

(2014) 12 CAL CK 0039

In the Calcutta High Court

Case No : APO 145 of 2002, WP 2563 of 2000, APO 149 of 2002 and WP 1045 of 2001

Calcutta Port Trust

APPELLANT

Vs

Trilok Singh

RESPONDENT

Date of Decision : 17-12-2014

Acts Referred:

Citation : (2014) 12 CAL CK 0039

Hon'ble Judges : Dr. Manjula Chellur, C.J.;Arijit Banerjee, J

Bench : Division Bench

Advocate : Arunava Ghosh, Sr. Adv., Ashoke Kumar Jena and Saptangshu Basu, Advocate for the Appellant; Hiranmoy Bhattarcharya and Sounak Bhattarcharya, Advocate for the Respondent

Judgement

Arijit Banerjee, J.—These two appeals arise out of a common judgment and order dated 6th July, 2001 by which the Ld. Judge disposed of four writ petitions including WP No. 2563 of 2000 and WP No. 1045 of 2001. By the impugned judgment and order, the Ld. Judge allowed all the four writ petitions. Appeal No. 145 of 2002 arises out of WP No. 2563 of 2000 and Appeal No. 149 of 2002 arises out of WP No. 1045 of 2001.

2. The petitioner in WP No. 2563 of 2000 is a retired employee of the appellant. The petitioner in WP No. 1045 of 2001 is the wife of the retired employee of the appellant namely Ram Perit Jeswara, since deceased, who superannuated from service with effect from 1st April, 1986. The petitioner in WP No. 2563 of 2000 namely Trilok Singh retired from service on 30th September, 1984.

3. The common grievance of the petitioners in the two writ petitions is that upon superannuation of the concerned employees, they were given the benefits of the Contributory Provident Fund Scheme. However, they were unaware of the Pension Scheme introduced by the appellant for its employees. It is their grievance that the Pension Scheme or the additional benefits accruing thereunder from time to time were not adequately publicized or circulated amongst the

employees of the appellant who were kept in the dark about the benefits and advantages of the pension scheme and as such were prevented from opting for the same. The time to exercise the option in favour of the pension scheme was extended from time to time but the same was also not communicated to the concerned employees. They came to know of the pension scheme and the greater benefits thereunder compared to the contributory provident fund scheme much after the last cut off date for exercising option in favour of the pension scheme from other employees of the appellant. Had the appellant adequately publicised the pension scheme and the benefits thereunder, the concerned employees would have opted for the same. By not keeping the employees informed of such scheme, the appellant prevented the concerned employees from opting for the pension scheme. The appellant ought to allow the concerned employees to opt for the pension scheme without taking the plea of expiry of the last cut off date.

4. With the aforesaid allegations the petitioners in the said writ petitions approached this Court. The Ld. Judge disposed of the writ petitions by the impugned judgement and order. The operative portion of the judgment and order of the Ld. Single Judge is extracted hereunder:-

"It is an admitted fact that the respondent authority did not inform the writ petitioners about the said circulars. The writ petitioners as such could not exercise their option as the said scheme was not known to them.

The similar issue has been decided by this court in the case of Indra Bhusan Dutta-vs.-Calcutta Port Trust (WP No. 591 of 1996) wherein S.B. Sinha, J. (as His Lordship then was) by judgment and order dated 28th July, 1988 held that it was incumbent upon the Port Trust Authority to inform the concerned employees so that they could exercise their option within the time stipulated. In absence of such communication if the writ petitioner submitted his option beyond time he cannot be blamed therefor. The similar view has been taken by Aloke Chakarabarty, J. in the case of Amiya Ghosh-vs.-Calcutta Port (WP No. 42 of 2000).

