Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 26760 of 2022

Sudhamoy Misra
Versus
Union of India & Ors.

For the Petitioner	:	Mr. Indranath Mitra
For the Union of India	:	Mr. Rajesh Kumar Shah
For the PF Authorities	:	Mr. Anil Kumar Gupta
For the Respondent No. 5, 8 and 9.	:	Mr. Arnab Roy
Heard on	:	18.04.2023
Judgment on	:	28.04.2023

Raja Basu Chowdhury, J:

1. 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.
2. The petitioner had joined as Group-D in West Bengal State Co-operative Agriculture and Rural Development Bank Ltd., being the respondent no. 5 herein in the year 1975. The petitioner enjoyed pensionable service and was covered by the Employees

Pension Scheme, 1995 (hereinafter referred to as the 'said Scheme').

3. 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/-.

4. 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 realizing 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 realizing 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 Authorities rejected the claim for disbursal of higher pension.

5. Mr. Mitra submits that being aggrieved by the order of rejection, a writ application was filed before this Court by the 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.

6. 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.

7. By relying on a supplementary affidavit affirmed by the petitioner on 11th April, 2023, Mr. Mitra submits that consequent upon the petitioner exercising his option claiming higher pension, the General Manager of the respondent no.5, under cover of letter dated 16th July, 2015, had forwarded the documents as sought for by the Office of the Regional Provident Fund Commissioner, which included the option forms for deduction of contribution for higher wages. Mr. Mitra by relying on the letter dated 16th July, 2015, issued by the General Manager of the respondent no.5 addressed to and duly receipted by the Office of the Regional Provident Fund Commissioner, submits that the petitioner had duly exercised his option in terms of paragraph 11(4) of the said scheme which was also acknowledged by the Provident Fund authorities.

8. 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.

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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.*

9. Mr Mitra submits that since the petitioner had 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 any further application in terms of 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. By referring to the communication dated 19th January, 2021, issued by the Provident fund authorities address to the respondent no. 5, a

copy whereof was marked to the petitioner, it is submitted that the Provident fund authorities taking note 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 3,67,727/- on the basis of calculations made by them towards differential payment to be made by the petitioner for the period from November 1995 to July 2013 with applicable rate of interest, in order to be entitled to higher wage pension. It is submitted that the petitioner while acting on the basis of the aforesaid requisition had duly deposited with the respondent no. 4 the differential sum, whereupon the pension payment order (PPO) digitally signed on 19th March, 2021, was issued, thereby sanctioning Rs 11,701/- as pension. The aforesaid PPO also records the petitioner's pensionable salary as Rs 39,238/- per month.

10. By referring to the affidavit in opposition filed by the respondent no.4, it is submitted that the respondent no.4 in its opposition has in fact admitted that it has stopped higher pension to the petitioner and that the PPO digitally signed on 19th March, 2021, had been revised, by issuing a PPO prepared on 15th December, 2022**.** The aforesaid revision of the petitioner's pension is illegal. The revised PPO dated 15th December, 2022, is contrary to the pension scheme. This Hon'ble Court may be pleased to direct the Provident Fund Authorities to revise the PPO

dated 15th December, 2022, and to release and disbursed higher pension in favour of the petitioner. By relying on an unreported judgement delivered by the Division Bench of this Hon'ble Court in MAT 311 of 2023 and MAT 312 of 2023, he submits that in identical facts the Hon'ble Division Bench had been pleased to affirm the direction for re-computation of the pensionary benefits as directed by this Court, in respect of a retired employee of the responding no. 5 from whom the Provident fund authorities despite realising additional contribution for disbursing higher pension, had been withholding the same on the alleged ground that the option exercised by such an employee was irregular. He says that the facts in this case are identical. This Hon'ble Court should be pleased to grant similar relief to the petitioner.

11. *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, 2011, which is at page 24 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 Hon'ble Division Bench reserving liberty to the employees of the respondent no.5 to approach the Provident

Fund 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 (e), (f), (g) and (h) of the paragraph 5 of the affidavit filed by the Provident Fund Authorities, he submits that since the provisions of paragraph 11(3) proviso and paragraph 11(4) of the said scheme had not been complied with by the petitioner as well as the respondent no.5, and since no option form was submitted by the petitioner prior to 1st September, 2014, the petitioner is not eligible for higher pension beyond the wage ceiling limit. It is still further submitted, that the PPO directing disbursal of higher pension was withdrawn, since the matter was pending before the Hon'ble Supreme Court. He says, the said issue has now been resolved and, in this context, he relies on the judgment delivered by the Hon'ble Supreme Court in the case of ***The Employees' Provident Fund Organization & Anr. v. Sunil Kumar B. & Ors.,*** reported in **2022 SCC OnLine SC 1521**. By relying on an unreported judgment delivered by this Hon'ble Court in the case of ***Sankar Prasad Mukherjee & Ors. v. West Bengal State Minor Irrigation Corporation Ltd. & Ors.*** in **WPA 8600 of 2019** on 27th February, 2023, he submits that similar directions as passed in WPA 8600 of 2019, may be passed in the aforesaid matter, and in the event the petitioner exercises his option jointly with the respondent no.5, his case for higher pension shall be considered.

