

(2007) 08 CAL CK 0054
In the Calcutta High Court
Case No : F.M.A. No 901 of 2007

Ibrahim Mallick

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 23-08-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2007) 4 CHN 1049

Hon'ble Judges : S.S. Nijjar, C.J.; Tapen Sen, J

Bench : Division Bench

Advocate : Kashi Kanta Mnitra and Arup Kumar Lahiri, for the Appellant;

Final Decision : Allowed

Judgement

S.S. Nijjar, C.J.—The petitioner retired from service in the year 2004. He had been appointed as Assistant Teacher of Taaranipur Primary School in the year 1968 with effect from 5th November, 1967. His services were duly regularized by the authority concerned. On 15th May, 1985 the petitioner was asked to opt for pension including family pension-cum-gratuity as also provident fund-cum-gratuity. The petitioner submitted the necessary option on the same day. Thereafter, he assumed that the option being final in nature on retirement he would be entitled to pension-cum-death-cum-retirement benefit. Due to the mistake committed by the respondent school, the option was not recorded. The petitioner was totally unaware about the non-recording of the option which had been duly submitted during the stipulated period. The petitioner came to know about the non-recording of the option only when his papers were scrutinized when he was due to retire on 31st October, 2004. The petitioner made a representation before the respondent No. 3, the Chairman, Nadia District Primary School Council for rectifying the mistake. The representation was sent to respondent No. 4 without enclosing the two option forms which were submitted by the petitioner on 5th August, 1985. The petitioner subsequently enquired from respondent No. 2 Chairman, Nadia District Primary School Council, i.e. the

respondent No. 3 regarding the original forms. These were, thereafter, forwarded by letter dated 4th March, 2005. Ultimately the request of the petitioner was forwarded by the Chairman of the respondent No. 3 in reply to the letter dated 16th September, 2004 which had been sent by the District Inspector of Schools (PE) Nadia. In this letter it has been accepted by the Chairman that in similar circumstances three teachers who had opted for pension had not been entertained due to inadvertence. The action, thereafter, had been taken on the basis of the second option which was for contributory provident fund-cum-gratuity. When these teachers were in the verge of retirement, the mistakes were detected and corrections were made. It was stated that the claim made by the petitioner is similar and, therefore, the mistake committed in his case be also corrected. However, the claim of the petitioner having been rejected, he was constrained to move the writ petition being W. P. No. 18568 (W) of 2006. This writ petition has been dismissed by the learned Single Judge on 11th August, 2006. Hence, this appeal.

2. The learned Single Judge has observed that the decision given by the authority does not need to be corrected as the petitioner had the knowledge of non-recording of the option since 15th May, 1985. He kept quite till September, 2004 when he was on the verge of retirement. The learned Single Judge further observed that the authority rightly rejected the petitioner's case as, he had not made any enquiry whether his option for family pension-cum-gratuity has ever been accepted. We may also notice that the learned Counsel for the petitioner had also relied on an earlier unreported Single Bench judgment of this Court dated February 14, 2003 given in W. P. 198 of 2003 in which relief had been granted to a person similarly situated. Learned Single Judge also noticed the other judgment cited by the learned Counsel for the petitioner in the case of Md. Jainurddin Biswas and Ors. v. District Inspector of Schools and Ors. reported in 2002(3) CHN 284. These judgments have been distinguished by the learned Single Judge on the basis that the petitioner there in had no knowledge of the Government Order dated December 16, 1991.

3. We have considered the entire matter. We have heard the learned Counsel for the appellant. We are of the considered opinion that the claim of the petitioner cannot be distinguished in any manner from the claim of the three teachers whose names have been mentioned in the communication dated 7th March, 2005 sent by the Chairman of the respondent No. 3 to the Director of School Education. This document was very much available on the record of the learned Single Judge but the impact of the same has not been considered. This apart, we are of the opinion that the judgment cited before the learned Single Judge could not be distinguished on the basis that the petitioner knew that his option had not been accepted. The actually is not the factual situation. The petitioner has claimed that he relied on the assurance given by the authority and assumed that the option once exercised would be final. In our opinion it was not the duty of the petitioner to make any enquiry as to whether his option has been accepted or not. The order rejecting the option was never communicated to the petitioner.

Had the order has been communicated, the petitioner would have been in a position to get the mistake rejected. Therefore, the claim of the petitioner is identical to the claim of the petitioners which was considered in the judgment which was cited by the learned Counsel. It is settled proposition of law that persons similarly situated have to be given similar treatment to avoid the charge of arbitrariness or discrimination, in other words, violation of Articles 14 and 16 of the Constitution of India. It is also a settled proposition of law that beneficent schemes have to be interpreted in favour of the employee for whose benefit the schemes are promulgated. Therefore, keeping in view the entire fact situation in this case, we are of the considered opinion that the option of the petitioner deserves to be accepted and the mistake in the official record deserves to be corrected. This view of ours will also find support from an unreported judgment of the Supreme Court in the case of Bijoli Bhattacharya v. State of West Bengal and Ors. in CA No. 5061 of 2004 arising out of SLP (C) No. 4928 of 2003 dated 6th August, 2004. The aforesaid judgement deserves to be quoted in toto:

ORDER

Leave granted.

The appellant was a Government servant who retired on 31.7.2000. The appellant joined the service as Assistant Teacher on 12.8.1977. In 1981 a scheme was introduced for payment of pension. Then the Government servants were given option either to opt for pension scheme or Contributory Provident Fund Scheme. The appellant did not opt for pension scheme in time. Thereafter, the appellant made series of attempts to exercise her option but she was not given permission. Aggrieved by that, she filed a writ petition and the same was rejected by the learned Single Judge and her appeal was also dismissed by the Division Bench. Against the same, the present appeal is filed by way of SLP.

Heard learned Counsel for the appellant and the Counsel for the State. Counsel for the State had submitted that the appellant was given enough opportunity to exercise her option and she did not avail those opportunities and did not exercise the option before the due date, whereas the Counsel for the appellant submitted that in several other cases the time for exercising option was extended and in the appellant's case the same was not done. He also contended that the appellant was not keeping well for sometime and therefore, she could not exercise her option before the due date.

It appears that the appellant did not exercise her option for pension scheme before the due date as she was not keeping well and the authorities were not justified in not giving a further opportunity to exercise her option. The appellant retired only in the year 2000 and several months before the date of retirement she filed her option. Hence, we allow this appeal and direct that she be permitted to opt for pension scheme in view of the peculiar facts and circumstances of the case.

If the appellant had already received the provident fund amount, the same shall

be refunded with 10% interest within two months and on such payment, pension shall be disbursed to her in accordance with the pension scheme.

Sd/-

(K.G. Balakrishnan, J.)

Sd/-

(Dr. AR. Lakshmanan, J.)

New Delhi

6th August, 2004

4. In view of the aforesaid observations we allow the appeal setting aside the order passed by the learned Single Judge. Consequently, the writ petition is also allowed. The order dated 19th May, 2006 passed by the respondent No. 2 is hereby quashed. Writ in the nature of mandamus is issued to respondent No. 2 to release the entire pensionary benefits of the petitioner in accordance with law on the basis of the option exercised by the petitioner on 5th August, 1985 within a period of three months from the date of communication of this order.

5. This judgment also governs the order appeal being FMA No. 597 of 2007 as the facts of both the appeals are identical in nature. Accordingly, the appeal being FMA No. 597 of 2007 is also allowed.

Tapen Sen, J.

6. I agree.