
(2002) 12 CAL CK 0016
In the Calcutta High Court
Case No : Writ Petition No. 1519 of 2002

Lakshmi Kanta Mukherjee

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 05-12-2002

Acts Referred:

Citation : (2004) 2 CHN 470

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : S. Biswas, J. Sengupta and A. Gupta, for the E.S.I. Corporation, S.S. Arefin, for the Appellant;

Judgement

Amitava Lala, J.—It appears to this Court that only a short point of law is involved in the matter. Therefore, it can be decided at the threshold without wasting any time by exchange of affidavits. The short point is whether on the basis of the application of the petitioner, authority can convert the pensionary benefit from the Contributory Provident Fund to the General Provident Fund under ROPA Rules 1998 or not.

2. It appears that on the earlier occasion when different matters came up for hearing I have passed similar orders which might or might not have any effect generally but by now the subject-matter is so well-settled that the same cannot be said to be disallowed by this Court. Previously, there was a memorandum being No. 496-Edn(B)/IM-39/91 dated 16.12.91 under which the option for conversion from the Contributory Provident Fund to the General Provident Fund was directed to be given within a period of 90 days from the date of issuance of the memorandum. The petitioner submitted option as per ROPA - 96 and his pay was fixed in the revised scale of pay with effect from 1st April, 1996.

3. Subsequent to the same in the year 1999 under memorandum No. 25-SE(B)/1M-102/98 fresh scope had been given to teaching and non-teaching staff in its clause 13 as follows :

"The teaching and non-teaching employees of aided/sponsored educational institutions who will opt for the revised scales of pay shall be allowed to enjoy pensionary benefit including dearness relief at par with the State Government employees. Maximum amount of gratuity shall be raised from Rs. 60,000/- to Rs. 2,50,000/- (Rupees two lakhs fifty thousand only)".

4. Therefore, option, if any, given belatedly has been regularised.

5. It further appears that such clause 13 is now substituted by a memorandum No. 155-SE(B) dated 13th July, 1999 as follows :

"The teaching and non-teaching employees of aided/sponsored educational institutions who will come under the revised scale of pay as per memorandum No. 25-SE(B) dated 12.2.99, will be allowed to enjoy the retirement benefit as per revised pension order of this department according to the option exercised by them under West Bengal Recognised Non-Govt. Educational Institutions Employees (Death-cum-Retirement Benefit) Scheme, 1981".

The petitioner is enjoying the Revised Pay Scale.

6. Learned Counsel appearing for the petitioner placed an order passed by a Bench of this Court whereunder I find time was extended by the Court. He also cited a Supreme Court judgment reported in 2001(4) Supreme 462 (State of Orissa and Anr. v. Pratiba Ghosh and Anr.) where an extreme circumstance arose. During the pendency of the application for conversion the incumbent expired but it was allowed on the basis of the representation of the widow. Why it was allowed? The reason is that the scheme is a beneficial scheme. It should be construed liberally but not with a harassing temperament.

7. Therefore, taking into totality of the matter I am of the view that the petitioner is entitled to the relief of conversion from the Contributory Provident Fund to the General Provident Fund, as prayed for but subject to fulfilment of conditions. Accordingly, he is allowed to make his appropriate application before the authority concerned for the purpose of due consideration of fulfilment of conditions and for granting such benefit within a period of one month from the date of communication of this order.

8. This order will have binding effect upon all the matters bearing numbers W.P. 1582 of 2002. (Mathura Nath Roy v. State of West Bengal and Ors.), W. P. 1583 of 2002 (Madan Mohan Ghosh v. State of West Bengal and Ors.), W. P. 1581 of 2002 (Kirit Mohan Ghosh v. State of West Bengal and Ors.) and W. P. 1580 of 2002 (Shashthiram Nandi v. State of West Bengal and Ors.).

9. Let xeroxed certified copy of this judgment be supplied to the parties by the department within seven days from the date of putting in requisition for drawing up and completion of the order as well as the certified copy thereof.

10. All parties are to act on a signed copy of minutes of the operative part of this judgment upon usual undertaking and as per the satisfaction of the officer of this

Court as above.