Mr. Chakraborty appearing for the Calcutta Port Trust in his usual fairness concedes that no appeal has been preferred from either of the said judgments. Ld. Counsel appearing for the writ petitioners submits that the said two orders have been implemented and those writ petitioners were given liberty to exercise their option belatedly. In my view, since the writ petitioners are in similar circumstances there is no reason why the Respondent would deny such opportunity. In the result the writ petitioners succeed. The options exercised by the writ petitioners must be considered by the Port Trust Authority in accordance with law and in accordance with the said scheme irrespective of the date of submission.

It is further made clear that in case the writ petitioners are allowed to opt for the pension scheme by the Calcutta Port Trust Authority the writ petitioners will be

bound by the terms of the scheme including refund or adjustment of the Provident Fund amount. It is expected that the Port Trust Authority will act expeditiously upon being served with the copy of the order."

5. Being aggrieved, the appellant Port Trust is before us. In the stay petition filed in Appeal No. 149 of 2002, the appellant stated, inter alia, as follows:-

(A) The erstwhile Commissioners for the Port of Calcutta by a circular dated 29th May, 1962 invited options from the employees who were under the contributory provident fund scheme and time was extended for exercising such option till 31st December, 1962.

(B) By another circular dated 25th December, 1972 the Commissioners for the Port of Calcutta further invited options to opt for pension scheme and the same was kept open till 30th September, 1972.

(C) A similar circular was issued on 16th January, 1974 which was kept open till 30th April, 1974.

(D) Another circular dated 30th August, 1974 was issued regarding exercising options in favour of the pension scheme and the same was kept open till 21st September, 1974. The Board of Trustees for the port of Calcutta was formed on and from 1st February, 1975.

(E) Thereafter, by a circular dated 8th August, 1977 the port authorities invited options from the existing as well as retired employees to join in the pension scheme and time was granted till 21st October, 1977 for exercising such option.

(F) Similar circular was also issued on 23rd April, 1979 giving time for exercising option till 11th June, 1979.

(G) By a circular dated 30th October/4th December, 1981 time was further extended for exercising the option till 3rd March, 1982.

(H) By further circular dated 31 July/17th August, 1984 opportunity was given to the existing as well as retired employees for exercising option and time was granted till 31st January, 1985.

(I) By another circular dated 29th March/2nd May, 1985 options were again invited and time was granted till 31st July, 1985.

(J) By another circular dated 1st January,/1st April, 1986 the time to exercise option from contributory provident fund to pension scheme was extended to 30th June, 1986.

(K) All the circulars relating to exercising option were circulated to each and every department of the Port Authorities and displayed in the notice boards of the respective departments/sections following which thousands of employees exercised their option to switch over to pension scheme from the CPF scheme.

(L) On 9th January 1997, the Central Government issued an instruction relating

to exercise of options by employees who had retired after 1st January, 1986 which was duly publicised in the leading newspapers in English, Hindi and Bengali for wide circulation.

6. Before us, Ld. Counsel for the appellant reiterated the statements and submissions made in the stay petition as noted above. Such statements are not controverted. It was submitted that there was wide circulation of the concerned circulars extending time to exercise option from time to time and it is not believable that the concerned employees were unaware of such circulars. Ld. Counsel for the appellant has also relied on an unreported decision of the Hon"ble Supreme Court in the case of Calcutta Port Trust & Ors.-vs.-Anadi Kumar Das (Capt.) & Ors. In the said case on almost identical facts the Ld. Single Judge had dismissed the employees' writ petition disbelieving his case that he was unaware of the concerned circulars issued by the Port Trust Authorities from time to time extending the time to exercise option. The Division Bench reversed the decision of the Ld. Trial Judge. The Hon"ble Supreme Court allowed the appeal of the Port Trust and restored the judgment of the Ld. Single Judge. However, in the peculiar facts of that case the Supreme Court directed the Port Authorities to allow the respondent's employee to exercise option within a period of two months.

