

FAGMIL
FCI Aravali Gypsum and Minerals India Limited
(A Government of India Undertaking)

No. FAGMIL/Claims-Pen./2022-23/ **1598**

Date: 09.02.2023

CIRCULAR

Subject: Hon'ble Supreme Court Judgment dated 04.11.2022 on EPS-1995

- 1.0 This has reference to the judgement dated 04.11.2022 of Hon'ble Supreme Court in Civil Appeal Nos. 008143-008144 of 2022 arising out of Special Leave Petition (C) Nos. 8658-8659 of 2019 in the matter of Employees' Provident Fund Organization & Anr. Vs. Sunil Kumar B. & Ors.
- 2.0 FAGMIL, earlier being an exempted establishment, the judgement is applicable to those employees/ex-employees of the FAGMIL who are eligible as per the Hon'ble Supreme Court Judgement dated 04.11.2022.
- 3.0 All employees of FAGMIL are members of the FAGMIL Employees Provident Fund Trust and contribute to the Provident Fund (PF) at the prescribed contribution rate on their actual salary, as applicable from time to time. FAGMIL also makes a matching employer's contribution on the actual salary to the Trust.
- 4.0 FAGMIL has been contributing towards EPS-95 @8.33% of prescribed wage ceiling i.e. Rs. 5000/- till May 2001, Rs. 6500/- w.e.f. June 2001 and Rs. 15000/- w.e.f. September 2014 out of the employer's contribution towards PF. As per the rule, EPS-95 contribution is deducted from the employer's contribution towards PF and is remitted /deposited by FAGMIL to the concerned office of the Employees Provident Fund Organization EPFO. Pension under EPS-95 is released by the concerned office of the EPFO to an employee of FAGMIL after the employee attains the age of 58 years.
- 5.0 Employees who joined FAGMIL after 01.09.2014 are not members of EPS-95 except those employees who were working elsewhere and were already a member of EPS-95.
- 6.0 EPFO has issued Circular No: Pension/2022/54877/15149 dated 29.12.2022 and corrigendum no: Pension/2022/54877/15238 dated 05.01.2023, in compliance with Para 44(ix) read with Para 44(v) and Para 44(vi) of the SC Judgement. EPFO circulars have been uploaded on EPFO official website. Para 5 of the EPFO circular specifies the employees who are eligible to exercise the option as per the SC Judgement in R.C. Gupta's case.
- 7.0 Accordingly, it is hereby informed that all such Ex-Employees of FAGMIL who are meeting the criteria specified in the EPFO circulars, if they so desire, may submit their option to the concerned Regional Office of the EPFO (From where they are drawing Pension under EPS-95) as per the procedures and

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along with the supporting documents as specified in para -6&7 of the EPFO circular dated 29.12.2022 and corrigendum 05.01.2023.

The following emerges from the above circulars:

- a) The employees who had exited EPS prior to 01.09.2014 and have not exercised the option for EPS-95 on higher salary under para 11(3) of the EPS Scheme than the wage ceiling fixed by EPFO are not covered for the pension on actual salary.
 - b) The employees who had exited EPS prior to 01.09.2014 and had exercised the option for EPS on higher salary under para 11(3) of the EPS Scheme and whose application was rejected by the concerned EPFO office are entitled to the benefit of pension on actual salary.
 - c) The circular is silent about the employees who have either exited EPS after 01.09.2014 or are still in active service. There is a likelihood of additional clarifications/ guidelines for such cases by EPFO as the same has been covered by the above judgement.
- 8.0 Ex-employee's of FAGMIL who attained the age of 58 years before 01.09.2014 and did not submit the joint option for enhanced pension on actual salary to EPFO are not covered under the above provisions.
- 9.0 It is informed that as per paragraph 43 read with paragraph 44(iv) of the SC judgement, all employees, who were Members of the EPS-95 as of 01.09.2014 (i.e. were below the age of 58 years) and who could not exercise the option, as contemplated in the proviso to paragraph 11(3) of the EPS-95 to contribute towards the scheme on actual salary instead of applicable wage ceiling, would be entitled to exercise option now under paragraph 11(4) EPS-95 within a period of four months from the date of judgement i.e. on or before 03.03.2023.
- 10.0 It is expected that EPFO may issue a separate circular/guideline shortly specifying the mode and manner of deposit of exercising the option and for submission of joint option cum declaration and undertaking for depositing the differential amount as per paragraph 43 read with paragraph 44(iv) of the SC Judgement dated 04.11.2022, in respect of eligible employee(s) who were a member of the EPS-95 as on 01.09.2014.
- 11.0 Since the time to exercise the option by the option by the eligible employees is available only for a period of four (4) months from 04.11.2022., it is hereby informed to all eligible employees that as per the Supreme Court Judgement, they have a one-time chance to exercise their option to contribute towards EPS-95 on actual salary instead of on applicable wage ceiling, for getting pension on actual Pensionable Salary.
- 12.0 Employee(s)/ Ex-employee(s)/ EPS-95 Pensioner(s), who opt to exercise the option now, would be required to deposit a differential amount i.e. the

