

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
(APPELLATE SIDE)**

Present:

The Hon'ble Justice Sujoy Paul

And

The Hon'ble Justice Smita Das De

FMA/1021/2022

Lilu Mahato

Vs.

Coal India Limited & Ors.

For the Appellant : Mr. Jayanta Das
: Ms. Soumita Ghosh

For the Respondent Nos. 1 to 7/ECL : Mr. Shiv Shankar Banerjee

For the Respondent No.8 : Ms. Somosree Saha
: Mr. Debasish Sutradhar

Reserved on : **09.09.2025**
Judgment on : **26.09.2025**

Smita Das De, J.:-

- 1.** The *intra-court* appeal assails the Order dated June 16, 2022 passed by the Learned Single Judge in WPA No. 23725 of 2012 whereby the writ petition filed under Article 226 of the Constitution of India was dismissed.
- 2.** Draped in brevity, the necessary facts for adjudication of this matter are that the petitioner qua 'Mining Sardar' being the appellant was appointed in Amritnagar Colliery under Eastern Coalfields Ltd. (hereinafter referred to as the said colliery) on September 19, 1967 during the operation of Coalmines

Provident Fund Schemes Act, 1948 (hereinafter referred to as the Scheme of 1948). The appellant herein served a long uninterrupted period of 38 years and was subsequently superannuated on January 1, 2007. On March 1, 1971, the Ministry of Labour Employment and Rehabilitation introduced a Notification introducing a scheme named as "Coalmines Pension Scheme". Thereafter on September 22, 2006 a Memorandum was issued by the Personnel Officer of the said colliery intimating thereby to the appellant that the appellants pension and provident fund shall be settled as per 1971 Circular as the appellant was on the verge of retirement i.e. with effect from January 1, 2007. The notice of superannuation was accordingly issued by the respondent authorities on November 13, 2006. The appellant's grievance is that despite being superannuated in terms of the notice issued by the respondent authorities he was never paid his legitimate claim of pension inspite of submitting all the relevant papers to the authorities concerned. The payment of the pension was accordingly refused without assigning any reason by the respondent authorities which was the subject matter of challenge before the Learned Trial Judge.

3. It is apposite to mention that the appellant as per the Memo dated November 13, 2006 made an application for payment of gratuity in Form-I along with filled up form for withdrawing the 'CMPF' and 'pension' as per Rules. After retirement the appellant duly received his provident fund dues and all other retirement dues except pension.

4. The Learned Judge was pleased to dismiss the Writ Petition holding inter alia, that since the appellant did not exercise the option for the pension thus the appellant is not entitled to have the pension, rather, whatever amount has been contributed was returned to the appellant and which became the subject matter of challenge in the instant appeal.

Appellant's contention:

5. The Learned counsel appearing for the appellant submits that there was an admission on the part of the employer Coal India Ltd., being the respondent no 2 herein that the contribution of the appellant as an employee by way of pension was deducted entitling the appellant to be eligible for receiving the family pension for his service tenure i.e. from 1967 to 2007. The contribution deducted from the appellant by way of pension fund was also not refunded or returned to the appellant and the same is still lying with the employer. Therefore it amply shows that the appellant is eligible to claim the family pension. By placing reliance upon Clauses 3 and 4 of the Notification issued by the Ministry of Labour, Employment and Rehabilitation dated 1st March, 1971 in exercise of the power conferred by Section 3(E) of the Coal Mines Provident Fund family Pension and Bonus Scheme Act, 1948 (hereinafter referred to as the 1948 scheme), the appellant submitted that the class of employees eligible to join the scheme were those who became members on or after 1st day of March 1971 and also being a member immediately before the commencement of the scheme, by not exercising the option under paragraph 4 Clause IV of the said Notification, wherein it has

been specified that “every employee” who was a member of the fund immediately before the commencement of the scheme should have the option not to join the scheme and the option referred to in the said clause should be exercised by filling up a specified form within a period of 6 months from the 1st day of March 1971. If option is exercised the same shall be final and those who do not exercise the option within time shall be eligible for the same.

