

(2016) 02 CAL CK 0089

In the Calcutta High Court

Case No : A.P.O. 302 of 2015, G.A. 415 of 2014 and W.P. 1254 of 2013

Dilip Sankar Das and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 22-02-2016

Acts Referred:

Citation : (2016) 2 CalHCN 316 : (2016) 2 CalLT 135 : (2016) 1 CLR 1013 :
(2016) 150 FLR 191 : (2016) 5 WBLR 271

Hon'ble Judges : Nishita Mhatre and Tapash Mookherjee, JJ.

Bench : Division Bench

Advocate : Debductta Basu, Advocate, for the Appellant; P. Sinha, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Nishita Mhatre, J.—1. The appellants were all employees of the Calcutta Tramways Company (1978) Ltd. (hereinafter referred to as CTC). They joined service on different dates between 1971 and 1981 and retired from service in 2010 and 2011. All of them were paid their retiral benefits such as gratuity and provident fund when they were superannuated.

2. Their grievance in the writ petition filed by them which resulted in the impugned order was that they had not been covered by the Pension Scheme introduced by their employer although they were entitled to pension.

3. There is no dispute that a Pension Scheme was introduced by the CTC for its employees known as the Calcutta Tramways Company Ltd. (1978) Employees Pension Regulations 2001 (hereafter referred to as the Pension Regulations). These Pension Regulations came into force with retrospective effect from 1st April, 1997. The Pension Regulations were notified in the Calcutta Gazette on 24th December, 2001. Under Regulation 2(3), the Pension Regulations were made optional for employees who were on the pay roll of the CTC when the Pension Regulations were notified in the Official Gazette. They were also made

optional for those who had retired prior to 1st April, 1997, when the regulations came into force. However, under Regulation 2(4) the Pension Regulations were made binding on new entrants into service. The Pension Regulations were made applicable to all categories of employees except those mentioned in Regulation 3. Under Regulation 6(1) an employee was required to exercise his option whether he desired to fall within the ambit of the regulations within 6 months from the date of the publication of the regulations in the Official Gazette. Failure by the employee to exercise such option within the stipulated period was to be treated as if he had not opted for the Pension Regulations. It would be beneficial to reproduce Regulation 6 of the Pension Regulations below:

"(1) The employee who may prefer to come under the purview of these regulations shall have to exercise his option within six months from the date of actual publication of these regulations in the Official Gazette.

(2) The employees who were on pay roll of the Company on the date on which these regulations came into effect and onwards but retired on subsequent dates, but before the publication of these regulations may exercise their option within six months from the date of publication of these regulations provided they refund to the Company the full amount of the share of Company's contribution towards Contributory Provident Fund together with interest accrued thereon plus an additional interest @ 5% simple chargeable from the date of receipt of the Company's share upto the month preceding the month of refund. They will however, be entitled to get the benefit of pension from the date they retired and disbursement of pension shall be made only after they refunded the Company's contribution of P.F together with interest they received.

(3) Failure to exercise option by an employee within the stipulated period as referred to in Regulation 6(1) and (2) shall be treated as if he had not opted towards the pension regulations.

(4) If an employee expires before exercising his option as referred to in Regulations 6(1) and 6(2) it should be taken as if he had not exercised his option in favour of the pension."

4. A circular was issued on 24th July 2006 by CTC, extending the date by which the option should be exercised by existing employees for the Death-cum-Retirement Benefit Scheme of 2001. All such employees who opted to fall within the ambit of the scheme were required to exercise their option by 31st July 2006. Copies of this circular were sent to different Trade Unions representing the employees of CTC. The circular also mentioned that arrangements were being made for the "Option Form" being made available at the Depots Offices.

5. Simultaneously, a notice was published in the widely circulated Bengali Newspaper "Ananda Bazar Patrika" on 25th July 2006, requesting the employees to opt for the Death-cum-Retirement Benefit Scheme. This notice indicated that all the existing employees, retired ex-employees and the widows of those employees who had expired after 2nd April 1997, were covered by this scheme.

6. The appellants did not bother to exercise their option under the pretext that they were under the impression that Pension Regulations covered them and it was not necessary for them to exercise any option. As mentioned earlier, all the appellants retired in the years 2010 and 2011. They took no steps to demand the payment of pension to themselves till the year 2013 when they and some other employees sent a representation to the CTC requesting payment of pension. They demanded that they be permitted to exercise their option for being covered by the Pension Regulations. There is no dispute that all the appellants have been paid their gratuity as well as the provident fund amount, including the employer's contribution after their retired from service.

7. The appellants filed a writ petition before this Court contending that they had not been given the opportunity to exercise their option for being covered by the Pension Regulations as no notice was put up at the place of work informing them that such option would have to be exercised by them within a stipulated period. The Learned Single Judge has dismissed the writ petition as the appellants had slept over their rights and because there was no explanation in the petition as to why it had been filed after such a long delay. Aggrieved by this order, the appellants have referred the present appeal.

8. The learned Counsel for the appellants has submitted that the learned Single Judge has erred in rejecting the claim of the appellants for payment of Pension on the ground that the claim was delayed. He submits that the payment of pension is a fundamental right which can be exercised at any point of time. According to him, an employee cannot be deprived of pension only on the ground of the delay in claiming it. The learned Counsel has fortified this submission by relying on the judgment in *State Of Jharkhand And Ors. v. Jitendra Kumar Srivastava And Anr.* (, AIR 2013 SCC 3383).

