

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
CIRCUIT BENCH AT JALPAIGURI

BEFORE: -

The Hon'ble Justice Soumen Sen

And

The Hon'ble Justice Partha Sarathi Sen

MAT/85/2023

SUSHANTA ACHARJEE AND ANR.

VS

UTTARBANGA KSHETRIYA GRAMIN BANK AND ORS.

IA NO: CAN/1/2023

AND

MAT/86/2023

RANJIT KUMAR SHOME AND ANR.

VS

UTTARBANGA KSHETRIYA GRAMIN BANK AND ORS.

IA NO: CAN/1/2023

AND

MAT/87/2023

SWAPAN KUMAR CHOWDHURY AND ANR.

VS

UTTARBANGA KSHETRIYA GRAMIN BANK AND ORS.

IA NO: CAN/1/2023

AND

MAT/88/2023

DANESH CHAKRABORTY AND ANR.

VS

UTTARBANGA KSHETRIYA GRAMIN BANK AND ORS.

IA NO: CAN/1/2023

AND

MAT/89/2023

MOHINI MOHAN SAHA AND ANR.

VS

UTTARBANGA KSHETRIYA GRAMIN BANK AND ORS.

IA NO: CAN/1/2023

AND

MAT/90/2023
SUKRAJ KUMAR BASU AND ANR.
VS
UTTARBANGA KSHETRIYA GRAMIN BANK AND ORS.
IA NO: CAN/1/2023

AND

MAT/91/2023
SANTI RANJAN SAHA AND ANR.
VS
UTTARBANGA KSHETRIYA GRAMIN BANK AND ORS.
IA NO: CAN/1/2023

AND

MAT/92/2023
TAPAS KUMAR DEB AND ANR.
VS
UTTARBANGA KSHETRIYA GRAMIN BANK AND ORS.
IA NO: CAN/1/2023
AND

MAT/93/2023
SWAPAN KUMAR BHATTACHARYA AND ANR.
VS.
UTTARBANGA KSHETRIYA GRAMIN BANK AND ORS.
IA NO: CAN/1/2023

AND

MAT/94/2023
PRANESH SARKAR AND ANR.
VS
UTTARBANGA KSHETRIYA GRAMIN BANK AND ORS.
IA NO: CAN/1/2023

AND

MAT/95/2023
SANDIP BHATTACHARJEE AND ANR.
VS
UTTARBANGA KSHETRIYA GRAMIN BANK AND ORS.
IA NO: CAN/1/2023

AND

MAT/96/2023
SIKHA BANIK AND ANR.
VS
UTTARBANGA KSHETRIYA GRAMIN BANK AND ORS.
IA NO: CAN/1/2023

AND

MAT/97/2023
SAMPA CHAKRABORTY AND ANR.
VS
UTTARBANGA KSHETRIYA GRAMIN BANK AND ORS.
IA NO: CAN/1/2023

AND

MAT/98/2023
SHILA GHOSH AND ANR.
VS
UTTARBANGA KSHETRIYA GRAMIN BANK AND ORS.
IA NO: CAN/1/2023

AND

MAT/99/2023
ARUN KUMAR BHATTACHARYYA AND ANR.
VS
UTTARBANGA KSHETRIYA GRAMIN BANK AND ORS.
IA NO: CAN/1/2023

AND

MAT/100/2023
SHUVAPADA CHAUDHURI AND ANR.
VS
UTTARBANGA KSHETRIYA GRAMIN BANK AND ORS.
IA NO: CAN/1/2023

AND

MAT/101/2023
BARUN KUMAR SAHA AND ANR.
VS
UTTARBANGA KSHETRIYA GRAMIN BANK AND ORS.
IA NO: CAN/1/2023

AND

MAT/102/2023
SANKAR DUTTA AND ANR.
VS
UTTARBANGA KSHETRIYA GRAMIN BANK AND ORS.
IA NO: CAN/1/2023

AND

MAT/103/2023
DINES CHANDRA LASKAR AND ANR.
VS
UTTARBANGA KSHETRIYA GRAMIN BANK AND ORS.
IA NO: CAN/1/2023

AND

MAT/104/2023
KABERI SARKAR (BASU) AND ANR.
VS
UTTARBANGA KSHETRIYA GRAMIN BANK AND ORS.
IA NO: CAN/1/2023

