Enterprise)

E 180523 BSNLCO-CA/30/1/2022-CA-ERP-FICO

Dated: 3rd January, 2023

To The CGMs,
All BSNL Circles

Subject: Instructions in compliance of orders contained in Para 44(ix) read with para 44(v) & (vi) of Honourable Court Judgement dated 04.11.2022 in the matter of special leave petition (C) Nos.8658-8659 of 2019.

Please find attached herewith EPFO circular No. Pension/2022/54877/15149 Dated 29.12.2022 on the above cited subject. The directions of EPFO are covered under para 5 and onwards of the letter. It is advised that the EPFO letter may be widely circulated among eligible beneficiaries to ensure notice by all concerned.

This has been issued with the approval of competent authority.

Enclosure: EPFO Circular No. Pension/2022/54877/15149 dated 29.12.2022.

Surajit Mandol
3/1/2023
Surajit Mandol
Sr. GM (CA)

Copy To : 1) PGM(Establishment) , BSNL CO
2) GM(EF and R&P) BSNL CO
3) PGM(Corp.Restg/WS & I) , BSNL CO
4) CS & AM (Legal) BSNL CO .



सत्यमेव जयते

ईपीएफओ, मुख्य कार्यालय
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EPFO, HEAD OFFICE
MINISTRY OF LABOUR & EMPLOYMENT, GOVERNMENT OF INDIA
BHAVISHYA NIDHI BHAWAN, 14, BHIKAJI CAMA PLACE, NEW DELHI 110066

www.epfindia.gov.in

No. Pension/2022/54877

15149

Date:

29 DEC 2022

To,

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

Sub: Instructions in compliance of orders contained in Para 44 (ix) read with Para 44 (v) & (vi) 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,

The above matter was referred to the Central Government for issuing directions. The Central Government vide letter dated 22.12.2022 has directed that requisite action may be taken by EPFO to implement the directions contained in **para 44 (ix) of the judgment dated 04.11.2022** of the Hon'ble Supreme Court within the stipulated timelines. Government has further directed that adequate publicity may be made to the decisions taken by EPFO to implement the said directions.

2. Accordingly, the field offices are directed to implement the directions contained in para 44 (ix) of the judgment dated 04.11.2022 of the Hon'ble Supreme Court within the stipulated timeline and to ensure adequate publicity of the decisions taken by EPFO to implement the said directions.

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 above-mentioned subject are as follows.

"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.

44 (vi) The employees who have retired before 1st September 2014 upon exercising option under paragraph 11(3) of the 1995 scheme shall be covered by the provisions of the paragraph 11(3) of the pension scheme as it stood prior to the amendment of 2014.

44 (ix) We agree with the view taken by the Division Bench in the case of R.C. Gupta (supra) so far as interpretation of the proviso to paragraph 11(3) (pre-amendment) pension scheme is concerned. The fund authorities shall implement the directives contained in the said judgment within a period of eight weeks, subject to our directions

contained earlier in this paragraph.”

4. In this context, factual position as narrated in R.C. Gupta & ors etc. vs Regional Provident Fund Commissioner, Employees' Provident Funds Organisation & ors etc. dated 04.10.2016 is as follows: -

4.1 Paragraph 4 of the above judgement states:

“ The appellant-employees on the eve of their retirement i.e. sometime in the year 2005 took the plea that the proviso brought in by the amendment of 1996 was not within their knowledge and, therefore, they may be given the benefit thereof, particularly, when the employer's contribution under the Act has been on actual salary and not on the basis of ceiling limit of either Rs.5,000/- or 6,500/- per month, as the case may be. This plea was negatived by the Provident Fund Authority on the ground that the proviso visualized a cut-off date for exercise of option, namely, the date of commencement of Scheme or from the date the salary exceeded the ceiling amount of Rs.5,000/- or 6,500/- per month, as may be. As the request of the appellant-employees was subsequent to either of the said dates, the same cannot be acceded to.”

4.2 Relevant portion of Paragraph 8 of the above judgement states:

“.... The said dates are not cut off dates to determine the eligibility of employer employee to indicate their option under the proviso to clause 11(3) of the pension scheme”.

