
(2005) 08 CAL CK 0067
In the Calcutta High Court
Case No : Writ Petition No. 2528 (W) of 2005

Subal Chandra Sahu

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 24-08-2005

Acts Referred:

Citation : (2006) 4 CHN 853

Hon'ble Judges : Arun Kumar Mitra, J

Bench : Single Bench

Advocate : Asok De and S. Dutta, for the Appellant; Suproakash Banerjee and Saikat Banerjee, for the Respondent

Final Decision : Allowed

Judgement

Arun Kumar Mitra, J.—In this writ petition the petitioner has prayed for conversion of his option from Contributory Provident Fund scheme to the pension scheme including General Provident Fund that is Pension including Family Pension. The petitioner alleged that he is an assistant teacher in Amarshi Brindaban Chandra Girls High School. VIII and P.O. Amarshi, District-Purba Midnapore and he is an approved teacher.

2. In the year 1985 the State Government has issued a notification under Memo No. 136-Edn. (B) dated 15.05.1985 for availing the opportunity for Contributory Provident Fund-cum-Gratuity and in pursuance to the said notification the petitioner exercised his option with a view to availing the opportunity of Contributory Provident Fund.

3. Subsequently in relaxation of Memo No. 136-Edn. (B) dated 15.5.1985 and partial modification the Government issued another Memo being No. 496-Edn. (S)/39/91 dated 16.12.1991. In this memo it was observed that the approved teaching and non-teaching staff of Aided Non-Government Educational Institutions who opted for Contributory Provident Fund-cum-Gratuity may exercise revised option for pension including family pension subject to the

condition that the employer's share of contribution together with interests accrued thereon shall be refunded to the Government forthwith. The petitioner has annexed this modification memo as Annexure-"P1" to the writ petition.

4. According to the petitioner the last date for submission of option was 15th March, 1992 and the petitioner submitted the option along with the declaration form before the authority on 25.01.1992 as Annexure- "P2".

5. The petitioner deposited the option form with the school authority according to him within time and he cannot deposit it directly and he has now come to Court for a direction on the Headmaster to deposit all his option papers with the District Inspector so that his change of option may be approved.

6. According to the petitioner the Headmaster cannot remain silent and sit over the documents and he cannot suffer for no fault of his own.

7. The petitioner submitted further representation before the Teacher-in-Charge and the representations submitted in 1992, 1998, 1999 and 2004 have been collectively annexed and marked as Annexure - "P3".

8. The petitioner has also annexed a judgment delivered by Hon"ble Justice Aloke Chakraborty in an identical matter.

9. On behalf of the State/respondents affidavit-in-opposition has been filed. In the affidavit-in-opposition it has been stated that option was to be exercised in a prescribed form and time to submit option was extended from time to time and lastly it was extended as a last chance through Government Circular No. 496-Edn. (B) dated 16th December, 1991 till 15"" March, 1992.

10. It has further been stated/submitted that beyond the cut off date no option can be accepted and the petitioner's option also cannot be accepted because cut off date is over.

11. In one paragraph observations of the Hon"ble Division Bench presided over by the Hon"ble Chief Justice, Ashok Kumar Mathur (as His Lordship then was) is quoted in which it has been observed by the Division Bench that belated option was given which was not accepted by the Government and as such the writ petitioners filed the writ petition. It has also been observed that learned Single Judge with one stroke of order condoned the delay in making the option and directed the authorities to accept the option and decide the matter of pension. This approach of the learned Single Judge cannot be sustained.

12. It has also been stated in the opposition that similar view has been taken by another Division Bench in the judgment reported in 2005 (1) CLJ 151 : 1 2005 CLT 375 State of West Bengal v. Madan Mohan Ghosh and Ors.

13. The affirming respondent in another paragraph has stated that the judgment delivered by Hon"ble Bhaskar Bhattacharya in W.P. No. 11013(W) of 2003 in which Hon"ble Justice Bhattacharya observed that after exercise of option of ROPA-1990 scheme the switch over is not required to exercise option once again

within the time stipulated (that is within 15th March, 1992), has been stayed.

14. It has been further submitted that on 6th December, 2004 while hearing the stay application in connection with M.A.T. No. 2560 of 2004 filed against the judgment dated 8th September, 2003 passed in W.P. No. 11013 (W) of 2003. Their Lordships Hon"ble Justice Barin Ghosh and Hon"ble Justice A.K. Basu observed that "being prima facie satisfied that exercise of option under ROPA, 1990 in terms of the provisions contained therein does not ipso facto presume exercise of option to switch over from Contributory Provident Fund-cum-Gratuity Scheme to Pension-cum-Gratuity Scheme. Their Lordships however, observed that if the petitioner succeeds in the appeal the Government will have to compensate the petitioner the loss suffered by him."

15. The affirming respondent lastly stated and/or submitted in the affidavit-in-opposition that in view of the judgments referred to above the petitioner is not entitled to change over the option from Contributory Provident Fund Scheme to General Provident Fund Scheme.

16. The petitioner submitted reply in connection with the affidavit-in-opposition filed by the respondent No. 2. In the reply the petitioner reiterated his stand taken in the writ petition and denied the allegations made in the affidavit-in-opposition.