7. Ld. Counsel for the writ petitioner/respondent reiterated the stand taken in the writ petition to the effect that the concerned employees have been precluded from exercising option by reason of inadequate circulation of the concerned circulars thereby keeping the concerned employees in the dark. It was urged that since the concerned employees in the writ petitions had retired in 1984 and 1986, and settled in their native place far away from Calcutta, they should have been personally informed of the concerned circulars. The port authorities not having done so, they cannot insist on the cut off date and must allow the writ petitioners to exercise option even beyond such cut off date.

8. We have considered the rival contentions of the parties. Since the facts involved in the two writ petitions giving rise to the two appeals are a little different, we shall deal with the two appeals separately.

RE: Appeal No. 149 of 2002 (Arising out of WP No. 1045 of 2001)

9. Admitted facts are that the husband of the writ petitioner joined service on 1st April, 1948 and he superannuated with effect from 1st April, 1986. It is the case of the writ petitioner that after her husband retired, he moved to his native village in Uttar Pradesh and settled down there with his family and as such he had little or no touch with Calcutta and was not aware of the concerned circulars inviting the employees to exercise option in favour of the pension scheme.

10. It will be seen from the facts noted above that the option to opt for the pension scheme was first given to the employees of the Port Trust in 1962 and, thereafter, the time to exercise such option was extended on numerous occasions by issuance of circulars. At all these times, the husband of the writ petitioner was

admittedly in service and it is not credible that he was not aware of such circulars. For reasons best known to him, he accepted without protest or demur the benefits under the contributory provident fund scheme at the time of his superannuation. He died in 1997. Four years after his death and 15 years after the cut off date for exercising option in favour of the pension scheme, the writ petitioner approached this Court. With all sympathy that we may have for the widow of the deceased employee, we feel that the writ petition is misconceived. The petitioners husband who was the employee of the Port Trust authority consciously chose not to opt for the pension scheme and the writ petitioner cannot be allowed to do so now.

11. The Ld. Single Judge's order under appeal is based on the premises that admittedly the respondent port trust authority did not inform the writ petitioners about the concerned circulars and as such they could not exercise their option as the said scheme was not known to them. We are unable to agree with the Ld. Single Judge on this point. There appears to be no such admission on the part of the Port Trust Authorities as observed by the Ld. Single Judge. On the contrary, it is the contention of the Port Trust that all the circulars were well publicised, inter alia, by way of posting in all departments/sections. We are inclined to accept such contention, inter alia, in view of the fact that as per records, thousands of employees of the port trust authorities have exercised option in favour of the pension scheme.

12. We also feel that there has been inordinate delay on the part of the writ petitioner in approaching this Court. In paragraph 8 of the writ petition it is alleged that in November, 2000 the petitioner came to know from one of her husband's colleagues about the introduction of the pension scheme. No particulars of such alleged colleague of her husband have been furnished. We are unable to believe the petitioner's contention that she became aware of the scheme only in November, 2000. Such a statement has been made only to cover up the huge delay in approaching this Court.

13. For the reasons aforesaid we are unable to sustain the judgment and order of the Ld. Single Judge. The impugned judgment and order is set aside. APO No. 149 of 2002 succeeds and is allowed. However, there will be no order as to costs.

RE: APO 145 OF 2002 (ARISING OUT OF WP No. 2563 of 2000)

14. It is an admitted fact that the petitioner joined the port trust authorities on probationary basis with effect from 1st May, 1946. His service was confirmed in the post of Assistant River Surveyor from 1st May, 1948. Thus, he became confirmed Class-I Officer of the Calcutta Port Trust.

15. It is also an admitted fact that the petitioner retired on 30th September, 1984. It is urged that at the time of his retirement there was no option available to the Class-I and Class-II employees for switching over to the pension scheme. This allegation does not appear to be correct. The pension scheme that was introduced in 1962 did not differentiate between the different classes of officers.

