
(2007) 08 CAL CK 0087
In the Calcutta High Court
Case No : F.M.A. No. 1783 of 2006

Sisir Kumar Mondal

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 27-08-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 19(1), 300A, 31(1)
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 47

Citation : (2008) 1 CHN 838

Hon'ble Judges : S.S. Nijjar, C.J.; Tapen Sen, J.; Pinaki Chandra Ghose, J

Bench : Full Bench

Advocate : Amal Baran Chatterjee and Kaji Sajjad Alam, for the Appellant; Samiran Giri, for the Respondent

Final Decision : Allowed

Judgement

S.S. Nijjar, C.J.—The petitioner was appointed as an assistant teacher on 5th March, 1969 by the concerned Managing Committee of the concerned school. The appointment was duly approved by the State Government. On 15.5.1985 the Government introduced a scheme for pension which would be applicable to the teaching and non-teaching staff of the private school. The teachers who were in service on 18th April, 1981 were required to exercise the option for pension and gratuity within 90 days of the issue of the scheme. At that time the petitioner duly opted for CPF (Contributory Provident Fund)-cum-Gratuity Scheme, and deposits of contribution of both the employer's and employee's share were regularly made. Subsequently, by Government Order No. 496-E.D.N. (B)/IM-39/91 dated 16.12.1991, an opportunity was given to the employees to revise the option. The revised option had to be exercised within 90 days, i.e., on or before 16.3.92. In order to exercise the option, the employees/teachers had to make an application in writing to the school. In order to get the benefit of the pension, it was necessary to adjust the contribution of the employer together with interest accrued thereon which had been credited in the account of the

teacher. On the amount being so refunded to the Government, the head of the institution was required to take the necessary action. As stated above the option under the circular dated 16th December, 1991 had to be exercised within ninety days from the date of the aforesaid order. It was further stipulated that fresh option so exercised shall be final and no further change of option will be allowed. It is alleged that the petitioner after coming to know about the aforesaid order exercised his revised option on 24th January, 1992. He submitted the option form to the Headmaster of the school in compliance of the instructions for exercise of the revised option. However, the meeting of the Managing Committee which was scheduled to be held on 22nd February, 1992 was adjourned. Thereafter, the petitioner made enquiries on a number of occasions and requested the school authorities to take further steps in the matter. The petitioner wanted to refund the entire employers contribution with interest and/or additional interest. However, no action was taken by the respondents. The petitioner claims that he was always ready and willing and is even now ready and willing to refund the employer's contribution of provident fund together with interest and/or additional interest. However, the concerned authorities are not taking the refund of the employer's contribution of provident fund in the absence of specific Government Order to that effect. The petitioner had even offered to receive the future salary without the benefit of the provident fund. This was, however, not accepted.

2. In this petition, the petitioner has again undertaken to refund the entire contribution of employer's share on account of the provident fund along with interest and/or additional interest. The petitioner also brought to the notice of the authorities that in similar circumstances twenty teaching/non-teaching staff of Purusrah High School, Hooghly had been allowed to change the option. He has even produced a copy of the order dated 6th December, 1999 as Annexure "P-5" to the writ petition. On the basis of the order dated 6th December, 1999, large number of teaching and non-teaching staff have been granted the benefit of pension even after retirement. The claim of the petitioner was ultimately accepted by the school on 10th April, 2004. The necessary resolution was passed accepting the change of option from Contributory Provident Fund-cum-Gratuity to the General Provident Fund and Pension including the Family Pension-cum-Gratuity. The claim was duly forwarded to respondent No. 3. This communication has been attached with the writ petition as Annexure "P-5". Despite the receipt of the aforesaid resolution the respondents did not take any action. The petitioner has, therefore, filed the present writ petition.

3. In spite of opportunities having been granted, the respondents did not care to file any affidavit-in-opposition. In spite of the fact that no opposition had been filed, the learned Single Judge has been pleased to dismiss the writ petition by order dated 9th March, 2006.

