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 **BY SPEED POST**

**Date:**

**To,**

**The CMD/Dir. (HR/Personnel)**

**Respected Sir,**

Sub: Submission of Joint Option from for higher pension as per SC judgement dated 04-11-2022 under EPS 95.

You may be aware that the Hon'ble Supreme Court vide its judgement dated 04-11-2022 in the matter of EPFO v. Sunil Kumar B. has categorically upheld the judgement in RC Gupta v. EPFO in which SC has put a quietus on the exercise of joint option under para 11 (3) and has upheld RC Gupta Order saying that there is no time limit under EPS to submit joint option for higher pension by employee and employer where contribution in PF is being paid at actual salary.

As per Para No. 44 of Hon'ble Supreme Court Judgement dated 04.11.2022 in the matter of Special Leave Petition(c) No. 8658-8659 of 2019, on Pension on actual wages matter, the Hon'ble Supreme Court has allowed four months' time {up to 03.03.2023) to exercise joint option with employer to avail higher pension.

Therefore in order to comply with the Hon'ble Supreme Court's deadline (up to 03.03.2023) I am enclosing herewith my JOF with the request to forward the same to the concerned RPFC within the given deadline 03-03-2023.

It may be mentioned here that in a recent Judgement the Madras High Court has ruled inter alia that the Hon'ble SC VERDICT on the subject is the Law of the land and the Employer is bound to exercise the Joint option along with Employee without waiting for any Circular from EPFO.

In view of above. I request that Company should fulfill its legal obligation to forward the enclosed JOF so as to reach concerned RPFC within the stipulated time i.e.03-03-2023.

Thanking you,

**( )**

Name:

Employee No.

**(1)**

**FOR RETIREES AFTER 01.09.2014**

**JOINT OPTION FORM UNDER ERSTWHILE PARA 11(3) & PARA 11(4) OF EMPLOYEES' PENSION SCHEME 1995**

 **Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_**

To,

The Regional Provident Fund Commissioner,

Employees Provident Fund Organization,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Sub.: Submission of Joint option under Para 11(3) and Para 11(4) of Employees' Pension Scheme, 1995 based

 upon the Hon'ble Supreme Court's Judgement in C.A. No. 008143 - 008144 / 2022 titled "EPFO vs. SUNIL

 KUMAR" pronounced on 04-11-2022.

Sir,

 Your kind attention is invited towards Para 43 and Para 44 (iv) *of* the aforesaid judgement dated 04-11-2022 of Hon’ble Supreme Court *of India,* in the above cited Civil Appeal wherein the eligible employee and his /her employer are required to submit a joint option under erstwhile Para 11(3) & para 11(4) of the EPS'95 within a period of 4 months from the date of judgement.

 Since no format for the Joint Option has yet been provided by EPFO (also not available on EPFO's website), based on similar formats issued by various ROs/EPFO in the years 2017 & 2018 while implementing the RC Gupta judgement; in order to comply with the above requirement , we (employee and employer) are, hereby submitting the joint option form as required under erstwhile Para 11(3) & Para 11(4) of Employees' Pension Scheme-1995 for claiming pension on actual salary/wages instead of ceiling salary limit of Rs. 15,000/-.

 My particulars (retired employee) are as under:

|  |  |  |
| --- | --- | --- |
| 1. | Name & designation *of* Retired employee |  |
| 2 | Father's name/ Spouse's Name |  |
| 3 | Date *of* Birth |  |
| 4 | EPFA/C No. |  |
| 5 | PPO No. |  |
| 6 | UAN Number (if applicable) |  |
| 7 | Aadhaar No. |  |
| 8 | Mobile No. |  |
| 9 | Date *of* retirement (on attaining 58 /60 years) /Date of Voluntary retirement (at the age *of\_\_\_\_\_\_* years) |  |
| 10 | E-mail address |  |
| 11 | Residential Address |  |
|  |  |  |

**(2)**

**DECLARATION BY RETIREE**

 It is certified that immediately after joining\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_I had been contributing towards the provident fund on my actual salary/wages and an equal amount used to be contributed in my PF by the employer also as provided under Para 26(6) of EPF scheme, 1952. It is to further certify that an amount @8.33% of the Statutory celling limit i.e. (earlier Rs.5,000/6,500 and Rs 15,000/-w.e.f.01.09.2014)out of the Employer’s contribution had been remitted by my employer every month towards Employees’ Pension Scheme,1995 since 16-11-1995 onwards. Or my joining.

