

16. 04. 2024

BP  
Sl.5  
Court No. 23

In the High Court At Calcutta  
Constitutional Writ Jurisdiction  
Appellate Side

WPA 27696 of 2023

Ramdeb Chatterjee  
Vs.  
The Employees Provident Fund Organisation  
& Ors.

Mr. Sambhunath De  
..for the petitioner

Ms. Sangeeta Roy  
..for the respondent no.1

Mr. Kanishka Prasad  
Mr. Atul Sureka  
..for the respondent no.5

The petitioner was an employee of Simplex Project Limited, the respondent no.5. The petitioner claims to have joined services of the respondent no.5 on 8<sup>th</sup> February, 1995 and tendered resignation on 23<sup>rd</sup> March, 2005. The petitioner claims that he had worked with respondent no.5 for more than ten years and as such is entitled to pension apart from the contributions made for provident fund.

The petitioner says that he had submitted his claim in Form 10C and 10D under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as EPF Act). It is also the case of the petitioner that despite submitting such claim form with the P.F. authorities neither the pension nor the

provident fund contribution has been paid to the petitioner.

On behalf of the respondent no.5 it is submitted by the Resolution Professional (RP) that an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) was filed before the National Company Law Tribunal, Kolkata Bench against respondent No.5. The said application was admitted on 27<sup>th</sup> April, 2022. Mr. Sutanu Sinha was appointed as the Interim Resolution Professional (IRP) and the company was subjected to CIRP. There was also a moratorium declared under Section 14 of IBC. It is also submitted that as an employer the necessary formalities have been done to enable the petitioner to get his retiral benefit much before, the company was subjected to CIRP in terms of the order dated 27<sup>th</sup> April, 2022.

On behalf of the P.F. authorities a letter dated 11<sup>th</sup> January, 2024 issued by the Regional P.F. Commissioner-II to the writ petitioner is placed before the Court which is taken on record.

It is submitted on behalf of the P.F. authorities by referring to the said letter that the petitioner did not work for ten years and as such is not entitled to pension. However, the petitioner is entitled to P.F. contribution for which he is requested to file Form 10C. The P.F.

authorities also say that the petitioner is free to contact P.F. authorities for due disbursement of his contributory amount.

The contention of the employer as also the EPF authorities are disputed by the petitioners. The petitioner says that he has worked for more than ten years and as such he is entitled to pension under the EPF Act. The petitioner also says that he had tendered his resignation in 2005 and since then has to run from pillar to post to get his P.F. dues. The employer company went under the CIRP on 27<sup>th</sup> April, 2020 more than seventeen years after the petitioner has tendered resignation which is not in dispute.

The petitioner has, however, stated in the writ petition that on 5<sup>th</sup> August, 2022 the petitioner has submitted the Form 10C along with all relevant documents through employer and as such there is no question of filing any further 10C Form. The date of filing of the claim also eliminates the delay on the part of the PF Authorities to pay the contribution. The petitioner also says that it will be difficult on the part of the petitioner to file a fresh Form 10C by obtaining signature and due verification from the employer who is undergoing CIRP.

In the aforesaid facts and circumstances, since the claim is for a period prior to the respondent No.5 had

gone for CIRP and that the respondent No.5 has no objection. If the petitioner gets his dues, the Regional Provident Fund Authorities are directed to process the Form 10C said to have been submitted by the petitioner on 5<sup>th</sup> August, 2022 and pay his contribution amount within a period of two months from date with accrued interest as per statute. The Provident Fund authorities shall also give the petitioner a personal hearing on the point of petitioner's eligibility to receive pension for having completed ten years service as claimed by the petitioner. The entire exercise as to pension should be completed within a period of six months from date.

The RP/IRP appointed in respect of Simplex Project Limited shall render all cooperation to the petitioner for receiving the provident fund benefits.

The parties shall act on a server copy of this order without insisting upon production of a certified copy thereof.

Nothing further remains to be adjudicated in the writ petition. The same is accordingly disposed of.

Since I have not called for affidavits, the allegations contained in the writ petition are deemed to have not been admitted by the respondents.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of

all necessary formalities.

(Arindam Mukherjee, J. )

