

FAQs on SC Judgment on Enhanced Pension Coverage

Q1. What is the new Supreme Court Judgment on Pension?

Earlier, the Pensionable salary was raised to Rs.15,000 vide Central Government amendment in notification G.S.R. 609 (E), dated 22nd August 2014, which was effective from 1st September 2014.

However, the amendment was challenged.

Finally, in the case of Employees' Provident Fund Organization and Anr. Etc. Vs Sunil Kumar B. and Ors. Etc. Dated 4th November 2022 (SLP (C) Nos. 86588659 of 2019)

The SC held that the members of the scheme, who did not exercise option before the 2014 Amendment, would be entitled to exercise option now, within 4 months i.e. till 4th March 2023.

Q2. Does the judgment apply to all pensioners?

The judgment applies to following:-

- Existing employees who had not exercised their option for higher/ uncapped pension.
- Existing employees who had exercised their option for higher/ uncapped pension under 11(3), even if they had not exercised the fresh option in 2014 within 6 months.
- Employees who have retired on or after September 1, 2014, with or without exercising their option for higher/ uncapped pension.
- Employees who retired prior to September 1, 2014, after having exercised their option for higher/ uncapped pension under 11(3).

Q3. Who will receive the benefit of enhanced pension coverage?

Employees who have exercised option to contribute on Pension beyond Rs. 15,000 and continue to be in service as on September 1, 2014 will continue to be governed on para 11(3). Hence, such employees can continue enhanced contribution beyond Rs. 15,000/-.

Members who did not exercise option to contribute on Pension beyond Rs. 15,000 as it was before 1st September, 2014, shall be eligible to exercise option under 11(4). Employees who could not exercise option due to the cut-off date shall be given a further chance to exercise option. Now, the PF members earning above Rs. 15,000/- who had not opted for enhanced pension coverage (on full salary) prior to the 2014 amendments, can henceforth do so within four months of this Order, i.e. till 4th March 2023.

Q4. How will members apply for enhanced coverage?

If the Employers are in agreement with eligible employees for enhanced pension coverage, they will submit joint declaration for enhanced pension coverage of the employee.

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 Rs. 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.

The application for enhanced pension coverage must contain the following documents:

- 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 Rs. 5000/6500; and
- d) Proof of remittance in Pension Fund on higher wages exceeding the prevalent wage ceiling of Rs. 5000/6500, if any; and
- e) Written refusal of APFC or any other higher authority of EPFO to such requests/remittance.

Q5. Whether PF members who have retired will be eligible for enhanced pension?

Employees who retired prior to 1st September, 2014 without exercising option will not be entitled to the benefit of the judgment.

Employees retiring after 1st September, 2014, on having exercised option but denied the benefit at that time, will be eligible for enhanced pension.

Q6. Whether PF members who have joined after 1st Sept 2014 will be eligible for enhanced pension?

The Members of Pension Fund who had joined on and after 1st September, 2014 are not entitled to get higher pension and the above judgment is not applicable to them.

Q7. What is para 26(6) of EPF?

Paragraph 26(6) of EPF is the provision by which a member can opt to contribute towards EPF on more than the statutory limit. For this the member and Employer have to submit an application in writing jointly which in turn will be approved by an Officer not less than the rank of APFC.

Q8. Whether option under Para 26(6) is compulsory for opting now?

Yes. Higher Pension option can be submitted only if a member is contributing towards EPF on his actual salary by exercising option under para 26(6) from the date on which the salary exceeded the statutory limit whichever is later by submitting a joint option with Employer.

Q9. What is 11(3) of EPS 1995?

Para 11(3) of pre-amended EPS 1995 provides for submitting option to contribute towards Pension Scheme on actual salary from 16.11.1995 or from the day the salary exceeded the statutory limit whichever is later by submitting a joint option with Employer.

Q10. What is 11(4) of EPS 1995?

The Paragraph 11(3) has been deleted w.e.f. 01.09.2014 on amendment of EPS 1995. However, a chance to continue the options already exercised under para 11(3) has been provided in para 11(4). As per this paragraph, those who had already opted under para 11(3) can renew their option by giving a joint option with the Employer within six months from 01.09.2014 and within another six months extended by the RPFC.

Q11. If a member who had opted under para 11(3) has not renewed their option within one year, what will happen?

If a member who opted under para 11(3) not renewed their option under para 11(4) within one year, their option will be cancelled and the contributions received in excess of statutory limit will be diverted to EPF.

Q12. If a member opted under 11(3) and not renewed his option under 11(4) within one year, can opt now?

No. As his option has been cancelled by his own inaction, he cannot renew his option now.