17. The petitioner submitted that by virtue of the notification being No. 496-Edn. (B) dated 17.12.1991 the State Government allowed the teaching and non-teaching staff to switch over option from Contributory Provident Fund-cum-Gratuity to Family Pension cum-Gratuity. The last date was fixed on 15th March, 1992. By virtue of that circular the petitioner submitted option from Contributory Provident Fund to Family Pension-cum-Gratuity on 6th February, 1992 before the Teacher-in-Charge within the scheduled time i.e., 15th of March. 1992.

18. The petitioner also submitted in the reply that the intention of the notification is very much clear in its perspective that the willing teaching and non-teaching staff for the purpose of exercising his option is only required to fill up the prescribed form and deposit the same to the head of the institution/Teacher-in-Charge and if it is complied with by the willing teaching and non-teaching staff in that event it is the burden of the school authority to send these papers to the concerned District Inspector of Schools for according approval but if any delay and/or laches is caused by the school authority the petitioner should not or cannot suffer.

19. It has further been stated that the intention of the notification is to change the option of the willing teaching and non-teaching staffs subject to the condition that the employer's share of contributory amount with the interest shall be refunded thereon and this option has been exercised by the petitioner for change from Contributory Provident Fund to General Provident Fund. It clearly appears that he has expressed his willingness to refund the employer's share of contribution with the interest accrued thereon.

20. The petitioner also stated that the question of refund of share of Provident Fund can only arrive after the teaching and non-teaching staff has been allowed to change the option and the school authority is liable or responsible for deduction of the Provident Fund and deposit the same with the Provident Fund authority but if school authority continues to deduct the Provident Fund from the employees and to deposit employer's share inadvertently or erroneously the staff cannot suffer.

21. The petitioner repeated and reiterated his prayer and/or stand as taken earlier in the writ petition.

22. Heard the learned Counsel for the parties and considered their respective submissions as well as their averments made in the respective writ petition, affidavit-in-opposition and in the affidavit-in-reply. Though in the affidavit-in-opposition it has been stated that petitioner made a false story but neither the Teacher-in-Charge comes forward to say that he has not received the option form or he has not received the reminders or the representations continuously given etc. In fact in spite of the notice the teacher has not entered appearance or nor has he filed any affidavit-in-opposition. There is no doubt about it that each and every document when filed to the District Inspector or the Government authorities the same should be filed under forwarded through the Teacher-in-Charge and/or the Headmaster. The teaching and non-teaching staff cannot directly go to the District Inspector and file the option form unless forwarded by the concerned Teacher-in-Charge or the Headmaster. The procedural aspect is like this that a Teacher or non-teaching staff if express his intention to switch over from Contributory Provident Fund to General Provident Fund the said expression is enough if it is in writing and if it is deposited with any authority. Now, in a school the authority is the Teacher-in-Charge or the Headmaster. Unless the Teacher-in-Charge or the Headmaster accepts and/or forwards the option form the District Inspector cannot entertain the teacher or the non-teaching staff directly. Sometimes it has been seen also that on such approach the authorities have initiated departmental proceeding against the teaching or non-teaching staff showing cause as to why he has approached the District Inspector or Director directly. In such circumstances the teacher or the non-teaching staff can only do this that he or she can file the document before the Head Teacher or the Teacher-in-Charge and Annexure-"P3" shows that not only the option form but also several reminders or subsequent representations have been given to the Teacher-in-Charge and it has not been contended by the affirming respondent that the signatures of the Teacher-in-Charge are forged.

23. It also appears to me that the decisions which have been quoted in the affidavit-in-opposition does not in aid of the opposition. On the other hand the judgment delivered by Hon"ble Justice Alope Chakrabarti which is annexure blank to the writ petition is identical in nature. There in that judgment also the option form was submitted before the school authority but the school authority delayed to filing the same before the District Inspector and His Lordship directed

the school authority to deposit all the papers immediately.

24. If the teacher through an option form has expressed his desire to switch over from Contributory Provident Fund to the Pension including Family Pension-cum-Gratuity and that option is accepted by the school authority and still then the school authority deducts the amount of employer's share as per the provisions of Contributory Provident and that too on submissions of several representations by the teacher/petitioner it cannot be said that the teacher is in any way responsible for the fault or laches, if any. If the teacher is not at fault then the school authority are bound to send the papers regarding his option and the District Inspector is bound to accept the same and the District Inspector is also bound to allow the petitioner to deposit the amount already drawn with interests as per the conversion provision.

25. In the above circumstances, I direct the school authority to submit all the papers of the petitioner including his application for change of option before the District Inspector of Schools concerned within a week from the date of communication of the order. The District Inspector thereafter in turn will allow the petitioner and/or pass an order directing the petitioner to deposit the amount drawn by the petitioner along with interest as per the Contributory Provident Fund provision so that the petitioner can avail the Pensionary General Provident Fund Scheme. Immediately on receipt of such a direction from the District Inspector of Schools the petitioner will deposit the amount calculated by the District Inspector within a week from the date of receipt of such direction. On such deposition the petitioner will be entitled to avail the General Provident Fund Scheme that is Pension Scheme.

26. The writ petition is thus allowed on the above terms.

27. There will be no order as to costs.

28. The dates are peremptory in nature.

29. Urgent xerox certified copy, if applied for, be given to the parties as expeditiously as possible.