
(2018) 09 CAL CK 0004
In the Calcutta High Court
Case No : Writ Petition No. 10915 (W) of 2014

Smt. Bula Chakraborty	Vs	APPELLANT
State of West Bengal & Ors.		RESPONDENT

Date of Decision : 04-09-2018

Acts Referred:

Citation : (2018) 09 CAL CK 0004

Hon'ble Judges : DEBANGSU BASAK, J

Bench : Single Bench

Advocate : Dipankar Pal, Kazi Sajjad Alam, Kakali Naskar, Joytosh Majumder, Pinaki Dhole, S.P. Lahiri

Final Decision : Dismissed

Judgement

DEBANGSU BASAK, J.

A widow of a deceased teacher seeks a direction upon the respondent authorities to accept the change of option from contributory provident fund cum

gratuity scheme to pension including family pension cum gratuity scheme.

Learned Advocate appearing for the petitioner submits that, the deceased employee did not exercise the option of change over during his lifetime. The

deceased had no opportunity to do so during his lifetime as the law relating to the switchover stood settled subsequent to his death. The issue regarding

the change over received consideration by the High Court and ultimately the law on the subject was settled by a judgment and order passed by the

Special Bench reported at 2013 Volume 3 Calcutta Law Journal (Cal) page 178 (District Inspector of Schools (SE), Kolkata & Anr. v. Abhijit Baidya

& Ors.). He submits that, the teacher expired in 2000. Consequently, the teacher could not exercise the option of conversion granted by Abhijit Baidya

& Ors. (supra). The petitioner, therefore, should be allowed to exercise the option. Learned Government Pleader appearing for the respondent submits that, the deceased teacher never exercised the option during his life time. The widow of the deceased teacher cannot be allowed to exercise such option now. He refers to Abhijit Baidya & Ors. (supra) and submits that, such judgment relates to living employees. The same cannot be extended to widows of deceased employees. He submits that, such an issue was considered by the Division Bench in MAT 2066 of 2014 (Renuka Khatua v. State of West Bengal & Ors.). Such issue was decided against the petitioner. He submits that, Renuka Khatua (supra) was rendered after considering another Division Bench judgment dated December 9, 2015 passed in MAT 1598 of 2015 (The State of West Bengal & Ors. v. Smt. Jharna Bhattacharya & Ors.) and Abhijit Baidya & Ors. (supra).

According to him Renuka Khatua (supra) should be followed and applied. He relies upon a judgment and order dated July 13, 2015 passed in W.P. No. 11970 (W) of 2015 (Champa Rani Bera Vs. The State of West Bengal & Ors.) and submits that, the Court considered similar issues and declined to grant relief to a widow of a deceased primary school teacher.

As noted above, a widow of a deceased teacher is seeking the benefits of conversion from contributory provident fund to general provident fund. Abhijit Baidya & Ors. (supra) deals with the issue of permissibility of such switchover. It directs the State to issue advertisements calling upon the employees in service of ex-employees who have retired to submit the option for switch over. Notification in terms of Abhijit Baidya & Ors. (supra) was issued. There was no provision in such notification for a widow to make an application for switch over. In the facts of the present case, the petitioner did not make any application for switch over. Abhijit Baidya & Ors. (supra) was considered in Champa Rani Bera (supra). There a widow of a deceased primary school teacher was disallowed the right to apply for conversion. In Smt. Jharna Bhattacharya & Ors. (supra) a Division Bench considering Abhijit Baidya & Ors. (supra) allowed an employee to exercise the option of conversion.

In Renuka Khatua (supra) however, another Division Bench, after considering Abhijit Baidya & Ors. (supra) and Smt. Jharna Bhattacharya & Ors. (supra) found that, the benefits granted by Abhijit Baidya & Ors. (supra) did not

extend to the widows of deceased employees to allow them to exercise an option for switchover. The notification dated June 13, 2014 issued in terms of Abhijit Baidya & Ors. (supra) does not contain any provision for the widows of the employees to exercise such option. Renuka Khatua (supra) being later in point of time than Smt. Jharna Bhattacharya & Ors. (supra) and Renuka Khatua (supra) being rendered after considering Abhijit Baidya & Ors. (supra) and Smt. Jharna Bhattacharya & Ors. (supra), it would be appropriate to apply the ratio of Renuka Khatua (supra). Abhijit Baidya & Ors. (supra) deals with five issues framed in paragraph 9 thereof.

The fifth issue is as follows:-

“Whether the time-limit fixed under the DCRB Scheme, 1981 to submit option can be extended in suitable cases?” Such issue is answered as follows:-

“In our opinion, as there was drastic change of provisions of para 17(2) of ROPA 1990 made by way of substitution in 2007, and ROPA 1998 also interfered with the rights conferred upon the employees under para 17(2) of ROPA 1990, all the employees who opted for ROPA 1990 ought to be given fresh opportunity to submit the option to switch over to Pension-cum-Gratuity.”

In the facts of the present case, there is nothing in record to suggest that, the deceased employee, during his lifetime opted for ROPA 1990. The employees who opted for ROPA 1990 were given a fresh opportunity to submit option for switchover, on the terms and conditions specified, in Abhijit Baidya & Ors. (supra). In such circumstances, no relief can be granted to the petitioner. W.P. No. 10915 (W) of 2014 is dismissed. No order as to costs. Urgent certified website copies of this judgment and order, if applied for, be made available to the parties upon compliance of the requisite formalities.