IN THE HIGH COURT AT CALCUTTA

CIVIL APPEALLATE JURISDICTION

(APPELLATE SIDE)

FMA 1405 of 2009
I.A. No. CAN 1 of 2009
(Old No. CAN 5193 of 2009)

The Regional P.F. Commissioner, West Bengal

Vs.
Edwin Reeves & Ors.

With
FMA 1403 of 2009
I.A. No. CAN 1 of 2009
(Old No. CAN 5187 of 2009)

The Regional P.F. Commissioner, WB

Vs.
Sri Rabindra Nath Bhattacharjee & Ors.

Before: **The Hon'ble Justice Arijit Banerjee**
&
The Hon'ble Justice Om Narayan Rai

For the Appellants — Mr. Shiv Chandra Prasad, Adv.

For Orders on — 09.10.2026

Arijit Banerjee, J. :-

1. These two appeals are directed against two orders, both dated June 07, 1996, passed in CO No. 7417 (W) [Edwin Reeves v. Union of India and Ors] of 1996 and CO No. 7422 (W) of 1996 [Sri Rabindra Nath Bhattacharjee v. Union of India and Ors]. The two orders are identical. Hence, these two appeals, which involve similar questions of fact and law, have been taken up for hearing together.

2. It is not in dispute that the private respondents in these two appeals, i.e, Edwin Reeves and Rabindra Nath Bhattacharjee, were employees of M/s Dunlop India Ltd, Sahaganj Factory. Rabindra Nath retired from service with effect from January 1, 1995. Edwin retired with effect from April 1, 1995. Their common grievance ventilated in two writ petitions was that the benefit of the Employees' Pension Scheme, 1995 was not being extended to them in spite of they having filed option for joining the said Scheme within the time period prescribed in Section 7 (3) of the said Scheme. The said two writ petitions were disposed of by a learned Judge of this Court by passing identical orders which read as follows: -

> **"**Heard the learned counsel for the parties Mr. Gupta, ld. counsel appearing for the respondent authorities submitted that since an appeal is pending challenging the validity and legality of the said Employees' Pension Scheme in this Court the respondent authorities have not taken any step for including the petitioner as a member of the said Scheme.
>
> It was submitted on behalf of the petitioner that in so far as M/s. Dunlop India Ltd. Sahaganj Factory, in which the petitioner was an employee, no action was taken by that Company challenging the said Scheme.
>
> In the said circumstances, since the respondent/P.F. authorities are bound to accept the petitioner as a member of the said Scheme as it is still in operation as if has not yet been set aside by any Court of competent jurisdiction, the pendency of the appeal by

itself shall be no bar of the petitioner for his inclusion as a member.

In the said circumstances, the writ application is disposed of with this direction that the respondent authorities shall include the petitioner as a member of the Employees' Pension Scheme, 1995.**"**

3. Being aggrieved, the Regional Provident Fund Commissioner, West Bengal (in short, 'RPFC') has come up by way of these two appeals.

4. When these two old appeals came up for hearing, we had directed fresh service to be effected on the private respondents in the two appeals. From the affidavits of service filed in Court by the appellant, we saw that Rabindra Nath received notice of the appeal. However, nobody appeared for him. Edwin did not receive the notice which was returned to the sender because of insufficiency of address. Mr. Prasad, learned Advocate for the appellant in both the appeals apprised us that Edwin did not appear in spite of receipt of the notice of appeal including Administrative Notice issued by this Court's department. Hence we took up the two appeals for hearing.

5. Appearing for the appellant, learned Advocate argued that neither Rabindra Nath nor Edwin had opted earlier in favour of the ceased Family Pension Scheme, 1971. They were not members of the 1971 Scheme. The 1995 Scheme came into effect on November 16, 1995. The date of authorization of Rabindra Nath's Provident Fund was January 18, 1995 and the date of authorization of Edwin's Provident Fund accumulation was April 24, 1995. Both Rabindra Nath and Edwin had withdrawn the Provident Fund money fully upon retirement and prior to the 1995 Scheme coming into effect. Hence, neither Rabindra Nath nor Edwin is entitled to the benefit

of the provisions of the 1995 Employees Pension Scheme. Documents in support of the aforesaid submission have been annexed to the stay petitions filed in the two appeals.

6. We find merit in the submission made on behalf of the appellant. Neither Rabindra Nath nor Edwin was a member of the 1971 Family Pension Scheme as on the dates of their respective retirements. Both of them withdrew the provident fund accumulations upon superannuation, much prior to the 1995 Pension Scheme coming into effect. As on the date of the 1995 Pension Scheme coming into force, they were not employees of the company.

7. In view of the aforesaid, the orders of the learned Single Judge impugned in these two appeals are unsustainable.

8. Accordingly, these two appeals are **allowed**. The orders under appeals are set aside. There will be no order as to costs.

9. Urgent Photostat certified copies of this judgment and order, if applied for, be supplied to the parties on compliance of all necessary formalities.

I agree.

(Om Narayan Rai, J.) **(Arijit Banerjee, J.)**