19.12.2022.
Item No.38
Court No.550
Saswata

W.P.A. 21070 of 2022

Narendra Nath Mondal
Versus
Union of India & Ors.

Mr. Indranath Mitra
...For the petitioner
Mr. Subit Majumder
...For the Union of India
Mr. Anil Kumar Gupta
...For the PF Authorities
Mr. Arnab Roy
...For the respondent nos. 5, 8 and 9

The present writ application has been filed, inter alia, praying for a direction upon the Regional Provident Commissioner, Kolkata to release the monthly pension of the petitioner. The petitioner has joined as a Technical Assistant on contractual basis in West Bengal State Co-operative Agriculture and Rural Development Bank Ltd., being the respondent no. 5 herein in the year 1986. The petitioner's service was confirmed in the year 1995. The petitioner enjoys pensionable service and is covered by the Employees Pension Scheme, 1995 (hereinafter referred to as the 'said Scheme').

Mr. Mitra learned advocate appearing in support of the aforesaid writ application submits that in the year 2011, the respondent no. 5 had issued a notification dated 26th April, 2011, thereby offering its employees an opportunity to exercise option, in terms of paragraph 11 (3) proviso of the said Scheme. It is submitted that while the petitioner was in employment, the petitioner having come across the above notification, had exercised his option in terms of paragraph 11(3) proviso of the said Scheme and thereby had agreed to pay @ 8.33 per cent as contributions on his salary exceeding Rs.6500/-. Mr. Mitra, learned advocate, submits that both the respondent no.5 and the Provident Fund authorities acted on the basis of the aforesaid option and started realising the additional Provident Fund contributions from the petitioner, for the same to be remitted to the pension fund. It is the petitioner's case that notwithstanding realising additional Provident Fund contributions from both the petitioner and other similarly placed persons in the employment of the respondent no.5, since the Provident Fund authorities were not disbursing higher pension by acting in terms of paragraph 11 (3) proviso of the said Scheme, a representation was made by the respondent no. 5 to the Regional Provident Fund Commissioner, requesting them to look into the matter and to release higher pension to the employees of respondent no.5 who had since been superannuated. By letter dated 26th April 2013, the Provident Fund Commissioner rejected the claim for disbursal of higher pension.

Mr. Mitra submits that challenging the aforesaid rejection, a writ application was filed before this Court by West Bengal State Co-operative Agriculture and Rural Development Bank Employees' Association which was registered as W.P. 2381 (W) of 2014. By an order dated 20th March 2014, this Hon'ble Court, while setting aside the rejection dated 26th April 2013, directed the Provident Fund Commissioner to settle the pensionary benefits of the employees of the respondent no.5, subject to such employees fulfilling all other requirements.

In the interregnum, however, the said Scheme was amended and paragraph 11 (4) of the said Scheme was inserted with effect from 1st September 2014, thereby permitting the employees who had been contributing on the salary exceeding Rs.6500/- per month, to exercise fresh option jointly with the employer, for contributing on the salary exceeding Rs.15000/- per month, subject to the employees contributing @ 1.16 per cent on the salary exceeding Rs.15000/- as an additional contribution from and out of the contributions payable by the employees for each month under the provisions of the Act or rules made thereunder.

Mr. Mitra, by drawing the attention of this Court to the document dated 16th July 2015, which forms part of the writ application submits that the petitioner jointly with his employer being the respondent no.5 had exercised his option in terms of paragraph 11(4) of the said Scheme and the same was also acknowledged by the Provident Fund Authorities.

The petitioner says that an appeal was carried from the order dated 20th March 2014. The order passed by the learned Single Judge was set aside by the Hon'ble Division Bench of this Court by an order dated 4th April 2016, inter alia, by observing as follows:-

> *"In order to ascertain this, material to be produced by the employee and the employer cannot be decided in the lis initiated at the instance of the association, particularly when*

conflicting documents coming forth before this Court and also in the light of not submitting proper format for claim of such benefit giving details as indicated in the requisite format under the statute and procedure.

In the light of above practical difficulty we are of the opinion there cannot be uniform direction to consider all the members of the association for higher pension benefit. Each case has to be decided depending upon establishment of contribution as indicated in the amended paragraph 11 of the Scheme.

...

