No. Pension. III/41st / PEIC - Meeting /2019/ 17449

To

All Members,
Pension & EDLI Implementation Committee,
Central Board, Employees' Provident Fund Organization.

Subject: Minutes of the 41st Meeting of the Pension & EDLI Implementation Committee (PEIC) held on 06.02.2019 – Regarding.

Sir,

A copy of minutes of the 41st Meeting of the Pension & EDLI Implementation Committee (PEIC) held on 06.02.2019 as approved by the Chairman, PEIC is forwarded herewith for information.

Your faithfully,

Encl:- As above

(MUKESH KUMAR)
REGIONAL P.F. COMMISSIONER – I (Pension)

Copy to:-

1. PS to Central Provident Fund Commissioner & Chairman, PEIC.
2. PS to Director/Deputy Secretary (SS), Ministry of Labour & Employment.
3. PS to Director/Deputy Secretary (Finance), DFS, Ministry of Finance.
4. PS to ACC -HQ (Pension) EPFO, Head Office.
5. PS to ACC (Pension) EPFO, Head Office.
6. RPFC-I (Conference), EPFO, Head Office.
MINUTES OF THE 41st PENSION & EDLI IMPLEMENTATION COMMITTEE MEETING HELD ON 06.02.2019 AT 11.00 AM IN THE CONFERENCE HALL OF EPFO, NEW DELHI

Members present:

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<tr>
<th></th>
<th>Name</th>
<th>Position</th>
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<tbody>
<tr>
<td>1</td>
<td>Shri Sunil Barthwal</td>
<td>Chairman</td>
</tr>
<tr>
<td></td>
<td>Central Provident Fund Commissioner</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Shri Vinod Kumar</td>
<td>Member</td>
</tr>
<tr>
<td></td>
<td>Director (MoL&amp;E)</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Shri M.L. Maurya</td>
<td>Member</td>
</tr>
<tr>
<td></td>
<td>Employer's Representative</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Shri Michael Dias</td>
<td>Member</td>
</tr>
<tr>
<td></td>
<td>Employer's Representative</td>
<td></td>
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<tr>
<td>5</td>
<td>Shri Sunkari Mallesham</td>
<td>Member</td>
</tr>
<tr>
<td></td>
<td>Employees' Representative</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Shri Harbhajan Singh Sidhu</td>
<td>Member</td>
</tr>
<tr>
<td></td>
<td>Employees' Representative</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Shri Jayesh D. Pandit</td>
<td>Domain Expert</td>
</tr>
<tr>
<td></td>
<td>Actuary</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Shri Rajesh Bansal</td>
<td>Convenor</td>
</tr>
<tr>
<td></td>
<td>Addl. Central P.F. Commissioner (HQ)(Pension)</td>
<td></td>
</tr>
</tbody>
</table>

Director / Dy.Secretary (Finance), DFS, Ministry of Finance and representative from PFRDA could not attend the meeting.

2. CPFC welcomed all the members to the first meeting of the newly constituted Pension and EDLI Implementation Committee (PEIC) and said that EPFO will benefit with their advice and guidance. He directed Convenor of the Committee to introduce the agenda items to the members.

3. Shri Rajesh Bansal, Addl.CPFC (HQ) introduced the agenda items before the Committee for consideration.
Item No.1: Confirmation of the minutes of the 40th meeting of the Pension & EDLI Implementation Committee held on 24.05.2017

Decision / Recommendation:

The PEIC confirmed the minutes of the 40th meeting as circulated.

Item No.2: Action taken report on the 40th meeting / decision

Decision / Recommendation:

The PEIC took note of the Action Taken Report placed before the Committee.

Item No.3: Report of the High Empowered Monitoring Committee

Shri Sunkari Mallesham requested that complete report of the High Empowered Monitoring Committee should be provided so that fruitful discussions can take place. Other members also demanded a copy of the complete report.

Shri Vinod Kumar, Director (MoL&E) informed that a Cabinet note has been moved on some of the recommendations of the report of the High Empowered Monitoring Committee and hence complete report can be shared only after approval of the Government. CPFC requested the members to discuss the broad recommendations of the High Empowered Monitoring Committee and give their views. Accordingly, the recommendations of the Committee were taken up for discussion.

The members welcomed the recommendation to increase the minimum monthly member pension to Rs.2000/- per month. Shri Sunkari Mallesham stated that on 01.02.2019, the government has announced minimum pension of Rs.3000/- per month to workers of unorganised sector. Hence the minimum pension under EPS-1995 where the contribution of workers is more should not be less than Rs.3000/- per month. Shri Harbhajan Singh Sidhu suggested that the minimum pension under EPS-95 should be increased to Rs.6000/- per month.
Shri Michael Dias suggested that EPFO should have an in-house full time Actuary. CPFC explained the provision of Para 32 of EPS-95 and informed that it is the prerogative of the Central Government to get the valuation of the Pension fund done by a valuer appointed by it. However, he welcomed the suggestion of Shri Jayesh Pandit that besides independent valuation of the Pension Fund by the Government appointed actuary there should be an in-house actuary for giving day to day inputs.

Members welcomed the recommendation relating to the restoration of commuted value of pension. Shri Sunkari Mallesham while supporting the recommendation of the High Empowered Monitoring Committee suggested to consider restoration after expiry of 10 years instead of 15 years. Shri Vinod Kumar explained the rationale behind taking the period for restoration of the commuted value of pension as 15 years.

Shri Sunkari Mallesham desired to know the status of the proposal regarding extension of medical benefits to the pensioners of the EPFO through ESIC hospitals. Shri Vinod Kumar explained the drawbacks of the medical benefit scheme through ESIC and explained that benefits provided under Ayushman Bharat (PMJAY) is better and more comprehensive as it provides tertiary treatment including super-speciality treatment.

CPFC assured that EPFO and MoL&E will examine this issue and a separate agenda item may be placed regarding providing of medical benefits to pensioners. The members of the Committee welcomed the other recommendations of the High Empowered Monitoring Committee.

**Item No.4: Information on the issue of Pension on higher wages and status of court cases**

Shri Sunkari Mallesham suggested that the existing employees who are presently contributing on full wages to the Provident Fund but Pension contribution is restricted to Rs.15000/- per month should also be allowed to exercise an option to contribute on higher wages in the pension scheme in light of the Kerala High Court judgement. However, the field offices are not accepting the applications submitted by the employees in this regard. CPFC informed that the matter is sub-judice and it has been decided to file SLP in the Hon’ble Supreme Court against the Kerala High Court judgement. Shri Sunkari Mallesham requested to direct the Regional Offices to accept the applications from the employees and issue reply that the matter is sub-judice. CPFC stated that legal advice will be taken in the matter.
Shri Harbhajan Singh Sidhu suggested that a separate scheme be formulated for disbursing pension to employees drawing salary above Rs.15000/- per month. CPFC welcomed the suggestion and informed that the matter will be examined.

**Item No.5: Status of proposals relating to Employees’ Pension Scheme, 1995**

Shri Rajesh Bansal explained that this agenda item is regarding the proposals approved by the PEIC and CBT in earlier meetings which are yet to be implemented. He briefly outlined the present status of the proposals and stated that this agenda item is placed for information.

Shri Sunkari Mallesham suggested for the need to spread awareness about the provisions of EPS-1995 by way of leaflet. He also suggested that RPFCs should conduct a monthly meeting with pensioners in which local CBT / Regional Committee members should also be invited. CPFC agreed to the suggestion and said that the FAQ on Pension provisions will be prepared and circulated to stakeholders as well as uploaded on the EPFO website. Leaflets will also be prepared for distribution. Monthly meeting with pensioners will be held along with the Nidhi Aapke Nikat.

**Item No.6: Status of proposal relating to Employees’ Deposit Linked Insurance Scheme, 1976**

Shri Rajesh Bansal explained in brief the proposal approved by PEIC in its 39th meeting held on 12.04.2017 and the reason why the same has not been approved by the government.

Shri Vinod Kumar suggested that instead of providing loyalty-cum-life benefit to the retiring employees it will be better if the maximum insurance amount be enhanced from the present Rs.6,00,000/- to Rs.8,00,000/- or Rs.10,00,000/-. Shri Sunkari Mallesham suggested that the minimum assurance amount should also be enhanced. Other members of the Committee welcomed the suggestion. CPFC assured to examine the suggestion for increasing the assurance benefit from time to time.