AND

MAT/105/2023
ASIM DAS AND ANR.
VS
UTTARBANGA KSHETRIYA GRAMIN BANK AND ORS.
IA NO: CAN/1/2023

AND

MAT/106/2023
BARUN KUMAR CHANDA AND ANR.
VS
UTTARBANGA KSHETRIYA GRAMIN BANK AND ORS.
IA NO: CAN/1/2023

AND

MAT/107/2023
PHANI BHUSAN ROY AND ANR.
VS
UTTARBANGA KSHETRIYA GRAMIN BANK AND ORS.
IA NO: CAN/1/2023

AND

MAT/108/2023
ABHIJIT MAULIK AND ANR.
VS
UTTARBANGA KSHETRIYA GRAMIN BANK AND ORS.
IA NO: CAN/1/2023

AND

MAT/109/2023
ANANYA DEY AND ANR.
VS
UTTARBANGA KSHETRIYA GRAMIN BANK AND ORS.
IA NO: CAN/1/2023

AND

MAT/110/2023
PANGANATH ROY @ PANGA NATH ROY AND ANR.
VS
UTTARBANGA KSHETRIYA GRAMIN BANK AND ORS.
IA NO: CAN/1/2023

AND

MAT/111/2023
DILIP KUMAR BARMAN AND ANR.
VS
UTTARBANGA KSHETRIYA GRAMIN BANK AND ORS.
IA NO: CAN/1/2023

AND

MAT/112/2023
BRAJESHWAR MALLICK AND ANR.
VS
UTTARBANGA KSHETRIYA GRAMIN BANK AND ORS.
IA NO: CAN/1/2023, CAN/2/2023

AND

MAT/113/2023
PINAKI RANJAN CHAKRABORTY AND ANR.
VS
UTTARBANGA KSHETRIYA GRAMIN BANK AND ORS.
IA NO: CAN/1/2023, CAN/2/2023

AND

MAT/114/2023
DEBABRATA GHOSH DASTIDAR AND ANR.
VS
UTTARBANGA KSHETRIYA GRAMIN BANK AND ORS.
IA NO: CAN/1/2023, CAN/2/2023

AND

MAT/115/2023
ASHOK KUMAR CHOWDHURY AND ANR.
VS
UTTARBANGA KSHETRIYA GRAMIN BANK AND ORS.
IA NO: CAN/1/2023, CAN/2/2023

AND

MAT/116/2023
ASIM BISWAS AND ANR.
VS
UTTARBANGA KSHETRIYA GRAMIN BANK AND ORS.
IA NO: CAN/1/2023, CAN/2/2023

AND

MAT/117/2023
ARABINDA SIDDHANTA AND ANR.
VS
UTTARBANGA KSHETRIYA GRAMIN BANK AND ORS.
IA NO: CAN/1/2023, CAN/2/2023

AND

MAT/118/2023
PARTHA SARATHI BISWAS AND ANR.
VS
UTTARBANGA KSHETRIYA GRAMIN BANK AND ORS.
IA NO: CAN/1/2023, CAN/2/2023

AND

MAT/119/2023
RABINDRA HARI KARJEE AND ANR.
VS
UTTARBANGA KSHETRIYA GRAMIN BANK AND ORS.
IA NO: CAN/1/2023, CAN/2/2023

AND

MAT/120/2023
TARUN KUMAR MANTA AND ANR.
VS
UTTARBANGA KSHETRIYA GRAMIN BANK AND ORS.
IA NO: CAN/1/2023, CAN/2/2023

AND

MAT/121/2023
SAMIR RANJAN SARKAR AND ANR.
VS
UTTARBANGA KSHETRIYA GRAMIN BANK AND ORS.
IA NO: CAN/1/2023, CAN/2/2023

AND

MAT/123/2023
SUDIP SANYAL AND ANR.
VS
UTTARBANGA KSHETRIYA GRAMIN BANK AND ORS.
IA NO: CAN/1/2023, CAN/2/2023

AND

MAT/127/2023
MOUMITA BARMAN KAR AND ANR.
VS
UTTARBANGA KSHETRIYA GRAMIN BANK AND ORS.
IA NO: CAN/1/2023, CAN/2/2023

For the Appellants : Mr. Jagriti Mishra, Adv.
Ms. Ananya Bhattacharya, Adv.,
Mr. Raj Kumar Mitra, Adv.,
Ms. Mrinmayee Das, Adv.,