We reserve liberty to be (Sic; read: *the*) *members of the respondents/writ petitioners to approach the appellant Authority in terms of proper requisite application and also place on record requisite information as required in paragraph 11 of the amended Scheme and the same shall be considered by the Provident Fund Commissioner in accordance with the procedure contemplated after giving opportunity of hearing to the employees and the employer.*

Mr. Mitra submits that since the petitioner had already exercised his option in terms of paragraph 11(4) of the said scheme consequent upon paragraph 11 (4) being inserted by notification dated 22nd August 2014, the petitioner did not make further application in terms of the liberty reserved by the Hon'ble Division Bench of this Court. He says that the aforesaid option exercised by the petitioner under paragraph 11(4) of the said Scheme was duly acted upon by the respondent no.4. It is submitted that the respondent no.4, while acting on the basis of the option exercised by the petitioner in terms of paragraph 11

(4) of the said Scheme, had called upon the petitioner to deposit a sum of Rs.2,31,251/- as differential contribution payable by the petitioner for the period from November 1995 to March 2021 with applicable rate of interest for the respondent no.4 to process the petitioner's entitlement for higher pension. It is submitted that the petitioner, while acting in terms of the aforesaid letter, had duly deposited a sum of Rs.2,31,251/- and such sum had been duly remitted to the Provident Authorities. The petitioner states that the respondents, while acting on the basis of the deposits made by the petitioner, had also issued a Pension Payment Order on 3rd November 2021 and had thereby determined Rs.10894/- as monthly pension payable to the petitioner.

The petitioner says that unfortunately since June 2022, the respondents all on a sudden stopped disbursing pension in favour of the petitioner without any rhyme or reason. This prompted the petitioner to make representation. Despite such representation, no steps have been taken by the respondents and hence, the present writ application has been filed.

In course of hearing, it is submitted on behalf of the petitioner that for the first time, the learned advocate representing the Provident Authorities had disclosed that a revised Pension Payment Order had been issued, thereby revising the petitioner's pension from Rs. 10894/- to Rs. 2588/- per month.

The aforesaid revision is illegal. No reasons for such revision has also been disclosed in the affidavit filed by the Provident fund authorities. This Hon'ble may be pleased to direct the Provident Fund authorities to release and disburse higher pension in favour of the petitioner by revising the aforesaid Pension Payment Order dated 3rd November 2022

Per contra, Mr. Gupta, learned advocate appearing for the Provident Fund authorities submits that the petitioner did not exercise his option in terms of paragraph 11 (3) of the said Scheme. By referring to the notification dated 26th April 2021, which is at page 25 of the writ application, it is submitted that the said notification is contrary to paragraph 11(3) of the said Scheme and no option on the basis thereof could be exercised by the petitioner. By referring to the order passed by the Hon'ble Division Bench of this Court dated 4th April 2016, it is submitted that despite the Division Bench reserving liberty to the employees to approach the Provident Authorities with requisite application, the petitioner had not approached them and as such is not entitled to get higher pension. By referring to sub paragraph (h) of paragraph 5 of the affidavit filed by the Provident Fund authorities, he submits that since the exercise of option by the petitioner under paragraph 11 (4) of the said Scheme was beyond the time specified in the said Scheme, the same was not accepted by the Provident Fund authorities. It is still further submitted, that the pension payment order directing disbursal of higher pension was withdrawn, since the matter was pending before the Hon'ble Supreme Court. He says the issue has now been resolved and in this context relies on the Judgment delivered by the Hon'ble

Supreme Court in the case of ***The Employees Provident Fund Organization & Anr. ETC*** *versus* **Sunil Kumar B. & Ors. ETC**[1].

Mr. Ray learned advocate appearing for respondent nos. 5, 8 and 9 submits that the respondent no. 5 had jointly, with the petitioner, exercised the option and had duly forwarded the documents to the respondent no.4. In this context, he places reliance on the letter dated 16th July 2015 addressed to the Provident Fund Commissioner. He submits that all optional forms including that of the petitioner were duly forwarded to the authorities, which had also been acknowledged by them. The Provident Fund authorities are bound to adhere to such communication issued by the respondent no. 5.

I have heard the learned advocates appearing for the respective parties and have considered the materials on record. I find admittedly the writ petitioner was in employment with the respondent no. 5 and the petitioner was enjoying a pensionable service. I find from the affidavit filed by the respondent no. 4 that the option form exercised by the petitioner on 29th April 2011, has been annexed to such affidavit. The said option was obviously exercised in terms of paragraph 11 (3) proviso of the said Scheme. Subsequently, however, the petitioner once again, after omission of paragraph 11 (3) proviso of the said Scheme, by the newly inserted paragraph 11(4), once again, jointly along with respondent no. 5, had exercised option thereby opting for higher pension.