Members expressed the need for spreading awareness regarding the provisions of EDLI scheme especially eligibility and calculation of assurance amount. CPFC agreed to the suggestion and
informed that FAQ on EDLI scheme provisions will also be prepared in Hindi and English and circulated to stake holders.

**Other items:**

Members expressed concern over the large number of cases filed in various courts and suggested to explore ways and means to reduce the same. CPFC stated that scientific analysis of the pending cases need to be carried out to weed out frivolous cases.

Shri Harbhajan Singh Sidhu informed that Regional Committee meetings has not been held in Delhi Region since last many years. Other members also informed that Regional Committee meetings are not held regularly. CPFC assured the members that the status of constitution of all Regional Committees, and meetings held during last five years will be compiled and placed in the next meeting.

CPFC expressed his gratitude for giving very valuable suggestions and assured that various suggestions made by members will be carried forward. Shri Sunkari Mallesham thanked the Chair for having a fruitful discussion.
No. Pension - III/41"/ PEIC Mtg. /2019/  
Dated: 31.1.2019

To

All Members,  
Pension & EDLI Implementation Committee,  
Central Board, Employees' Provident Fund Organisation

Subject: 41" Meeting of the Pension & EDLI Implementation Committee (PEIC) scheduled to be held on 06.02.2019 at 11.00 A.M at EPFO, Head office - Regarding.

Sir,

Please arrange to refer letter No. Pension - III/41"/ PEIC Mtg. /2019/16921 dated 29.01.2019 on the cited subject. In continuation of the same, please find enclosed the agenda items approved by the Central Provident Fund Commissioner for the 41" Meeting of the Pension & EDLI Implementation Committee (PEIC) scheduled to be held on 06.02.2019 at 11.00 A.M.

Your faithfully,

(MUKESH KUMAR)  
REGIONAL P.F. COMMISSIONER – I (Pension)

Encl:- As above

Copy to:-

1. PS to Central Provident Fund Commissioner & Chairman, PEIC
2. PS to Director/Deputy Secretary (SS), Ministry of Labour & Employment.
3. PS to Director/Deputy Secretary (Finance), DFS, Ministry of Finance.
4. PS to ACC – HQ (Pension) EPFO, Head Office.
5. PS to ACC (Pension) EPFO, Head Office.
6. RPFC-I (Conference), EPFO, Head Office.
AGENDA FOR 41st MEETING OF

PENSION

&

EDLI IMPLEMENTATION COMMITTEE (PEIC)

Date of Meeting: 06.02.2019

Time: 11:00 A.M

Venue: Conference Hall, 3rd Floor,
Employees' Provident Fund Organisation,
Head Office, Bhavishya Nidhi Bhawan,
14, Bhikaiji-Cama Place,
New Delhi-110066.
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<td>Status of proposal relating to Employees' Deposit Linked Insurance Scheme 1976 – for information</td>
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Item No. I: Confirmation of minutes of the 40th meeting of the Pension & EDLI Implementation Committee held on 24.05.2017

The minutes of 40th meeting of Pension & EDLI implementation Committee Annexure 'A' is placed for confirmation of the committee.
**Item No. II: Action Taken Report on the 40th meeting/decision**

In the 40th PEIC meeting the following decision was taken:

**Action Taken Report**

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<th>Decision of PEIC</th>
<th>Action Taken</th>
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<tr>
<td>1</td>
<td>Implementation of Supreme Court Orders related to Employees' Pension Scheme, 1995, in respect of members/pensioners of exempted trust exempted under section 17(1) (a) of the EPF and MP Act 1952 or relaxed under Para 79 or the employees exempted under Para 27 or 27A of Employees’ Provident Fund Scheme 1952 who have contributed on higher wages exceeding the statutory wage ceiling of Rs.6500/- in the Provident Fund Trust of those Establishments.</td>
<td>CPFC informed that EPFO is neither legally liable nor financially capable to pay for money not received by EPFO. CPFC further confirmed that the matter will be placed at higher forums after taking detailed legal opinion.</td>
<td>Legal advice was obtained on 31.05.2017 on the question whether the judgement of the Hon’ble Supreme Court in the matter of R.C.Gupta &amp; Others Vs. RPFC, Shimla is applicable in the matter of exempted establishments. Based on the legal advice circular No.Pension-I/12/33/EPS/Amendment/96/Vol.II/4432 dated 31.05.2017 was issued as a clarification to the earlier circular dated 23.03.2017 that the Hon’ble Supreme Court order in the matter of R.C.Gupta is not applicable to employees of exempted establishments.</td>
</tr>
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</table>

ITEM No. III: Report of High Empowered Monitoring Committee - for consideration

A High Empowered Monitoring Committee for complete evaluation and review of the Employees' Pension Scheme, 1995, was constituted under the Chairmanship of Additional Secretary (L&E) vide Ministry of Labour & Employment letter No.H-11016/44/2015-16-SS-II dated 04.01.2018.

ITEM No. IV: Information on the issue of Pension on higher wages & status of court cases.

An agenda item on the issue of pension on higher wages was placed for information in the 221st CBT Meeting held on 13.04.2018.

Shri. A. K. Padmanabhan, CBT Member desired to place an agenda item on the issue of pension on higher wages including the status of court cases before the CBT. Prior to placing the agenda item before the CBT, information on the issue of pension on higher wages including the status of court cases is placed as Annexure 'C' for information.
ITEM No. V: Status of proposals relating to Employees’ Pension Scheme, 1995 – for information.

1. Increasing the short service pension entitlement age from 50 years to 55 years of age:

MoL&E vide letter No.H-11016/13/2015-SS.II dated 17.02.2017 directed that the proposal needs rethinking / further consultation as it is felt that it will be disadvantageous to those members who may intend to opt for early retirement.

2. Increase in cessation of membership under Employees’ Pension Scheme, 1995, from the existing age of 58 years to 60 years:

MoL&E sought further information and data which is under compilation.

3. An opportunity may be given with a time limit of six months to those members of the pension scheme who do not want to contribute on higher wage exceeding Rs. 15000/- @ 8.33% with additional contribution at the rate of 1.16% of the wage exceeding Rs. 15000/- to opt out of higher contribution

Since the matter is under litigation in various courts the matter has been kept in abeyance.
ITEM No. VI: Status of proposal relating to Employees' Deposit Linked Insurance Scheme 1976 – for information.

Loyalty-cum-Life Benefit to retiring employees

Matter was discussed in the Ministry and it was advised that the matter requires amendment in the EPF & MP Act, 1952 and as such proposal needs to be examined through Department of Legal Affairs and also requires to be valued by the Actuary after his appointment.
Minutes of 40th Meeting of Pension & EDLI Implementation Committee

Date: 24th May, 2017

Venue: Conference Hall,
Employees Provident Fund Organisation,
Head office, Bhavishya Nidhi Bhawan,
14, Bhikaji Cama Place, New Delhi-66.

Present:

1. Dr. V.P. Joy, Central Provident Fund Commissioner
   Chairman
2. Shri Vinod Kumar, Director (MoL&IE)
   Member
3. Shri Bhagirathi Dhal, Representative on behalf of Shri R.S. Maker, Employers’ Representative, CBT (EPF)
   Representative on behalf of Sh. R.S. Maker, Employers’ Representative, CBT (EPF)
4. Shri D.I. Sachdev, Employers’ Representative, CBT (EPF)
   Member
5. Shri R.M. Verma, ACC-II (Pension)
   Convenor

Shri Arun Goel, Additional Secretary & Financial Advisor (MoL&IE), Shri R.S. Maker, Employers’ Representative, CBT (EPF), Shri G.P. Srivastava Employers representative, CBT (EPF) , Shri Vrijesh Upadhyay Employers’ Representative, CBT (EPF), Shri Rakesh Sharma, Representative of PFRDA and Shri Jayesh D. Pandit, Actuary, could not attend the meeting.

Central P.F. Commissioner welcomed the members of the Pension and EDLI Implementation Committee (PIIC) and introduced the agenda items in brief before the committee for consideration.

**Item No.1 Confirmation of minutes of the 39th meeting of the Pension & EDLI Implementation Committee.**

Decision/Recommendation: The PIIC confirmed the minutes of the 39th meeting as circulated.

