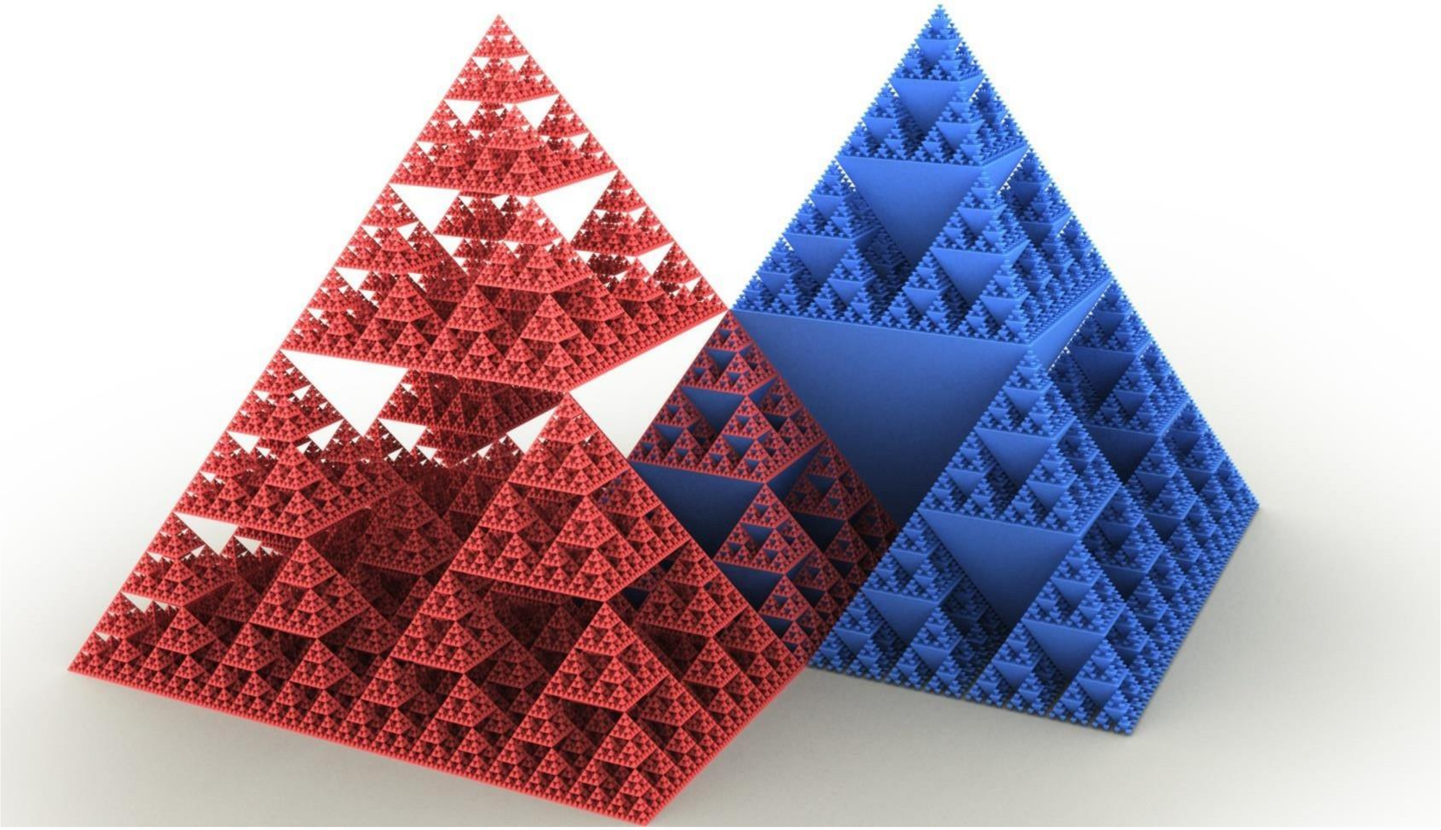

Employee Pension Scheme – Supreme Court Judgement & Implications

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What is EPS?

Employee Pension Scheme (EPS) is a social security scheme provided by the Employees’ Provident Fund Organisation (EPFO).

Purpose

EPS was introduced to provide pension to the employees of the organised sector after their retirement at 58 years.

- EPS came into force on 16th November 1995.

- This scheme applies to all the employees of factories and other establishments to which the 1952 Miscellaneous Provisions Act and Employees Provident funds applies.

- Employees' Provident Fund Organisation (EPFO) administers the system, which assures that employees receive a pension after they retire.

Pension Benefits under EPS

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Retirement at the age of 58 years	• A member becomes eligible for pension once e attains the age of 58 years. • However, it is mandatory for him to render a service for a period of at least 10 years when he turns 58 for availing pension benefits.
Leaving service before becoming eligible for Monthly Pension	• If a member is not able to render a service 10 years before attaining the age of 58 years, he can withdraw the complete sum at the age of 58 years. • The member will not be eligible for monthly pension benefits after retirement.
Total Disablement during the Service	• A member who is permanently disabled is entitled to a monthly pension irrespective of the fact that he has not served the pensionable service period. • Employer must deposit funds in his EPS account for at least one month to be eligible for the pension • Pension is payable for lifetime from the date of permanent disablement.
Pension to Family on the Death of the Member	• In case of death of the member while in service and the employer has deposited funds in his EPS account for at least one month. • In case the member has completed 10 years of service and dies before attaining 58 years of age. • In case of death of the member after the commencement of the monthly pension

Types of Pensions under EPS

Widow Pension

- The Pension amount is payable until the death of the widow or her remarriage.
- Paid to eldest widow in case family has more than one widow.

