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PROOF OF JOINT OPTION UNDER EPF SCHEME NOT REQUIRED FOR JOINT OPTION UNDER EPS SCHEME: KERALA HIGH COURT'S INTERIM ORDER

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Through an interim order, the Kerala High Court has opined on the requirement of producing copies evidencing exercise of joint option under Paragraph 26(6) of the Employees' Provident Funds Scheme, 1952 (EPF Scheme) for the purpose of exercise of joint option for higher pension benefits under the Employees' Pension Scheme, 1995 (EPS Scheme) pursuant to the ruling of the Supreme Court of India in *Employees' Provident Fund Organisation (EPFO) and Another v Sunil Kumar and Others* [AIR 2022 SC 5634] (SC Ruling). In this update, we examine the key takeaways of this order (Interim Order) in the case of *Saheer S and Others v Union of India and Others* [Writ Petition (Civil) Number 8979 of 2023 (Kerala High Court)].

Understanding the background

It may be recalled that the SC Ruling had, in part, 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 EPS Scheme. Notably, the Supreme Court of India had also re-affirmed the principle laid down in *RC Gupta and Others v Regional Provident Fund Commissioner, EPFO* [(2018) 14 SCC 809] (RC Gupta) that there cannot be a cut-off time period for exercise of benefits under a beneficial legislation (which the EPS Amendment did by providing a timeline of 6 months to employees who were members of the EPS Scheme as on 1 September 2014, for opting for higher pension benefits). With this re-affirmation, came a directive to EPFO to allow certain categories of employees to have another opportunity (within a limited timeframe) to make higher contributions under the EPS Scheme. We have analysed the SC Ruling as part of our previous update available [here](#).

In furtherance of the SC Ruling, the EPFO released a bunch of circulars *inter alia* providing that the employees who opted under Paragraph 26(6) of the EPF Scheme for making employees' provident fund contributions on the wages exceeding the then applicable wage ceiling but had not similarly opted for higher contributions under the EPS Scheme while being members as of 1 September 2014 or thereafter, could now exercise their joint option in this regard under the EPS Scheme on or before 3 May 2023. As part of this process, the eligible employees are also required to produce a proof of exercise of joint option under the EPF Scheme.

The ground realities

As evident from the discussion above, the starting point for the joint option process under the EPS Scheme is the exercise of joint option under the EPF Scheme, and this aspect has also been confirmed by the Supreme Court of India in *RC Gupta*. While the

wording of Paragraph 26(6) of the EPF Scheme may suggest that the employer and the employee have to make a written application to the EPFO before they are able to exercise their joint option under the EPF Scheme, the ground realities have hitherto been slightly different.

There have been several cases where the employer and the employee have proceeded to make higher contributions under the EPF Scheme without a formal application process in place, and such higher contributions were not objected to by the EPFO. Notably, the EPFO even released a [circular](#) dated 22 January 2019, wherein it provided that if an employer and an employee have made higher contributions under the EPF Scheme without formally exercising a joint option for the same, and if the employees' provident fund account of the concerned employee-member has been accordingly updated, it shall be inferred that the joint option under the EPF Scheme has been exercised by the employer and the employee and accepted by the EPFO. This circular was later [withdrawn](#) by the EPFO. Nevertheless, instances of higher contributions under the EPF Scheme without a formal joint option exercise have continued to this day, and this is exactly what formed the basis for the petitioners to approach the Kerala High Court and plead that the EPFO should now not insist upon proof of joint option under the EPF Scheme for the purpose of opting for higher pension benefits.

[The Interim Order](#)

To the relief of the petitioners (even if temporary), the Kerala High Court took cognizance of the ground realities discussed above and noted the following:

"Thus, when considering all the above aspects, the only view that can possibly be taken is that the petitioners have succeeded in establishing a prima facie case...There cannot be any dispute that if they were not permitted to submit their options before the cut-off date, they would be deprived of their opportunity to claim the benefits of the judgment of the Honorable Supreme Court forever...the Employees Provident Fund Organization and the authorities under the same are directed to make adequate provisions in their online facility to enable the employees/pensioners to furnish the options in tune with the directions of the Honorable Supreme Court, without the production of the copies of option under paragraph 26(6) of the Scheme, 1952 and the details thereof, for the time being."

[Comment](#)

While the Interim Order appreciates and favourably considers the grievances of the employees, care should be taken to assess the said order in the specific context in which it was passed. The Interim Order should not be read to be a conclusive determination on the manner of making joint option under the EPF Scheme, but rather, it should be seen as a relief being provided on an immediate basis to those employees who are eligible to benefit from the SC Ruling and wish to avail the same within the limited timeframe provided by the EPFO. On a related note, it is yet to be seen how EPFO will respond to the Interim Order and make suitable arrangements to the online facility provided for employees to make a joint option for higher pension benefits until 3 May 2023 (or such other extended timeline that it may provide in the future).

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