

(2016) 12 CAL CK 0043
In the Calcutta High Court
Case No : W.P. No. 14630 (W) of 2000

Bimala Hati

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 12-12-2016

Acts Referred:

Citation : (2017) 1 CalLJ 444

Hon'ble Judges : Samapti Chatterjee, J.

Bench : Single Bench

Advocate : Mr. Saikat Banerjee, Mr. Shamim ul Bari and Mr. Subham Kanti Bhakat, Advocates, for the Petitioner; Mr. Supriyo Chattopadhyay and Mr. Sabyasachi Mondal, Advocates, for the State

Final Decision : Disposed Off

Judgement

Mrs. Samapti Chatterjee, J.—Liberty is given to the petitioner to amend the Cause Title by impleading the Director of Pension, Provident Fund and Group Insurance, respondent no.6 and the Treasury Officer, Bankura, respondent no.7.

2. The petitioner has filed the present writ petition for direction upon the respondent authority to act in terms of the revised option exercised by late Manohar Hati on 28.02.1992 to opt for family pension and gratuity in terms of the Government order being Memo No. 476-Edn(B)/IM-39/31 dated 16.12.1991 thereby allowing the petitioner to refund the excess amount drawn with interest and additional interest from his provident fund account and thereafter disburse the family pension in favour of the petitioner.

3. Mr. Banerjee, learned advocate appearing for the petitioner submits that the petitioner's husband being a clerk of Shashpur D. N. S. Institution, Bankura retired on 31st March, 1995 after attaining the age of superannuation. Prior to retirement petitioner's husband late Manohar Hati exercised his option for pension including family pension on 28.02.1992. Mr. Banerjee further submits that the petitioner's husband was granted pay scale under Ropa 1990.

Unfortunately, after retirement the petitioner was granted contributory pension thereby ignoring the petitioner's option for pension including family pension. Hence the present writ petition was filed by the petitioner some time in 2000.

4. Since the original petitioner Manohar Hati expired on 21st December, 2013, thereafter the petitioner has taken out an application for substitution which was duly allowed on 27th January, 2016 by this Hon'ble Court. Mr. Banerjee further contends that it is an admitted settled law that by Ropa 1990 and subsequently by Ropa 1998 it was stipulated that teachers who opt to accept revised scale of pay shall automatically be entitled to the pension and gratuity benefit. This benefit of pension and gratuity was in consideration of the concerned teacher agreeing to have the age of superannuation reduced from 65 to 60 years. Mr. Banerjee further submits that the petitioner's husband accepted the retirement age as 60 years instead of 65 years. It is evident that the husband of the petitioner i.e. late Manohar Hati had agreed to retire at the age of 60 years. Therefore, the consideration for the benefit of gratuity and pension was duly paid. Since in the present case it is evident that late Hati has already exercised his option under Ropa 1990 for pension as well as the family pension, therefore, no further option is required to be obtained from the widow, the present petitioner herein. Mr. Banerjee in support of his contention relied on an unreported decision by the Hon'ble Division Bench of this Court in MAT 1598 of 2015 (State of West Bengal v. Jharna Bhattacharya and others) and he also relied on an unreported decision of the Hon'ble Division Bench of this Court the Review Application being RVW No.68 of 2016 arising out of the said MAT as referred above.

5. Mr. Chattopadhyay, learned advocate appearing for the State, submits that considering the decision passed in MAT 1598 of 2015 which was subsequently affirmed in the review application by the Hon'ble Division Bench thereby rejecting the review application No. RVW 68 of 2016, that the petitioner's prayer should be considered by the appropriate authority if not already considered.

6. Considering the submissions advanced by the learned advocates and after perusing the record and the decisions referred above in my considered view justice would be sub-served if the respondent no.3 the District Inspector of Schools (S.E.) Bankura is directed to quantify the employer's share with contributory provident fund with interest and additional interest to be paid by the widow of late Manohar Hati within three weeks from the date of communication of this order and thereafter communicate the same to the widow of late Manohar Hati within one week. After receiving such communication the widow of late Manohar Hati will take steps to refund the entire amount along with interest and additional interest through challan through the Director of Pension, Provident Fund and Group Insurance, respondent no.6 herein. After receiving the same amount with interest and additional interest the respondent no.6 will prepare a fresh P.P.O. and send the same to the Treasury Officer, respondent no.7 and the concerned Treasury Officer after receiving such amount will take steps for

disbursement of the same in favour of the petitioner within one week.

7. With this direction this writ petition is disposed of.

8. There will be no order as to costs.

9. Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties on usual undertakings.