4. We have heard the learned Counsel for the parties. Learned Counsel for the appellant submitted that the writ petition has been wrongly dismissed only on

the ground of delay and laches. The matter deserved to be examined on merits, as the petitioner had submitted the option within time. Similarly situated employees have been given the benefit of the revised option. The action of the respondents is arbitrary and discriminatory. On the other hand, the learned Counsel for the State of West Bengal has submitted that the petitioner did not submit the option in accordance with the correct procedure. He cannot take any advantage of his own wrong. He did not send the employer's share of the refund along with the change of option. The learned Counsel for the State has emphasized that the writ petition has not been dismissed only on the ground of delay and laches but it has been dismissed on merits.

5. We have considered the submissions made by the learned Counsel for the parties. We are of the opinion that there is much to be said for the claim put forward by the petitioner. It is a matter of record that West Bengal Recognised Non-government Educational Institutions (Death-cum-Retirement Benefit) Scheme, 1981 was introduced on 15th May, 1985. In the scheme Clause 3(a) provides that persons who had been recruited on or after 1st April, 1981 will automatically be governed by the new scheme for pension. However, persons who were in service from 1st April, 1981 will have the option either to continue to be governed by the existing rules governing retirement benefits or to come under the 1981 schemes. The aforesaid provision is contained in Clause 3(b)(i) (ii) of the said scheme. By Clause 4(a) it is provided that the persons willing to come under Clause 3(b)(ii) and opting for the benefit of pension-cum-gratuity shall apply in writing to the head of the institution/organisation stating that he/she is willing to refund to Government the employer's share of contribution together with interest accrued thereon. Thereafter, the head of the institution/organization will take necessary action and intimate the Director after transferring the amount. Clause 5(a) of the scheme provides that existing employees appointed prior to 1st April, 1981 shall be required to opt within ninety days from the date of issue of the scheme. By letter dated 16th December, 1991 the Government further decided to relax the provisions contained in para 5(a) of the scheme. It was provided that the employees may be permitted to exercise revised option for pension subject to the condition that the employer's share of the contribution together with interest and additional interest shall be refunded to the Government forthwith. It was further provided that the revised option as per the memo dated 16th December, 1991 will have to be exercised within ninety days from the date of issue of the memo. It is not denied that the petitioner exercised the option on 24th January, 1992 which was well within the stipulated period of three months. However, due to the inaction on the part of the school authority, the option exercised by the petitioner was not forwarded to the concerned authority. In such circumstances, it would be wholly unjust to deny the benefit of the change of option to the petitioner. A perusal of the order dated 6th December, 1999 would show that twenty employees of Purushura High School were permitted to exercise the option even after the expiry of the stipulated period of three months. Some of these employees had

even retired. In such circumstances, the denial of the same benefit to the petitioner would certainly be violative of Articles 14 and 16 of the Constitution of India. Furthermore, it is to be seen that under the 1981 scheme under Clause 4(a) it is categorically provided that the head of the institution/organisation will take necessary action and intimate the Director after transferring the amount. Once the petitioner had exercised the option on 24th January, 1992 it was the duty of the school authority to take the necessary action about the refund as required under the scheme.

6. There is also much substance in the submissions made by the learned Counsel that the case of the petitioner is similar to the case of the petitioner in *Bijoli Bhattacharyya v. State of West Bengal*, which was decided in her favour by the Supreme Court in the Civil Appeal No. 5061 of 2004 arising out of SLP (C) No. 4928 of 2003. This SLP had been filed by the petitioners therein from the judgment and order dated 24th July, 2002 in M.A.T. 2206 of 2001 of this Court. In that case it has been held as follows:

ORDER

Leave granted.