 Since I have already withdrawn the entire amount of provident fund on my retirement on attaining the age of superannuation/voluntary retirement, I undertake to return the due differential amount that I had withdrawn after my retirement/voluntary retirement/exit i.e., the difference between the amount @8.33% of my actual salary/wages out of employer’s contribution towards Pension Fund and the amount already remitted by the employer in EPS’95on celling Salary / wages from the date of joining the EPS’95 till my attaining the age of 58/60/\_\_\_\_\_years with due Interest for claiming my eligibility for drawing Pension on the basis of actual salary/wages instead of on celling salary/wages in accordance with the aforesaid judgement.

 I retired on attaining age of 58 years for the purpose of EPS-1995 / 60 years (on my opting for deferred pension)/\_\_\_\_\_\_\_years (on my taking voluntary retirement), after 01-09-2014 i.e., on \_\_\_\_\_\_\_\_\_.In case there is any different format for submission of joint option, a copy of the same may be provided to me and I am ready to submit the same once again.

 **Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **Employee No: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 **UNDERTAKING BY THE EMPLOYER**

 I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Name and Designation) being the authorized signatory on behalf of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Do hereby certify that Shri/Mrs/Miss\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_was working with us as\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and has retired / voluntarily retired on attaining age of 58 /60 years on\_\_\_\_\_\_\_\_ .His/her EPF A/c No. was\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ . He/she had been contributing towards Provident Fund on his/her actual salary/wages, as per the terms of Para 26(6) of the EPF Scheme 1952. Equal share had been contributed by this establishment too. This establishment has no objection if he/she deposits/returns the due differential amount@ 8.33% of the employer's share i.e. 16-11-1995 i.e. from the date of commencement of the

Scheme or when his/her salary/wages exceeded the statutory limit, along with due interest as declared under EPF Scheme, 1952 from time to time, thus making him/her eligible for drawing pension on the basis of Pensionable salary based on his/her actual salary/wages, instead of on the statutory limit as per erstwhile Para 11(3) & Para 11(4) of the EPS'95 Scheme as permitted to do so by the aforesaid judgement of Supreme Court dated 04-11-2022.

 I certify that the particulars furnished above are correct as per the available record.

Place:-\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date:-\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Signature of authorized signatory with official seal)

 **FOR RETIREES AFTER 01.09.2014**

**JOINT OPTION UNDER ERSTWHILE PARA 11(3) OF EMPLOYEES' PENSION SCHEME -1995**

 Date:-\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

To,

The Regional Provident Fund Commissioner,

Employees Provident Fund Organization,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Sub.: Submission of Joint option under Para 11(3) and Para 11(4) of Employees' Pension Scheme, 1995 based

 Upon the Hon'ble Supreme Court's Judgement in C.A. No. 008143 - 008144 / 2022 titled "EPFO vs. SUNIL

 KUMAR" pronounced on 04-11-2022.

Sir,

 In pursuance of above circular , EPFO has been paying enhanced revised pension after getting return of differential amount i.e., difference between 8.33% of actual salary and 8.33% of ceiling amount with interest from the pre 01-09-2014 retirees upon exercising joint option under deleted Para 11(3) . Vide Supreme Court judgment dated 04- 11- 2022 in EPFO vs. Sunil Kumar 8 & Ors., the ratio of R.C. Gupta judgment has been upheld and EPFO has been directed to implement the same within 8 weeks.

 Although all the retirees were covered in circular dated 23-03-2017, yet vide another circular dated 31-05- 2017 without any approval from CBT and MoL & E, Pension Division of EPFO restricted the benefit of actual salary pension only for pensioners from unexampled establishments. The Hon'ble Supreme Court vide judgement dated 04.11.2022 has unequivocally held that there was no distinction between the employees of Exempted establishments and Un-exempted establishments since they stand on equal footing for EPS' 95.

 So far as the question of exercising option under deleted Para 11(3) of the Scheme is concerned, the Hon'ble Supreme Court in para 41 of the judgment dated 04-11-2022has re-iterated the decision in R.C. Gupta case. The Hon'ble Supreme Court excluded pre 01- 09-2014 retirees from the operation of this judgment since they stood already benefitted by the earlier judgment dated 04.10.2016 rendered in R.C. Gupta case. The pre 01-09-2014retirees were not impacted by the GSR 609.dated 22 -08 -2014 and their rights stood already crystallized under the earlier R.C. Gupta order.

