Item Nos. 1 & 2.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 30.03.2023

DELIVERED ON: 30.03.2023

CORAM:
THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

M.A.T. 311 of 2023
With
I.A. No.CAN 1 of 2023
With
I.A. No.CAN 2 of 2023

Regional Provident Fund Commissioner.
Vs.
Narendra Nath Mondal & Ors.

And

M.A.T. 312 of 2023
With
I.A. No.CAN 1 of 2023
With
I.A. No.CAN 2 of 2023

Regional Provident Fund Commissioner.
Vs.
Subhas Majhi & Ors.

Appearance:-

Mr. Anil Kumar Gupta .... for the appellants (in both appeals)

Mr. Arnab Ray ... for respondent nos.5 and 6.

Mr. Rajesh Kumar Shah .... for the Union of India.

Mr. Debabrata Saha Roy,
Mr. Indranath Mitra,
Mr. Pingal Bhattacharyya,
Mr. Subhankar Das,
Mr. Neil Basu,
Mr. Sankha Biswas ... for the respondents / writ petitioners.

JUDGMENT

(Judgment of the Court was delivered by* T.S. SIVAGNANAM, *J.)

1. Since the subject-matter of disputes in both these appeals are common, both the matters are taken up and heard analogously and decided by this common judgment and order.

Re: I.A. No.CAN 1 of 2023 (in MAT 311 of 2023) &
I.A. No.CAN 1 of 2023 (in MAT 312 of 2023)

2. These are the applications to condone the delay of 30 days in filing the instant appeals.

3. We have heard Mr. Anil Kumar Gupta, learned counsel appearing for the appellants and Mr. Debabrata Saha Roy, learned counsel appearing for the respondents/writ petitioners.

4. We are satisfied with the reasons assigned in the affidavit filed in support of the applications. Accordingly, the delay in filing the instant appeals is condoned.

5. The applications for condonation of delay being I.A. No.CAN 1 of 2023 (in MAT 311 of 2023) & I.A. No.CAN 1 of 2023 (in MAT 312 of 2023) are allowed.

6. For the purpose of convenience of discussion, we take up MAT 311 of 2023.

7. This intra-Court appeal filed by the Regional Provident Fund Commissioner is directed against the order dated 19th December, 2022 in WPA 21070 of 2022. The said writ petition was filed by the respondents herein praying for a direction upon the appellant to release the monthly pension to them based on the revised rates, which was extended to the respondents / writ petitioners.

8. The contention of the appellant before the learned Single Bench was that the respondents / writ petitioners did not exercise their option in terms of paragraph 11(3) of the relevant scheme and reference was made to the notification dated 26th April, 2021 and it was submitted that there is a marked difference between the conditions in the notification and paragraph 11(3) of the said scheme and no option on the basis thereof could be exercised by the writ petitioners. Reference was also made to the judgment of the Hon’ble Division Bench of this Court in FMA 3090 of 2015 dated 4th April, 2016, which was

an appeal filed by the Central Provident Fund Commissioner against an order passed in an earlier writ petition filed by the respondents / writ petitioners in W.P.2381(W) of 2014 dated 20th March, 2014. It was further contended that the option exercised by the writ petitioners under Section 11(4) of the said scheme was beyond the time specified in the said scheme and the same was not accepted by the provident fund authorities. Further, it was contended that the pension payment order directing disbursal of higher pension was withdrawn since the matter was pending before the Hon'ble Supreme Court at the relevant time and as of now, in the light of the decision in **The Employees Provident Fund Organisation & Anr. ETC – Versus - Sunil Kumar B. & Ors. ETC** reported in **2022 SCC OnLine SC 1521**, the matter stands resolved.

9. The respondents / writ petitioners contended before the learned Writ Court that the writ petitioners had exercised option, which was duly forwarded by the employer to the appellant / organisation and in this regard, referred to the letter dated 16th July, 2015 addressed to the Provident Fund Commissioner. Further, it was contended that all option forms including that of the writ petitioners were duly forwarded to the authorities, which was acknowledged by the authorities and

therefore, they are bound to adhere to the communication issued by the West Bengal State Co-operative Agriculture and Rural Development Bank Limited. The learned writ Court upon hearing the appellant and taking note of the submission, took note of the factual position by referring to the affidavit filed by the Regional Provident Fund Commissioner, which was the 4th respondent in the writ petition, wherein it has been stated that option form has been signed by the writ petitioners on 29th April, 2011 and the said option was exercised in terms of paragraph 11(3) proviso of the said scheme. Further, the learned writ Court on facts notes that the writ petitioners once again after omission of paragraph 11(3) proviso of the scheme and after the new paragraph 11(4) was introduced, once again jointly along with the employer namely, the West Bengal State Co-operative Agriculture and Rural Development Bank Limited exercised the option opting for higher pension.

10. The learned writ Court noted that the factum of receipt of the option form under paragraph 11(4) of the scheme by letter dated 16th July 2015 was not denied by the appellant/organisation in their affidavit in opposition. The contention of the appellant was that the option was exercised beyond the statutory period of six months with effect from 1st September, 2014 and the

same cannot be considered as option within the meaning of paragraph 11(4) of the scheme. The learned writ Court taking note of the submission made on behalf of the appellant/organisation noted that the appellant/organisation has acted based on the said option exercised by the writ petitioners claiming higher pension in terms of paragraph 11(4) of the scheme and not only the writ petitioners were directed to make payment of the differential amount on account of contributions payable by the writ petitioners at 1.16 per cent on the salary exceeding Rs. 15,000/- as an additional contribution from and out of the contributions payable by the writ petitioners for each month under the provisions of the said scheme.

11. The learned writ Court noted that the writ petitioners have deposited a sum of Rs. 2,31,251/- and Rs. 4,26,175/- respectively. Furthermore, the learned writ Court noted that the appellant/organisation has not denied the receipt of the differential amount, which was paid by the writ petitioners. However, the appellant/organisation had been continuously harping on the issue that the option exercised in terms of paragraph 11(4) of the said scheme was deemed to be irregular, cannot be accepted. Thus, taking note of the option exercised by the writ petitioners dated 16th July, 2015, the writ Court came

to the conclusion that such option cannot be ignored. Furthermore, in the decision of the Hon'ble Supreme Court in *Sunil Kumar B. & Ors. ETC (supra)* the Hon'ble Supreme Court extended the time to exercise option under paragraph 11(4) by a further period of 4 months and noting that the writ petitioners along with their employer namely the Bank had exercised such an option in terms of paragraph 11(4) of the scheme and more particularly when the writ petitioners were directed to deposit the additional contribution in terms of paragraph 11(4), therefore, the writ Court held that the appellant/organistion cannot turn around and non suit the writ petitioners stating that they have not approached them with the requisite application in terms of the liberty granted by the Hon'ble Division Bench in F.M.A. 3090 of 2015.

12. Thus, we find that the learned single Bench rightly directed the appellant/organisation to re-compute the pensionary benefits payable to the writ petitioners by treating the option exercised by them under paragraph 11(4) as valid and release the appropriate monthly pension at a higher rate along with arrears as may be found due by issuing revised pension payment order.

13. Thus, the appellant has not made out any ground to interfere with the order passed by the learned single Bench. Accordingly, the appeals fail and are dismissed.

14. However, the time for compliance of the order passed by the learned single Bench is extended by a period of 3 months from the date of receipt of server copy of this judgment and order.

15. There shall be no order as to costs.

16. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM, J)

I agree,

(HIRANMAY BHATTACHARYYA, J.)

NAREN/PALLAB(AR.C)