The appellant was a Government servant who retired on 31.7.2000. The appellant joined the service as assistant teacher on 12.8.1977. In 1981 a scheme was introduced for payment of pension. Then the Government servants were given option either to opt for Pension Scheme or Contributory Provident Fund Scheme. The appellant did not opt for pension scheme in time. Thereafter the appellant made series of attempts to exercise her option but she was not given permission. Aggrieved by that, she filed a writ petition and the same was rejected by the learned Single Judge and her appeal was also dismissed by the Division Bench. Against the same, the present appeal is filed by way of SLP.

Heard learned Counsel for the appellant and the Counsel for the State. Counsel for the State had submitted that the appellant was given enough opportunity to exercise her option and she did not avail those opportunities and did not exercise the option before the due date, whereas the Counsel for the appellant submitted that in several other cases the time for exercising option was extended and in the appellant's case the same was not done. He also contended that the appellant was not keeping well for sometime and therefore, she could not exercise her option before the due date.

It appears that the appellant did not exercise her option for pension scheme before the due date as she was not keeping well and the authorities were not justified in not giving a further opportunity to exercise her option. The appellant retired only in the year 2000 and several months before the date of retirement she filed her option. Hence, we allow this appeal and direct that she be permitted to opt for pension scheme in view of the peculiar facts and circumstances of the case.

If the appellant had already received the provident fund amount, the same shall be refunded with 10% interest within two months and on such payment, pension shall be disbursed to her in accordance with the pension scheme.

Sd/- (K.G. Balakrishnan, J.)

Sd/- (Dr. Ar. Lakshmanan, J.)

New Delhi 6th August, 2004.

7. The claim put forward by the petitioner seems to be on a better footing than the petitioner in Bijoli Bhattacharyya's case (supra). In that case, she had not exercised the option before the due date as she was not keeping well. In the present case the petitioner has clearly exercised the option before the due date. However, the same was not transmitted to the authorities by the school authorities. The inaction on the part of the school authorities cannot be permitted to rob the petitioner of the benefits of the beneficial scheme introduced on 15th May, 1985 which was subsequently extended.

8. At this stage we may also notice certain observations made by the Supreme Court in the case of Deokinandan Prasad Vs. The State of Bihar and Others, . In this case it has been held that right to receive pension would be a fundamental right under Articles 19(1)(f) and 31(1) of the Constitution. The Supreme Court approved the view taken by the Punjab High Court in the case of Bhagwant Singh Vs. Union of India, , in which it was observed that the right to receive pension would constitute property of a public servant and any interference will be a breach of Article 31(1) of the Constitution. This would not be the correct position of law after the deletion of Article 19(1)(f) and Article 31(1) of the Constitution by the Constitution (Forty-fourth) Amendment Act, 1978. Right to receive pension cannot now be said to be a Fundamental Right. But at the same time by virtue of Article 300A it would still be a Constitutional right. Since to receive pension is a right to property, an employee cannot be deprived of the same except by authority of law. The Supreme Court also approved the observations made by the majority of Judges of the Full Bench of the Punjab & Haryana High Court in the case of K.R. Erry v. State of Punjab reported in ILR 1967 P & H 278, that the pension is not to be treated as bounty payable on the sweet will and pleasure of the Government and the superannuation pension including its amount is a valuable right vesting in a Government servant.

9. It is also settled that when construing a provision in a beneficial piece of legislation the Court would interpret the provision in such a way as to advance the purpose for which the legislation was enacted. The Court cannot adopt a narrow and doctrinaire approach which would destroy or make the provision illusory. This proposition of law has been laid down by the Supreme Court in the case of Alembic Chemical Works Co. Ltd. Vs. The Workmen, . In this case it has been held as follows:

The answer to this question must be in the negative for two reasons; first,

having regard to the obvious policy and object of the Act, if Section 79(1) of 1978 Act is capable of two constructions that construction should be preferred which furthers the policy of the Act and is more beneficial to the employees in whose interest the Act has been passed. It is well-settled that in construing the provisions of a welfare legislation Courts should adopt what is sometimes described as a beneficent rule of construction.

