Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA**
**CONSTITUTIONAL WRIT JURISDICTION**
**APPELLATE SIDE**

Present :

**The Hon'ble Justice Raja Basu Chowdhury**

**WPA 2243 of 2020**
**with**
**CAN 1 of 2023**
**&**
**CAN 2 of 2023**

**Ashis Kumar Sahoo & Ors.**
**Vs.**
**Union of India & Ors.**

| | | |
|---|---|---|
| For the petitioners | : | Mr. Ashim Kumar Roy<br>Mr. Sutanu Chakraborty |
| For the PF authorities | : | Mr. S.C.Prasad |
| For the respondent no.4 | : | Mr. Ritwik Pattanayak |
| Heard on | : | 22.09.2022, 28.11.2022,<br>24.02.2023, 28.02.2023,<br>08.05.2023, 15.05.2023 |
| Judgment on | : | 16.05.2023 |

**Raja Basu Chowdhury, J:**

**In re: CAN 1 of 2023**

1. The present application has been filed, inter alia, to record the death of the petitioner nos. 7, 10, 15, 31, 35, 36, 49, 67, 81, 83, 86, 106 & 107, as mentioned in paragraphs 3(a) to 3(m) of the aforesaid application.

2. Learned advocate appearing for the petitioners submits that there is a typographical error in the prayer portion of the aforesaid application. He prays for leave to correct the error.

3. Considering the submission made and as prayed for, leave is granted to the learned advocate appearing for the petitioners to correct the prayer portion of the application.

4. Mr. Roy, learned advocate appearing for the petitioners submits that the nominees of the deceased petitioners need to be brought on record. According to Mr. Roy, the deceased petitioners in the respective declarations filed before the Provident Fund Authorities, had identified the nominees who are sought to be brought on record. He submits that the aforesaid nominees are all major and *su juris*. He prays for impleading the aforesaid nominees who are identified in the cause title, as proposed nominees of the respective deceased petitioners.

5. Mr. Pattanayak, learned advocate appearing for the respondent no. 4, does not raise any objection.

6. Heard the learned advocates appearing for the respective parties and considered the materials on record. Taking into consideration the statements made in paragraph 3 of the said application and the fact that the petitioners identified therein

have already died, let the death of the aforesaid petitioners be recorded and there being no impediment in bringing their nominees on record, let such nominees be substituted in place and stead of the deceased petitioners.

7. CAN 1 of 2023 is accordingly ***disposed of***.

8. **Department** is directed to carry out the aforesaid directions.

**In re: CAN 2 of 2023**

1. This application has been filed, inter alia, for recording the death of the petitioner nos. 56, 75 and 88

2. Mr. Roy, learned advocate appearing for the petitioners submits that the aforesaid petitioners have died and he prays for recording of death of the aforesaid petitioners.

3. Heard the learned advocates appearing for the respective parties and considered the materials on record. Taking into consideration the submissions made by the parties, I am of the view that the factum of death of the petitioners, whose particulars have been provided in paragraph 4 of the application, be recorded.

4. CAN 2 of 2023 is accordingly ***disposed of***.

**In re : WPA 2243 of 2020**

1. The present writ application has been filed, inter alia, praying for a direction upon the respondents to refix the petitioners pension on the basis of their actual salary, the petitioners seek a direction on the respondents to permit them to exercise option in terms of paragraph 11(3) and 11(4) of the Employees Provident Fund Scheme (as amended), 1995 (hereinafter referred to as the said Scheme).
2. The petitioners are the retired employees of Contai Co-operative Bank Limited and were members of the said Scheme.
3. Mr. Roy, learned advocate appearing for the petitioners, by drawing attention of this Court to a supplementary affidavit filed by the petitioners submits that the issue as regards legality and/or validity of the notification dated 22nd August 2014 having been finally decided by the Hon'ble Supreme Court in the case of ***Employees Provident Fund Organization & Anr. v. Sunil Kumar B***.[1] and the Hon'ble Supreme Court having opened a window for the petitioners to exercise joint option in terms of paragraph 11(3) and 11(4) of the said scheme, the petitioners had duly, in terms of the direction passed by the Hon'ble Supreme Court, applied by submitting their joint option forms which have been duly executed by the petitioners and their ex employer, Contain Co-operative Bank Limited, the respondent no.4. He, however, submits that the Provident Fund authorities

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[1] 2022 SCC Online SC 1521

are not treating the same as a valid exercise of option. Unless specific direction is issued to treat the options already exercised by the petitioners as valid, the petitioners shall suffer irreparable loss.