4.3 Relevant portion of Paragraph 10 of the above judgement states:

“...If both the employer and the employee opt for deposit against the actual salary and not the ceiling amount, the exercise of the option under paragraph 26 of the provident fund scheme is inevitable. Exercise of the option under paragraph 26(6) is a necessary precursor to the exercise of the option to the Clause under 11(3). Exercise of such option, therefore, would not foreclose the exercise of a further option under Clause 11(3) of the pension scheme unless the circumstances warranting such foreclosure are clearly indicated”.

5. Accordingly, the direction of the Hon'ble Supreme Court in R.C. Gupta judgement pertains to such employees who contributed on higher wages under paragraph 26(6) of EPF Scheme, and had further exercised their option under the proviso to erstwhile para 11 (3) prior to their retirement, but their option request under the proviso to paragraph 11(3) was explicitly denied by concerned office of the RPFC and /or contribution on higher salary was refunded / diverted back to provident fund accounts.

6. The following pensioners may apply digitally/ online at www.epfindia.gov.in for validating their options, if any, by the concerned Regional Office:

- i. the pensioners who as employees had contributed under paragraph 26(6) of EPF Scheme on salary exceeding the prevalent wage ceiling of Rs 5000/- or 6500/-; and
- ii. exercised joint option under the proviso to Para 11(3) of the pre-amendment scheme while being members of EPS,95; and
- iii. their exercise of such option was declined by PF authorities,

7. The way such pensioners 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 application form for validation will contain the disclaimer as ordered in the aforesaid government notification.
- iii. In case of share requiring adjustment from Provident Fund to Pension Fund and if any, re deposit to the fund, the explicit consent of the pensioner will be given in the application 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. The method of deposit of such funds will follow through subsequent circulars.
- vi. Aforesaid application form must contain the following specified documents for evidence and for further processing :-
 - a. Proof of joint option under Para 26(6) of the EPF Scheme duly verified by the employer; and
 - b. Proof of joint option under the proviso to erstwhile Para 11(3) duly verified by the employer; and
 - c. Proof of remittance in Provident Fund on higher wages exceeding the prevalent wage ceiling of ₹5000/6500; and
 - d. Proof of remittance in Pension Fund on higher wages exceeding the prevalent wage ceiling of ₹5000/6500, if any; and
 - e. Written refusal of APFC or any other higher authority of EPFO to such requests / remittance.

8. The above application forms when received in the specified time period will be dealt with in the following manner by Regional PF Commissioner:

- i. A facility will be provided for which URL will be informed shortly. Once received, the Regional PF Commissioner shall put up adequate notice and banners on the noticeboard 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 employer's login whose verification with 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 concerning 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 concerning SS / AO will mark out any discrepancies and send it with the rule position to APFC / RPFC-II who after due examination will put the case to Officer-in charge of RO.
- vii. The OIC shall examine each case of pension on higher salary and dispose it by passing a speaking order that shall be intimated to the applicant through e-mail/post. Efforts will be made to intimate them through telephone/SMS.

9. Officer in-Charge of the concerned Regional office will send a weekly monitoring report to the respective Zonal Office. The monitoring format will be specified by the ACC-HQ Pension. Zonal office will also report the aggregate position of the zones weekly to the Pension Division at Head Office.

10. Any grievance by the applicant can be registered on EPFiGMS after submission of his request 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

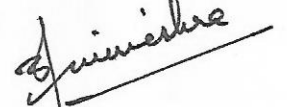
will be monitored by the Officer in-Charge of Regional Office and Zonal Office.

11. These directions are issued in compliance of the judgement dated 04.11.2022 of Hon'ble Supreme Court and notification of the MoL&E for immediate implementation.

12. This circular is being issued in supersession of all earlier instructions issued on this subject.

[This issues with the approval of CPFC.]

Yours faithfully,



(Animesh Mishra)

Addl. Central P.F. Commissioner (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 and Employment with reference to letter No. R-15011/03/2022-SS-II dated 22.12.2022.
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.