

Form No.J(2)

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

Present :

The Hon'ble Justice Raja Basu Chowdhury

**WPA 18180 of 2018
Sudhansu Chakraborty
Vs.
Regional Provident Fund Commissioner, EPFO & Ors.**

For the petitioner	:	Ms. Abantika Garai
For the PF authorities	:	Mr. S.C.Prasad
For the CSTC	:	Mr. Amal Kumar Sen Mr. Sabyasachi Mondal
Heard on	:	03.07.2023
Judgment on	:	03.07.2023

Raja Basu Chowdhury, J:

1. The present writ application has been filed, inter alia, praying for a direction upon the respondents for disbursement of retiral benefits, inter alia, including payment of higher pension in favour of the petitioner. The petitioner claims to have been appointed as a Lower Division Clerk in the Calcutta State Transport Corporation (CSTC), Nilganj Depot. It is submitted that the petitioner was a member of pension fund and had, from time to time, deposited contributions as required under the pension Scheme. It is the petitioner's case that the petitioner had reached

the age of 58 years on 31st January 2013 and at the relevant point of time his gross salary exceeded Rs.15000/-. The petitioner claims that, although an option was given to the members of the pension fund to contribute on the salary exceeding Rs.6500/- per month, the petitioner being unaware of the same, could not take the benefit thereof.

2. Ms. Garai, learned advocate appearing for the petitioner by drawing attention of this Court to a salary slip for the month of January 2013, submits that the employer, on regular basis had been deducting the provident fund contributions from the petitioner which also included the contribution for the pension fund. By further referring to a judgment delivered by the Hon'ble Supreme Court in the case of ***Employees Provident Fund organization & anr. -vs- Sunil Kumar B. & Ors.***¹, it is submitted that the Hon'ble Supreme Court has opened a window of opportunity for the petitioner to exercise option in terms of the amended paragraphs 11(3) and 11(4) of the Employees' Pension Scheme, 1995 (hereinafter referred to as the said Scheme). She submits that the petitioner had duly applied before the Provident Fund authorities seeking permission to file joint option form for higher pension.
3. By placing before this Court, a communication dated 14th June 2023 issued by the Provident Fund authorities, it is submitted

¹ 2022 SCC Online SC 1521

that in response to his application for higher pension, the petitioner has been advised to file the joint option form through the online portal of the Provident Fund authorities.

4. It is submitted that the petitioner cannot individually file such option form. Such option form is required to be filed jointly with his employer. In such view of the matter, it is submitted that the petitioner's employer should be directed to file the joint option form along with the petitioner, in terms of the direction issued by the Hon'ble Supreme Court for the petitioner to avail higher pension benefits.
5. Mr. Prasad, learned advocate appearing for the Provident Fund authorities submits that if the petitioner is otherwise eligible for higher pension, the same will be duly disbursed in his favour, provided a joint option form as required is filled in and submitted online. Mr. Prasad says that the Provident Fund authorities are not interested to stand in the way of eligible persons, availing higher pension benefits.
6. Mr. Sen, learned advocate appearing for the CSTC, the added respondent submits that the petitioner was in fact an employee of the CSTC. He says that the petitioner had retired from service sometime in January 2015 and had exited from the membership of the pension fund in January 2013. He further submits that the added respondent/CSTC had duly, in terms of unamended paragraph 11(3) of the said Scheme, deposited the provident fund

contributions which included the pension fund contributions to the CSTC Employees Provident Fund Trust, which is an exempted trust fund, to the maximum extent permissible as per the unamended provision of unamended paragraph 11(3) of the said Scheme.

7. According to Mr. Sen, the contribution payable by the petitioner was calculated on the basis of the maximum pensionable salary of Rs. 6500/- and 8.33 per cent thereof, was deposited in the pension fund being the CSTC Employees Provident Fund Trust. The said Trust in due course, had deposited the portion of amount relatable to the pension fund with the Regional Provident Fund Commissioner.
8. By referring to the Pension Payment Order dated 1st June 2015, it is submitted that pension had already been released in favour of the petitioner. According to Mr. Sen, since the petitioner had exited the pension fund sometime in January 2013, without exercising the option for higher pension, on his salary exceeding Rs.6500/- per month, he is not entitled to exercise any further option as per the amended paragraph 11(4) of the said Scheme.
9. Heard the learned advocates appearing for the respective parties and considered the materials on record.
10. I find that admittedly the petitioner was in service of the added respondent, CSTC. I still further find that the added respondent / CSTC had deposited, on the petitioner's account, 8.33 per cent

of Rs. 6500/- by treating the same to be the maximum pensionable salary of the petitioner. It would appear that in the year 1995, the Government had introduced a pension scheme under Section 6A of the Employees Provident Fund and Miscellaneous Provisions Act, 1956. The said scheme provides that the employer's contribution of 8.33 per cent should be towards the pension fund. The said scheme capped maximum monthly pensionable salary at the rate of Rs.6500/-. Thus, the employer had to contribute at the rate of Rs.8.33 per cent on the maximum monthly pensionable salary which was Rs.5000/-. Later, the same appears to have been revised to Rs.6500/-.

11. Although, a proviso was added to the paragraph 11(3) of the said Scheme, giving the employer and employee, option to contribute on the actual salary exceeding Rs.6500/- to the pension fund, in the present case it appears that no such option was exercised since, according to Mr. Sen, and on the showing of the petitioner, the contribution of 8.33 per cent was made on Rs.6500/-.
12. Having regard to the aforesaid, it is crystal clear that the petitioner did not exercise the option under the amended paragraph 11(3) of the said scheme, prior to his retirement.
13. I find that the Hon'ble Supreme Court in the case of **Sunil Kumar B (supra)**, while interpreting the provision of the said scheme has, inter alia, provided and directed 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 paragraph 11(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."

14. Although the petitioner says that he was unaware of the amended provision of paragraph 11(3) and as such could not exercise the option, however, having regard to the aforesaid judgment and considering the fact that the petitioner had exited from the membership of pension fund and had retired without

exercising his option under paragraph 11(3) of the said Scheme, I am of the view that the petitioner is not entitled to exercise option as per the aforesaid judgment.

15. No further right survives for the petitioner to jointly exercise option with his ex employer under paragraphs 11(3) and 11(4) of the said Scheme at this stage.
16. Under such circumstances, the writ petition fails and is accordingly ***dismissed*** without any order as to costs.
17. 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.)

Saswata
Assistant Registrar (Court)