

01.09.2023
sayandeep
Sl. No.02
Ct. No. 12

FMA 211 of 2023
With
IA No. CAN 1 of 2023

Regional Provident Fund Commissioner -
Versus-
Rup Kumar Roy & Ors.

Mr. Anil Kr. Gupta
.....for the appellant.

Mr. Debabrata Saha Roy
Mr. Indranath Mitra
Mr. Pingal Bhattacharyya
.....for the respondent No. 1

Mr. Arnab Ray
.....for the respondent Nos. 5 & 6

The present appeal is filed challenging the order dated 16th December, 2022 made in WPA 21064 of 2022 filed by the respondent No. 1.

The respondent No. 1 is an employee of respondent No. 2. During his employment an offer was given for higher pension and payment of additional contribution to Provident Fund. The respondent No. 1 exercised his option as per proviso to paragraph 11(3) of the Employees Pension Scheme, 1995. After exercising the option by first respondent and the employees, the higher pension was granted to the employees. Subsequently from May, 2022, the higher pension was stopped. The West Bengal State Co-operative Agriculture and Rural Development Bank Employees' Association took up the issue and filed writ

petition No. 2381(w) of 2014. The learned Single Judge of this Court by the order dated 20th March, 2014 allowed the writ petition and directed the appellant to pay higher pension to all the employees. The appellant filed appeal in FMA No. 3090 of 2015 challenging the said order while so the said scheme was amended and paragraph 11(4) was inserted. The respondent No. 1 exercised the option as per paragraph 11(4). The Division Bench of this Court set aside the order dated 20th March, 2014 of the learned Single Judge and directed the employees to exercise the option individually and directed the appellant to consider the same in accordance with the procedure contemplated after giving opportunity of hearing to the employees and employer.

The respondent No. 1 having exercised his option under 11(4) already did not make fresh option.

The appellant informed the respondent No. 2 to collect sum of Rs. 2,03,474/- from respondent No. 1 as additional contribution for payment of higher pension. The respondent No. 1 paid the said sum and the respondent No. 2 deposited the said amount to the appellant. After depositing the said amount, initially higher pension was paid and subsequently the respondent No. 1 was not paid higher pension. In such circumstances, the first respondent and three other similarly placed employees filed separate four writ

petitions including WPA 21064 of 2022. The learned counsel appearing for the appellant contended before the learned Judge that option was not exercised as per paragraph 11(4) in time and therefore the respondent No. 1 and other employees are not entitled to higher pension.

The learned Judge elaborately considered all the materials placed before him and by giving cogent and valid reason allowed all the writ petition by different orders. The present order is dated 16th December, 2022. Against orders of writ petitions, the appellant filed three appeals challenging the same being appeal Nos. 311 of 2023, 312 of 2023 and 212 of 2023. The present appeal is 211 of 2023 challenging the order dated 16th December, 2022 passed in WPA 21064 of 2022. The other two appeals were listed before the co-ordinate Bench of this Court. The co-ordinate Bench of this Court considered said contention of counsel appearing for the appellant therein as well as dates on which option exercised by the employees under paragraph 11(4) and the fact that additional contributions were received by the appellant dismissed the appeals being MAT 311 of 2023 and MAT 312 of 2023.

The facts in the present appeal are similar to the other two appeals which were dismissed by co-ordinate Bench of this Court. The reason given by the Division

Bench to dismiss the two appeals are squarely applicable to the fact of present case.

In view of the same, the appeal dismissed without any order as to costs.

However, time for compliance of the order passed by the learned Single Judge is extended by a period of three months from the date of received of the copy of the order.

(V.M. Velumani, J.)

(Rai Chattopadhyay, J.)