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[1] *2022 SCC Online SC 1521*

The factum of receipt of the option form under paragraph 11 (4) of the Scheme, by letter dated 16th July 2015 has not been denied by the respondent/Provident Fund authorities in the affidavit in opposition. The Provident Fund authorities, however, attempted to explain such document, by inter alia contending that such option was exercised beyond the stipulated period of 6 months with effect from 1st September 2014 and as such, the same cannot be considered, as an option within the meaning of paragraph 11 (4) of the said Scheme. In the instant case, however, it would appear that the respondent/Provident Fund authorities had acted on the basis of the option exercised by the petitioner, claiming higher pension in terms of paragraph 11 (4) of the said Scheme and by invoking the first proviso to paragraph 11 (4) of the said Scheme, had called upon the petitioner to make payment of the differential amount on account of contributions payable by the petitioner @ 1.16 per cent on the salary exceeding Rs.15000/- as an additional contribution from and out of the contribution payable by the petitioner for each month under the provisions of the said Scheme. The petitioner, while acting on the basis of the directives issued by the Provident Fund authorities, had also deposited a sum of Rs. 2,31,251/-. Such fact would corroborate from an undated letter at page 63 of the writ application.

Respondent no. 4 has further not denied receipt of the said sum of Rs.2,31,251/-. On the contrary, it has been their contention inasmuch as the petitioner had not exercised the option within the time stipulated in paragraph 11 (4) of the said Scheme, the option exercised was deemed to be irregular and cannot be accepted. It would also appear from the statements made in paragraph 9 of the affidavit filed by the respondent no. 4 that higher pension payable to the petitioner was stopped since the matter was pending before the Hon'ble Supreme Court.

From the document dated 16th July 2015, it would appear that the petitioner had exercised his option and such option form had been verified by the employer and had been forwarded to the Employees' Provident Fund Organization who had duly acknowledged the same. Such fact would corroborate from the acknowledgement seal appearing on the said letter, itself.

I find that the factum of receipt of the said letter dated 16th July 2015 had not been denied, however, the option exercised by the petitioner has been ignored, inter alia, by claiming that the same had been filed beyond the stipulated period. I find, that the judgment delivered in the case of ***The Employees Provident Fund Organization & Anr. ETC*** *versus* ***Sunil Kumar B. & Ors. ETC***[2]**.,** the Hon'ble Supreme Court has extended the time to exercise option, under paragraph 11(4) of the said Scheme by a further period of 4 months. I find that the petitioner, along with his employer, the respondent no. 5, had jointly exercised the option under paragraph 11(4) of the said Scheme. In such circumstances, as to whether the petitioner had exercised such option, within the time stipulated in paragraph 11(4) of the said Scheme loses

[2] *2022 SCC Online SC 1521*

much of its significance. The respondent no.4 having called upon the petitioner to deposit the additional contribution in terms of paragraph 11(4) cannot turn around and claim that petitioner having not approached them with requisite application, in terms of the order passed by the Hon'ble Division Bench is not entitled to claim higher pension. I find that no proper explanation is forthcoming as to why the petitioner's pension has been revised from Rs.10894/- to Rs.2588/-. The issue before the Supreme Court having been resolved, there cannot be any impediment in the disbursing higher pension in favour of the petitioner.

Although the petitioner had asserted that the petitioner had deposited contributions as was directed to be paid by the Employees' Provident Fund Organization and had deposited a sum of Rs.2,31,251/-, yet without going into such controversy, it would be prudent to direct the respondent no. 4 to ascertain whether the petitioner had contributed @ 1.16 per cent on the salary exceeding Rs.15000/- as an additional contribution from and out of the contributions payable by the petitioner for each month in terms of paragraph 11 (4) of the said Scheme and in the event of shortfall, to realise the same from the petitioner along with interest.

I find that the Hon'ble Supreme Court despite declaring the requirement of members to contribute @ 1.16 per cent on the salary to the extent of salary exceeding Rs.15000/- as an additional contribution under the said Scheme to be ultra vires, has suspended the operation of such order for a period of 6 months, so as to enable the authorities to make adjustments in the Scheme so that additional contribution can be generated. As such as and when adjustments are made, it only natural that the petitioner would also get benefit thereof.

In the light of the aforesaid, the respondent no. 4 is directed to re-compute the pensionary benefits payable to the petitioner, by treating the option exercised by the petitioner under paragraph 11 (4) of the said Scheme as valid and release appropriate monthly pension in favour of the petitioner at higher rate along with arrears, as may be found due by issuing revised Pension Payment Order.

The entire exercise must be completed within a period of 2 (two) months from date.

With the above directions and observations, the writ petition being WPA 21070 of 2022 is allowed.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis upon completion of requisite formalities.

(*Raja Basu Chowdhury, J.*)