6. It was further submitted that the scheme for family pension of an employee comes within the meaning of beneficial legislation which is meant for the welfare of employees. In the context of the instant case if such employees did not exercise their option to opt for such scheme. They may be given a further opportunity to exercise the same. The Learned counsel for the appellant in support of the same relied upon a decision of a Coordinate Bench of this Court in the matter of **Sankar Majhi Vs. Coal India Limited and Others** reported at **(2013) 4 CLT 520 (High Court)**.

7. The appellant being an employee had already served for a considerable period of time therefore, should not be deprived of the pensionary benefit when the State has come with a liberalized pension scheme and gave an option to the retired employees to join such scheme. The Learned counsel also relies upon another decision of the Hon’ble Supreme Court in **Union of India and Others Vs. DRR Shastri** reported at **(1997) 1 SCC 514**. Apart from the judgments relied upon, the appellant also placed reliance upon **Veena Pandey vs Union Of India & Ors.** reported at **(2022) 2 SCC 379** and **The Commissioner Coal Mines Provident Fund & Anr. Vs Jasbir Singh & Ors.**

8. The Learned counsel further submits that the respondent No. 8 had admitted that the appellant was a member of 1971 Family Pension Scheme. Such finding remains unchallenged therefore, the same becomes final and binding upon the respondent No. 8.

9. The appellant heavily relies upon the document wherein by mentioning the name of his father Raghu Mahato instead of Ram Mahato to establish that the document was a manufactured document. The appellant also denies the signature appended to the form in question. In support of the same the appellant contends further that the fake signature appended below in the form makes it a manufactured document and that there cannot be any question of obtaining signature on January 28, 1999 as Clause 4 of 1998 Coal Mines Pension Scheme, wherefrom it appears that clause 4(2) clearly envisages that an employee who had not opted for Coal Mines Pension Scheme 1971 but is covered by Provident Fund Scheme may opt for pension under 1998 Scheme within a period of 60 days from the appointed day i.e. from March 31, 1998. But the PS-1 form shows that the signature was obtained much later than the said period of 60 days, w.e.f. March 31, 1998, i.e. on January 28, 1999, which is not legally tenable and cannot be relied upon by the respondent no. 8 or the respondent no. 2 and 3.

10. The appellant relied upon the Clause 4 of the notification of Coal Mines Pension Scheme 1998 which specifically contemplates that PS-1 form should be signed within 366 days from the appointed day i.e. from March 31, 1998

which was subsequently amended by introducing clause (2AA) dated 5th March vide GSR No. 154 (E) w.e.f March 5,2009.

11. The appellant further submits that the said notification came into effect much after the appellant was superannuated, therefore, the question of having any binding effect on the claim of the appellant does not arise. The respondents cannot take the fullest advantage of the benefit of the clause 4(2) of the 1998 scheme.

12. The appellant submits that the Coal Mines Pension Scheme, 1998 was introduced and/or came into effect by virtue of the provision of the 1998 Scheme, which got merged with the Scheme of 1971 as a result of which the appellant automatically became a member of the 1971 scheme and is entitled to be covered under the 1998 scheme since 2% salary of the appellant was admittedly deducted by the respondent authorities towards pension funds. Since the respondent authorities admitted, the appellant to be a member of the Pension scheme, they cannot subsequently retract from such admission though it was averred that the said deducted amount was repaid to the appellant without any proof thereof, which clearly hits the doctrine of a probate and reprobate.

Contention of the respondent No. 2 , M/s. Eastern Coalfields Limited-

13. The Learned Counsel for the respondent No. 2 strenuously argues that the respondent No. 2 is the subsidiary of the respondent No. 1 for better management and organization. The respondent No. 1 had created an

autonomous organization i.e. respondent No. 8 which is governed by a Board of Trustees and its main purpose is to supervise the Ministry of Coal, Government of India, and to aid Financial and Social security to the employees, who are working under the respondent No. 1 and its subsidiaries.

