
(2002) 06 CAL CK 0006
In the Calcutta High Court
Case No : Writ Petition No. 20854 (W) of 1997

Md. Jamiruddin Biswas

APPELLANT

Vs

District Inspector of Schools (S.E.) Nadia

RESPONDENT

Date of Decision : 14-06-2002

Acts Referred:

Citation : (2003) 1 ILR (Cal) 1

Hon'ble Judges : Pratap Kumar Ray, J

Bench : Single Bench

Advocate : Chandi Charan De, for the Appellant; Bhudeb Bhattacharya, for State and A.K. Dutta, for the Respondent

Final Decision : Allowed

Judgement

Pratap Kumar Ray, J.—Heard learned advocates for the parties.

2. In this writ application, the Petitioners have prayed for the following reliefs:

a) A writ of and/or in the nature of Mandamus commanding the Respondents to allow the Petitioners to give option to the scheme of pension including Family Pension-cum-Gratuity as above;

b) A Writ of and/or in the nature of Mandamus commanding the Respondents to consider the application (Annexure "A") to this petition filed by the Petitioners and allow the Petitioners to give option for scheme of pension including Family Pension-cum-Gratuity.

3. It is the case of the Petitioners, who are teaching and non/teaching staff of Thanarpara H.M. High Madrasa (hereinafter referred to as the concerned Madrasa) that in terms of Memo No. 496-Edn.(b) dated December 16, 1991 they would be allowed to opt for pension, including Family Pension-cum-Gratuity Scheme by way of filing revised option to change the earlier option as filed for such benefit, namely, contributory provident fund cum gratuity scheme. It is the contention of the Petitioners that memo No. 496-Edn.(B) dated December 16,

1991 was not circulated to the said Madrasa and accordingly they had no knowledge about the time limit of 90 days as prescribed in the said circular dated December 16, 1991 to file the revised option under the Scheme, as stated.

4. An application dated September 16, 1997, was filed by the Petitioners praying reversion to the pension, including family pension cum gratuity scheme on refund of amount of the employer's share paid in the contributory provident fund scheme, with interest. This prayer of the Petitioners was rejected by the District Inspector of Schools concerned by memo No. 2525/Genl/S.E. dated September 26, 1997, only on the ground that time limit for change of option from C.P.F. cum-Gratuity to Pension-Family Pension-cum-Gratuity under Death cum Retirement Benefit Scheme, 1981, had already expired.

5. This writ application has been opposed by filing affidavit by the state Respondents contending, inter alia, that time limit of 90 days was mandatory and accordingly the prayer of the Petitioners could not be considered.

6. An affidavit has been filed as per direction of the Court passed by Ruma Pal J, (as Her Lordship then was) by the school authority through the Headmaster of the school which reveals the fact that memo No. 496-Edn.(B) dated December 16, 1991, whereby the teaching and non-teaching staff Were granted benefit to change the option was not all all circulated in the school. The contention of the Petitioners accordingly has been proved by the school authorities that they had no knowledge of the circular and accordingly from the date of knowledge of the circular within 90 days, they filed the application. Having regard to the facts of the case, learned Advocate for the State Respondents was directed by me to produce the necessary documents, namely, the communication and circulation of memo No. 496-Edn.(B) dated December 16, 1991 to the teaching and non-teaching staff of the concerned Madrasa. Learned Advocate failed to satisfy this point save and except the submission that as per normal course from the office of the Director of school Education, West Bengal, the aforesaid memo was referred to the Office of the District Inspector of Schools concerned, who, in turn was directed to communicate it to different schools. However, Mr. Bhattacharya, learned Advocate for the State Respondents could not assist the Court by mentioning the actual date when such memo was sent to the concerned school. No opposition also has been filed controverting the contention as made by the school authorities, by the State Respondents that the said memo was communicated to the school. In view of such state of affairs, this Court must presume that memo No. 496-Edn.(B) dated December 16, 1991 was not at all circulated and/or communicated to the teaching and non-teaching staff of the said Madrasa. It is a settled legal position that mere issuance of a memo cannot be a starting point of limitation for filing any application, but starting point of such limitation will run when such memo is communicated to the persons concerned for whom the benefit was granted. Having regard to the legal position, I am of the view that the impugned decision is vitiated with illegality as the Petitioners had no chance to file the application in view of non-communication of

the Government memo dated December 16, 1991. Besides, the provision for filing option within 90 days from the date of issuance of the memo, is a procedural law which cannot take away the substantive right for change of option which is a beneficial provision for the teaching and non-teaching staff. So far as the notification and the effect of such notification, the Apex Court has considered the matter in two Judgments upon holding that the date of effect would not be counted from the date of publication, but from the date when such notification was offered for sale to the public. Reliance may be placed to the judgment in the case of Collector of Central Excise Vs. New Tobacco Co. Etc. Etc., , Garware Nylons Ltd. Vs. Collector of Customs and Central Excise, Pune, . Even a Full Bench judgment of this Court in Collector of Customs v. Gindal Strips Limited 2000 (1) C.K.N. 332 upon considering the various judgments of the Apex Court, replied the issue in the same line by holding that: "If. publication is through a Gazette, then mere printing of it in the Gazette would not be enough. Unless the Gazette containing the notification is made available to the public, the notification cannot be said to have been duly published. "Further, in the said judgment Full Bench it is held in para. 25 that executive must make all reasonable efforts to make the law known to the public. Having regard to such legal position about the effect of a notification from the date of placing of the same to sale, the same principle should be applied in the instant case so far as the Government Orders and Memos are concerned. Admittedly, the concern memo No. 496-, Edn(B) was issued on December 16, 1991, but it was not even placed for circulation to the concerned teaching and non-teaching staff. In that view of the matter limitation of 90 days surely will not run from the date of publication of that Government order, but 90 days is to be counted from the date when the present Petitioners had acknowledge of the said Government memo.

7. Having regard to such legal position, the impugned decision of the District Inspector of School annexed to the supplementary affidavit rejecting the prayer of the Petitioners is hereby set aside and quashed. The Petitioners are allowed to change their option to enjoy the benefits of Family Pension-cum-Gratuity under Death cum Retirement Benefit Scheme, 1981 in terms of Memo No. 496-Edn (B) dated December 16, 1991, subject to refund of employer's share to the contributory provident fund, with interest. The District Inspector of Schools concerned is directed to take steps in the matter so that the Petitioners can refund the employer's share of contributory provident fund with interest to the Government Treasury. For such purpose, the District Inspector of schools concerned will communicate the Petitioners within 2 months the actual amount as is required to be refunded upon having discussion with the concerned teaching and non-teaching staff and the passbooks of the bank. After refund of the amount as aforesaid, the Petitioners would be entitled to enjoy the benefit of pension, including Family Pension cum Gratuity in terms of memo No. 496-Edn. (B) dated December 16, 1991 and necessary order be passed by the District Inspector of Schools concerned granting such change of option within two weeks from the date of refund of the money to the Government Treasury, as directed. It

is declared that for all purposes, the Petitioners would be deemed as optees for pension, including Family Pension cum Gratuity Scheme under Death cum Retirement Benefit Scheme, 1981, and all benefits accordingly be released in favour of the Petitioners, as and when such situation would arise.

8. The writ application is accordingly allowed.

9. Urgent xerox certified copy of the order, if applied for, be supplied expeditiously.