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difference between the contribution @8.33% on the actual salary less contribution already deposited by FAGMIL on applicable wage ceiling from the date of joining the EPS-95. Additionally, such employee(s) shall be required to pay the interest due on the differential amount at the applicable rate till the month of remittance. Employees will also be required to contribute 1.16% of their actual salary exceeding Rs. 15000/- as an additional contribution from September 2014.

- 13.0 In case of the eligible resigned employee(s) who have joined other organization(s) from FAGMIL, will provide the actual salary details, on their request, for the applicable service period in FAGMIL as per records available.
- 14.0 FAGMIL has already taken up with the EPFO, Jodhpur about the specified format for employees getting covered as per paragraph 44(iv) of the SC Judgement dated 04.11.2022, if any, and undertaking to be given by employees / ex-employees (who opt) in the joint option cum declaration/ undertaking format, etc and the same shall be made available, as and when clarifications or information in this regard is received from EPFO.
- 15.0 As per the Hon'ble Supreme Court judgement, payment of the differential amount shall follow the submission of a joint declaration and the same shall have to be remitted/ deposited within the timeline, if any, prescribed by EPFO. Accordingly, eligible ex-employee(s) who would exercise the option and who have already withdrawn their Provident Fund from FAGMIL Employees Provident Fund Trust will have to arrange the differential amount for payment to EPFO, within the prescribed time. The mode and manner of deposit of the differential amount will be informed in due course as decided by EPFO.
- 16.0 Ex- employee(s)/ EPS-95 pensioner(s) may also note that revision in EPS-95 enhanced pension may take considerable time as the pension payment under EPS-95 is released by the concerned office of the EPFO and will not be in the control of FAGMIL.
- 17.0 For serving employees (who opt for enhanced EPS-95 pension on actual salary), payment of differential amount will be recovered from the respective PF account of employee with EPFO as the PF Trust has been surrendered.
- 18.0 All employees are requested to visit FAGMIL official website (www.fagmil.nic.in) for various information/notifications etc.
- 19.0 The option exercise is irrevocable at later date and no change of option shall be entertained under any circumstances.
- 20.0 The Joint option form and other forms duly filled **(in triplicate originally signed)** in every manner should be submitted by concerned employee / ex employee at **FAGMIL Jodhpur** latest by 25th February, 2023.

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21.0 These instructions are subject to directions/instructions of EPFO and or decision of court of law (if any) issued from time to time in this regard.

Disclaimer: This circular is being issued to adhere the time limit of Hon'ble Supreme Court Judgement passed in SLP No. 8658-8659 of 2019, amendment to the Pension scheme brought by notification No. G.S.R. 609 (E) dated 22 August 2014 and is subject to any ratification (s)/guideline(s) that may be issued by EPFO from time to time. Therefore, the joint option submitted by Employees/Ex-employees does not confer any right to receive or obligation upon FAGMIL to pay higher pension to them.