12. Mr. Roy, learned advocate appearing for the respondent no.5, 8 and 9, submits that the respondent no.5 had jointly, with the petitioner, exercised the option under paragraph 11(3) proviso as also under paragraph 11(4) of the said scheme, and had duly forwarded the documents to the respondent no.4. He submits that all option forms were duly acted upon by the Provident Fund Authorities. The Provident Fund Authorities are bound to adhere to their communication dated 19th January, 2021. The respondent no.4 having realised additional contribution from the petitioner for disbursing higher pension, cannot deny higher pension to the petitioner.

13. 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 nos.5, 8 and 9 that the option form exercised by the petitioner on 30th 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. I also find that the Provident Fund Authorities by their communication dated 19th January, 2021, had while processing the petitioner's claim for higher pension, having found that EPS contributions on actual salary was not deposited for the period November, 1995 to July, 2013, had called upon the

petitioner to make payment of a sum of Rs.3,67,727/- towards differential payment for the period November, 1995 to January, 2021, together with applicable interest. From the aforesaid communication read with PPO digitally signed on 19th March, 2021, it would be apparent that the aforesaid differential sum of Rs.3,67,727/-, also included the employees contribution payable by the petitioner, on actual salary exceeding Rs.15,000/- from November, 2014 to July, 2013, inasmuch as the PPO clearly records pensionable salary was Rs.39,238/- per month. It is, therefore, apparent that the petitioner had not only exercised his option jointly with the respondent no.5 but the respondent no.4 while acting on the basis thereof had also realised additional contribution from the petitioner, as payable by the petitioner for each month under the provisions of the Act, to avail higher pension.

14. In the affidavit-in-opposition, the respondent no.4 has only attempted to make out a case that by reasons of non-compliance of the provisions of paragraph 11(3) proviso and paragraph 11(4) of the said Scheme, and the order passed by the Division Bench of this Hon'ble Court, the petitioner is not entitled to higher pension. The aforesaid stand taken by the respondent no.4 is illegal to say the least. From the communication dated 19th January, 2021, it would be apparent that the respondent no.4 had not only acted on the basis of paragraph 11(3) proviso but

paragraph 11(4) of the said Scheme and had realised additional contribution from the petitioner in terms of the paragraph 11(4) of the said Scheme.

15. It would, thus, be evident from the documents on record that the petitioner, along with his employer, the respondent no. 5, had jointly exercised the option under paragraph 11(4) of the said Scheme and the respondent no.4 while acting on the basis thereof had realized additional contribution payable by the petitioner along with interest in terms of paragraph 11(4) of the said Scheme. In such circumstances, as to whether the petitioner had exercised such option, strictly in terms of the provisions of paragraph 11(3) and 11(4) of the said Scheme loses much of its significance. The respondent no.4 having called upon the petitioner to deposit the additional contribution on actual salary which exceeded Rs.15,000/- per month, had obviously realised the same in terms of paragraph 11(4) of the said scheme. Having done so, respondent no.4 cannot turn around and claim that the petitioner having not approached them with requisite application, in terms of the liberty reserved by the Hon'ble Division Bench is not entitled to claim higher pension. I find that no proper explanation is also forthcoming as to why the petitioner's revised pension had also been stopped. The issue before the Hon'ble Supreme Court having been resolved, there cannot be any impediment in disbursing higher pension in favour of the

petitioner. As such directing the petitioner to once again exercise option in terms of paragraph 11(3) and 11(4) would be iniquitous to say the least.

16. As rightly pointed out by Mr. Mitra, I also find that in identical facts the Division Bench of this Hon'ble Court in MAT 311 of 2023 and MAT 312 of 2023 had been pleased to affirm the direction for re-computation of pensionary benefits passed by this Court, by treating the option exercised by an ex-employee of the respondent no. 5 under paragraph 11 (4) of the said scheme as valid, and had also directed the Provident fund authorities to release appropriate monthly pension at higher rate along with arrears as may be found due, by issuing revised pension payment order. As such I am of the view that similar relief cannot be denied to the petitioner.

17. 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. 3,67,727/-, and that no additional contribution is payable, 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.15,000/- 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.

18. 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.15,000/- 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 is only natural that the petitioner would also get benefit thereof.

19. 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 petitioner to have validly exercised options under paragraph 11(3) proviso and paragraph 11(4) of the said Scheme, by revising the PPO prepared on 15th December, 2022, and release appropriate monthly pension in favour of the petitioner at higher rate along with all arrears, as may be found due by issuing revised Pension Payment Order.

20. In the event the respondent no.4 proposes to re-fix the pension payable to the petitioner less than Rs.11,701/-, appropriate reasons must accompany such PPO to justify such revision in accordance with paragraph 11(4) of the scheme. It is made clear that the PPO revision should strictly be made in

terms of paragraph 11(4) of the said Scheme and based on observations made herein.

21. The entire exercise must be completed within a period of 2 (two) months from the date of communication of this order. The directions are peremptory.

22. With the above directions and observations, the writ application being WPA 26760 of 2022 is disposed of.

23. There shall be no order as to costs.

24. 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.)

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