4. He has also disclosed a chart in the letterhead of the respondent no.4 showing, the date of exist, and last drawn salary of the respective petitioners.

5. Mr. Prasad, learned advocate appearing for the Provident Fund Authorities by placing before this Court, the judgment delivered by the Hon'ble Supreme Court in the case of ***Employees' Provident Fund Organization (supra),*** has clarified that only those petitioners who were in service as on 1st September 2014 are otherwise eligible to exercise joint option in terms of the said scheme. He says that simply because all the petitioners have submitted their options that does not make all the petitioners eligible, to exercising option under the said scheme.

6. He further submits by placing reliance on an office memorandum dated 23rd April 2023 issued by the Regional P. F.Commissioner-I (Pension) addressed to all the Addl. CPFCs, Zonal Offices and all RPFCs/OICs, Regional Offices, that in terms of the judgment delivered by the Hon'ble Supreme Court in the case of ***Employees' Provident Fund Organization (supra),*** specific instructions have been issued for

implementation of such order. He says online facility has already been deployed and is available for exercising option.

7. He submits that the petitioners are required to exercise the option in the manner, as provided by the respondent Provident Fund Authorities in the said circular. He says that in the event, the petitioners are otherwise qualified in terms of the judgment delivered by the Hon'ble Supreme Court, in such event the options to be exercised by the petitioners shall be accepted and revised Pension Payment Order shall be issued in favour of the petitioners.

8. He further submits that in terms of the direction passed by the Hon'ble Supreme Court, the time provided in the circular dated 23rd April 2023 has since been extended up to 26th June 2023, for exercise of joint options as contemplated in paragraphs 11(3) and 11(4) of the said Scheme.

9. Heard the learned advocates appearing for the respective parties and considered the materials on record. I find that the Hon'ble Supreme Court in the case of ***Employees' Provident Fund Organization and Another*** (supra) in paragraph 46 thereof has been, *inter alia,* pleased to observe as follows:-

> *"**46.** We accordingly hold and direct:—*
>
> *(i) The provisions contained in the notification no. G.S.R. 609(E) dated 22nd August 2014 are legal and valid. So far as present members of the fund are concerned, we have read down certain provisions of the scheme as applicable in their cases and we shall give our findings*

*and directions on these provisions in the subsequent sub-paragraphs.*

*(ii) Amendment to the pension scheme brought about by the notification no. G.S.R. 609(E) dated 22nd August 2014 shall apply to the employees of the exempted establishments in the same manner as the employees of the regular establishments. Transfer of funds from the exempted establishments shall be in the manner as we have already directed.*

*(iii) The employees who had exercised option under the proviso to paragraph 11(3) of the 1995 scheme and continued to be in service as on 1st September 2014, will be guided by the amended provisions of paragraph 11(4) of the pension scheme.*

*(iv) The members of the scheme, who did not exercise option, as contemplated in the proviso to paragraph 11(3) of the pension scheme (as it was before the 2014 Amendment) would be entitled to exercise option under paragraph 11(4) of the post amendment scheme. Their right to exercise option before 1st September 2014 stands crystalised in the judgment of this Court in the case of R.C. Gupta (supra). The scheme as it stood before 1st September 2014 did not provide for any cutoff date and thus those members shall be entitled to exercise option in terms of paragraph11(4) of the scheme, as it stands at present. Their exercise of option shall be in the nature of joint options covering pre-amended paragraph 11(3) as also the amended paragraph 11(4) of the pension scheme.*

*There was uncertainty as regards validity of the post amendment scheme, which was quashed by the aforesaid judgments of the three High Courts. Thus, all the employees who did not exercise option but were entitled to do so but could not due to the interpretation on cut-off date by the authorities, ought to be given a further chance to exercise their option. Time to exercise option under paragraph 11(4) of the scheme, under these circumstances, shall stand extended by a further period of four months. We are giving this direction in* *exercise of our jurisdiction under Article 142 of the Constitution of India.*

*Rest of the requirements as per the amended provision shall be complied with.*

*(v) The employees who had retired prior to 1st September 2014 without exercising any option under paragraph 11(3) of the pre-amendment scheme have already exited from the membership thereof. They would not be entitled to the benefit of this judgment.*