During the service tenure of the petitioner, numerous circulars were issued by the port trust authorities from time to time extending the time for exercise of option in favour of the pension scheme. As a Class-I officer, the petitioner must have been aware of such circulars and it is not credible that he was in the dark regarding the same. He consciously chose not to opt for the pension scheme. Even after his retirement on 30th September, 1984 he had the option of choosing the pension scheme as the Ministry of Surface Transport by a circular dated 30th November, 1984, provided that the employees who retired between 1st August, 1984 and 1st December, 1984 were allowed to exercise the option by 31st May, 1985. We are unable to accept that as a responsible Class-I officer of the port trust authorities, the petitioner had no knowledge of such circulars. We are of the opinion that the petitioner consciously accepted the benefits under the contributory provident fund scheme as the same appeared to be more attractive to him compared to the benefits under the pension scheme. The pension scheme was not a scheme that was introduced for the first time after the retirement of the petitioner. It was a scheme of 1962, the benefits whereunder were enhanced from time to time. It appears that the petitioner, after having received his benefits under the contributory provident fund scheme for years together, suddenly realised that the benefits under the pension scheme were greater and accordingly was prompted to approach this Court.

16. In the writ petition, the petitioner has stated that he came to know of the introduction of the pension scheme only in June, 1999 while he was visiting his friend/colleague in Calcutta. We are unable to accept this statement. In our view, the petitioner is feigning ignorance of the pension scheme till June, 1999 to cover up the inordinate delay in approaching this Court. Delay defeats equity. The petitioner has approached this Court in its equitable jurisdiction without acceptable explanation for the huge delay. On that ground also the petitioner is not entitled to any relief.

17. In the case of the Calcutta Port Trust & Ors.-vs.-Anadi Kumar Das (Capt.) & Ors. (Supra) in paragraphs 21 and 22 of the judgment, the Hon'ble Apex Court observed as follows:-

"If an aggrieved retiree seeks intervention of the Court for issue of a direction to the employer to give him opportunity to exercise option to switch over from one scheme to the other, the employer can produce evidence to show that the concerned employee had knowledge about the particular scheme etc. The employer can also show that even though the scheme etc. had not been communicated to the concerned employee in person, he was aware of the same. Each such case will have to be decided by the competent court keeping in view the pleadings and evidence produced by the parties and it cannot be laid down as a general rule that each and every circular/instruction issued by the employer giving additional monetary benefits to the retired employees must be published in the newspapers and that in the absence of such publication or personal communication to the retired employee would entitle him to seek intervention of

the Court after lapse of many years.

We may now revert to the facts of this case. It is not in dispute that at the time of the introduction of the Pension Scheme, respondent No. 1 was very much in service as Class-I officer. Circular dated 11.08.1979, 17.1.1981 and 11.3.1981 were also issued during his tenure as a senior officer of appellant No. 1. Therefore, it is not possible for any person of ordinary prudence to believe that respondent No. 1 was not aware of the Pension Scheme and the opportunities given to the retired employees/officers to exercise option to switch over from the CPF Scheme to the Pension Scheme. This is precisely what the Ld. Single Judge did and we do not find any error in the approach adopted by him. The story put forth by respondent No. 1 of having acquired knowledge about the circulars issued in 1984 and 1986 from his friend/colleague was rightly discarded by the Ld. Single Judge. The failure of respondent No. 1 to disclose the name of the concerned friend/colleague adequately supports the inference drawn by the Ld. Single Judge and the Division Bench of the High Court committed serious error by interfering with the order of the Ld. Single Judge."

18. Our view is strengthened by the observations of the Hon"ble Apex Court noted above.

19. In view of the aforesaid and also in view of what we have said while disposing of Appeal No. 149 of 2002, we are unable to agree with the judgment and order of the Ld. Single Judge. The impugned judgment and order is set aside. Appeal No. 145 of 2002 succeeds and is allowed. There will be no order as to costs.

20. Both the appeals are disposed of accordingly.

Dr. Manjula Chellur, C.J.

I Agree.