(2019) 12 CAL CK 0128

In the Calcutta High Court

Case No : General Application (GA) No. 1023 Of 2019, Writ Petitions (WP) No. 701 Of 2017

Kuntala Chel APPELLANT

Vs

State Of West Bengal & Ors RESPONDENT

Date of Decision : 24-12-2019

Acts Referred:

Citation : (2019) 12 CAL CK 0128

Hon'ble Judges : Moushumi Bhattacharya, J

Bench : Single Bench

Advocate : Chaitali Bhattacharya, Tuli Sinha, Syed Shamsul

Final Decision : Disposed Of

Judgement

Moushumi Bhattacharya, J

The Court : This application has been filed by the Director of Pension, Provident Fund and Group Insurance (DPPG) for recalling an order passed by this Court dated 25th February, 2019 and for setting aside the direction upon the applicant for granting provisional family pension to the writ petitioner.

Learned counsel appearing for the applicant/DPPG relies on a Special Bench judgement District Inspector of Schools (SE) vs. Abhijit Baidya reported in 2013 (3) CLJ 178 and submits that this decision had not been taken into account by the Court while passing the order dated 25th February, 2019.

Learned counsel further relies on a Notification no.749-SE dated 13th June, 2014 which provides, inter alia, that if an employee exercises option, he shall be entitled to Pension-cum-Gratuity in accordance with law with effect from the date of refund made by the said employee of the employer's share of contribution to the Government. The said circular also provides for three months time to be given to the teaching and non-teaching staff of recognized non-government aided educational institution for switching over to Pension-cum-Gratuity scheme under the Death-cum-Retirement Benefit Scheme, 1981. Counsel relies on a further Memorandum dated 15th May, 1985 which provides that persons willing to opt for the benefit of Pension-cum-Gratuity shall apply in writing to the Head of the Institution that he or she is willing to refund to the government the employer's share of contribution together with interest accrued thereon which has been created against the contributory provident fund account of the concerned person. Clause IV of the Memorandum further provides that head of the institution will take necessary action and intimate the director after transferring the amount. Both the aforesaid points come under clause IV of the Memorandum dated 15th May, 1985.

Learned counsel for the petitioner submits that the Special Bench decision has no application to the facts of the instant case, since the petitioner's husband had already exercised his option from switching over from Contributory Provident Fund to General Provident Fund within 90 days window. Counsel further submits that if given a chance, the petitioner will refund the employer's share of the contribution within a specified time period.

Having heard learned counsel for the parties and upon considering the Special Bench judgment in Abhijit Baidya, it appears that the said judgment was concerned with granting an opportunity to the petitioners in that case and other similarly situated persons for submitting the option to switch over to Pension-cum-Gratuity by providing a further time period of three months for exercising such option following a public notice to be issued by the State Government. This would be evident from paragraph 76 of the Special Bench judgment. It appears that this paragraph was concerned with the Notification no.749 dated 13th June, 2014 which has been referred to above.

On the factual score, it is undisputed that the petitioner's husband, who was appointed as an Assistant Teacher on 30th September, 1965 had exercised his option for switching over from Contributory Provident Fund to General Provident Fund within the three months time period provided under the 16th December, 1991 Notification which provided for change of option in terms of Memo dated 15th May, 1985 which has been referred to above. Under the 16th December, 1991 Notification, the revised option was to be exercised within 90 days from the date of issue of this Memo which means that those interested would have to exercise their option within 16th March, 1992. From the records of the case, it appears that the petitioner had done the needful under the relevant circular which would be apparent from a communication dated 14th March, 1992 from the school to the District Inspector stating that the petitioner's husband wants to change his earlier decision and opt for Pension-cum-Gratuity (General Provident Fund). The letter sent by the school to the D.I. shows that the petitioner's husband complied with the requirement of the Memorandum dated 15th May, 1985. It is also correct that there is no document to show that the DI took any steps pursuant to this communication from the school. The petitioner's husband died thereafter on 2nd March, 2002. This Court is inclined to agree with the contention made on behalf of the petitioner that by reason of such death, the petitioner may not have been in a position to refund the employer's share of contribution as provided in the Memorandum dated 15th May, 1985 and the Notification dated 13th June, 2014.

As has been fairly submitted by learned counsel for the applicant/DPPG, the petitioner may be given an extension of time to refund the said amount within a specified time frame. This Court is also of the view that the petitioner cannot be permitted to take the benefit of the revision option until and unless the employer's share of contribution together with the interest accrued thereon is refunded to the Government which has been provided under the relevant circular.

In view of the above, the order dated 25th February, 2019 is modified in the manner as stated below:

i) The District Inspector will inform the petitioner within three weeks from today the total amount with the relevant break-up which is to be refunded by the petitioner.

ii) After receiving the particulars from the DI, the petitioner will refund the said amount within three weeks from the date on which such information is received by the petitioner.

iii) Upon such refund being made over to the DI by the petitioner, the applicant being the Director of Pension, Provident Fund and Group Insurance will release the provisional family pension to the petitioner within a period of three weeks from the date on which the direction under (ii) is complied with.

The application for recalling of the order dated 25th February, 2019 is disposed of on the basis of the above directions.