14. Prior to 1971 an employee of the coal mines was entitled to the benefits of general pension under the Family Pension Fund. On March 1, 1971 the respondent No. 1 introduced the Coal Mines Family Pension Scheme (hereinafter referred to as the 1971 scheme).

15. The employees of the said organization whose appointments were prior to the 1971 scheme, an option was given to all such employees to join the 1971 scheme by indicating them to switch over in Form 1 within a period of six months from 1st March, 1971 as provided under Section 4(2) of 1971 scheme. From the plain reading of the Clauses 4(1) and (3) of the Scheme, shows, that an employee would have the choice “**not to join**” the said scheme and avail the benefit arising there from. It is also apparent that an employee in order to join the 1971 scheme, would have to contribute a certain sum of money towards the said scheme, as provided under Clause 7 of the 1971 scheme.

16. The respondent no 2 submits that the appellant was aware of the said condition of the said scheme but did not opt to join the 1971 scheme as the same is evident from the internal communication of the respondent No. 2 dated 9th September 1971 wherefrom the appellant's name appears as Sl. No. 17 amongst the list of employees marked as 'N', who chose not to join the 1971 scheme. It is also not evident from the records itself that whether the

appellant had at all made any contribution towards 1971 scheme which would entitle him for any benefit arising therefrom.

17. It was further submitted, that till date the appellant did not challenge the said public document. By operation of Section 82 of Bharatiya Sakshya Adhiniyam, 2023 (Old provision being Section 90 of the Indian Evidence Act, 1872) the said documents is presumed to be true.

18. Thereafter, it is also brought to the notice of this Court that the 1971 scheme, was superceded by introducing a further notification to give effect to the Coal Mines Pension Scheme, 1998 which became effective on and from 31st March 1998 (hereinafter referred to as the 1998 Scheme). From a bare reading of Clause 4 read with 4(A) and 4(AA) of the new scheme of 1998 would show that the employee who was “not a member” of 1971 scheme on the date of his superannuation from 1st April 1994, “**could opt**” for the benefits under the 1998 scheme within a period of 360 days. The Mandatory period of 360 days was notified by the authority, vide a Notification bearing No. GSR 218(E) on March 22, 1999. Wherein Clause VIII of 1998 Scheme is akin to the scheme of 1971 i.e an employee have to make contribution under the scheme for availing any benefit therefrom.

19. It is further submitted, that since the appellant had retired on December 31, 2006 during the continuation of service, by giving his declaration under ‘Form PS1’ on January 28, 1999, the appellant had categorically declared that he would ‘not opt’ for the 1998 scheme. Since the appellant neither opted for 1971 scheme, nor opted for 1998 scheme, thus on his retirement on 31st

December 2003, he was provided pension and other benefits i.e. gratuity, provident fund accumulation and difference of wages in terms of NCWA VII and VIII, in as much as, from the salary of the Petitioner, as arose from General Family Pension Funds, and the same was accepted and availed by the appellant without any protest or demur.

20. It is further submitted that the appellant after six long years filed a Writ Petition being W.P. No. 23725 of 2012 claiming inter alia, the pension benefits under the 1971 scheme and 1998 scheme. The appellant also did not challenge his signature to be 'forged' and/or manipulated before any court of law. The onus lies on the appellant to prove and establish his real signature by any contemporaneous document which the appellant in the instant case has failed to do, thereby leading to a categorical admission of the document on his part.

21. The appellant also failed to disclose any document in the whole proceedings to demonstrate that he had actually opted for either of the schemes under reference. It was also not demonstrated and/or pleaded by the appellant to show that he is under financial hardship and/or any fraud being committed on him by showing any particulars of such fraud to substantiate the same.

22. The respondent No. 2 in support of his contention relied upon certain judgments as follows:-

- a. (2020) 15 SCC 209 [Union of India & Anr. V. K.C. Sharma & Company & Ors.] - para 20 - where the Hon'ble Apex Court had laid**

down that in cases where forgery or fraud is alleged, particulars of fraud must be pleaded and proved.