9. The learned Counsel then submitted that the Pension Regulations were notified only when a notice was issued in the newspaper on 25th July 2006. He submitted that the aforesaid notice necessitated only the retired employees or their widows to exercise their option to be covered by the Pension Regulations. The learned Advocate pointed out that the notice did not require the existing employees to exercise any option for being covered by the Pension Regulations and therefore, none of the appellants had exercised any option. He pointed out that the circular issued on 24th July 2006, informing the existing employees also to exercise their option was not widely published; the employees of the Depots had no knowledge about such a circular. Therefore, according to the learned Advocate it would be incumbent on the CTC to establish by cogent material on record that it had in fact published the Pension Regulations widely and had informed the existing employees that they were expected to exercise their option within a stipulated period. The learned Advocate submits by relying on the judgments in *Dakshin Haryana Bijli Vitran Nigam And Others v. Bachan Singh* , (2009) 14 Supreme Court Cases 793 and *Calcutta Port Trust And Others v. Anandi Kumar Das (Captain) And Ors.* [, (2014) 3 SCC 617] that deemed knowledge of a circular for

exercising option cannot be assumed.

10. According to the learned Counsel, the CTC has not denied the pleadings of the appellants in their writ petition to the effect that the scheme was not widely published except for a general denial. Therefore, according to him, such a general denial amounted to an admission. To support this proposition he relied on the decision of the Supreme Court in *Badat And Co., Bombay v. East India Trading Co.* (, AIR 1964 Supreme Court 538).

11. Mr. Majumdar, learned Counsel for CTC submits that it is surprising that the appellants were not aware of the fact that they were required to exercise their option to avail of the Pension Regulations. He pointed out that the Pension Regulations have been published in the Kolkata Gazette on 24th December 2001, and therefore, the appellants could not claim ignorance of the Pension Regulations. He drew our attention to the fact that after the Pension Regulations came into existence in 2001, One Thousand Seven Hundred and Seventy Two (1772) existing employees opted for the Pension Regulations. The time to exercise option under the Pension Regulations was extended in 2006, pointed out the learned Counsel. The last date to exercise the option was notified as 31st July 2006. The learned Counsel pointed out that One Thousand Two Hundred and Fifty Seven (1257) employees exercised their option at this stage. According to the learned Counsel, the notice published in "Ananda Bazar Patrika" in 2006, does not in any manner absolve the existing employees from exercising their option under Pension Regulations. He submitted that the notice mentions the categories of persons to who are eligible for pension under the Pension Regulations: existing employees, retired employees, and the widows of those who had expired on or after 2nd April 1997. This requirement to exercise their option was for all the aforesaid categories of the employees and the appellants having failed to exercise their option, cannot now demand the payment of pension. He submitted that all the employees have been paid their provident fund dues including the employer's contribution and the gratuity and other retiral benefits. Therefore, according to Mr. Majumdar the learned Single Judge was right in dismissing the appeal as the requirement to exercise option to avail of the Pension Regulations was not open ended.

12. We have given our anxious consideration to the submissions of the learned Counsel. There is no dispute that the Pension Regulations were notified in the Calcutta Gazette on 24th December 2001. Therefore, the appellants cannot feign ignorance of a notification once it is published in the Official Gazette. It is well settled that ignorance of law is no excuse. Regulation 6 of the Pension Regulations required the existing employees to exercise their option within 6 months of the date of publication of the Regulations in the Official Gazette. This means that by June 2002, the existing employees had to exercise their option to avail of the Pension Regulations. Regulations 6(3) explicitly provides that failure to exercise such an option within the stipulated period would mean that the employee had decided not to opt for the Pension Regulations. Thus, the

appellants cannot claim that they were not aware of the Pension Regulations.

13. Further the circular issued on 24th July 2006 also extended the period to exercise the option till 31st July 2006. This was followed by a notice in the Newspaper publication dated 25th July 2006 intimating all employees, existing as well as retired employees and the widows of deceased employees.

14. The submission of the learned Counsel for the appellants that there was no publicity for this Scheme is untenable in view of the fact that the Pension Regulations were notified in the Official Gazette. The reliance placed by the learned Counsel on the *Dakshin Haryana Bijli Vitran Nigam And Ors.* (supra) and *Calcutta Port Trust And Ors.* (supra) is of no avail. The Pension scheme in both these judgments was notified by circulars which the Supreme Court found had not been published or communicated to the employees. In the present case, as we have mentioned earlier once the Pension Regulations were notified in the Official Gazette, the appellants could not claim that they were not aware of the Pension Regulations.

15. There is no doubt that right to receive pension has now been considered as a fundamental right by the Supreme Court as pension is the property of an employee. However, when a Scheme for pension is made applicable to existing employees conditional upon them opting for the same and such option is not exercised within the stipulated time, they cannot claim the pension as a matter of right. The pension is payable under the Pension Regulations of 2001 which have been notified in the Official Gazette. Since, the appellants chose not to exercise their option within the time framed stipulated in the Pension Regulations and as extended by the CTC, they are not entitled to claim the pension under the aforesaid Regulations.

16. The reliance placed on *Badat And Co.,* (supra) in support of the submission that a general evasive denial of facts should be construed as an admission is again of no assistance to the appellants. Even assuming the circular of 25th July 2006, was not widely published by sending it to the various Offices, Depots and other establishments of the CTC, the Pension Regulations were notified in 2001 in the Official Gazette under which the option was to be exercised within six months from the date of publication of the Pension Regulations in the Official Gazette i.e. by 23rd June 2002. The time to opt was extended in 2006 which fact was published in a Newspaper on 25th July 2006. Therefore, in our opinion, the appellants have no right to claim the pension at this stage when they have not cared to opt for the Pension Regulations while in service in the year 2001 or within the extended date of 31st July 2006, more so, when all of them have received their gratuity and provident fund dues on retirement.

17. The appeal is therefore dismissed.