

## ERGO

*Analysing developments impacting business*

### EPFO'S MUCH-TALKED-ABOUT CIRCULAR ON SUPREME COURT'S PENSION JUDGMENT: KEY TAKEAWAYS

2 January 2023

#### **Background**

In an important development, the Employees' Provident Fund Organisation (EPFO) has released a [circular](#) dated 29 December 2022 pursuant to the directions of the Supreme Court of India in the case of EPFO and Another v Sunil Kumar and Others [AIR 2022 SC 5634] (*Sunil Kumar*), setting out the specific steps towards implementation of the said order. The circular has already drawn massive attention from the industry given that several aspects continue to await clarity. In this ERGO, we examine the circular against the backdrop of *Sunil Kumar* order.

#### **Key directions for EPFO in *Sunil Kumar* order**

It may be recalled that in *Sunil Kumar* order, the Supreme Court of India upheld the constitutional validity of the Employees' Pension (Amendment) Scheme, 2014 (EPS Amendment) that had specified a monthly wage ceiling of INR 15,000 as the eligibility criterion for an employee to become a member of the Employees' Pension Scheme, 1995 (EPS Scheme). In the same vein, the court also struck down the part of the EPS Scheme that had stipulated that the employees who were members of the EPS Scheme as on 1 September 2014 could make higher contributions upon making a fresh option within 6 months from 1 September 2014, holding that a cut-off date of this nature went against the beneficial nature of the legislative framework. A detailed analysis of *Sunil Kumar* order as undertaken by us is available [here](#).

Notably, while striking off the above-mentioned provision, the Supreme Court provided a one-time facility to employees who were members of the EPS Scheme as of 1 September 2014, allowing them to opt for higher contributions within 4 months from operation of the order. In this regard, the court did not lay down the procedural nuances around raising of a fresh option for higher contributions, effectively leaving it to the EPFO to work on these aspects as part of its enforcement regime.

#### **Procedure set out in the EPFO circular**

In furtherance of *Sunil Kumar* order, the EPFO has provided that employees who were members of the EPS Scheme as of 1 September 2014 would, for the purpose of exercising the above-referred option, be required to approach the jurisdictional Regional Provident Fund Commissioner (RPFC) that would further clarify the manner and form of making an application for higher contributions. Such application must be accompanied by each of the supporting documents specified in the circular, i.e., (a) the joint option exercised by the employer and the employer for higher contributions under the Employees' Provident Funds Scheme, 1952, (b) similar option made by the employer and the employee under the EPS Scheme, (c) proof of remittance of such higher

contributions (than the statutory ceiling) towards the provident fund, and (d) written refusal by the Assistant Provident Fund Commissioner (or a higher authority) in respect of the option for higher contributions exercised by the employer and the eligible employee.

Each application made to the RPFC will be registered and monitored digitally (further information in this regard is expected to be notified shortly). The officer-in-charge of the regional office of the EPFO will examine each case on its merits and issue a speaking order that shall be duly communicated to the applicant.

### Comment

The EPFO circular comes right before the expiry of the second month in the 4-month window provided by the Supreme Court to the eligible members to make an option for higher contributions. With the limited window available for exercising the option, comes another challenge as regards employees who, while being members of the EPS Scheme as of 1 September 2014, did not exercise the option of making higher contributions within the 6-month window available to them as per the EPS Amendment (Non-Opting Members).

The EPFO circular focuses only on those members who, while being members on the said date, also went ahead and opted for higher contributions during the 6-month timeline but were not allowed to do so by an authority of the EPFO. It is for this reason that several employees and their representative bodies have already expressed concerns over the manner in which EPFO has dealt with the directions of the apex court, which had allowed such facility also to Non-Opting Members as of 1 September 2014.

Further, it was anticipated that the EPFO would clarify, basis *Sunil Kumar* order, the eligibility of new employees earning a monthly pay in excess of INR 15,000 per month to become a member of the EPS Scheme or make higher contributions thereunder, considering that the court did not specifically deal with the case of such employees. However, the EPFO has not done so as yet.

It is hoped that further circulars / clarifications from the body will offer some guidance on the above-mentioned aspects.

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