**Item No.2 Action Taken Report on the 39th meeting/decision.**

Decision/Recommendation: The PIIC took note of the Action taken report placed before the committee.
Item No.3

Implementation of Supreme Court Orders related to Employees Pension Scheme 1995 in respect of members/pensioners of exempted trust exempted under section 17(1)(a) of the EPF and MP Act 1952 or relaxed under para 79 or the employees exempted under para 27 or 27A of Employees' Provident Fund Scheme 1952 who have contributed on higher wages exceeding the statutory wage ceiling of Rs.6500/- in the Provident Fund Trust of those Establishments.

CPFC informed that in the 38th meeting of PEJC it was decided unanimously that the compliance with the order of Hon'ble Supreme Court in the matter of Sh. R.C. Gupta & Others may be made immediately in respect of Members whose accounts are maintained by EPFO as their details are already available with EPFO and contribution on higher wages has been received by EPFO. In respect of those members of Exempted Provident Fund Trusts whose contribution on higher wages has not been received by EPFO, it was decided that their cases may be examined and the information may be submitted to the committee. Accordingly after receiving approval of the CBT & MOL.&E administrative instructions were issued to the field offices vide circular dated 23.03.2017.

The matter was examined in respect of members of exempted trusts and it is proposed that no revision of pension is admissible in their cases if they have not remitted pension contribution on full salary to EPFO, on account of the following.

1. All the appellant employees in the aforesaid case before the Hon'ble Supreme Court were from unexempted establishment i.e. an establishment making P.F. contributions in the statutory Provident Fund managed by EPFO. The Employer's contribution of 12% under the Act in respect of the said employees was on actual salary and not on the ceiling limit of either Rs.5,000/- or Rs.6500/-.

2. Employees' Pension Scheme remittances are being made by the establishments and not by the exempted Trusts. As such, the issue is whether establishments with exempted trusts be allowed to make balance remittances on full salary to the EPS scheme afresh. If this is allowed, the same will have to be considered for unexempted establishments also. It is not contemplated in the judgement.

3. Exercise of option under Para 26 (6) is a precursor to exercise of option under proviso to clause 11 (3) of the pension scheme. The appellant employees in the aforesaid case had exercised option under para 26 (6) of the EPF Scheme.
4. In cases where both the provident fund and pension fund are managed by EPFO and the contribution on higher wages in the provident fund has been received at the appropriate time, adjustment of account can be made, even if option to contribute on higher wages in the Pension Fund is given on a later date.

5. In the case of exempted establishment the Provident Fund and Pension Fund are managed by separate legal entities. The Provident Fund of employees of exempted establishments are managed by Exempted Trusts and Pension Fund is managed by EPFO. As such, adjustment of contribution from Provident Fund Account (maintained by Exempted Trust) to Pension Account (maintained by EPFO) in respect of Employees’ of exempted establishments does not arise.

6. Employees Pension Scheme-1995 being a funded scheme with defined contribution and defined benefits, pension can be sanctioned only on the basis of contribution received in the Pension Fund. Any sanction of pension without receipt of timely contributions will deplete the fund jeopardising payment of pension/benefits to eligible members/pensioners leading to unsustainability of the Employees Pension Scheme.

Shri Bhagirathi Dhal disagreed with the CPFC and requested to record his view as under :-

1. There cannot be two classes of beneficiaries of the pension scheme, one under EPFO & another under exempted trusts.
2. The exemption to the establishments is given on the tacit understanding that the benefits could be either same or better to the employees covered under the exempted trusts.
3. The Supreme Court while delivering its judgement has not made any difference between the two categories of subscribers that is subscribers of exempted trusts and EPFO.
4. The differential amount due to non receipt of funds from the exempted trusts in the pension fund over the ceiling limit may be computed through the financial processes for extending these benefits to the employees of exempted trusts.

Shri D.L. Sachdev while agreeing to the points made by Shri Bhagirathi Dhal clarified that in the 38th meeting of PEIC, the committee had unanimously decided that compliance be made immediately in respect of the members whose accounts are maintained by EPFO and contribution on higher wages has been received by EPFO. He added that the cases of members of exempted trusts may be examined in detail and information be submitted to the committee so that a decision can be taken.

The members also suggested that specific legal opinion may be sought in the matter.
Shri Vinod Kumar while giving his views on the issues (1-4) above raised by the members, stated:

1. There are no two classes of beneficiaries in the pension scheme, one under EPFO and another under exempted trusts as the pension under EPS 1995 is administered and managed by the EPFO only and there is only one class of beneficiaries.

2. As the exemption is from EPF Scheme 1952, the benefits should be same or better under the exempted trust in respect of the Provident Fund only and not in respect of any other scheme.

3. In the SLP under reference where Hon’ble Supreme Court delivered its Judgement, all the employees who went to court were from un-exempted establishment. CBT has decided to extend the same only to similarly placed persons.

4. The suggestion does not appear technically and financially feasible.

CPFC informed that EPFO is neither legally liable nor financially capable to pay for money not received by EPFO. CPFC further confirmed that the matter will be placed at higher forums after taking detailed legal opinion.

The meeting ended with a vote of thanks to the chair.

Sd- (29.5.2017)
(Dr. V.P. Joy)
Central P.F. Commissioner
and Chairman, PEIC, CBT, EPF.
### Recommendations of High Empowered Committee

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<th>S. No.</th>
<th>Issue</th>
<th>Recommendation</th>
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<tbody>
<tr>
<td>1</td>
<td>Increase of Minimum Monthly Member Pension.</td>
<td>Minimum monthly member pension payable to the member /widow/ widower pensioners may be raised to at least Rs.2000 per month, provided the Central Government budgetary support is provided for the same on yearly basis. Further, this may be considered along with modification of the scheme prospectively to disallow pre-mature withdrawal benefit and fix a minimum monthly contribution.</td>
</tr>
<tr>
<td>2</td>
<td>Period over which the Average Pensionable Salary is calculated.</td>
<td>Considering the actuarial valuation, wherein the Pension Fund is already in deficit, any reduction in the period for calculation of monthly average pensionable salary is not recommended. However, the issue may be revisited after actuarial valuation in the subsequent years.</td>
</tr>
<tr>
<td>3</td>
<td>Restoration of commuted value of pension</td>
<td>Government may consider restoration of the commuted value of pension after expiry of 15 years for EPS pensioners who had opted for commutation.</td>
</tr>
<tr>
<td>4</td>
<td>Re-introduction of the provision for commutation of pension.</td>
<td>Re-introduction of provision of commutation is not recommended.</td>
</tr>
<tr>
<td>5</td>
<td>Restoration of the provision of Return of Capital.</td>
<td>In view of a substantial actuarial deficit on reintroduction of the provision, the restoration of the provision for return of capital in EPS 95 is not recommended.</td>
</tr>
</tbody>
</table>
| 6      | Linking the monthly pension with cost of living index | Linking the pension admissible under EPS 95 with cost of living index is not feasible in view of following reasons:  

A. The EPS 95 is a defined-benefit, defined-contribution scheme, therefore, the benefits
admissible under the provisions of the scheme cannot be allowed to be open-ended, as otherwise, this may severely affect the financial health of the Pension Fund.

B. There exists a provision in the scheme for periodic actuarial evaluation of the Pension Fund and grant of suitable benefits to its members, if the health of the Fund so permits. Whenever the Pension Fund had surplus in the past, reliefs in pension were given as mentioned in para 1.10 above.

C. There cannot be any meaningful comparison between the pension being granted under the provisions of the Central Civil Services pension rules and that being granted under the EPS 95, as both pension schemes have vastly different provisions in terms of funding of the scheme. Further, even for government servants joining after 01-01-2004, such benefits do not exist.

D. As per the actuarial report, provision of linking EPS 95 pension with price index, i.e. D.A. relief (assumed at rate of 5% p.a.) shall result in net actuarial deficit of Rs. 3,29,770.52 Crores to the corpus of the Pension Fund.

E. To certain extent, the increase in cost of living index is being mitigated by the Government by fixing minimum monthly member pension.