For the Opposite Party : Mr. Chitra Bhanu Gupta, Adv.,
Ms. Supriya Singh, Adv.,

Hearing concluded on : 1st May, 2024

Judgment on : 2nd May, 2024

Soumen Sen, J.:

1. The appeals and the applications are heard together as they involve common questions of law and fact and disposed of by this common order.

2. The appellants were employees of Uttarbanga Kshetriya Gramin Bank (in short, 'the bank'). They retired from service prior to issuance of the notification dated 30th November, 2018.

3. On 30th November, 2018 the Board of Directors of the said bank in exercise of the power conferred by Section 30 read with sub-Section (1) of Section 17 of the Regional Rural Banks Act, 1976 after consultation with the Central Bank of India being the sponsor bank and the National Bank and with the previous sanction of the Central Government introduced Uttarbanga Kshetriya Gramin Bank Employees Pension Regulation, 2018. It was notified in the gazette of India on 10th December, 2018. The said regulation applied to three different categories of employees and in so far as the present writ petitioners are concerned they come under the category of employees who retired from service on or before 30th March, 2018 and opted to become a member of Uttarbanga Kshetriya Gramin Bank Employees Provident Fund constituted under Regulation 4.

4. The principal issue raised in this appeal is with regard to the payment of pension with effective date upon commutation of pension.

5. Before the learned Single Judge the appellants urged that in terms of the relevant provisions of the said Regulation 2018 they would be

entitled to pension with effect from 1st April, 2018 and such calculation would be based on the methodology mentioned in the said regulation for commutation of pension. The benefit of such pension was extended to the appellants in the month of February, 2020, however, the amount which has been monthly commuted for lump sum payment towards commutation of pension should have been paid to the writ petitioners from 1st April, 2018 till the date of actual payment and due to delay in releasing the commutation of pension in terms of the regulations of 2018 the appellants are entitled to get interest on commutation of pension.

6. Although the claim was resisted before the learned Single Judge by the respondent bank the learned Single Judge observed that since commutation of pension was paid from February, 2020 and it ought to have been paid just after the issuance of the notification dated 30th November, 2018, the writ petitioners would be entitled to get interest on delayed payment of commutation to which writ petitioners are entitled from 1st April, 2018. The relevant notification was issued on 30th November, 2018 and not on 1st April, 2018 and therefore, the period from 1st April, 2018 till 30th November, 2018 needs to be condoned while considering the claim for interest for delay in releasing commutation of pension. Accordingly, the learned Single Judge directed the authorities concerned to pay interest at the rate of 8 per cent per annum on commutation of pension that was released in favour of the writ petitioners for the period from 1st December, 2018 till

31st January, 2020. The respondent bank has accepted the said order and paid the said interest.

7. However, the writ petitioners are aggrieved by the other directions in the impugned order by which the contention of the petitioners for payment of 1/3rd Pension which has been commuted for payment of pension in terms of the Regulation of 2018 was disallowed on the ground that the direction for payment of any further amount to the extent of 1/3rd of the monthly pension for the period from April, 2018 till January, 2020 would lead to double payment.

8. The learned Single Judge in arriving at the said conclusion was of the view that the respondent authorities on calculation from 1st April, 2018 in terms of the regulation of 2018 calculated the commuted value of pension and released the same in the month of February, 2020 and the claim of the appellant can at best be for delayed payment of pension and not for payment of 1/3rd pension from 1st April, 2018 as it would in effect would lead to double payment of 1/3rd of pension from 1st April, 2018 till January, 2020.