- b. (2021) 15 SCC 300 [Rattan Singh & Ors. V. Nirmal Gill & Ors.]** - para 72 to 74 - where the Hon'ble Supreme Court had provided that in terms of Section 90 of the Indian Evidence Act, 1872 which lays down that genuineness of a 30 years old document may be presumed to be true, is to be held as genuine, if a party, challenging its authenticity has failed to rebut the same and in fact, has acted on the same for prolonged period.
- c. (2022) 2 SCC 301 [Chairman, SBI & Anr. V. M. J. James]** - para 36, 39 and 40 - On doctrine of acquiescence, delay and laches - a party cannot stand and see another person dealing with his right and complain later on, when such violation is complete. This shows that such party has given his assent and tacit consent for the same.
- d. 2016 SCC OnLine Jhar 1721 [Swami Nath Singh V. Central Coalfields Ltd. & Ors.]** - para 12 - in this matter, the Hon'ble Court has acknowledged the provision of the 1998 scheme which mandates a person to switch over to such scheme when he is already a member of the 1971 scheme and has also applied for joining the 1998 scheme separately.

Contention of the respondent No. 8, The Coal Mines Provident Fund

Organization

23. Per contra, the learned counsel appearing for the respondent No. 8 submits that Para 4 of CMFPS 1971 states that -

1. Every employee who is a member of the Fund immediately before the commencement of this scheme shall have the option not to join this scheme.
2. The option referred to in sub paragraph (1) shall be exercised in Form-I within a period of 6 months from the 1st day of March 1971.
3. The option once exercised shall be final and those members who do not exercise their option within the time specified in sub paragraph (2) shall be deemed to have become member of the Family Pension Scheme.

In the light of para (2) of the CMPFS the respondents have submitted that it appears from the Pension A list dated September 9, 1971 being SL No 117 with a mark 'N' shows that he chose not to opt which inter alia disentitles him to avail the benefit of the 1971 scheme.

24. Subsequently, a further opportunity was also given after the amalgamation of the said 1971 scheme with 1998 scheme to all the members including the appellant. The appellant again exercised his option in Form P.S. 1 on January 28, 1999 but chose not to opt for the scheme, which thereby defeats his eligibility to be a member under Coal Mines Pension Scheme, 1998. Furthermore, no contribution under clause (b), (c), (d) and (e) of para 3

of CMPS '98 was ever made by the appellant nor any amount was ever deducted or deposited by the member, thus the entitlement to claim pension as per provision of the scheme did not arise.

25. The appellant further submits, that as per the option exercised by him and as per list dated September 9, 1971 he did not become the member of CMPFS, 1971. Subsequently he again exercised his option in Form P.S.1 on January 28, 1999 as per extension granted by subsequent notification wherein he did not opt for the scheme and wished not to include himself within the scope or as a member of the scheme. Consequently, he did not become eligible for pension under Coal Mines Pension Scheme 1998. It was further submitted that as per Clause (b), (c), (d) and (e) of Para 3 of CMPFS 1998 scheme no contribution was deducted or deposited by the appellant and once the option has been exercised it cannot be changed. The CMPF accumulation to the tune of Rs. 13,96,358/- vide P.O. No. 592 (2006-07) dated December 29, 2006 has already been paid to the appellant, therefore, the question of the entitlement of the benefit of the pension scheme does not arise at all. It has also been stated that as per Para 7 of the 1971 scheme certain contributions can be made only after opting for the said pension which was not given in the case of the appellant. The Para 7 of the scheme of 1971 enumerates below :

