(2024) 01 CAL CK 0001

In the Calcutta High Court

Case No : W.P.A. No. 2082 Of 2018

Pratima Bhandari APPELLANT

Vs

State Of West Bengal & Ors. RESPONDENT

Date of Decision : 02-01-2024

Acts Referred:

Citation : (2024) 01 CAL CK 0001

Hon'ble Judges : Aniruddha Roy, J

Bench : Single Bench

Advocate : Manujendra Narayan Roy, Biswarup Nandy, Pinaki Dhole, Avishek Prasad

Final Decision : Allowed

Judgement

Aniruddha Roy, J

Facts:

1. The petitioner was an Assistant Teacher and retired from one Bengai Girls' High School, District Hooghly (for short, the School). She was appointed as a teacher on August 8, 1972 as would be evident from the relevant extract of the service book of the petitioner at page 22 to the writ petition. The petitioner then retired on April 30, 2009 which would also be evident from the said page of the writ petition. The petitioner, therefore, had served as an Assistant Teacher for about more than 36 years.

2. Pursuant to a Larger Bench judgment dated July 16, 2013 rendered, inter alia, In the matter of: District Inspector of Schools (S.E.), Kolkata & Anr. Vs. Abhijit Baidya & Ors. (APO 94 of 2009) reported at 2013 (3) CHN 711 (Cal) (FB) the petitioner was also allowed to opt for a scheme from Contributory Provident Fund (CPF) to General Provident Fund (GPF). In terms of the said Larger Bench decision the respondent No. 2 issued a notification dated June 13, 2014, Annexure P-8 at page 41 to the writ petition inviting the candidates for exercising their option. The time for exercising such option was fixed in the said

notification for Three Months i.e. till September 12, 2014.

3. Pursuant to and in terms of the said notification the petitioner submitted the necessary format for option dated August 18, 2014 at page 33 to the writ petition. After receiving the said option form from the petitioner, the relevant school by its communication dated August 27, 2014, Annexure P-6 at page 35 to the writ petition transmitted and sent the same before the respondent No. 7. Following the dictum of the Larger Bench and the scheme framed by the State, the petitioner had returned the entire Employer's contribution including the interest thereupon to the State authority on September 1, 2014 as would be evident from page 39 to the writ petition. The respondent No. 9 by its communication dated November 2, 2016 had also acknowledged the return of such amount by the petitioner, Annexure P-8 at page 40 to the writ petition. Since then the petitioner has not yet received the benefits of conversion as stated above. Hence this writ petition.

Submissions:

4. Mr. Manujendra Narayan Roy, learned counsel appearing for the petitioner referring to sub-paragraph 5 to paragraph 74 from the Larger Bench decision submits that, all the employees who opted for ROPA 1990 also to be given fresh opportunity to submit the option to switch over to Pension-cum-Gratuity. Learned counsel submits that, such finding of the Larger Bench includes the petitioner who had initially been to the category of then existing Pension Rules of 1968 and the relevant scheme of 1981.

5. Learned counsel for the petitioner further submits that, in strict compliance of the said notification issued by the State authority dated June 13, 2014 the petitioner had exercised and opted for the change of option within the period of three months as framed thereunder. The petitioner with all her bona fide had returned the entire money she had received being the employer's contribution together with interest. The petitioner being the beneficiary of the scheme had complied with all her obligations with all bona fide whatever she could do.

6. Accordingly, the learned counsel for the petitioner submits that, the respondent State authorities shall be directed in the form of mandamus to grant the benefit of the scheme to the petitioner.

7. Mr. Pinaki Dhole, learned State counsel with Mr. Avishek Prasad, learned State counsel appearing for respondent Nos. 1 to 7 referring to a report dated September 7, 2023 signed by the respondent No. 6 submits that, the respondent No. 5 by its memo dated June 18, 2018 sent the papers to the Principal Accountant General (A&E), West Bengal. The said authority then by P.P.O. No. 11183684 sanctioned the necessary pension in favour of the petitioner, Annexure R-3 at page 4 to the report. The learned State counsel submits that, the petitioner had exercised the option to switch over from Contributory Provident Fund to Pension including Family Pension-cum-Gratuity in terms of the notification dated June 13, 2014 and therefore, the petitioner is not eligible to

exercise the said option for conversion as would be evident from Annexure R-1 at page 2 to the report. They submit that, there was no provision to switch over from the said Contributory Provident Fund Scheme to the General Provident Fund and therefore the said notification of the State dated June 13, 2014 would not apply for the petitioner.

8. Relying heavily upon Annexure R-1 at page 2 from the report the learned counsel for the State submits that, since the petitioner initially belonged to the existing Rules of 1968 and the relevant scheme of 1981 and the said option form being signed by the petitioner on August 4, 1985, Annexure R-1 at page 2 to report, the petitioner is not eligible to receive the benefit of the said conversion from Contributory Provident Fund to General Provident Fund. Learned counsel for the State further referring to Annexure R-3 at page 4 to the report submits that, the petitioner has been receiving the regular pension to which she is entitled to.

9. In reply, learned counsel for the petitioner relied upon an interim order passed in this writ petition by a coordinate Bench dated July 25, 2018, whereunder the petitioner has been receiving pension under 1968 option rule. He, therefore, submits that, it was not a voluntary act on the part of the State authority due to which the petitioner has been receiving pension but under the direction of a coordinate Bench.

