

FAQ on Supreme Court Judgement to opt for the higher pension contribution under Employees’ Pension Scheme (“EPS”)

Q. What is EPS and who are eligible to become the member of the scheme.

Ans. EPS is a scheme framed under the EPF & MP Act 1952 for providing the pension benefits to certain categories of employees. The employee fulfilling the following conditions are eligible to become member of the EPS.

- Employees should be the member of EPS prior to 01st Sep 2014 and continued to be member after 01st Sep’2014.
- The Employees & Employers, who had contributed under Paragraph 26(6) of the EPF Scheme on salary exceeding the prevalent Wage ceiling of RS. 5000/- or RS. 6500/-.
- Did not exercise joint option under the proviso to Para 11(3) of the Pre-amendment Scheme, while being members of EPS 95.
- Contributing PF on a higher basic salary which should be more than the wage ceiling prior to 01st Sep 2014.
- Employees joined on or after 01st Sep 2014 drawing basic wage up to INR15000/- per month.

Q. How PF and EPS is calculated presently.

Ans. The PF and EPS is calculated in the below manner. If assumed monthly basic wage is INR 100000/- per month and EPS wage ceiling is INR 15000/-

Scenario	Employee’s Share (INR) Rate-12%	Employer Share (INR)	
		Employer PF (Employee share-EPS)	EPS 8.33% of INR 15000/-
Higher PF contribution on actual basic wage and pension on wage ceiling of INR 15000/-	12,000	10,750	1,250

Q. What is the Supreme Court judgement?

Ans. The judgment provides the option to certain employees to exercise the joint option with the employer to contribute the monthly EPS on the higher basic wage instead of the wage ceiling from the date prior to September 01, 2014, employees start contributing to the PF on a higher basic wage which was more than ceiling prescribed under the EPF Scheme 1952.

Illustration-who is eligible

Eligible

- Employees whose monthly Basic Salary exceeds Rs. 6500/- on or before August 31, 2014 and 12% of the Employee's contributions and 12% of the Employer's contributions should be deposited on full Basic Salary more than Rs. 6500/.

Not Eligible

- If First Employment start on or after 01-09-2014.
- Employees who retired before September 1, 2014 without exercising the option for pension contribution on full Basic Salary

Q. How EPS will be calculated under both scenarios if an employee exercise OR do not exercise the joint option to contribute on higher basic wage.

Ans. The PF and EPS is calculated in the below manner in both the scenarios. If assumed monthly basic wage is INR 100000/- per month and EPS Ceiling is INR 15000/-.

Scenario	Particular	Employee's Share (INR) Rate-12%	Employer Share-Rate-12% (INR)	
			Employer PF (Employee share-EPS)	EPS 8.33%
Employee do not exercise the option	Higher PF contribution on actual basic wage and pension on wage ceiling of INR 15000/-	12,000	10,750	1,250
Employees exercise the option	Higher contribution for both Schemes	12,000	3,670	8,330

Q. I was member of the EPS prior to 01st Sep 2014 but in 2016, I settled my account and withdraw the EPS amount. I again become member of EPS in 2017, am I eligible to exercise the option.

Ans. – No, in the above scenario employee is not eligible to exercise the joint option.

Q. If I exercise the joint option of EPS on higher basic wage instead of wage ceiling, from when it will be applicable and how.

Ans. The joint option can be exercised from the date employee start contributing the PF on the higher basic wage instead of wage ceiling and once the option is exercised, the differential EPS will be recovered and may be with interest from the EPF balance.

Illustration –

- Employee become member of EPF and EPS Schemes 01st April 2010
- Contributing the PF and EPS on wage ceiling of INR 6500/- till 31st Dec 2012.
- Employee starts contributing the PF on higher basic wage of INR 10000/- with effect from 01st Jan 2013 onwards and continued to contribute on EPS on wage ceiling of INR 6500/-
- Employee is eligible from 01st Jan 2013 to exercise the joint option to contribute the EPS on higher basic wage instead of wage ceiling.
- The differential EPS contribution with effect from 01st Jan 2013 will be recovered from the PF balance of employee and may be with interest earned on the PF.
- In case of shortfall of the differential EPS contribution, employee may have to return it along with interest.

*The above illustration is subject to interpretation by EPFO and provisions of EPF & MP Act 1952 and Schemes framed thereunder.

Q. Do EPFO ask the proof duly verified by employer for contributing the PF on the higher basic wage prior to 01st Sep 2014 and allow such members who possess such proof.

Ans. Yes, EPFO may ask the proof of permission from EPFO to contribute the PF on higher basic wage prior to 01st Sep 2014 and may allow only such members who possess such proof. Therefore, there is possibility that opportunity to exercise joint option may be limited to certain categories of employees only.

Q-. How to exercise the joint option.

Ans. At present online option is available at EPFO Portal (<https://unifiedportal-mem.epfindia.gov.in/memberinterface>) for employees retired before 01-09-2014 & all such retired employees who applied for higher pension earlier but their application had been rejected by PF office.

Employees who were members of the Employees' Pension Scheme as on August 31, 2014 and did not opt for higher pension earlier should also be eligible for higher pension as per Para 44(iv) of the Supreme Court ruling dated November 4, 2022.

