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(2024) 03 CAL CK 0075

In the Calcutta High Court

Case No : WPA No. 3104 Of 2018

Shyamal Kumar Sengupta APPELLANT

Vs

State Of West Bengal & Ors RESPONDENT

Date of Decision : 27-03-2024

Acts Referred:

Citation : (2024) 03 CAL CK 0075

Hon'ble Judges : Raja Basu Chowdhury, J

Bench : Single Bench

Advocate : Manas Kumar Ghosh, Susmita Dey (Basu), Amal Kumar Sen, Sabyasachi Mondal

Final Decision : Disposed Of

Judgement

Raja Basu Chowdhury, J

1. The petitioner was an employee of Calcutta State Transport Corporation (hereinafter referred to as the "said Corporation"). The petitioner was superannuated on 28th February 2017.

2. It is the petitioner's case that the (Death-cum-Retirement) Benefit Regulations, 1990 (hereinafter referred to as the "said Regulation) which came into force with retrospective effect from 1st April, 1984 is applicable to the employees of the said Corporation. The petitioner contends that in terms of the said Regulation, which was subsequently amended in the year 2002, whereby the time to exercise the option was extended till 4th June, 2002. The petitioner had duly exercised the option and had opted for pension cum gratuity and had relinquished his claim to the employer's contribution to his contributory provident fund account. It is the petitioner's case that notwithstanding exercising such option pension was not disbursed in favour of the petitioner in terms of the said Regulation. In such circumstances, the petitioner had made a representation for release of his monthly pension. Since, his representation was not adhered to, the petitioner had filed the instant writ petition.

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3. Records reveal that in terms of the direction passed by a Coordinate Bench of this Court on 10th May 2018, CSTC had filed a report in the form of an affidavit on 6th August, 2018. From such report it would be apparent and clear that the petitioner during his service tenure in terms of the said Regulation had exercised his option on 31st July 1991. However, such option was recorded in the service book only on 27th March 2017.

4. Mr. Ghosh, learned advocate representing the petitioner submit that once the respondents had recognized that the petitioner had exercised his option in terms of the said Regulation it was the obligation of the respondents to disburse pension in favour of the petitioner consequent upon his retirement. By placing reliance on a judgment delivered by a Coordinate Bench of this Court in the case of Ashit Chakraborty v. The State of West Bengal & Ors. On 17th August, 2018 in WP 6808 (W) of 2018, it is submitted that in identical set of facts, the Coordinate Bench having found that the Corporation could not hold back the legitimate claim of the employee who had exercised similar option, had directed the Corporation to disburse the monthly pension in favour of such ex-employee of the Corporation, including arrears of pension along with interest @ 6% per annum.

5. It is submitted that although, an Intra-Court Appeal was preferred, the Division Bench of this Court by a judgment and order dated 5th March, 2021, in FMA 692 of 2019 was, inter alia, pleased to affirm the said order. Mr. Ghosh further submits that challenging the aforesaid direction passed by the Hon'ble Division Bench, the Corporation had applied before the Hon'ble Supreme Court by filing a Special Leave Petition, being Special Leave to Appeal (C) No.11991 of 2021. By a judgment and order dated 8th May, 2023 the Hon'ble Supreme Court after granting leave to appeal had dismissed the same by, inter alia, observing as follows:-

"It is not in dispute that the respondent no.1 had exercised his right to receive pension under the 1990 Regulations in the year 1991. Thereafter, it was the duty of the Corporation to have given effect to the same. Merely, because thee were some wrong deductions from his salary and he was treated as member of the CPF Scheme, cannot be permitted to be raised as a ground to defeat his rightful claim. The pension was to start after retirement of the respondent. When the same was not released to him, immediately representation was made by him. As no response was received from the appellant, the writ petition was filed. The argument that there are number of similarly situated employees who will also state their claims, will not deter this Court in granting the relief to the respondent, which is legitimately due to him. Rather this argument shows that the Corporation was at fault in implementing the 1990 Regulations in the cases of number of employees though these were notified on 4.1.1991 and were given retrospective effect from 1.4.1984. Technical objections are sought to be raised, which are not tenable. For any fault on the part of the Corporation, the employees cannot be made to suffer".

6. Mr. Ghosh submits that the petitioner's case is identical and similar benefits

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should be afforded in favour of the petitioner.

7. Per contra, Mr. Sen, leaned advocate representing the Calcutta State Transport Corporation submits that in the instant case although, the petitioner had exercised his option, however, unfortunately, the Corporation had been depositing the employer's share of contribution which was enhanced from time to time in terms of the Employees' Pension Scheme, 1995, with the provident fund authorities. He submits, if the aforesaid writ petition is allowed the respondents shall face serious difficulties in recovering the aforesaid amount, even if the petitioner is directed to refund the employer's share of provident fund contribution. He, however, does not dispute the fact that in an identical case the Coordinate Bench of this Hon'ble Court had directed the Corporation to make payment of pension in terms of the said Regulation and the ultimate challenge to the same before the Hon'ble Supreme Court, at the instance of the Corporation did not succeed.

8. Heard the learned advocates appearing for the respective parties and considered the materials on record. In this case it is noticed that the petitioner had duly exercised the option in terms of the aforesaid Regulation. It is also noticed that in an identical case this Hon'ble Court taking note of the option exercised on the part of the employee and the failure of the Corporation to give effect to the same, had been pleased to hold that there was no justification for the Corporation to hold back the legitimate claim of the employee, and had accordingly directed disbursal of pension. In view thereof, and taking note of the option exercised by the petitioner, I find that it was obligation of the respondents to give effect to the same. If the respondents had deposited provident fund contributions by ignoring the option, the petitioner cannot be made responsible therefor.

9. It is a matter of record that both the Division Bench of this Hon'ble Court as also the Hon'ble Supreme Court had concluded that it is the duty of the Corporation to give effect to the option once, the same is exercised. Merely because there had been some wrong deductions from the salary of the employee, the said employee cannot be treated to be a member of CPF Scheme and the respondents cannot be permitted to raise the same as a ground to defeat the rightful claim for such person. The right to get pension immediately after retirement is a recognised right.

10. Having regard to the aforesaid and taking note of the fact that in similar circumstances, the Hon'ble Supreme Court had directed the Corporation to release pension in favour of the employee who had exercised option, I am of the view that similar benefit cannot be denied to the petitioner.

11. In view thereof, I direct the petitioner to refund the employer's share of contribution on provident fund as also the amount of gratuity already paid in excess of pensionable amount, if any, to the Corporation with interest @ 6% per annum within a period of two weeks from the date of the Corporation raising a

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demand on the petitioner. Upon receipt of such payment or in the alternative, if no such demand is raised within a period of four weeks from the date of communication of this order, the Corporation/respondents shall release pension in favour of the petitioner for the month of May, 2024 and onwards and shall continue to pay the same as per the entitlement of the petitioner in accordance with law.

12. Insofar as arrear pension, i.e. from March, 2017 till April, 2024 is concerned, the same shall be disbursed in favour of the petitioner, in the manner provided herein, within a period of six weeks from the date of communication of this order, along with a computation sheet and the arrear pension shall also carry an interest @ 6% per annum from the date of superannuation of the petitioner till the same is actually disbursed.

13. The petitioner is directed to intimate the respondents the particulars of his bank account, for the respondents to credit pension in such account.

14. With the above observations/directions the writ petition stands disposed of.

15. There shall be no order as to costs.

16. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

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