<table>
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<th>7</th>
<th>Issue of payment of pension on higher / actual wages to employees of exempted establishments.</th>
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<tr>
<td></td>
<td>To ensure sustainability of the Pension Fund, permitting of option to deposit contribution on wages higher than statutory wage limit for employees of exempted establishments is not recommended.</td>
</tr>
</tbody>
</table>
AGENDA ITEM

In the 221st CBT meeting held on 13.04.2018 an agenda item was placed on the issue of pension on higher wages. As part of the agenda item a detailed note on Employees’ Pension Scheme, 1995 containing details of SLPs dismissed by Supreme Court of India and the judgement dated 04.10.2016 in the matter of R.C.Gupta Vs. RPFC, Shimla on the issue of higher pension was placed before the CBT. The reasons for not extending the benefits envisaged in the Hon’ble Supreme Court order dated 04.10.2016 to the employees of the exempted establishments were also elaborated in the said agenda item along with the background for issuing the clarificatory letter dated 31.05.2017.

However, the information on the issue related to pension on higher wages is summarized as under:

1. Vide GSR 748(E) dated 16.11.1995 published in the Gazette of India Extra, Pt.II, Sec. 3(i), dated 16th November, 1995 the Employees’ Pension Scheme, 1995 was notified for implementation, substituting the erstwhile Employees Family Pension Scheme, 1971.

2. Different stakeholders including the employees of big establishments, Public Sector undertakings, various Trade Unions and Political Parties opposed this Scheme. Many Establishments, Employees’ Associations and others approached various High Courts against implementation of the Employees’ Pension Scheme, 1995.

3. In order to have wider acceptance by various stakeholders, a provisowas added to Para 11(3) vide gazette notification No.134 dated 28.02.1996 w.e.f. 16.03.1996 giving option to the employees for making contribution on higher wages exceeding the statutory limit.
This was perhaps introduced to make EPS, 1995 more attractive to a wider group of employees without detailed financial analysis regarding sustainability of the Pension Fund on long term basis.

4. **CONTRIBUTION TO“PROVIDENT FUND” ON HIGHER WAGE**

The provision for contribution on higher wages is provided in Para 26(6) of Employees Provident Fund Scheme 1952, which reads as following:

Para 26(6)
“Notwithstanding anything contained in this paragraph an officer not below rank of an Assistant Provident Fund Commissioner may, on the joint request in writing, of any employee of a factory or the establishment to which this Scheme applies and his employer, enroll such employee as a member or allow him to contribute on more than (rupees six thousand and five hundred) of his pay per month if he is already a member of the Fund and thereupon such employee shall be entitled to the benefits and shall be subject to the conditions of the Fund, provided that the employer gives an undertaking in writing that he shall pay the administrative charges payable and shall comply with all statutory provisions in respect of such employee."

5. **CONTRIBUTION TO“PENSION FUND” ON HIGHER WAGE**

The erstwhile Para 11(3) (deleted through amendment dated 22.08.2014) of Employees’ Pension Scheme, 1995 provided the clause for considering higher wage as pensionable salary under Employees’ Pension Scheme, 1995 and is reproduced below:-

“The maximum pensionable salary shall be limited to [Rupees six thousand and five hundred/Rs. 6500/-] per month.
Provided that if at the option of the employers and employee, contribution paid on salary exceeding [Rupees six thousand and five hundred/Rs. 6500/-] per month from the date of commencement of this Scheme or from the date salary exceeds [Rupees six thousand and five hundred/Rs. 6500/-] whichever is later, and 8.33 percent Share of the employers thereof is remitted into the Pension Fund; pensionable salary shall be based on such higher salary.”

This provision for contributing on higher wages in Pension Fund continued from 16.11.1995 to 31.08.2014 in the EPS, 1995. As such, provision under para 11(3)of EPS, 1995 allowed employer and employee to pay contribution to Pension Fund on higher wage and get the pension on such higher wage on retirement or otherwise, up-to 31.08.2014.

6. Various petitions as mentioned in Para 2 above, against introduction of Employees’ Pension Scheme, 1995 filed in different High Courtswere transferred to Hon’ble Supreme Court through Transfer Petition. The Hon’ble Supreme Court in the year 2003 decided the pending matters by upholding the validity of the Employees’ Pension Scheme, 1995.

7. Since the matter was pending in Hon’ble Supreme Court up to 2003 and some interim orders were also passed during this period, many of the Employees who had not opted to become members of Pension Scheme were given opportunity to become members of the Pension Scheme and also to contribute on higher wages as per the provisions of Para 11(3) of Employees Pension Scheme, 1995 through detailed instructions dated 05.02.2004 for payment of contribution.
8. Subsequently, considering the financial viability of the Employees’ Pension Scheme, 1995 based on various actuarial reports till then, the opportunity for giving option to contribute on higher wages on becoming member of the Employees’ Pension Scheme was stopped in the year 2004 vide circular No.Pen-4(38)/96/WB/59867 dated 01.12.2004. A clarificatory circular discontinuing acceptance of contributions on higher wage in Pension Fund was also issued vide communication dated 22.11.2006.

9. The provision for contribution on higher wages vide Proviso to Para 11(3) of EPS-1995 continued from 16.11.1995 to 31.08.2014. The scheme was amended in 2014 by omitting the proviso to clause 11 (3) by G.S.R. No.609 (E), dated 22.08.2014 (with effect from 01.09.2014). Thus w.e.f. 01.09.2014 option for contribution on higher wages was omitted from EPS-1995.

10. During the period 2004 to 2014 many cases were filed in various forums and High Courts, praying for payment of pension on higher wages by allowing to contribute on higher wages under the pension scheme.

11. On being aggrieved by the orders of the Kerala High Court, EPFO appealed to the Hon’ble Supreme Court wherein the department filed 8 SLPs against the orders of Hon’ble Kerala High Court. The said SLPs were dismissed by the Hon’ble Supreme Court vide order dated 31.03.2016 (7 – SLPs) and dated 12.07.2016 (1-SLP) by bunching the SLPs. Some of the Writ Petitions filed against the stand taken by EPFO in this matter were as old as 2007, that is immediately after issue of circulars for stoppage of option for contribution on higher wages with retrospective effect.

The details are as under:—
## Details of SLP dismissed by Supreme Court of India

### A) Dismissed vide common order dt.31.03.16

<table>
<thead>
<tr>
<th>S. No.</th>
<th>SLP No.</th>
<th>Title</th>
<th>Arising out of order</th>
<th>Against W.P No.</th>
<th>Name of the establishment</th>
<th>Whether Exempted or Unexempted</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>i) 7074/2014</td>
<td>A.Majeed Kunju &amp; Ors.</td>
<td>1135/2012 – dt.05.03.13</td>
<td>7878/2011 dt.24.02.12</td>
<td>Kerala State Handloom Development Corpn. Ltd.</td>
<td>Unexempted</td>
</tr>
<tr>
<td></td>
<td>ii) 7075/2014</td>
<td>Abdul Hakkim Sherief &amp; Ors</td>
<td>1137/2012 – dt.05.03.13</td>
<td>15252/2011 dt.24.02.12</td>
<td>Kerala State Handloom Development Corpn. Ltd.</td>
<td>Unexempted</td>
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<tr>
<td></td>
<td>iii) 7076/2014</td>
<td>M.Babu &amp; Ors</td>
<td>568/2012 – dt.05.03.13</td>
<td>6643/2007 dt.04.11.11</td>
<td>Fertilizers &amp; Chemicals Ltd.(FACT)</td>
<td>Exempted</td>
</tr>
<tr>
<td></td>
<td>iv) 7107/2014</td>
<td>A.K.Jayappan &amp; Ors.</td>
<td>569/2012 – dt.05.03.13</td>
<td>9929/2007 dt.04.11.11</td>
<td>Fertilizers &amp; Chemicals Ltd.</td>
<td>Exempted (Relaxed)</td>
</tr>
<tr>
<td></td>
<td>v) 7108/2014</td>
<td>P.N.Pillai &amp; Ors.</td>
<td>1174/2012 – dt.05.03.13</td>
<td>13220/2007 dt.12.04.12</td>
<td>Hindustan Newsprint Ltd.</td>
<td>Exempted</td>
</tr>
<tr>
<td></td>
<td>vi) 7224/2014</td>
<td>S.Nizar &amp; Ors.</td>
<td>1138/2012</td>
<td>15313/2011</td>
<td>Kerala State Handloom Development Corpn. Ltd.</td>
<td>Unexempted</td>
</tr>
<tr>
<td></td>
<td>vii) 697/2016</td>
<td>K.J.Varkey &amp; Ors.</td>
<td>1423/2014</td>
<td>167/2014 dt.04.03.14</td>
<td>Kerala State Handloom Development Corpn. Ltd.</td>
<td>Unexempted</td>
</tr>
</tbody>
</table>

### B) Dismissed vide order dated 12.07.2016

12. The 8 SLPs dismissed were related to employees of two Exempted establishments and two un-exempted establishments.

13. In the case of employees of FACT Limited, the request of the employees to remit the pension contribution on higher wages was permitted earlier by EPFO and the difference amount was transferred and credited to the Pension Account. Later on, the permission already granted was disallowed and the differential amount was transferred back to the P.F. account in the Exempted Trust on the plea that the difference amount was deposited after the cut-off date of 01.12.2004 based on the circular issued by EPFO on the subject matter. Aggrieved by the said action the employees of FACT limited filed Writ Petition in High Court which was allowed and subsequently upheld by Division Bench of the High Court. Thereafter, EPFO filed SLP in Hon’ble Supreme Court which was dismissed vide order dated 31.03.2016 as detailed in the Table in Para 11 above.

