



निवृत्त कर्मचारी (१९९५) समन्वय समिती (राष्ट्रीय संघटन)

EMPLOYEES PENSION (1995) CO-ORDINATION COMMITTEE (National Organisation)

Regd. No. MH-803/15 (Na), F-33646 (N)

Affiliated to Bharat Pensioners Samaj, Reg. No. -2023 (1962-63) NEW DELHI

Regd. Office : Anil Balaji Kusare, House 21, Narkeshwari Society, Sadbhawna Nagar, Nagpur - 440 027

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जावक क्रमांक : NKSS/3012/22/Circular

दिनांक : 30/12/2022

To,

The Central PF Commissioner,
EP FO, Head Office,
Ministry of Labour & Employment, Govt. of India,
Bhavishya Nidhi Bhavan, 14, Bhikaji Cama Place,
New Delhi 110066.

Sub. : Instructions in compliance of order contained in Para 44(ix) read with Para 44(v) & (vi) of Hon'ble Supreme Court Judgment dated 04.11.2022, in the matter of SLP (C) Nos. 8658-8659 of 2019.

Ref. : Your Circular No. Pension/2022/54877/15149 dated 29/12/2022.

Respected Sir,

With reference to your above mentioned Circular, it is stated that this Circular dated 29.12.2022, in compliance of Para (ix) of the order of the Hon'ble Supreme Court dated 04.11.2022, is very wrong, vague, incomplete, in contradiction to the approval dated 27.01.2017 of Govt. of India, MOL&E and as well as in violation of directives of Hon'ble Supreme Court in the order dated 04.10.2016, in R.C. Gupta case, in the order dated 04.11.2022 in the SLP No. 8658-8659 of 2019 and in order dated 12.07.2016 in SLP (C) No. 19954 of 2015 (Austin Joseph C. & ors. V/s Union of India & ors.) case. The facts are as below –

1. The above Circular is in compliance of Para 44(ix) of the order dated 04.11.2022 only and it is not for compliance of whole order of the Hon'ble Supreme Court.
2. In the Para 44(ix) the Hon'ble Supreme Court directed for compliance of directions in R.C. Gupta within a period of eight weeks.

3. For compliance of directions in R.C. Gupta, a Circular No. Pension-I/12/33/EPS Amendment/96/Vol II dated 23.03.2017 is already issued which in abeyance at present. This Circular dated 23.03.2017 was issued after the approval of CBT dated 19.12.2016 and approval of Govt. of India MOL&E, on 27.01.2017 and vide letter dated 16.03.2017. A proposal was made by the PEIC during its meeting held on dated 08.12.2016 and after the office note dated 05.01.2017, the said approval was forwarded to the Govt. of India for approval which was approved by the Govt. of India as mentioned above.

Your this Circular dated 29.12.2022 is not in accordance with the approval of the Govt. of India MOL&E, for compliance of R.C. Gupta judgment.

The Circular dated 23.03.2017, as per the approval of the Govt. of India MOL&E and the Order in R.C. Gupta case, is already implemented in case of non-exempted establishment employees and pension of about 24672/- retired employees are revised. We have already requested for implementation of the Circular dated 23.03.2017, vide our letter No. NKSS/1212/22/CPFOMM dated 12.12.2022.

This Circular was kept in abeyance for the decision of Hon'ble Supreme Court regarding the correctness of R.C. Gupta judgment and on the disputed Circular dated 31.05.2017 which is finally cancelled by the Hon'ble Supreme Court order dated 04.11.2022. The Hon'ble Supreme Court vide its order dated 04.11.2022 did not alter or modify the modalities for implementation of R.C. Gupta vide Circular dated 23.03.2017.

Therefore, the present Circular dated 29.12.2022 is in disobedience of Govt. of India as well as present order of the Hon'ble Supreme Court.