10. This same principle has been reiterated by the Supreme Court in the case of *The Buckingham and Carnatic Co.Ltd. Vs. Venkatiah and Another*, . Mr. P.B. Gajendragadkar, J. speaking for the Bench laid down the principle in the following words:

Mr. Doila contends that since this Act has been passed for conferring certain benefits on employees in case of sickness, maternity and employment injury; it is necessary that the operative provisions of the Act should receive a liberal and beneficent construction from the Courts. It is a piece of social legislation intended to confer specified benefits on workmen to whom it applies, and so, it would be inappropriate to attempt to construe the relevant provisions in a technical or a narrow sense. This position cannot be disputed. But in dealing with the plea raised by Mr. Doila that the Section should be liberally construed, we cannot overlook the fact that the liberal construction must ultimately flow from the words used in the section. If the words used in the Section are capable of two constructions one of which is shown patently to assist the achievement of the object of the Act, Courts would be justified in preferring that construction to the other which may not be able to further the object of the Act. But, on the other hand, if the words used in the Section are reasonably capable of only one construction and are clearly contractable (sic) in regard to the construction for which Mr. Dolia contends, the doctrine of liberal construction can be of no assistance.

11. This proposition of law has also been further reiterated by the Supreme Court in the case of *Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda*, . In this case it has been held as follows:

53. Although the Act is a beneficial one and, thus, deserves liberal construction with a view to implementing the legislative intent but it is trite that where such beneficial legislation has a scheme of its own and there is no vagueness or doubt therein, the Court would not travel beyond the same and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered thereby.

(See *Regional Director, ESI Corporation v. Ramanuja Match Industries.*)

54. The decision of this Court in *Kunal Singh v. Union of India* relied upon by Mr. Banerji cannot be said to have any application whatsoever in the instant case as therein this Court while considering the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 held that the language thereof is plain and certain statutory obligation

on the employer was case to protect an employee acquiring disability during service and only in that situation, it was observed; (SCC p. 530, para 9)

9. ...In construing a provision of a social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act.

56. It is now well-settled that for the purpose of interpretation of statute, same is to be read in its entirety. The purport and object of the Act must be given its full effect. The object underlying the statute is required to be given effect to by applying the principles of purposive construction.

12. This view was further reiterated by the Supreme Court in the case of Gamini Krishnayya and Others Vs. Curza Seshachalam and Others, . In this case it has been held that:

13. The answer to the view of the High Court be that in the first place every provision in the statute must be given effect to unless by doing so any conflict with any other provision of the Act would arise. In the second place we cannot ignore the object of the legislature in enacting this law which was to grant relief to the agriculturists and that any beneficial measure of this kind should, as far as permissible, be interpreted in such a way as to carry out the main object which the Legislature had in view....

13. In view of the aforesaid observations we are of the considered opinion that the claim of the petitioner has been illegally and arbitrarily denied.

14. On a number of occasions the Supreme Court has deprecated the unjustified actions of the State authorities in denying retiral benefits to its employees. In many cases the Courts have awarded, to aggrieved employees, exemplary costs as a small measure of compensation for the pain, suffering and mental torture. The Supreme Court considered one such episode in the case of Deokinandan Prasad Vs. State of Bihar and Others, . Even after obtaining a direction from the Supreme Court for the payment of his pension on 4th May, 1971, his pension was fixed only in 1976. Even then it was not fixed in accordance with the decision of the Supreme Court. He approached the Supreme Court once again by making a miscellaneous application. The State was directed to determine the amount payable and to pay interest at the rate of 6% from the due date till payment. He was also awarded Rs. 25,000/- costs. Still no payment was made to him. He, therefore, moved a contempt petition which invited severe strictures against the respondents.