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(Rajendra Singh Rathore)
General Manager

Distribution:

1. All Staff
2. Sr. Manager (Tech.) with a request to upload the circular on FAGMIL website.

Copy to:

1. CMD
2. Vigilance

Annexure – A

Joint Option under Erstwhile Para 11 (3) & Para 11 (4) of EPS'95

To,
The Regional Provident Fund Commissioner
Regional Office, 130,
Paschim Pal Vistar Yojana,
Jodhpur

Sub:- Joint Option under Para 11 (3) and Para 11 (4) of Employees Pension Scheme, 1995 based upon the Hon'ble Supreme Court's order in SLP No. 8658-8659 year 2019 Titled EPFO Vs Sunil Kumar pronounced on 04th November 2022 – Reg.

Reference is invited towards Para 43 and Para 44 (ii) & (iv) of the aforesaid Order dated 04th November 2022 of Hon'ble Supreme Court of India, in the above cited Civil Appeal wherein the eligible employees/ex-employees and his/her employer are required to submit a joint option under erstwhile Para 11 (3) & 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 been provided by EPFO (also not available on EPFO's website), based on similar formats issued by various ROs in the year 2017 & 2018 while implementing the R C Gupta judgement; in order to comply with the above requirement, we (employee/ex-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 instead of ceiling salary limit of Rs. 15000/-.

Particulars of the employee are as under:-

| SI No. | Particular | Details |
|--------|--|---------|
| 1. | Name | |
| 2. | EPS Account Number | |
| 3. | EPS Account Number Previous Organization (if any) | |
| 4. | EPS Account Number Previous Organization (if any) | |
| 5. | EPS Account Number Previous Organization (if any) | |
| 6. | Aadhar Number | |
| 7. | UAN No. | |
| 8. | PPO Number (if any) attach copy | |
| 9. | Date of Leaving service or attained the age of 58 years / 60 years which was earlier (if applicable) | |
| 10. | Correspondence Address and Mobile | |

Declaration by Employee/Ex- employee

It is certified that immediately after joining in FAGMIL, 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 EPS Scheme 1952. It is to further certify that an amount @ 8.33% of the statutory ceiling amount i.e. Rs. 15000 (earlier Rs. 5000/- or Rs. 6500/-) out of the employers contribution had been remitted every month towards Employees' Pension Scheme 1995 since 16th November 1995 or the date of joining whichever is later onwards.

I, do hereby opt for delivering 8.33% of my actual salary/wages out of employers contribution towards pension fund (after adjusting the amount already diverted in EPS'95 on ceiling wages) from the date of joining the EPS'95 till my attaining the age of 58 years/VRS/ resignation.

(Tick whichever is applicable)

☐ Since I have already withdrawn entire Provident Fund on my retirement/VRS/resignation, I am ready to pay the differential amount that I had taken/withdrawn after my exit/retirement;

☐ In case my Provident Fund amount (Employer) becomes short on a/c of non refundable advance, I am ready to pay the differential amount that I had taken/ withdrawn;

Thus making me eligible for drawing pension on the basis of average of last 60 months salary / wages as pensionable salary / wages i.e. based on my Actual salary/ wages instead of being based on the statutory limit.

That I retired on attaining the age of 58 years / 60 years for the purpose of EPS 1995 after 01.09.2014 on (strike out not applicable)

I also undertake that if any other legal formality is required in this regard, I am ready to do accordingly.

Place:-

Signature:

Date:-

Name:

E. Code:

Annexure - B

To be filled by the employee/ex-employee who joined FAGMIL from any other organization in which they were member of EPS'95 Scheme:-

(Separate Sheet should be filled for every previous organization in which employee was member of EPS'95)

| S. No. | Particulars | Details |
|--------|--|---------|
| 1. | Name of the Employee | |
| 2. | Previous Establishment Name | |
| 3. | Previous Establishment Address | |
| 4. | Previous Establishment PF Code | |
| 5. | PF Account is held by: (Name of EPF Office/PF Trust) | |
| 6. | Date of Joining EPS'95 IN Previous Establishment | |
| 7. | Date of Exit EPS'95 in Previous Establishment | |
| 8. | EPS Number of Previous Establishment | |
| 9. | UAN of Previous Establishment | |

- Supporting PF Slip indicating EPS number should be attached.

The above particulars are correct, and I am liable to bear any consequence arises based on the above declared facts.

Signature of the employee/ex-employee

Name of the Employee

Employee Code