Q13. Whether the nominees of deceased pensioners be eligible to avail revised pension?

There is no clarity on this at the moment, the EPFO will have to decide this.

Q14. What are 'Exempted Establishments'? Does the judgment apply to 'Exempted Establishments'?

Exempted Establishments are organizations that have their own PF trusts. Usually, they are big corporate entities who chose to run their own PF trust for better benefits for their employees. These entities do not remit their PF contribution amount to EPFO, but keep to themselves. However, they give the pension component (EPS) to the EPFO.

Yes, the judgment applies to such establishment, wherein, the eligible employees can opt for enhanced pension coverage.

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.

Q15. Is there any actionable for the Employers?

The employee's 12% contribution goes towards PF, employees do not directly contribute to Pension. The employer's contribution of 8.33% goes towards the employees' pension scheme, and the remaining 3.67% goes towards EPF.

Employers with exempted provident funds would need to gear up for employees opting to contribute more to EPS. Administration systems would need to be enabled to calculate and distribute monies owed on account of Provident Fund and monies owed on account of EPS. Further, such calculations/ distributions would have to be communicated/ transferred to the EPFO.

For those employees who exercise this option, employers may have to trace reckonable salary from the date of their joining and apply the appropriate contribution rates on a month-to-month basis. While un-exempted employers would merely have to communicate these numbers, the exempted employers would have to transfer the necessary amounts to the EPFO and ensure that the credit is made to the correct employees, at the correct levels. Also, employers would need to align their administration systems to being able to implement such option as and when an employee exercises it.

Hence, the Employers will have a higher PF liability for the Pension amount payable on actual PF wages.

Q16. The judgment seems to have struck down 1.16% of additional contribution required on amount above Rs. 15,000, with 6 month Stop-Gap measure.

Does this mean that this additional contribution does not need to be paid?

No, the additional contribution will continue for the time being, till 4th May 2023, or till such time the Government makes an amendment, whichever is earlier.

Thereafter, it will be revisited. It remains to be seen how this additional contribution will be treated after expiry of said period.

Q17. How will the enhanced pension be calculated?

Formula for calculation pension amount is –

Pension = (Pensionable salary) (average of last 60 months) X Pensionable Service /70.

Q18. In a nutshell, who can opt now?

- (i) Those who left before 01.09.2014 and opted during their service but rejected by EPFO.
- (ii) Those who are in service on or after 01.09.2014 and if they are contributing to EPF on actual salary but not opted for higher pension.

Q19. Who are not eligible for pension?

- (i) Those who left before 01.09.2014 without exercising any option.

- (ii) Those who are contributing towards EPF on statutory limit.
- (iii) Those who had exercised option under 11(3) but not renewed within one year under 11(4).
- (iv) Those who joined after 01.09.2014.

Q20. Whether the Government has issued any direction to Employees' Provident Fund Organisation (EPFO) to take steps for immediate follow-up to the Supreme Court's directions on enabling concerned employees and pensioners to opt for higher pension and if so, the details thereof;

Q21. Whether any circular issued by EPFO and opened online facility to pensioners and employees for exercising the higher pension option, since the deadline is 4th March and if so, the details thereof;

Q22 Whether the deadline would be extended in view of short time left for the employers and employees and if so, the details thereof;

Q23 Whether the Government has completed the mechanism for claiming higher provident fund pensions by employees and if so, the details thereof;

Answer for Q21- Q24:

As per directions contained in paragraph 44(ix) read with paragraph 44(v) and (vi) of the Hon'ble Supreme judgment dated 04.11.2022, online applications were called by Employees' Provident Fund Organisation (EPFO) on 29.12.2022 from pensioners who had retired before 01.09.2014 and had exercised joint option for contributing in pension fund on salary exceeding wage ceiling before their retirement but whose joint options were rejected by the EPFO (on account of cut-off date). Joint options were to be filed on or before 03.03.2023. Now this date has been extended up to 03.05.2023. Further, as per directions contained in paragraph 44(iii) & paragraph 44 (iv) read with paragraph 44(v) of the judgment of Hon'ble Supreme Court dated 04.11.2022, instructions have been issued by EPFO on 20.02.2023 for online joint options to be filed by the employees who were in service prior to 01.09.2014 and continued to be in service on or after 01.09.2014 but could not exercise joint option under erstwhile proviso to paragraph 11(3) of Employees' Pension Scheme (EPS), 1995. Joint options can be filed on or before 03.05.2023.

Q24 Whether the Government is planning to formulate a policy to ensure the guaranteed return on EPF to ensure retirement planning; and if so, the details thereof?

No such proposal is under consideration.