Decision:

10. After considering the rival contentions of the parties and upon perusal of the materials on record, at the threshold it appears to this Court that, the said option for change over from C.P.F. to G.P.F. being upheld by the Larger Bench In the matter of: Abhijit Baidya & Ors. (Supra) the Larger Bench had decided all the issues which were raised before it and finally came to its conclusion. From a reading of the said Larger Bench decision it further appears to this Court that, this conversion policy introduced by the State was a benevolent policy for granting an opportunity to the Teachers to switch over from one scheme to other. The beneficiaries are the Teachers. The policy should be construed in a liberal manner in favour of the beneficiaries so that the actual and real effect can be given thereto in favour of such beneficiaries.

11. The notification of the State dated June 13, 2014 refers to the said Larger Bench judgment and pursuant thereto the said notification was issued.

12. In terms of the said notification, the petitioner duly submitted her option form on August 18, 2014. The petitioner therefore submitted its option form admittedly within the period of three months timeframe as stipulated in the notification dated July 16, 2013. The petitioner then returned the employer’s contribution together with interest on September 1, 2014 which was also within the said time stipulation of three months and the return of contribution was duly admitted by the respondent no.5 in its communication dated November 2, 2016, Anexure-P8 at page 40 to the writ petition. The conduct of the petitioner shows that, she was a bona fide applicant under the said conversion scheme.

13. The stand of the respondent no.6 from the said report dated September 7, 2023 is quoted below :

“4. The Deputy Director of School Education (GA), West Bengal vide sanction no-441 dated 18.06.2018 sent the papers to the office of the Principal Accountant General (A&E), West Bengal.

5. The above said authority vide PPO No.11183684 sanctioned pension @Rs.5637/- (Rupees Five thousand six hundred thirty seven only) in favour of the petitioner (copy of PPO is annexed and marked as R-3)

6. In the meantime the petitioner exercised option to switch over option from Contributory Provident Fund to Pension including Family Pension cum Gratuity in terms of Notification No.749-SE(L)/SL/5S-56/13(Pt-V) dated. 13.06.2014 which the petitioner is not entitle as she exercised option ‘The existing Rules (pension-cum-CPF) governing retiring benefit’

7. There is no provision to switch over from the aforesaid option and as such the deposition of Government share in terms of G.O. No-749-SE (L)/L/5S-56/13(Pt-V) dated 13.06.2014 has no legality.”

14. In the light of the said stand of the State read with Annexure-R1 at page 2 to the report, it appears to this Court that, the first option form was executed by the petitioner long back on August 4, 1985, much prior when the State has introduced the said policy for conversion. It is significant to note that, the petitioner, as a teacher, was appointed on August 8, 1972 whereas the policy was upheld and received its judicial sanction by the Larger Bench under the judgment dated July 16, 2013. On a reading of the said Larger Bench decision, this Court is also of the view that, the law declared thereunder includes the petitioner who opted in 1985 to be under the existing 1968 Option Rule read with the Scheme of 1981. When this 1985 option form was submitted by the petitioner, the said scheme of conversion was not there at all. A person who had submitted an option form in 1985 could not foresee about any benevolent scheme that would be introduced after about twenty years or more.

15. The conduct of the petitioner has an important role to play. The moment the petitioner has opted and responded to the notification of the State dated June 13, 2014 by submitting her option form within the timeframe of three months and returned the employer’s contribution together with interest within the said timeframe, this Court is of the firm view that, the petitioner was a bona fide applicant within the meaning of the said conversion scheme and the said notification dated June 13, 2014. The option form filled up in 1985 cannot be a stumbling block or the same cannot stand in the way for availing a benevolent scheme introduced by the State after about twenty years or more of the said option form being filled up in 1985 and received the judicial sanction in 2013.

16. In view of the foregoing reasons and discussions, the respondent no.6 is directed to prepare the records of the petitioner accordingly and transmit and

send the same to the respondent no.4 for issuing the necessary and fresh Pension Payment Order under the 1981 Scheme strictly in accordance with the notification dated June 13, 2014 at page 41 to the writ petition positively within a period of three weeks from the date of communication of this order.

17. While sanctioning the necessary pension in terms of the said notification dated June 13, 2014, the respondent no.6 shall calculate the entire amount together with interest @8% per annum to be paid to the petitioner on and from September 2, 2014 as the petitioner had returned the money on September 1, 2014.

18. After receiving the papers from the respondent no.6, the respondent no.4 shall issue the fresh Pension Payment Order strictly in accordance with the notification dated June 13, 2014 in favour of the petitioner and shall send and transmit the fresh Pension Payment Order to the jurisdictional Treasury Officer, Hooghly positively within a period of four weeks from the date of receiving of the records and papers from the respondent no.6.

19. After receiving the fresh Pension Payment Order from the office of the respondent no.4, the jurisdictional Treasury Officer, Hooghly shall immediately pay the petitioner all the arrears along with interests, as directed above, positively within a period of three weeks from the date of receiving the said Pension Payment Order from the respondent no.4 and then shall continue to pay the regular pension to the petitioner in terms of the said Pension Payment Order to be issued by the respondent no.4 without any default.

20. The pensionary benefit already received by the petitioner shall be taken into account and adjusted while preparing the fresh Pension Payment Order by the respondent nos.6 and 4.

21. At every stage whenever any assistance is required from the school by any of the State authorities, the respondent no.8 shall render all its assistance and cooperation to all such State authorities forthwith.

22. The school authority, as the respondent no.8 is not represented today, the petitioner shall serve a copy of this order upon the school authority also.

23. With the above observations and directions, this writ petition WPA 2082 of 2018 stands allowed, without any order as to costs.

24. Photostat certified copy of this order, if applied for, be furnished expeditiously.