9. The leaned Counsel on behalf of the appellants has submitted that the learned Single Judge has misconstrued the scope of the Regulation and the benefits to which the superannuated employees would be entitled to under the said Regulation. The release for the 1/3rd commuted value from 1st April, 2018 cannot be escaped and denied by the respondents as the notification has fixed 1st April, 2018 as the effective date. The bank was

unable to create the fund within the period prescribed under the Regulations and did not forward the option forms to the interested and willing employees to avail the benefit of pension under the said scheme. Even after the commuted amount was paid there has been an unreasonable delay on the part of the respondent bank to release the pension in terms of the regulation.

10. It is submitted that in terms of Regulation 39(9) the superannuated employees who opted to become member of the fund under the said Regulations on 1st April, 2018 and where the application of commutation was made in form VI within one year from the date of retirement would be entitled to commutation of pension from 1st April, 2018 as the commutation of pension become absolute under the aforesaid sub-regulation on fulfillment of the aforesaid criteria.

11. Per contra the learned Counsel for the respondents banks has submitted that there has been a delay in the constitution of the pension fund for the reasons beyond the control of the bank inasmuch as the writ petitioners transferred their contribution in May, 2019 and on and from that date only they became eligible to pension.

12. Although there was no obligation on the part of the bank to release pension for the earlier period, however, taking into consideration the effective date as 1st April, 2018 for the benefit of its employees pension was paid with effect from 1st April, 2018. The appellants received the commuted value along with arrears since 1st April, 2018 even if the notification was issued on 30th November, 2018.

13. It is submitted that this pension scheme was introduced for the benefit of the superannuated employees and although they were not eligible for the commuted value of the pension prior to their depositing the entire corpus which was admittedly made in May, 2019.

14. Moreover, if commutation of pension were to be paid to the writ petitioners considering the absolute date that is 1st April, 2018 then as per regulation the reduction of amount in pension on account of commutation shall become operative from its inception, that is, 1st April, 2018.

15. In the aforesaid backdrop the claim of the appellants needs to be considered.

16. The requirement of the respondent bank to pay pension upon commutation in terms of Regulation 39 read with the other regulations in our view would be dependent upon the entire corpus being deposited by the superannuated employees as in absence of any such deposit the corpus of fund could not be created. It is no doubt that they would be entitled for pension if they fulfil all the conditions which had *inter alia*, include exercise of option but unless the corpus is created and deposits are made by the individual willing retired employees they cannot get the benefit of retrospective effect of the notification.

17. Moreover, the difficulties explained by the bank in implementing the said scheme needs to be considered. The bank faced various difficulties at the time of creation of the fund as it involves huge financial implication inasmuch as the application for exemption from the Regional Provident Fund

Commissioner, Jalpaiguri under Section 17(1), 17(1)(C) of EPF Act, 1952 was pending. The exemption was ultimately granted on 25th February, 2020.

18. It appears that the National Pension System for staff members was introduced on 24th May, 2019 and prior thereto all the branches were informed to circulate the regulations to collect option forms from the staffs.

19. The bank relying on the provisions of the relevant regulations calculated the commuted amount of pension considering $\frac{1}{3}$ rd of basic pension of the writ petitioner multiplied by the age of the writ petitioners as on 1st April, 2018 being the absolute date and reduction was made accordingly as per clause 6 of Section 39 and was ultimately paid.

20. The writ petitioners have enjoyed the entire amount till it was actually deposited although they got the benefit with retrospective effect and over and above the same they have also received interest on the lump sum amount paid to them towards commuted value in terms of the order of the learned Single Judge.

21. In the aforesaid circumstances, we are of the view that the finding of the learned Single Judge that the writ petitioners would not be entitled to payment of $\frac{1}{3}$ rd of pension on April, 2018 till January, 2022 is justified. In fact, simply put it could be seen as a delayed payment of pension for which the writ petitioners have been duly compensated by payment of interest.

22. The bank has already complied with the order of the learned Single Judge.

23. On such consideration we do not find any reason to interfere with the order passed by the learned Single Judge.

24. All the appeals and the connected applications are accordingly dismissed.

25. However, there shall be no order as to costs.

I agree

(Soumen Sen, J.)

(Partha Sarathi Sen, J.)