14. In the case of Hindustan Newsprint Limited, the Petitioners had given option on 20.01.1999 for contributing to EPS, 1995 on actual salary from 16.11.1995. But the employer remitted the contribution on full wages from April, 2003 onwards awaiting further direction. Hence the order of the Hon’ble High Court allowing the benefit of retrospective contribution under Para 11(3) of the Pension Scheme was on the basis of the factual circumstances of the case and it cannot be construed that the benefit of retrospective option under Clause 11(3) can be allowed to employees of all exempted establishments in general.

15. After dismissal of the aforesaid multiple SLPs by the Apex Court, compliance of the orders in the respective Writ Petitions was required to be made and benefit of pension on higher wages retrospectively was allowed to the members who were petitioners
in the aforesaid writ petitions including the employees of the concerned exempted establishments.

16. Thus the judgement passed by the Hon’ble High Court on the facts of the cases of FACT Ltd.&Hindustan News Print Ltd.cannot be construed to be applicable in general to employees of all exempted establishments.

17. Some employees of Himachal Pradesh Tourism Development Corporation (HPTDC) who were contributing towards the Provident fund (maintained by the RPFC, EPFO, Shimla) on their actual salary but were contributing to the Pension Fund on the ceiling limit of Rs.6500/- p.m. throughout their service period with the EPFO requested for allowing to contribute on higher wages in the Pension Fund at the time of retirement. This was rejected by RPFC, Shimla. Aggrieved by such refusal, the employees of the Himachal Pradesh Tourism Development Corporation filed two writ petitions before the Learned Single Judge of the Hon’ble High Court of Himachal Pradesh, which were allowed by the Learned Single Judge holding that the employees would be entitled to the benefit of deposit of 8.33% of their actual salary in the pension fund irrespective of the ceiling limit, while making it clear that the said decision would not serve as a precedent.

18. EPFO filed an appeal against the aforesaid judgment in the Division Bench of the Hon’ble High Court. The Hon’ble High Court reversed the aforesaid judgment of the Single Bench upholding the view of the RPFC, EPFO, Shimla that under Proviso to clause 11(3) of the EPS there was a cutoff date.

19. Against the aforesaid judgment passed by the Division Bench disallowing the option for contributing to Pension Fund on higher wage, the employees of HPTDC filed two SLPs bearing Civil Appeal Nos. 33032-33033 of 2015 titled “R.C. Gupta & others Vs.
RPFC, Shimla” before the Hon’ble Supreme Court. The Hon’ble Supreme Court disposed off the aforesaid 2 SLPs vide order dated 04.10.2016 (R.C. Gupta Vs RPFC Shimla) allowing the petitions.

20. In this matter of R.C. Gupta Vs. RPFC Shimla the Hon’ble Supreme Court vide its judgment dated 04.10.2016, decided the matter of pensionary benefit on higher wages with detailed order examining the provisions of the Employees Provident Fund Scheme, 1952 and Employees’ Pension Scheme, 1995 and also citing the orders passed by the Apex Court for dismissal of SLPs filed by EPFO with reference to the orders passed by Hon’ble Kerala High Court.

21. Relevant portion of judgment of the Supreme Court dated 04.10.2016 may be summarized and reproduced as follows:-

(a) Reading the proviso, we find that the reference to the date of commencement of the Scheme or the date on which the salary exceeds the ceiling limit are dates from which the option exercised are to be reckoned with for calculation of pensionable salary. The said dates are not cut-off dates to determine the eligibility of the employer-employee to indicate their option under the proviso to Clause 11(3) of the pension Scheme.

(b) A somewhat similar view that has been taken by this court in a matter coming from the Kerala High Court, wherein the special Leave petition (C) No. 7074 of 2014 filed by the Regional Provident Fund Commissioner was rejected by this court by order dated 31.03.2016.

(c) A beneficial Scheme, in our considered view, ought not to be allowed to be defeated by reference to a cut-off date, particularly, in a situation where (as in the present case) the employer had deposited 12% of the actual salary and not 12% of the ceiling limit of Rs. 5,000/- or Rs. 6,500/- per month, as the case may be.
(d) Exercise of the option under paragraph 26(6) is a necessary precursor to the exercise of option under Clause 11(3). Exercise of such option, therefore, would not foreclose the exercise of a further option under Clause 11(3) of the Pension Scheme unless the circumstances warranting such foreclosure are clearly indicated.

(e) The above apart, in a situation where the deposit of the employer’s share at 12% has been on the actual salary and not the ceiling amount, we do not see how the Provident Fund Commissioner could have been aggrieved to file the LPA before the Division Bench of the High Court.

(f) All that the Provident Fund Commissioner is required to do in the case is an adjustment of accounts which in turn would have benefitted some of the employees. At best what the Provident Fund Commissioner could do and which we permit him to do under the present order, is to seek a return of all such amounts that the concerned employees may have taken or withdrawn from their Provident Fund Account before granting them the benefit of the proviso to Clause 11(3) of the Pension Scheme. Once such a return is made in whichever cases such return is due, consequential benefits in terms of this order will be granted to the said employees.

22. The outcome and implications of orders of the SLPs already dismissed and detailed order dated 04.10.2016 of the Hon’ble Supreme Court was placed for consideration and opinion before senior officers of Head Office in the meeting held on 23.11.2016 wherein it was decided to place the matter before Pension and EDLI Implementation Committee (PEIC) for taking decision on compliance of orders of the Hon’ble Supreme Court considering the financial implication involved in compliance of the judgment.
23. The matter was placed before Pension and EDLI Implementation Committee (PEIC) in its meeting dated 08.12.2016. After detailed discussion, Pension and EDLI Implementation Committee (PEIC) agreed to comply with the aforesaid order and recommended to place it before Central Board of Trustees (CBT).

(i) **Un-exempted establishment** - However, it was agreed that compliance may be made immediately in respect of the Provident Fund & Pension Members including superannuated cases whose accounts are maintained by EPFO as their details are already available with EPFO and contribution on higher wages has been received by EPFO. Their pension settlement may be regulated in accordance with the order of the Hon’ble Supreme Court by taking joint option from the employee and the employer and transfer/payment to Pension Fund as per details of payable contributions with interest.

(ii) **Exempted establishment** - In respect of those members of Exempted Provident Fund Trusts whose contribution on higher wages has not been received by EPFO, it was decided that their cases may be examined on verification of books of record of the exempted establishment and the trust regarding compliance to Provident Fund and Pension Fund as per the provisions of the EPF Scheme 1952 and Employees’ Pension Scheme 1995 and the information may be submitted to the committee.

24. The matter was placed as a separate agenda in the 215th CBT meeting on 19.12.2016. The Central Board of Trustees (CBT) approved the proposal contained in the agenda as per recommendations of PEIC for consideration of the Government for implementation.
25. The proposal for implementing the directions of the Hon’ble Supreme Court order dated 04.10.2016 by way of issuing administrative instructions to field offices for compliance as approved by Central Board of Trustees (CBT) was forwarded to Ministry of Labour & Employment vide UO. Note Pension-I/12/33/EPS Amendment/96/Vol.II 1839 dated 10.01.2017.

26. After series of queries and discussions by the MOL&E on the subject matter, the MOL&E vide letter dated 16.03.2017 conveyed its approval to implement the directions given in the order dated 04.10.2016 of the Hon’ble Supreme Court as per proposal approved and recommended by the CBT, EPF.