As per the ruling, such employees should opt for higher pension by March 3, 2023 (4 months from the ruling). The circular dated Feb 20, 2023 issued by the EPFO declared that an option/modality for online application is in process and the same will be rolled out in 2-3 days along with complete procedure of filing the application. We will keep you posted with the latest development in this matter.

It is likely that EPFO may issue different circular to provide instructions on how these employees can avail the higher pension benefit through online application on EPFO Portal but the considering the time constraint of March 3, 2023 and delay at EPFO end – we have proposed to fill & submit joint option with PF office before 3rd March 2023.

Timelines:

All eligible employees, who are willing to exercise higher pension option, should fill & sign the joint option form and get the same authorised by the Employer through respective HR Dept at the earliest. Scanned copy of duly signed form (along with required documentary proofs as mentioned in EPFO circular) must be mailed to RPFO by the respective employees. Hard copy of the form can also be submitted to RPFO through respective HR Dept before 3rd March 2023.

Note:

1. Employees are required to do due diligence in choosing which option is better for them.
2. This consent does not guarantee that you will be eligible for higher pension contribution. This will depend on the EPFO final guideline. If the employee is eligible for higher pension contributions, then the amount will be transferred from the PF fund to the Pension Fund with up-to-date interest.
3. As informed, PF office has not issued consent letter till date, it may be possible that PF office may reject the application with direction of re-submit the application after issue of PF Head Office guidelines.

JOINT OPTION FORM UNDER EMPLOYEES PENSION SCHEME 1995

(Eligible employees who are member of EPS)

To

The Regional Provident Fund Commissioner
Employees Provident Fund Organisation
_____ (address) _____

Sub: Joint Option under para 11(3) and/or para 11(4) of the Employees' Pension Scheme (EPS) 1995 in accordance with Hon'ble Supreme Court Judgment dated 04-11-2022 in SLP (C) Nos. 8658-8559 of 2019

Dear Sir,

In line with para 43 & 44 of the abovementioned judgment of Hon'ble Supreme Court, eligible employees were given option to submit Joint option form under the para 11(3) and/or para 11(4) of the Employees' Pension Scheme (EPS) 1995 from the date of Judgment.

Since the due date is approaching and no format for Joint Option form has been finalised/published by EPFO, in pursuance of the format issued by RO's, EPFO in the year 2017 & 2018 in compliance of RC Gupta Judgment, we eligible employees and concerned employer are hereby submitting Joint Option form as required under the para 11(3) and/or para 11(4) of the Employees' Pension Scheme (EPS) 1995 for claiming pension on actual salary instead of per month wage/salary ceiling EPF act 1952 respectively.

Particulars of employee are as under:

I.	Name of Employee	
II.	Father's Name of Employee	
III.	Employee ID	
IV.	Date of Joining	
V.	UAN No	
VI.	Employee PF Account No	
VII.	EPS NO	
VIII.	Employer's EPF NO	
IX.	Mobile No of Employee	
X.	PAN Card No of Employee	
XI.	Aadhar Card No of Employee	
XII.	E-mail ID of Employee	
XIII.	PPO Number	
XIV.	Date of attaining age of Superannuation	

XV.	Date of attaining Actual Superannuation	
XVI.	Bank Details of Employee (A/c No, Branch, IFSC Code & MICR Code)	
XVII.	Name of pension disbursing Bank	

Declaration by Employee

I do hereby opt for contributing 8.33% of my actual salary/wage out of Employer's Contribution towards EPS 1995. I further opt for diversion of amount from my PF Account No/UAN No. to EPS 1995 upto 8.33% of my actual salary/wage. The diversion shall be subject to already deposited contribution by employer considering wage ceiling of 5000, 6000, 15000 respectively.

I hereby authorise DCM Shriram PF trust / EPFO to transfer the differential amount with interest accrued thus making me eligible for drawing pension on the basic of actual salary/wage instead of salary/wage fixed as per prevailing ceiling under the act, in accordance with the aforesaid judgment.

I also undertake that in case my corpus/balance in PF account falls short/insufficient to meet the aforesaid requirement. I am ready to pay the differential amount thus making me eligible for drawing pension on the basic of actual salary/wage instead of salary/wage fixed as per prevailing ceiling under the act, in accordance with the aforesaid judgment.

I understand that the Joint Option form is subject to acceptance by EPFO. I further understand that the option exercised is irrevocable until allowed by competent authority.

Place:

Date:

Signature of Employee

Undertaking by the Employer

I _____(Name and Designation)_____ being the authorised by the board vide resolution no ___ dated _____ to undertake on behalf of M/s. DCM Shriram Limited, _____(Unit name and location)_____ with Establishment Code _____ do hereby certify that Mr./Miss/Mrs. _____ UAN No. _____ is an employee of this establishment since _____(Date of Joining)_____. The Employee has shown its willingness to opt for contributing 8.33% of his/her actual salary/wage out of Employer's Contribution towards EPS 1995. The establishment has no objection if he/she transfers/diverts the differential amount of @8.33% of

employer's contribution wef 16.11.1995 or from his date of joining, whichever is later along with due interest as declared under EPF Scheme 1952 thus making him/her eligible for drawing pension on the basic of actual salary/wage instead of salary/wage fixed as per prevailing ceiling under the act, in accordance with the aforesaid judgment.

This exercise of option is being carried out in consonance with the judgment of Hon'ble Supreme Court dated 04-11-2022.

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

Place:

Date:

Signature of Authorised Signatory of
Employee with designation and seal