IN THE HIGH COURT AT CALCUTTA

(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 899 of 2025

Mr. Sanjoy Kumar Das

Vs.

Additional Central Provident Fund Commissioner (Kolkata Zone) & Ors.

For the Petitioner	:	Mr. Suvadip Bhattacharjee, Mr. Balaram Patra.
For the Respondent Nos. 1 & 2	:	Mr. Shiv Chandra Prasad.
For the Respondent Nos. 3 & 4	:	Mr. Ranjay De, Sr. Adv. Mr. Basabjit Banerjee, Mr. A. A. Bose.
Hearing concluded on	:	22.01.2025
Judgment on	:	28.01.2025

Shampa Dutt (Paul), J.:

1. The present writ petition has been preferred challenging the letters being No.Ref. Ex-CC /WB /PRB /367 /2198 dated 16.09.2022, No. Ref.-EPFO /RO /WB /PRB /EX /367 dated 05.01.2023, No. Ref.-EPFO/RO /WB /PRB /EX /367 /2349 dated 02.05.2023 issued by the respondent no.2 and Ref.: EPFO /RO /WB /PRB /EX /367 /Sanjoy Das/2437 dated 03.08.2023 being and praying for further direction upon the respondent nos.2 and 3 to pay admitted amount to the tune of Rs.3,74,954 which has been admitted vide email dated 7th May, 2022 after re-computing the payable amount using the penal rate of interest of minimum 12% PA (as per para 72/7 of the Employees Pension Fund Scheme, 1952) without deduction of family pension contribution of 1.16% as the same is payable by the respondent no.3 per Clause 10 of the engagement agreement.

2. It is the case of the petitioner that he was employed with the respondent no.3 which is a private body for the period from **1985 to 1987.**

3. It is submitted that the said period work done by him be verified for him to make him eligible to get the pension as per law.

4. It appears that on a representation submitted by the petitioner before the Regional Provident Fund Commissioner, the said authority vide a letter dated 03.01.2023 requested the Regional Office, Park Street to take necessary action on the issues noted and ensure that eligible PF amount is paid to the complainant and also to settle his EPS account and a reasoned order was to passed by the authority concerned.

5. Vide a letter dated 2.5.2023 the said direction was complied with on the following findings:-

> *"1. The letter of engagement is a contract between the employer and employee and any clause therein, as stated earlier, in contravention to any statutory provision will never supersede the Statute. The engagement agreement between the complainant and the Employer was made way back in Oct, 1985 in which EPFO was not a party. At present stage it is not our duty to regularise the agreement. We are only required to ensure that statutory provisions are followed. Thus no action taken to regularize the same pending refund of the said amount of Rs.51072/-, pertaining to both share of PPF, by the complainant. The calculation of overpayment has been made by area EO.........*
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> *.......... It is reiterated that as per EO report payment of Rs.3,18,142/- was made by the establishment to the complainant on 14.01.2022 as per request and calculations prepared by complainant himself. The said calculation have been scrutinised by EO and the said overpayment has been arrived at for the complainant to become a member of FPS 1971.........."*

6. Vide another letter dated 5.6.2023 the Regional Provident Fund Commissioner again directed the Regional Provident Fund Commissioner-I of Regional Office, Park Street to consider the grievance of the petitioner over the issue of non-payment of interest on the belated settlement.

7. By another report dated 3.8.2023 the Provident Fund Commissioner-I submitted the following report to the Additional Central PF Commissioner, Salt Lake, which report as follows :-

> *"In reference to the subject this is for your kind information that the instant matter of allowing credit of interest beyond 31/03/2014 has already been replied in Point No.3 of this office letter dated 02/05/2023.* ***The complainant left***

> ***service of Exide Industries Ltd. on 17/07/1987.*** *Therefore, in the light of Notification dated 15/01/2011 the account became inoperative after 36 months and interest could be allowed till 36 months in terms of Para 60(6) of the EPF Scheme, 1952 and thus the same stands paid till 31/03/2014. This is also relevant to state that the modalities of crediting interest in inoperative account again got revised vide Notification dated 11/11/2016 but which will not apply in this case as because the complainant left service on 17/07/1987 and thus will be governed by Notification dated 15/01/2011 only.*
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> *Secondly, regarding deduction and deposit of FPS contribution, necessary enquiry has been made from the establishment but they could not provide any such documentary evidence for such old period of any other employees employed at that point of time.* ***However, for the purpose of extension of Employees' Family Pension Scheme 1971 membership to the complainant the excess amount paid to him of Rs.51,072/- (Rupees Fifty one thousand and seventy two only) required to be refunded and then only further action may be initiated."***

8. It appears from the document placed before this court that though the Company being the respondent no.3 could not provide any documents, it appears that the petitioner **joined the respondent no.3 in the year 1985 and served till the year 1987. The same has been verified by the PF authority as is evident from the documents annexed and not denied by the respondent PF authority.**

9. Considering the said fact, the appropriate authority is at liberty to count the said period of service to compute the pension for which the petitioner is eligible under the law.

10. Regarding his Provident fund dues it appears that the calculation placed by the respondent no.3 with the Provident Fund Authorities have been duly verified and reasoned order has already been passed by the Provident fund authorities and this court finds no reason to interfere with the same.

11. **Dues as admissible to the petitioner** may be granted within a period of two months from the date of this order.

12. **The writ petition stand disposed of.**

13. Urgent Xerox certified copies of this judgment, if applied for, shall be supplied to the learned counsel for the parties as expeditiously as possible, in compliance of usual formalities.

(Shampa Dutt (Paul), J.)