15. The case is reported as Deokinandan Prasad Vs. State of Bihar and Others, . Undoubtedly the Supreme Court discharged the rule, but made the following observations:

This is just to call "amen" to a heroic struggle waged by the petitioner in the fall

of his life for recovering his hard-earned dues from heartless, unsympathetic and occasionally, hostile bureaucracy. In an unequal fight between the mighty State and a retiree, judicial process at the Apex Court had to interpose itself more than once to tilt the balance heavily tilted against the petitioner. The outcome is reassuring in that the wrong has been righted and a festering wound has healed but the frightening legacy of the whole episode is so disturbing that one shudders at the thought as to how after rendering long, meritorious and devoted service for 38 years the employee was thrown on the thorns of life and left to bleed.

2. A Constitution Bench of this Court in *D.S. Nakara and Others Vs. Union of India (UOI)*, , posed three questions: "What is a pension? What are the goals of pension? and what public interest or purpose, if any, it seeks to serve? and proceeded to answer the same inter alia that pension is not only a compensation for service rendered in the past but it has a broader significance in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and therefore, one is required to fall back on savings. Article 41 obligates the State within the limits of its economic capacity and development to make effective provisions amongst others for assistance in case of old age, sickness and disablement. Pension provisions are to some extent the legislative response to the constitutional expectation. But this legal conundrum would provide a paper guarantee if the statutory right to pension is not translated into action in a reasonably short time or retirement leaving the employee to penury and economic destitution.

16. Again in the case of *Katheerji Bai Vs. Superintending Engineer and Others*, , the Supreme Court considered the case of a widow of a deceased employee seeking payment of Provident Fund and Gratuity. Again the Supreme Court made the following observations:

...We must add that the case had left us with the feeling of uneasiness and distress at the plight of helpless persons like the petitioner whose repeated representations to those in authority were left uncared for so long despite the tediously frequent protestations of social justice.

17. Again in the case of *State of Kerala and Others Vs. M. Padmanabhan Nair*, , the Supreme Court observed as follows:

Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment.... The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over-emphasised and it would not be unreasonable to direct that the liability to pay penal interest in

these dues at the current market rate should commence at the expiry of two months from the date of retirement....

We are also of the view that the State Government is being rightly saddled with a liability for the culpable neglect in the discharge of his duty by the District Treasury Officer who delayed the issuance of the LPC but since the concerned officer had not been impleaded as a party defendant to the suit the Court is unable to hold him liable for the decretal amount. It will, however, be for the State Government to consider whether the erring official should or should not be directed to compensate the Government the loss sustained by it by his culpable lapses. Such action if taken would help generate in the officials of the State Government a sense of duty towards the Government under whom they serve as also a sense of accountability to member of the police.

18. These observations are fully applicable in the facts and circumstances of this case. We have noted above that the respondents have slept over the matter for the period of twelve years. The petitioner duly exercised revised option of 24th January, 1992. This was forwarded by the school to the competent authority on 10th April, 2004. This kind of delay is clearly inexcusable.

19. such circumstances we would be fully justified in imposing exemplary costs on the respondents. However, in the interest of justice we refrain from doing so. We allow this appeal and place on record our strong disapproval of the manner in which the pension case of the writ petitioner has been dealt with. The petitioner shall be entitled to interest at the rate of 9% on the delayed payment, i.e., from a date which would be two months from the date of retirement of the petitioner, till the date of payment.

20. With the above observations, the appeal is allowed. The order of the learned Single Judge is set aside. The respondents are directed to release the retiral benefits to the petitioner within a period of three months from the receipt of the certified copy of the order after making necessary adjustment in accordance with law.

21. Xerox certified copy of this order, if applied for, be given to the learned Counsel for the parties.

Tapen Sen, J.

22. I agree.

Later:

23. At this stage the learned Counsel for the appellant seeks stay of operation of the judgment. The prayer is refused.

24. Urgent xerox certified copy of this judgment, if applied for, be given to the learned Counsel for the parties.