27. Accordingly the officers in-charge of all filed offices were directed vide letter No.Pension-I/12/33/EPS Amendment/96/Vol.II/34007 dated 23.03.2017 to take necessary action in accordance with the order of the Hon’ble Supreme Court in SLP No.33032-33033 of 2015 as approved by the Government and as per the provisions of the EPF & MP Act, 1952 and Schemes framed there under.

28. Upon issue of instructions for compliance of the judgment of Hon’ble Supreme Court as above, many groups of employees belonging to Exempted Establishments who had not contributed on higher wages to the Pension Fund started approaching the various field offices of EPFO for extending the benefits to them also.

29. The case of exempted establishments was examined in detail in the 40th meeting of Pension and EDLI Implementation Committee held on 24.05.2017 with regard to the Supreme Court judgments, as per decision of the Pension and EDLI Implementation Committee in its meeting dated 08.12.2016. In the said meeting the members suggested that specific legal opinion may be sought in the matter.
Accordingly, opinion of the Legal Advisor of EPFO was received on 31.05.2017. As per the legal opinion, the judgement of the Hon’ble Supreme Court in the matter of R.C.Gupta is not applicable to the facts and situation of exempted establishments. Accordingly, considering the difficulties faced by the field offices in convincing such employees belonging to exempted establishments that they are not covered by the directions of Hon’ble Supreme Court order dated 04.10.2016 for Pension on higher wages in compliance of the instant judgment of the Hon’ble Supreme Court, clarification was issued on 31.05.2017 that the provisions mentioned by the Hon’ble Supreme Court in its order dated 04.10.2016 applied only to the employees of un-exempted establishments, whose both Provident Fund and Pension contributions were being deposited by the employer in EPFO account.

30. After issue of such clarification many of the groups of employees belonging to exempted establishments filed petitions in various High Courts challenging the clarification issued on 31.05.2017 and claiming for benefits misrepresenting the instant judgment of the Hon’ble Supreme Court.

31. In order to avoid adverse order from different courts, a conscious decision was taken to file a petition for transfer of all such petitions filed in various High Courts to the Hon’ble Supreme Court to have uniformity and finality in the matter. Accordingly, a petition for transfer of petitions filed in various High Courts was filed in Hon’ble Supreme Court vide Transfer Petition (Civil) No.(S)2302-2342 / 2017. The Hon’ble Supreme Court vide order dated 10.04.2018 requested the concerned High Courts to deal with the matters on merits. The Hon’ble Supreme Court accordingly disposed the Transfer Petition and all pending applications.
32. In addition to the Writ Petitions filed in various High Courts, 30 Writ Petitions under Article 32 have been filed in the Supreme Court by employees of exempted establishments. In the said Writ Petitions the following prayers have been made:

- To extend benefit of proviso to Para 11 (3) of EPS 95 pertaining to grant of enhanced pension to the pensioners of the exempted establishments also.
- To issue directions to the respondents (Union of India & EPFO) to issue demand to each EPS member & also employer of the exempted establishments/ trusts of the differential amount of the past period contributions limited to the date of 23.03.2017.
- To issue directions to pay the arrears along with interest applicable.
- In a few cases the notification dated 22.08.2014 amending the EPS’95 has also been challenged.

**Present status:**

All the cases have been clubbed together by the Hon’ble Supreme Court and proceedings are going on before the Registrar, Supreme Court of India for filing counter affidavit. 25.01.2019 is the next date for filing counter reply before the Registrar. Counter reply duly approved by the CPFC has been forwarded to legal division for filing in 23 cases. Counter reply in the remaining 7 cases is under preparation. In the reply furnished before the Supreme Court, department has relied on points detailed in the ‘Note on EPS 1995’ which was placed as an agenda item in the 221st CBT. In brief, the main plea is as under - The Hon’ble Supreme court order dated 04.10.2016 in the matter of R.C. Gupta is applicable in case of employees whose Provident Fund contribution has been received on wages exceeding ceiling limit but Pension contribution has been
restricted to the ceiling limit of Rs. 6,500 per month and where both the Provident Fund account and pension account are managed and administered by EPFO.

In case of establishments that have been granted exemption from EPS Scheme 1952, they operate and maintain their own PF Trust and the employees of the exempted establishments remit their PF contribution to their respective trusts and as such the adjustment of contribution from PF account to Pension account as contemplated in the judgement of the Hon’ble Supreme Court is neither permissible nor feasible.

33. Meanwhile employees of HPTDC filed a Contempt Petition in Hon’ble Supreme Court bearing No. 1816-1817 of 2017 in C.A No.10013-10014 of 2016 aggrieved by:

(i) the levying of interest on the differential amount i.e. the difference of contribution at the rate of 8.33% on actual salary and the contribution already remitted at the rate of 8.33% on the ceiling amount of Rs.6500/- to be returned by the retired employees.

(ii) the non-payment of interest on arrears of pension after revision by EPFO.

(iii) non-adjustment of the refundable amount to be paid by the employee who has withdrawn his P.F. amount against the arrears of pension payable to the concerned employee.

Plea taken by EPFO in the Counter Affidavit / reply:

(a) The MOL&E vide letter dated 16.03.2017 conveyed its approval to allow members of the Employees’ Pension
Scheme, 1995 who had contributed on higher wages exceeding the statutory wage ceiling of ₹6500/- in the Provident Fund to divert 8.33% of the salary exceeding ₹6500/- to the Pension Fund with up to date interest as declared under EPF Scheme, 1952 from time to time to get the benefit of pension on higher salary on receipt of joint option of the Employer and Employee.

(b) In Para 11 of the judgment and order dated 04.10.2016, the Hon’ble Supreme Court observed as under:

“... At best what the Provident Fund Commissioner could do and which we permit him to do under the present order is to seek a return of all such amounts that the concerned employee may have taken or withdrawn from their Provident Fund Account before granting them the benefit of the proviso to clause 11(3) of the Pension Scheme. Once such a return is made in whichever cases such return is due, consequential benefits in terms of this order will be granted to the said employees.”

(c) It is most respectfully submitted that the return of all such amount will include the differential Provident Fund contribution between the amount calculated @ of 8.33% of the actual salary & the amount calculated @ of 8.33% on the ceiling of ₹6500/- with up to date interest as declared under the EPF Scheme, 1952 from time to time. It is most respectfully stated that had the Provident Fund contribution not been withdrawn by the retired employee, it would have earned the interest as equivalent to the interest declared under the EPF Scheme, 1952 from time to time.
(d) In a similar matter, the Hon’ble High Court of Kerala in WP(C) No.31525 of 2013 where the petitioners were contributing to their Provident Fund Account on actual salary but the contribution in pension fund was limited to ceiling amount of ₹.6500, held that the employers contribution proportionate to salary in excess to ₹.6500 in their Provident Fund Account ought to have been credited to pension scheme. It was further held that with respect to the retired employees who had drawn their retirement benefits by way of Provident Fund, proportionate amounts along with interests accrued in the account as also that accrued after the withdrawal of the PF amounts have to be refunded to the Provident Fund Organisation.

(e) It is important to note that pension fund is a Pool Fund and receipt of contribution on Higher Wages for back period without receipt of up to date interest as declared under the EPF Scheme, 1952 from time to time will mean the loss on this account to the fund will have to be borne by the presently contributing members to the fund.

(f) A corollary can be drawn from reading the clause 6(C) with Para 7(2) & Para 17(2) of the EPS Scheme, 1995 which provides that an employee who ceased to be a member of the Employees’ Pension Scheme 1971 between 01.04.1993 & 15.11.1995 shall have the option to join the scheme by returning the amount of withdrawal benefit received together with interest @ 8.5% per annum from the date of payment of such withdrawal benefit & date of exercise of the option to receive monthly pension as per the provisions of Employees’ Pension scheme, 1995.
(g) The employees had withdrawn the Provident Fund contribution long back and are seeking pension on higher wages retrospectively. Accordingly the contribution payable on higher wages to the pension fund from 16.11.1995 or the date when the salary crossed the limit of ₹ 6500 has to be remitted with interest.

(h) It is also relevant to note that there is no provision to give interest on the arrears of pension.

**Decision:** The Hon’ble Supreme Court after having perused the statements made in the reply / counter affidavit filed by EPFO, held that no contempt was made out and accordingly dismissed the contempt petitions.