4. Moreover, Circular dated 29.12.2022 is not in accordance with the order in R.C. Gupta case.

R.C. Gupta has not exercised his option while in service. These facts are mentioned in first line of Para 4 of R.C. Gupta judgment which is "***the appellant-employees on the eve of their retirement i.e. sometimes in the year 2005...***" which is reproduced in Para 4.1 of your present Circular itself. Moreover, in some RTI cases, it is revealed that R.C. Gupta has not exercised his option while in service. Para 11 of the

the R.C. Gupta Judgment indicates to these facts also. Relevant part of said Para 11 is reproduced here. **“At the best what Provident Fund Commissioner could do and which we permit him to do under the present order to seek a return of all such amounts that the concerned employees may have taken or withdrawn from their provident fund accounts before granting them the benefit of Proviso to Clause 11(3) of pension scheme. Once such return is made in whichever cases such return is due, consequential benefits in terms of this order will be granted to the said employee”.** This portion of the order of Hon’ble Supreme Court is being disobeyed vide this Circular dated 29.12.2022.

Therefore, the Circular dated 29.12.2022 is in contradiction and disobedience of the order of the Hon’ble Supreme Court in R.C. Gupta case.

5. Moreover, the judgment in R.C. Gupta is “there is no cut-off date for the option under Proviso to Para 11(3) of the pension scheme”, however, you have created a **cut-off date** which is the date of retirement of an employee, vide a Circular dated 29.12.2022, which is in contradiction and disobedience of the order of Hon’ble Supreme Court in R.C. Gupta. Moreover, this issue is already settled by the Hon’ble Supreme Court, in the case of Austin Joseph C., SLP (C) No. 19954 of 2015, decided on 12.07.2016. This was the case of retired employees who retired from services of Kerala State Financial Enterprises (KSFE).

6. The employees were not given any opportunity to exercise their option under Para 11(3) of the scheme since 01.12.2004, on one or on other grounds and it is only after the order of the Hon’ble Supreme Court in R.C. Gupta case, it is cleared. **The employees retired prior to 01.09.2014 can exercise their option as per order in R.C. Gupta and Circular dated 23.03.2017 and the employees those retired after 01.09.2014 can exercise their option as per the present order of the Hon’ble Supreme Court dated 04.11.2022.**

That, nowhere in Clause 44(v) and 44(vi) or in the whole judgment dated 04.11.2022, it is mentioned that the option under Proviso to Para 11(3) is required to be exercised while in service. The Hon’ble Supreme Court vide its order dated 04.11.2022 did not alter/change/modify the judgment in R.C. Gupta case or Austin

Joseph case and therefore, all earlier conditions are prevailing. EPFO authorities cannot modify the orders of the Hon'ble Supreme Court, as per their whims & wills for the denial of the legal rights of employees and therefore, you are requested to withdraw the Circular dated 29.12.2022 and implement the order of the Hon'ble Supreme Court in R.C. Gupta case, as per the approval of Govt. of India MOL&E and Circular dated 23.03.2017. Please refer our above mentioned letter dated 12.12.2022 in this regard. You are also requested to be pleased to issue the guidelines and modalities regarding the employees retired after 01.09.2014 and those who are in service at present.

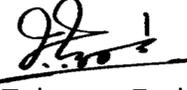
Since 2017, near about 3.5 lacs pensioners died without getting their legitimate pension and justice and therefore, you are requested to take actions at the earliest in this regard.

Thanking you.

Date : 30.12.2022

Place : Nagpur

Yours faithfully



(Dada Tukaram Zode)
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Copy submitted w.r. to :

- 1) PS to Secretary to the Govt. of India, MOL&E, Shram-Shakti Bhavan, Rafi Marg, New Delhi 110001.
- 2) Under Secretary to the Govt. of India, MOL&E, Shram-Shakti Bhavan, Rafi Marg, New Delhi 110001 with reference to letter No.R-15011/03/2022-SS-II dated 22.12.2022.
- 3) PS to CPFC., Bhavishya Nidhi Bhavan, 14, Bhikaji Cama Place, New Delhi 110066.



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