 Since no format for the Joint Option has yet been provided by EPFO (also not available on EPFO's website), based on similar format s issued by various ROs/EPFO in the years 2017 & 2018 while implementing the RC Gupta judgement; in order to comply with the above requirement, we (employee and employer) are, hereby submitting the joint option as required under erstwhile Para 11(3) of Employees' Pension Scheme-1995 for claiming pension on actual salary/wages instead of ceiling salary limit of Rs. 6,500/ - (earlier Rs. 5,000/-).

**My particulars (retired employee) are as under:**

|  |  |  |
| --- | --- | --- |
| 1 | Name & designation of Retired employee |  |
| 2 | Father’s name /Spouse’s Name |  |
| 3 | Date of Birth |  |
| 4 | EPF A/C No. |  |
| 5 | PPO No. |  |
| 6 | UAN Number (if applicable) |  |
| 7 | Aadhaar NO. |  |
| 8 | Mobile No. |  |
| 9 | Date of retirement (on attaining 58 years)/ Date of voluntary retirement (at the age of \_\_\_\_\_\_\_years. |  |
| 10 | E-mail address |  |
| 11 | Residential Address |  |
|  |  |  |

**DECLARATION BY THE RETIREE**

 It is certified that immediately after joining\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_I had been contributing towards the Provident Fund on my actual salary/wages and an equal amount used to be contributed in my PF by the Employer also as provided under Para 26(6) of EPF Scheme, 1952. It is to further certify that an amount @8.33% Of the Statutory ceiling limit i.e., Rs.6,500 /-(earlier Rs. 5,000/-) out of the Employer's contribution had been remitted by my employer every month towards Employees' Pension Scheme, 1995.

 Since I have already withdrawn the entire amount of Provident Fund on my retirement / voluntary retirement, I undertake to return the due differential amount that I had withdrawn after my retirement / voluntary retirement / exit i.e., the difference between the amount @8.33% of my actual salary/wages out of employer's contribution towards Pension Fund and the amount already remitted by the employer in EPS'95 on ceiling salary/wages from the date of joining the EPS'95 till my attaining the age of 58 years /\_\_\_ years (due to my voluntary retirement) with due interest for claiming my eligibility for drawing Pension on the basis of actual salary / wages instead of on ceiling salary/wages in accordance with the aforesaid judgements.

 I retired on attaining age of 58 years for the purpose of EPS-1995 / after\_\_\_\_\_ years (due to my voluntary retirement) before 01-09-2014 i.e., on\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ . In case there is any different format for submission of joint option, a copy of the same may be provided to me and I am ready to submit the same once again.

Place:-\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date:-\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Signature:-\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name:-\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Employee No:-\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Address:-\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**UNDERTAKING BY THE EMPLOYER**

 I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Name and Designation) being the authorized signatory on behalf of\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ do hereby certify that Shri/Mrs./Miss,\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_was working with us as

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ -and has retired on attaining age of 58 years/ after\_\_\_\_\_ years (due to his/her voluntary retirement) on\_\_\_\_\_\_\_\_\_\_\_\_\_\_ .His/her EPF A/c No. was\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ . He/she

had been contributing towards Provident Fund on his/her actual salary/wages, as per the terms of Para 26(6) of the EPF Scheme 1952. Equal share had been contributed by this establishment too. This establishment has no objection if he/she deposits/returns the due differential amount w. i.e. 16-11-1995 i.e. from the date of commencement of the Scheme or when his/her salary/wages exceeded the statutory limit, along with due interest as declared under EPF Scheme, 1952 from time to time, thus making him/her eligible for drawing pension on the basis of Pensionable salary based on his/her actual salary/ wages, instead of on the statutory limit as per erstwhile Para 11(3) of the EPS'95 Scheme as permitted to do so by the aforesaid judgement of Supreme Court dated 04-10-2016 implemented by EPFO vide circular dated 23-03-2017 after due approval from CBT (19-12-2016) & MoL&E (16-03-2017).

I certify that the particulars furnished above are correct as per the available record.

Place:-\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date:-\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Signature of authorized signatory with official seal)