34. **Order dated 24.09.2018 in W.P.Nos.33804 of 2012 and 32028, 33091, 33094 of 2013 (Hyderabad High Court):**

**Facts:** Some employees of Andhra Pradesh Road Transport Corporation, an exempted establishments exercised option under proviso to Para 11 (3) of EPS’95 in 2007 to contribute on higher wages in the pension fund and consequently remitted the higher amount to pension fund which was never objected to nor questioned by EPFO. However, their pension cases were settled by restricting the pensionable salary to ceiling amount aggrieved the employees filed the Writ Petition in the Hyderabad High Court.

**Decision:** The Hon’ble High Court observed that monthly pension is determined based on the amount accrued to the account of employee at the time of termination of service. It is not in dispute that the petitioners herein have made higher contribution than the ceiling limit imposed and amount is accrued to the account of EPFO. The Hon’ble Court accordingly held that petitioners are entitled to
draw higher pension based on the higher contribution made by them.

35. **Order of the Hon’ble Kerala High Court Judgement in WP(C) No.13120 of 2015 & connected cases dated 12.10.2018:**

**Facts:** By notification No. GSR 609 (E) dated 22.08.2014 the following amendments were made in EPS 1995 with affect from 01.09.2014:

i) The ceiling amount for making contribution in the pension fund was enhanced from Rs. 6500 to Rs. 15000 per month.

ii) Membership for new Provident Fund Members joining after 01.09.2014 was restricted to those drawing salary upto Rs. 15000 per month.

iii) Pensionable salary to be taken as the average salary of 60 months before exit from employment instead of 12 months.

iv) Provision for joined option to contribute on higher wages in Para 11 (3) deleted.

v) Existing members contributing on higher wages to the pension fund as on 01.09.2014 to make additional contribution of 1.16% on wages exceeding Rs. 15000 per month.

vi) Pension to be calculated on pro-rata basis on the maximum pensionable salary of Rs. 6500 up-to 01.09.2014 and on Rs. 15000 per month after 01.09.2014.

vii) Withdrawal benefit to be calculated taking into account the weighted average of the wage at the end of every wage ceiling period.

Aggrieved, employees filed Writ Petition to quash the said notification on the plea that:

i) Pension amount is reduced by taking pensionable salary of 60 months instead of 12 months.

ii) Deletion of option to contribute on higher wages deprives them of higher pension which is their only source of income.

iii) There is no provision under the EPF & MP Act for payment of any contribution to the pension fund by the employees.

**Stand of EPFO:**
i) The amendments were made keeping in view the interest of the lower waged workers and to ensure the long term sustainability of the pension fund.

ii) Members who contributed on higher wages drew disproportionately higher amount as pension which affected the pension fund.

iii) The amendments were made to stop reverse subsidization which affected the rights of the lower wage income group.

iv) After enhancement of statutory wage ceiling from Rs. 15000 w.e.f. 01.09.2014 if the pensionable salary is computed on basis of 12 months wages it will result in payment of pensionary benefits completely disproportionate to the contribution made.

Decision:
• Notification No. GSR 609(E) dated 22.08.2014 set aside.
• All consequential orders and proceedings issued by the P.F authorities on the basis of the said amendment set aside.
• Orders of EPFO declining to grant exercise of joint option to make contribution on actual salary set aside.
• Employees entitled to exercise option under para 26 of EPF Scheme without any insistence on a cut-off date.

Present Status:
EPFO has decided to file SLP against the order dated 12.10.2018. Draft SLP duly approved by CPFC has been forwarded to MoL&E for vetting.

Facts: Employees of few exempted establishments who were denied the benefit of revision of pension on higher wages retrospectively as envisaged in the Hon’ble Supreme Court order dated 04.10.2016 in the matter of R.C. Gupta vs RPFC Shimla filed Writ Petitionson the plea that their case is not distinguishable from the case which were there before the Supreme Court and that the situation would not change merely because their contribution was deposited with the Provident Fund Trust of the exempted establishments and not directly with EPFO.

Decision:

I. Judgement passed in the case of R.C. Gupta and others could be squarely applicable to the fact of the present case because once a judgement has been passed by the Supreme Court it would have its applicability to all the organisations uniformly.

II. The Petitioners are granted liberty to submit option under clause 11(3) and the P.F Commissioner shall thereafter obtain the amount from the respective PF Trust and release all consequential benefits according to the terms as directed by the apex court. **This exercise shall be completed by EPFO within a period of 4 months.**

III. The notification dated 22.08.2014 will not apply in view of the judgement passed by the Supreme Court in the case of R.C. Gupta. The court also noted that the division bench of Kerala High Court vide its judgment dated 12.10.2018 has set aside the notification dated 22.08.2014.

IV. The notification dated 22.08.2014 will not apply to the exceeding employees who were already members of this scheme and could only apply if at all to employees who become members of this scheme after 2014 notification.

Present status:

EPFO has decided to file LPA before the Division Bench of Rajasthan High Court against the Hon’ble High Court order dated 11.12.2018
after discussion with the panel advocates. The said decision is based on various factors including –

- The above said order of the Hon’ble High Court of Rajasthan is contrary to the stand of EPFO that the benefits envisaged in the order dated 04.10.2016 of the Supreme Court in the matter of R.C. Gupta is applicable only to such employees whose both Provident Fund account and Pension account are maintained and administered by EPFO.
- 30 Writ Petitions under Article 32 have been filed by employees of exempted establishments in the Supreme Court and various writ petitions have been filed in different High Courts.
- The aforesaid order is also contrary to the stand taken by EPFO that the judgment of Hon’ble Supreme Court in the R.C. Gupta case is not applicable to existing employees as on 01.09.2014 as scheme provisions amended by notification dated 22.08.2014 will be applicable to them.

37. **Order dated 23.08.2018 in W.A No.766/2018, 887/2018 and 973/2018 of Hon’ble High Court of Madhya Pradesh:**

**Decision:**

The Hon’ble Court upheld the Single Bench order dated 03.01.2018 passed in W.P No.4979/2017 wherein the Hon’ble Court directed EPFO not to levy interest on the differential amount deposited by the petitioner from the date of withdrawal till date of deposit.

**Present Status:**

EPFO has filed Review Petition against the aforesaid High Court order dated 23.08.2018 as the matter regarding payment of
interest on the differential amount from the date of withdrawal of the Provident Fund amount to the date of deposit on exercising option for revision of pension on higher wages retrospectively has already attained finality in view of the Hon’ble Supreme Court order dated 20.04.2018 in the Contempt Petition No.1816-1817 of 2017.

**CONCLUSION:**

38. The provisions of the Employees’ Pension Fund 1995 has been subject to litigation from its inception in different courts starting from District Consumer Forums due to various factors including the complexities in the Scheme and interpretation of the Court, added with the view taken by legal fora on humanitarian ground and considering Pension Scheme as welfare measure of the Government. Even after the judgment of Hon’ble Supreme Court in 2003, upholding the validity of Employees’ Pension Scheme, 1995, the cases filed by the members’ right from consumer forums to High Courts have been enormous. As per information made available by the field offices more than 400 cases relating to EPS 1995 are pending in various courts.

39. The Consumer Forums & Courts have been issuing orders on humanitarian grounds considering the pension scheme as a welfare legislation. Such orders are either based on the interpretation of the provisions under the scheme, absence of express provisions in the scheme and at times not in consonance with the Scheme provisions.

40. The cases and disputes relating to EPS crop up due to the fact that pension granted is not directly linked to the contributions paid by the individual member of this scheme during entire period of membership. Rather it is based on the average pay at the end of
the membership which is much higher than the average of entire period of membership. Infact, the contribution against a member are not even individually accounted. It is credited to a pool find. Since benefits of the pension is granted for entire life time of the pensioners from a pool fund contributed by all members for future payouts it is thought by the pensioners that common fund can pay higher pension irrespective of their individual accumulated contribution.

41. It is believed that the spate of litigation can be stopped only by a complete revamp of the pension scheme and moving towards a individual contribution based scheme from the current pool based scheme.

Reasons for not extending the benefits envisaged in the Hon’ble Supreme Court order dated 04.10.2016 to the employees of the exempted establishments:

i) The Hon’ble Supreme Court in its judgment dated 04.10.2016 has clearly mentioned that option under para 26(6) of the Employees’ Pension Scheme 1952 is a necessary precursor to the exercise of option under clause 11 (3) of the Employees’ Pension Scheme 1995.