*(vi) The employees who have retired before 1st September 2014 upon exercising option under paragraph 11(3) of the 1995 scheme shall be covered by the provisions of the paragraph 11(3) of the pension scheme as it stood prior to the amendment of 2014.*

*(vii) The requirement of the members to contribute at the rate of 1.16 per cent of their salary to the extent such salary exceeds Rs. 15000/- per month as an additional contribution under the amended scheme is held to be ultra vires the provisions of the 1952 Act. But for the reasons already explained above, we suspend operation of this part of our order for a period of six months. We do so to enable the authorities to make adjustments in the scheme so that the additional contribution can be generated from some other legitimate source within the scope of the Act, which could include enhancing the rate of contribution of the employers. We are not speculating on what steps the authorities will take as it would be for the legislature or the framers of the scheme to make necessary amendment. For the aforesaid period of six months or till such time any amendment is made, whichever is earlier, the employees' contribution shall be as stop gap measure. The said sum shall be adjustable on the basis of alteration to the scheme that may be made.*

*(viii) We do not find any flaw in altering the basis for computation of pensionable salary.*

*(ix) We agree with the view taken by the Division Bench in the case of R.C. Gupta (supra) so far as interpretation of the proviso to paragraph 11(3) (pre-amendment)*

> *pension scheme is concerned. The fund authorities shall implement the directives contained in the said judgment within a period of eight weeks, subject to our directions contained earlier in this paragraph.*
>
> *(x) The Contempt Petition (C) Nos. 1917-1918 of 2018 and Contempt Petition (C) Nos. 619-620 of 2019 in Civil Appeal Nos. 10013-10014 of 2016 are disposed of in the above terms."*

10. As would appear from the above, only those employees who had exercised option under the proviso to paragraph 11(3) of the said Scheme and continued to be in service as on 1st September, 2014 will be guided by the amended provision of the paragraph 11(4) of the said Scheme. The members of the scheme who did not exercise option as contemplated in the proviso to paragraph 11(3) of the said Scheme (as it was before 2014 amendment) would be entitled to exercise option under paragraph 11(4) of the said Scheme. Their exercise of option shall be in the nature of the joint options covering pre-amended paragraph 11(3) as also amended paragraph 11(4) of the Scheme.

11. In the present case none of the ex-employees of the respondent no.4 had exercised their option in terms of paragraph 11(3) of the said Scheme (pre-amendment). As per paragraph 2(11) of the said Scheme a member, ceases to be a member of the pension fund from the date of attaining 58 years of age or from the date of vesting admissible benefits under the said scheme whichever is earlier. It would also appear from the aforesaid judgment that the Hon'ble Supreme Court had made it clear that the employees who had

retired prior to 1st September, 2014 without exercising any option in terms of paragraph 11(3) of the pre-amendment scheme and have already exited from the membership thereof shall not be entitled to the benefit of the judgment.

12. Without going into any controversy at this stage and taking into consideration the chart made over by the petitioners' advocate on the letterhead of the respondent no. 4, which has also been confirmed by Mr. Pattanayak, learned advocate appearing for the respondent no. 4, it would appear that the following petitioners are otherwise eligible for exercising their options, particulars of the petitioners are set out herein below:-

| Last Drawn Salary of Retired Employees before their exit from EPS Membership on attaining 58 years | | | | |
|---|---|---|---|---|
| Row Sl. No. | Sl. No. As per Writ | Name of the Retirees/Petitioners | Date of Exit from Membership on attaining 58 years | Last Drawn Salary before Exit from Membership |
| 20 | 31 | Biswanath Kar | 26.12.2015 | Rs.53249.82 |
| 21 | 33 | Chandi Charan Nayak | 27.04.2015 | Rs.34122.93 |
| 40 | 56 | Milan Kumar Maiti | 06.10.2016 | Rs.68763.30 |
| 50 | 67 | Pranabendra Maiti | 06.05.2015 | Rs.48953.30 |
| 71 | 90 | Sibendu Bhattacharya | 02.04.2015 | Rs.48953.30 |
| 91 | 1 | Ashis Kumar Sahoo | 23.12.2014 | Rs.62310.60 |
| 92 | 3 | Ajit Kr. Roy Ari | 24.10.2016 | Rs.32701.13 |
| 93 | 4 | Amal Das | 27.11.2015 | Rs.37639.58 |
| 94 | 5 | Amitava Pahari | 08.07.2016 | Rs.70829.60 |
| 95 | 6 | Amiya Kumar Das | 06.12.2014 | Rs.42169.80 |
| 96 | 8 | Anil Giri | 01.06.2017 | Rs.49736.96 |
| 97 | 9 | Anil Kumar Das | 19.11.2014 | Rs.42312.05 |
| 98 | 20 | Asit Baran Sahoo | 20.08.2016 | Rs.61528.60 |
| 99 | 23 | Aswini Kumar Pradhan | 09.12.2015 | Rs.33251.43 |
| 100 | 27 | Bikash Ch. Sinha | 31.12.2014 | Rs.47048.55 |
| 101 | 28 | Bimal Kr. Panda | 21.07.2016 | Rs.65249.00 |