“7. Contribution to the Family Pension Fund – (1) A portion of the member’s contribution’ equivalent to one and one-sixth percentum of his total emoluments and an equal amount from the employer’s contribution

to the Fund shall be diverted to the Family Pension Fund. The amount required to be so diverted shall be transferred from Fund Account No. I to a new Account No. 1 (Pension) to be opened in the State Bank of India, Dhanbad. As such transfers from Fund Account No. I to Account 1 (Pension) shall be effected by the State Bank of India on receipt of a transfer advice note duly signed by the Commissioner or such other Officer as may be authorised by him in this behalf from time to time. All amounts transferred to account No. 1 (Pension) shall be credited to an Account to be known as the Family Pension Fund Account by contra debit to the Suspense General Account maintained under the Provident Fund Schemes. The rate of transfer of funds to Account No. 1 (Pension) prescribed in this sub-paragraph may be verified by the Central Government from time to time subject to the provisions contained in section 3E of the Act.

“Provided that in the case of a member whose total emoluments exceed rupees one thousand six hundred per month, the contribution payable by such member as well as his employer, shall be limited to the amount payable on his total emoluments of rupees one thousand six hundred per month.”

(2) Every employer shall submit every month a return of contributions to the Fund and the Family Pension Fund in Form 3.

“[Provided that every employer shall submit every month return of contributions to the fund and Family Pension Fund in form PP prescribed under paragraph 33A of the Coal Mines Provident Fund Scheme for month of April, 1988, onwards.]”

“(3) Each contribution to be diverted to the Family Pension Fund under sub-paragraph (1) shall be calculated to the nearest rupee, fifty paise or more to be counted as the next higher rupee and fraction of a rupee less than fifty paise to be ignored.”

26. In the light of the above rules of the scheme, no such amount was ever deposited by the appellant. He did not act in terms of the condition as per the relevant clauses of the Pension Rules. Therefore, the claim of the appellant is not tenable and is barred by limitation. The appellant filed a Writ Application after six long years and during the years prior to filing of the application, no communication was made by the appellant to any authority for payment of pension, which clearly shows that he took a chance by suppressing his intention and to obtain an order of entitlement of pension for which he has not opted during his tenure of service.

27. It was further submitted, that, if the appellant had opted for pension under 1971 scheme, there was no requirement to give a further option in 1999. The Learned Counsel further relies upon a judgment of **Sri Lakhi Baruan And Others vs Sri Padma Kanta Kalita & Ors** reported in **AIR 1996 Supreme Court 1253** Para 14, 15 and 107 with regard to the authenticity of the documents. It was further submitted that documents of 1971 and of January 28, 1999 are 30 years old documents and as such the authenticity cannot be questioned as per Section 90 of the Evidence Act and the Learned counsel also submits that the issue of a manufactured and forged documents cannot be urged in the writ proceedings since it is a disputed question of fact.

The Learned counsel relies upon another judgment of **Vineet Kumar Sharma Vs. Northern Railway and Others** reported in **2025 SCC OnLine Del 269**, (paragraph 8 and 9) which reads as follows-

28. The Supreme Court in the case of Shubhas Jain v. Rajeshwari Shivam, has held that the Constitutional Courts, while exercising the writ jurisdiction, should restrain themselves from adjudicating the hotly disputed question of facts. The Court held as under-

“26. It is well settled that the High Court exercising its extraordinary writ jurisdiction under Article 226 of the Constitution of India, does not adjudicate hotly disputed questions of facts. It is not for the High Court to make a comparative assessment of conflicting technical reports and decide which one is acceptable.”(Emphasis Supplied)

28. That once the option form has been exercised, the same cannot be altered, because the option once exercised becomes final and those members who do not exercise their option, within the time specified in sub-paragraph 2 of clause 2, shall be deemed to have become member of the Family Pension Scheme. In the light of the Para 2 of the said Colliery Management the respondents “A” list was submitted in which the appellant has opted Pension “B” which is mentioned as Sl. No. 117 in the Pension A list dated 09.09.1971. Since further opportunity was given after the amalgamation of the 1971 scheme with the 1998 scheme to all the members including the appellant, the appellant again exercised his option in Form P.S.1 at a belated stage i.e. on January 28, 1999. Which apparently shows that he was not eligible to be governed under Coal Mines Pension Scheme, 1998. It was also submitted that

since the date of appointment was in the year 1967, and as per the option exercised by him as per the list dated 09.09.1971, he did not become the member of the CMPFS 1971. Subsequently, he exercised his option in Form P.S.1 on January 28, 1999 as per extension granted by the subsequent notification neither he exercised to opt for the scheme nor did he included himself as a member of the scheme as a result of which his entitlement for claiming pension under Coal Mines Pension Scheme 1998 does not arise at all.

