
(2018) 07 CAL CK 0037
In the Calcutta High Court
Case No : Writ Petition27120(W) of 2017

Binodini Roy

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 06-07-2018

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2018) 07 CAL CK 0037

Hon'ble Judges : SHEKHAR B. SARAF, J

Bench : Single Bench

Advocate : Saktipada Jana, Ujani Pal, Sougata Bhattacharya, Pinaki Bhattacharya

Final Decision : Disposed Of

Judgement

This is an application under Article 226 of the Constitution of India wherein the writ petitioner is the wife of an Assistant Teacher of the Bhawani

High School (H.S.), Jalpaiguri. The petitioner's husband had worked from 1981 till the year 2014. As per Notification bearing No.749-

SE(L)/SL/5S-56/13(Pt.V) dated 13th June, 2014 the Government of West Bengal, School Education Department, had permitted the teaching and non-

teaching staff to switch over from Contributory Provident Fund to General Provident Fund scheme.

The petitioner's husband made application on June 26, 2014 for such switching over by exercising his option i.e. within thirty days from the date of

passing of such notification. The procedure for switching over as per the notification is that once the employee exercises the option, the head of the

institution is to forward the same to the concerned District Inspector of Schools. Thereafter, the concerned District Inspector of Schools after

verification of the same would approve the statement showing the amount of

employer's share of contributory provident fund that is to be reimbursed by the employee. Once the approval from the concerned District Inspector of Schools is received, the employee concerned is required to deposit the said sum within seven days thereafter.

The facts in this case are peculiar and unfortunate as the petitioner's husband having exercised his option on June 26, 2014 expired on August 18,

2014. Owing to the above circumstances, the petitioner's husband had not deposited employer's contribution within time. Subsequently, after

seven months of her husband's death, on March 20, 2015 the amount of employer's contribution fund of Rs.3,02,725/- was deposited by way

of a Treasury challan in accordance with law. The question that arises herein is as to whether the authorities are required to accept the deposited

amount and allow the petitioner to exercise the option?

Counsel on behalf of the respondent authorities has produced three interdepartment letters that have been sent by the Director of Pension, Provident

Fund and Group Insurance that are grappling with the issue as to whether the benefit can be extended to the petitioner. In fact, by the letter dated

January 18, 2018 the Special Director, Directorate of Pension, Provident Fund and Group Insurance, Government of West Bengal has written to the

Secretary to the Government of West Bengal, School Education Department, as follows :-

As per the documents furnished, it appears that the deceased employee had been appointed as a Group-D staff on 02/02/1981 and as per GO

no.136 Edn(B) Dated 15/05/1985, he initially opted for CPF scheme on 02/12/1985. Subsequently, in pursuance of GO no:749-SE(L)/SL/5S-56/13(Pt-

V) Dated: 13/06/2014, he gave option for Pension including family pension-cum-Gratuity under DCRB Scheme, 1981 on 26/06/2014 which was

accepted by the Head Master on 27/06/2014. However, before depositing the Employer's share of CPF amount with interest to the Govt Head of

account, he died on 18/08/2014.

Subsequently, after a period of 7 months after his death, an amount of Rs.3,02,725/(representing the employer's share of CPF with interest

amount) was deposited on 20/03/2015 by Treasury Challan by the Headmaster of Bhawani High School (H.S.), PO-Panbari, District-Jalpaiguri. As

the amount was deposited beyond the prescribed time limit mentioned in GO

no:749-SF(L)/SL/5S-56/13(Pt-v) Dated :13/06/2014, so an

approval/concurrence is being sought to regularize the delay occurred in depositing the amount and for settlement of the instant family pension case, if

approved. An early reply will facilitate us to dispose the case at the earliest.â??

Thereafter on July 4, 2018, the Senior Law Officer, Pension, Provident Fund and Group Insurance has once again written to the Secretary, School

Education Department, Government of West Bengal, to consider the case of the petitioner. As it is evident from the records, the authorities are

sympathetic to the case of the writ petitioner and only approval/concurrence is required from the Secretary, Government of West Bengal, with

reference to the delay in depositing the share of the employerâ??s contributory fund keeping in view the peculiar facts and circumstances wherein

the petitionerâ??s husband died 54 days after exercising the option.

I have heard the learned Counsel for the appearing parties and perused the materials available before this Court. In view of the peculiar facts and

circumstances of the case specially considering the fact that the petitioner herein has not received an iota of pension money since 2014, I am of the

view that the necessary approval/ condonation be granted by the Secretary to the Government of West Bengal, School Education Department in

relation to the case of the writ petitioner within a period of four weeks from the date of communication of this order. On receipt of the approval/

condonation the relevant authorities is directed to disburse the arrear pension amount to the petitioner within a period of four weeks and to start the

regular pension of the petitioner.

It is made clear that this order shall not act as a precedent as the same has been passed under compelling and peculiar circumstances. With the above

observation, this writ petition is disposed of without however, any order as to costs. Since no affidavit is called for, all allegations made in the writ

petition are deemed not to have been admitted. All parties are to act on the website copy of this order. Written instruction submitted by the Counsel on

behalf of the State is kept with the record.