The provisions of the para 26(6) of the Employees Provident Fund Scheme 1952 applies to the employees of un-exempted establishments only for whom deposit of Provident Fund contribution is made in account maintained by EPFO. The employees of Exempted Establishments are governed by the respective Provident Fund Schemes of concerned establishments as framed by the Establishment and managed by the respective board of Trustees. As such the judgement is not applicable to them.

ii) Monthly contributions to Provident Fund have not been paid to EPFO by these employees whereas the demand is for benefits from EPFO. They are demanding to pay monthly contributions to Pension Fund on higher wage for past many years now. It is much relevant to impress that EPFO has not accepted monthly contribution from the employees of even un-exempted establishments now who had not given joint option from the date of eligibility and paid for contribution on actual salary under Para 26 (6) of the EPF Scheme, 1952. What has been granted is only a reclassification of contributions already paid to EPFO so far based on Court order.

iii) If monthly contributions are accepted by EPFO now, the same demand will be made by un-exempted establishments’ employees also, who have not made such contributions, which will be in effect extending the facility to contribute on higher wages to any and all members of EPF with retrospective effect.

iv) Allowing benefit of retrospective option to members of Pension Scheme of exempted establishments whose contribution was received in the pension fund on higher wage would bring them at par with those member/pensioners who had the foresight to contribute to the Pension Fund on higher wages since beginning and who had accordingly sacrificed a part of their earnings (by not depositing the contribution above the ceiling amount in P.F and earn handsome interest on it) to avail higher pension, continuously for several years.
If the option to contribute retrospectively is allowed to those who consciously chose not to make contribution in Pension Fund on salary above ceiling limit, they will get the same benefit now (that is pension on higher wages) and this will send a wrong message.

v) If these employees of exempted establishments could have complied in the initial days of beginning of Employees Pension scheme 1995, the return on investment could have been on much higher rate of return and for longer period as the rate of interest in late 1990’s and early 2000’s were around 12 to 14 % whereas the current interest rate on investment is around 6%. Further, it would have yielded returns for future period also as EPFO investments are for longer tenure. As such deposit of the amount for past many years (having higher return regime) in the current low interest regime and paying pension on much higher wage for future (say 15 to 20 years) will be detrimental to the financial health of the pension fund. It is not just loss of past interest income, but erosion of corpus itself.

vi) It is stated that if a member is allowed to give option to contribute on higher wages in the Pension Scheme, retrospectively, it will amount to enhancing monthly pension of the member many fold without getting any contribution from him towards increased pension. This will be evident from the following live example where the member retired on 31.03.2011 and subsequently remitted contribution on higher wages in 2016.

<table>
<thead>
<tr>
<th>PPO No:</th>
<th>XXXXXXXXXX</th>
</tr>
</thead>
<tbody>
<tr>
<td>PF Account No.</td>
<td>XXXXXXXXXX</td>
</tr>
<tr>
<td>Date of Birth</td>
<td>01.04.1953</td>
</tr>
<tr>
<td>Date of Joining</td>
<td>01.04.1983</td>
</tr>
<tr>
<td>Date of Exit</td>
<td>31.03.2011</td>
</tr>
<tr>
<td>NCP days</td>
<td>0</td>
</tr>
<tr>
<td>Date of Commencement of Pension</td>
<td>01.04.2011</td>
</tr>
<tr>
<td>Past Service</td>
<td>13 years 5 months 18 days</td>
</tr>
<tr>
<td>Pensionable service</td>
<td>15 years 4 months 16 days</td>
</tr>
<tr>
<td>Weightage</td>
<td>2</td>
</tr>
<tr>
<td>Commutation option</td>
<td>N</td>
</tr>
<tr>
<td>ROC option</td>
<td>N</td>
</tr>
</tbody>
</table>
Calculation of Pension:

<table>
<thead>
<tr>
<th></th>
<th>Existing</th>
<th>Revised (on higher wages)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pensionable salary</td>
<td>6500</td>
<td>78106</td>
</tr>
<tr>
<td>Pension as per formula</td>
<td>1613*</td>
<td>19384</td>
</tr>
<tr>
<td>Past service benefit</td>
<td>313</td>
<td>313</td>
</tr>
<tr>
<td>Total pension</td>
<td>1926</td>
<td>19697</td>
</tr>
</tbody>
</table>

*including weightage

Amount remitted (contribution at 8.33% on higher wages with interest up to 10/2016) : Rs.7,64,971/-
Arrears of Pension paid : Rs.12,21,076/-

Thus in this case the member received an amount of Rs. 456105 up front as arrears of pension and his monthly pension was increased 10 times from Rs. 1926 to Rs. 19697, without practically paying single Rupee towards the enhanced pension in the Pension Scheme. The liability of this enhanced monthly pension will be borne by the members who are presently contributing to the Pension Scheme.

vii) That after the judgment of this Hon’ble Court in the aforesaid matter, as per the data received, pension has been revised in respect of 1175 pensioners’ upto 30.06.2017. The details are as under:

<table>
<thead>
<tr>
<th>Sl.</th>
<th>Name of Regional Office</th>
<th>Total No. Pensioners</th>
<th>Amount of contribution and interest remitted by pensioners (In Rs.)</th>
<th>Old Pension (In Rs.)</th>
<th>New Pension (In Rs.)</th>
<th>Pension Arrears paid to pensioners (In Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>RO, Kannur</td>
<td>81</td>
<td>20553462</td>
<td>149898</td>
<td>648197</td>
<td>25213944</td>
</tr>
<tr>
<td>2</td>
<td>RO, Kochi</td>
<td>489</td>
<td>158010947</td>
<td>866315</td>
<td>4001877</td>
<td>169894870</td>
</tr>
<tr>
<td>3</td>
<td>RO, Kollam</td>
<td>58</td>
<td>31234177</td>
<td>101692</td>
<td>682608</td>
<td>36680128</td>
</tr>
<tr>
<td>4</td>
<td>RO, Kottayam</td>
<td>59</td>
<td>21953239</td>
<td>105572</td>
<td>503649</td>
<td>23922839</td>
</tr>
<tr>
<td>5</td>
<td>RO, Kozhikode</td>
<td>297</td>
<td>68215669</td>
<td>524466</td>
<td>2130410</td>
<td>84749984</td>
</tr>
<tr>
<td>6</td>
<td>RO, Trivandrum</td>
<td>191</td>
<td>86230650</td>
<td>380919</td>
<td>2173730</td>
<td>90082275</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td>1175</td>
<td>386198144</td>
<td>2128862</td>
<td>10140471</td>
<td>430544040</td>
</tr>
</tbody>
</table>
viii) It would be evident that in nearly every case the pension arrears paid to the pensioners is much more than the amount of contribution and interest remitted by the pensioners.

ix) It can be seen from the table/data that the average original pension in respect of 1175 pensioners is Rs.1811.80 and the average revised pension in respect of 1175 pensioners is Rs.8630.19. Thus the increase in average pension is Rs.6818.39 for each revised case.

x) It is reported that as on 31.03.2016 there are 53.85 lakh pensioners out of which 9,72,231 member pensioners are of exempted establishments. If all the employees of exempted establishments who have contributed on higher salary to the P.F. Trust of Exempted Establishments give option for revision of pension, the monthly impact will be 662.9 crore per month. Such huge outgo would make the fund unsustainable.

xi) In order to provide proper social security cover, the Govt. enhanced minimum pension to Rs.1,000/- w.e.f. 01.09.2014. The yearly expenditure to provide the minimum pension Rs.1,000/- is as under:

<table>
<thead>
<tr>
<th>Year</th>
<th>No. Pensioner Affected</th>
<th>Amount Provided by Central Government (Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014-15</td>
<td>18,55,273</td>
<td>439.46 Cr.</td>
</tr>
<tr>
<td>2015-16</td>
<td>18,34,791</td>
<td>821.70 Cr.</td>
</tr>
<tr>
<td>2016-17</td>
<td>18,34,624</td>
<td>813.05 Cr.</td>
</tr>
</tbody>
</table>

This additional liability of approximately Rs. 800.00 crore is provided entirely by the Central Govt. through budgetary support as pension fund cannot bear this load.

xii) Vide letter dated 17.01.2017 EPFO had sought comments of actuary with respect to the financial implication of the fund if members drawing salary exceeding Rs.15,000/- per month are allowed to become the members of the Pension Scheme. The actuary informed that allowing member to contribute on salary without ceiling and get benefit on the same will not be financially viable.