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|---|---|---|---|---|
| 102 | 32 | Bibhabasu Dey | 24.02.2016 | Rs.56912.58 |
| 103 | 41 | Goutam Kumar Das | 21.01.2016 | Rs.56912.58 |
| 104 | 50 | Kajeswar Pandit | 10.11.2016 | Rs.41816.70 |
| 105 | 52 | Kanchan Gopal Bhattacharya | 09.05.2015 | Rs.50634.10 |
| 106 | 53 | Madan Kumar Kamilya | 20.12.2015 | Rs.45924.30 |
| 107 | 61 | Nikhil Huzzat | 04.01.2017 | Rs.46616.12 |
| 108 | 69 | Pravansu Pati | 11.01.2017 | Rs.40785.41 |
| 109 | 73 | Ram Chandra Misra | 20.01.2015 | Rs.48883.40 |
| 110 | 92 | Smt. Asha Nayak Mal | 30.09.2014 | Rs.45551.25 |
| 111 | 95 | Subhas Ch. Jana | 18.08.2015 | Rs.50778.70 |
| 112 | 97 | Suvendu Kumar Maity | 19.11.2015 | Rs.51954.76 |
| 113 | 98 | Subodh Ch. Jana | 11.09.2015 | Rs.38193.29 |
| 114 | 100 | Sudip Kanti Hatua | 18.04.2016 | Rs.54316.34 |
| 115 | 103 | Suprakash Jana | 11.01.2016 | Rs.59233.50 |
| 116 | 109 | Swapan Kumar Misra | 26.10.2016 | Rs.57327.00 |
| 117 | 116 | Tarun Kanti Mahapatra | 03.09.2015 | Rs.62062.85 |

13. In view of the aforesaid, only those employees of the respondent no.4, who were in service as on 1st September, 2014, and were members of the said scheme shall be entitled to exercise the option which shall cover (pre-amended previous scheme) paragraph 11(3) as also paragraph 11(4) of the said Scheme. The aforesaid options should be exercised jointly with the respondent no.4

14. Mr. Prasad has, however, submitted that the Provident Fund Authority in compliance with the directions passed by the Hon'ble Supreme Court has already issued departmental instructions dated 23rd April, 2023 and online facility has been deployed which was available on the basis of the said letter upto 3rd May, 2023. According to Mr. Prasad, the last date for filing option forms has been extended till 26th June 2023.

15. Having regard to the aforesaid, I direct the petitioners as also the respondent nos.3 and 4 to act in terms of the directions issued by the Hon'ble Supreme Court in the case *of* ***Employees' Provident Fund Organization and Another (supra)***. The Contai Co-operative Bank Limited, being the respondent no.4 is directed to jointly exercise options along with eligible petitioners indicated hereinabove in the manner as directed by the Hon'ble Supreme Court, within the extended time provided for by the Provident Fund Authorities that is 26th June, 2023.

16. In the light of the aforesaid, the respondent no. 3 being the Assistant Provident Fund Commissioner (pension) Regional/sub Regional office, Employees Provident Fund Organization (EPFO), Bhavishyanidhi Bhawan D.K. Block, Sector II, Salt Lake City, Kolkata 700091, is directed to accept the option forms, from the eligible petitioners as indicated hereinabove and to re-compute the pensionary benefits payable to the eligible petitioners, by issuing revised pension payment orders, upon making adjustments and by realizing additional contributions as may be necessary, and to complete the entire exercise within a period of three months from the date of furnishing the joint option forms, both by the eligible petitioners as also by the respondent no. 4.

17. Court fees paid are found to be sufficient.

18. With the above observations and directions, the aforesaid writ petition stands disposed of.

19. There shall, however, be no order as to costs.

20. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities

**(Raja Basu Chowdhury, J.)**

Saswata
Assistant Registrar (Court)