Child Pension

- Monthly Children Pension is applicable for a maximum two surviving children in the family in addition to widow pension.
- Amount is 25% of widow pension and will be paid till he attains the age of 25 years.

Orphan Pension

- In case the member has no surviving widow, then his children are applicable to get monthly orphan pension.
- Amount payable is 75% of widow pension and benefit is applicable for two surviving children.

Reduced Pension

- A member can withdraw early pension if he has rendered 10 years of service but not attained the age of 58 years. Pension amount is slashed at 4% for each year the age is less than 58 years.
- A member withdraws the monthly reduced pension at age of 56 years, he will get a pension at 92% of the original pension.

How to Calculate Pension under Current EPS

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- The pension amount in EPS depend upon the pensionable salary and the pensionable service. The member's monthly pension is calculated as per the following EPS formula:

Member's Monthly Pension = Pensionable salary * Pensionable Service / 70

Pensionable Service

Actual service period of the member is considered Pensionable Service. Service periods under different employers are added at the time of calculating the pensionable service period.

Pensionable Salary

- Pensionable Salary is the average monthly salary in the last month 60 months before the member exits the Employee Pension Scheme.
- Pensionable salary is calculated on pro rata basis for pensionable service up to 1st September 2014, subject to a maximum of INR 6,500/- and the period thereafter at a maximum of INR 15,000/-.

Contributions to Current EPS

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- 12% of Basic + DA is contributed to the Provident Fund
  - Employer
    - 3.67% to EPF
    - 8.33% to EPS *(capped to a statutory limit)*
  - Employee
    - Total contribution goes to EPF

***Note**: The statutory threshold has changed overtime from INR 5,000/- per month to INR 6,500/- per month and to finally INR 15,000/- per month.*

The contribution to EPS under normal circumstances does not exceed INR 1,250/- (i.e., 8.33% of INR 15,000/-)

Central Government also contributes at the rate of 1.16% of the pay of the members of the Employee Pension Scheme.

Amendments and Latest Supreme Court Judgements

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2014 Provident Fund Amendments

- Paragraph 11 (3) of EPS provided an employee with the option to contribute on higher/uncapped salary to reap a higher pension on retirement.
- The above provision was deleted effective from 1st September 2014 post a 6 months window to opt for uncapped EPS plan.
- Other Amendments:
- The statutory cap was increased from INR 6,500/- to INR 15,000/-
- Those who opted for uncapped EPS had to contribute 1.16% of wages as additional contribution.

Supreme court Judgement – 4th November 2022

- Allow employees to opt for the uncapped EPS contributions and benefits
- Employees are no longer liable to pay additional 1.16% of wages as contributions if they opt for uncapped EPS plan

Circular issued by EPFO – 29th December 2022

- This circular provides an opportunity to apply for higher EPS pension.
- This opportunity is for those employees who have retired prior to 1st September 2014 and had exercised the option but were rejected.
- EPFO is likely to issue a follow up circular shortly for the other category of employees to opt for higher pension in compliance to the supreme court judgement dated 4th November 2022.

Update as at 21st April 2023

- The last date of application of the joint option for higher EPS Pension benefit has been extended to 26th June 2023.
- The monthly Employers' contribution to the EPS scheme would be increased from 8.33% of applicable pay to 9.49% of applicable pay. The excess contribution of 1.16% of applicable pay would be paid on pay exceeding INR 15,000 per month.

Case Study

Capped Salary

DOB: 01-Apr-1972
DOJ: 01-Apr-1996
DOE: 31-Mar-2030 (Date of Attaining 58 years)
Date of Pension Start: 31-Mar-2030

Contribution (per month) = 15,000*8.33% = **INR 1,250/- pm**

Salary: INR 20,000/-
Pensionable Salary: INR 15,000/-

Service till 31-Aug-2014 = **6720 days**
Statutory Limit (SL) prior to 01-Sep-2014: **INR 6,500/-**

Service after 31-Aug-2014 = **5690 days**
Statutory Limit (SL) post 01-Sep-2014: **INR 15,000/-**

Pension = (6500*6720/365 + 15000*5690/365) / 70
Pension = INR 5,050/- per month

Uncapped Salary

DOB: 01-Apr-1972
DOJ: 01-Apr-1996
DOE: 31-Mar-2030 (Date of Attaining 58 years)
Date of Pension Start: 31-Mar-2030
Salary escalation rate: 8.00%

Contribution = 20,000*8.33% = **INR 1,666/- pm**
(the contribution will increase with increase in salary)

Salary: INR 20,000/-
Pensionable Salary (average of last 5 years) = **INR 2,18,643/-**
Pensionable Service = 34.00 years

Pension = 218643*34 / 70
Pension = INR 1,06,198/- per month

Key Considerations

For individual's closer to retirement age or retired it is easier to calculate the accurate benefit under the uncapped EPS plan.

If the employee has sufficient other assets/wealth at retirement, they can opt for higher EPS plan to receive a regular flow of income.

Buying a pension from the market would most likely get more expensive in future as interest rates get lower and life expectancy improves. The EPS pension guarantees the pension amount irrespective of the market scenario.

There is a risk that Government may reduce pension benefits if uncapped EPS scheme becomes unsustainable or ask Employee for additional contribution

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