29. Against the aforesaid backdrop of the case the following issues arises which are as follows:-

- a) Whether the appellant is entitled to claim the benefit of the Family Pension Scheme 1998 even the appellant did not opt for pension under the 1971 scheme.
- b) Whether inclusion of the appellant under 1998 Family Pension Scheme is an automatic process inspite of the fact that he did not exercise the option “not to opt” under the 1971 scheme.

Analysis

30. Since the question arises in the issues No. 1 and 2 are common they are dealt together.

31. In view of the above submissions made by the parties, it is an admitted fact that the appellant did not exercise any option “not to opt” to become the member of the 1971 scheme.

32. It is apposite to mention that an employee can avail the benefits of the 1971 scheme, subject to the condition that the employee should make some contribution for availing the benefit of pension therefrom.

33. It is apparent from the submission of the appellant that the appellant neither exercised the option “not to opt” nor made any contribution resultantly, waived his right of claiming the benefit under the 1998 scheme.

34. The appellant in fact had the opportunity to become a member of 1998 scheme, provided he submitted his option in Form PS1. From the record as well as from the admission of the appellant it is amply clear that he did not opt for 1998 scheme by filling up the said Form PS1. Since the appellant did not fill up the Form PS1 the right to have the opportunity to be governed by 1998 scheme gets forfeited.

35. Merely because of the contribution were deducted from his salary, albeit by mistake, cannot clothe the appellant with any right when specifically he did not opt either 1971 or 1998 scheme.

36. From the internal communication of the respondent No. 2 dated 9th September 1971, it is germane to show that the name of the appellant appeared as Sl. No. 17 with a marking “N” amongst the list of employees who chose not to join the 1971 scheme. It is an admitted fact that after his superannuation, the appellant declared that he would not opt for the 1998 scheme under Form PS1 on January 28, 1999.

37. In the conspectus of the fact it is established that the appellant did not opt 1971 scheme. Thus the question of his entitlement to pension, this Court

does not propose to give any credence to any such contention. Since on his retirement he was already provided his retiral benefits i.e. his gratuity, provident fund and the details of wages in terms of NCA (VII) AND (VIII) from the salary of the appellant as arose from the General Pension Fund which was accepted and availed by the appellant without any protest.

38. The judgement relied upon by the appellant are distinguishable both in fact as well as in law. In the case of **Veena Pandey (Supra)** clearly postulates the territorial jurisdiction and the payment towards the contribution which is contrary to the fact in the instant case.

39. In the case of **Shankar Majhi (Supra)** the appellant contended that while he was an employee he duly filled up the requisite form for the pension scheme and ultimately after a thorough scrutiny on records by the Writ Court it was found that the appellant had exercised its option to join the relevant pension scheme but in the instant case the factual matrix is different from the instant case since the appellant herein deliberately did not exercise any option “not to opt” for the 1971 scheme by filling up the requisite Form PS1. Hence the ratio of the judgements are not applicable in the instant case. The judgement and the order passed by the Learned Single Judge in the context of the instant case had rightly observed that in absence of exercising the family pension scheme and on the contrary by not accepting the same, the appellant is not eligible to avail the benefit of 1998 scheme. Hence both the issues have been answered as indicated above.

40. As a cumulative effect of the aforesaid fact and the judicial pronouncement, we find that there is no legal infirmity in the judgment and order passed by the Learned Single Judge.

41. In view of the above the appeal stands dismissed. However, there is no order as to costs.

42. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all requisite formalities.

I agree

(Smita Das De J.)

(Sujoy Paul, J.)