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## SUPREME COURT ON CONSTITUTIONAL VALIDITY OF PENSION AMENDMENT

### **A. Introduction:**

Supreme Court (“**SC**”) in the *EPFO v. Sunil Kumar* case,<sup>1</sup> on 4<sup>th</sup> November 2022, upheld the constitutional validity of the 2014 amendment to the Employees’ Pension Scheme, 1995 (**EPS**)<sup>2</sup> that capped the pensionable salary at Rs. 15,000 per month. However, it granted relief to certain employees to contribute more towards EPS provided that they met certain conditions.

### **B. Brief Facts:**

1. The pensionable salary cap was raised to Rs. 15,000 by notification dated August 22, 2014<sup>3</sup> (**Notification**), effective from September 1, 2014. It also made certain other modifications to EPS mainly to restrict its coverage.
2. The constitutional validity of the Notification was challenged before different High Courts (**HCs**) by EPS members. HCs of Kerala, Rajasthan, and Delhi ordered in favour of the members and struck down the amendment as *ultra vires* by placing reliance on the SC’s decision in *R.C. Gupta* case.<sup>4</sup>
3. Aggrieved by the HC judgments, the EPFO<sup>5</sup> filed Special Leave Petitions (**SLPs**) challenging the legality and correctness of the HCs’ orders. SC clubbed the SLPs and delivered common judgment in the *Sunil Kumar* case.

### **C. Judgment & Reasoning:**

SC held:

1. On the issue of classifying employees into categories and determining their eligibility to higher pension, the SC held that it is well within the power and authority of the Employees Provident Fund Organisation (**EPFO**) to reasonably classify different sets of employees and categorise them for the nature of benefits they might get from the existing EPS.
2. Insofar as fixing of cut-off date (eligibility for higher pension for employees’ already in service before 1<sup>st</sup> September 2014), the Notification specifically provided for same. In *R.C. Gupta* case, the wording of EPS in paragraph 11(3) was different. Thus, that judgment’s ratio cannot be applied to the changed provisions of EPS. SC opined that the interpretation to the proviso to the paragraph prior to 2014 amendment does not require any reconsideration. As no cut-off date was contemplated prior to the

<sup>1</sup> *The Employees Provident Fund Organisation and Others V. Sunil Kumar B. and Others* MANU/SC/1442/2022.

<sup>2</sup> Issued under Sec. 6A of the EPF Act.

<sup>3</sup> No. G.S.R. 609 (E). Also, paragraphs 3, 6, 11, 12 and 14 were modified.

<sup>4</sup> *R.C. Gupta and Others V. Regional Provident Fund Commissioner and Others* MANU/SC/1759/2016.

<sup>5</sup> Employees Provident Fund Organisation.

Notification, limiting the entitlement of enhanced pension coverage to only those employees who had already exercised option under the paragraph in the unamended EPS would be contrary to the *R.C. Gupta* judgment.

3. The joint option, as contemplated in paragraph 11(4) of the amended EPS, must be merged into one. In the event the employer and employee jointly opt for coverage beyond salary limit of Rs. 15,000 without giving an earlier option under the unamended paragraph, they would not be excluded from their right to exercise option under the paragraph in the unamended EPS.
4. Nothing in the EPF Act<sup>6</sup> required payment of additional contribution of 1.16% (“**Additional Contribution**”) by an employee to EPS. Since, the Act does not contemplate any such contribution to remain in EPS, the Central Government (CG) under cannot prescribe this. To that extent, the provision of EPS requiring Additional Contribution is *ultra vires* the EPF Act.
5. The change in computation of the pensionable salary (from 12 months average of the salary drawn to 60 months) comes within the power of the CG.<sup>7</sup> There is a reasonable basis for effecting change in computation methodology for determining pensionable salary and there is no illegality or unconstitutionality in effecting this amendment.
6. Employees of exempted establishments<sup>8</sup> are integrated into EPS and they should not be deprived of the benefit of getting option to remain in EPS while drawing salary beyond the ceiling limit.

#### **D. Conclusions:**

1. The SC upheld the *R.C. Gupta* judgment in respect of the cut-off date (eligibility for higher pension for employees’ already in service before 1<sup>st</sup> September 2014).
2. It prescribed the conditions under which EPS members are entitled for higher pension.
3. The requirement to make Additional Contribution by employees is *ultra vires*. However, this part of the order will be operational only after 6 months.
4. It upheld the change in the manner of computation of the pensionable salary.
5. *Sunil Kumar* judgment appears to have raised more questions than setting at rest the plethora of issues that were being litigated. EPFO and exempted establishments are reportedly grappling with the financial, legal, actuarial and logistical issues arising out of implementing this judgment.

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<sup>6</sup> Employees Provident Fund and Miscellaneous Provisions Act, 1952 (“**EPF Act**”).

<sup>7</sup> Under Section 7 of the EPF Act read with Item 10 of the Schedule III and paragraph 32 of EPS.

<sup>8</sup> Under Section 17 of the EPF Act (where the EPF is managed by trusts).