

(2014) 04 CAL CK 0106
In the Calcutta High Court
Case No : W.P. No. 5570(W) of 2011

Suniti Kumar Ghosal and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 25-04-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity (Supply) Act, 1948 — Section 79(c)

Citation : (2014) 3 CALLT 667 : (2014) 4 CHN 14 : (2015) 1 WBLR 737

Hon'ble Judges : Arijit Banerjee, J

Bench : Single Bench

Advocate : Saptangshu Basu, Sr. Adv., Mr. Biswaroop Bhattacharya and Ms. Reshmi Ghosh, Advocate for the Appellant; Sumit Panja and Mr. Sumit Roy, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Arijit Banerjee, J.—These three writ petitions would raise identical issues and have accordingly been heard together.

2. The petitioners in the three writ petitions are/were employees of the West Bengal State Electricity Board (in short WBSEB), presently the West Bengal State Electricity Distribution Company Limited (in short the Distribution Company) and the West Bengal State Electricity Transmission Company Limited (in short the Transmission Company). The petitioners in W.P. No. 5570(W) of 2011 (Suniti Kumar Ghoshal and Ors.-vs.-Union of India and Ors.) are all existing employees of the Distribution Company and the Transmission Company. The petitioners in the other two writ petitions are all retired employees of the Distribution Company and the Transmission Company as well as the West Bengal Power Development Corporation Limited.

3. The basic grievance of the petitioners is that they have been prevented from switching over to the West Bengal State Electricity Board Employees (Death-cum-Retirement Benefits) Regulations, 1985 (in short the DCRB, 1985), which was

brought into effect from 4th May, 1985. It is their case that they were never informed about the DCRB, 1985 and that it was more beneficial than the Employees' Pension Scheme, 1995 by which they were governed. DCRB 1985 was compulsorily made applicable for those employees, who joined the WBSEB on or after 4th May, 1985. However, all the petitioners joined the WBSEB service prior to 4th May, 1985. It is the grievance of the petitioners that the DCRB was made gradually more and more attractive whereas the Employees' Pension Scheme, 1995 remained unchanged for over a decade.

4. It is urged by the writ petitioners that by Circular No. 11 dated 22nd April, 1991, the Secretary of the then WBSEB in continuation to Circular No. 10 extended the time for exercise of option for Pension Scheme under Regulation 5(a)(1) of the DCRB, 1985. It was recorded that such extension was final and would be in force for a period of six months and that no further extension of time for exercising option for pension scheme would be allowed. It was made clear that employees who did not exercise the option would continue to remain under the Contributory Provident Fund-cum-Gratuity Scheme of the WBSEB. Further, all controlling officers should ensure that the employees and officers under them are made aware of the decision contained in such circular. However, the controlling officers did not bring such decision to the notice of the petitioners or many other persons who were similarly placed. The petitioners contended that each employee should have been informed individually through notices, which was not done and as a result the petitioners were prevented from exercising their options.

5. The petitioners contended that the Circular dated 4th December, 1993 whereby option was given to the employees to switch over to the DCRB, 1985 was also not adequately circulated nor notified in the official gazette and it is immaterial as to whether there was press-publication or not. In short, the petitioner's grievance is that they were not made aware that an option was being offered to switch over to the DCRB, 1985.

6. Once again by a further Circular dated 4th December, 1993 option was given to the employees to come over to the DCRB, 1985. It was recorded that DCRB, 1985 is compulsorily applicable for the employees who entered Board's service on or after 4th May, 1985. Further, the employees in Board's service as on 3rd, May, 1985 were granted opportunity to exercise option to opt for switching over to DCRB, 1985. It was recorded that the same was the last opportunity. The Controlling Officers were once again requested to bring the Circular to the notice of all employees individually working under their control by making such number of copies at their end. It was recorded that all concerned should extend all sorts of cooperation so as to make the opportunity to exercise option a meaningful one. However, the above notification was not widely circulated and was not notified in the Official Gazette as required u/s 79(c) of the Supply Act. It is absolutely immaterial as to whether there was press publication or not. The fact remains that the petitioners were never put on notice regarding the proposed switch over.

7. It appears that by a Circular dated 4th December, 1993 an option was solicited from the existing employees like the petitioners who joined on or before 4th May, 1985 to come over to the DCRB, 1985. However, the petitioners were never informed of such Circular nor are the petitioners aware of the issuance of any such Circular by way of a public advertisement made in the daily newspaper. The said Circular dated 4th December, 1993 and the subsequent Circular dated 14th December, 2001 were not circulated properly and not brought to the knowledge of all the employees.

8. The petitioners state that subsequent attractive changes were not made known to employees and they could not foresee changes. Therefore a scope for exercising option to switch over to the DCRB, 1985 should have been kept open/given.

9. The petitioners submit that though vide paragraph No. 8 of the Circular dated 14th December, 2001 referred to in the writ application, all controlling officers were directed to bring the Circular and the booklet to the notice of all employees working under their control by making out such number of copies as may be necessary from their end but fact remains that the Circular dated 14th December, 2001 and the booklet were not brought to the petitioners' notice as a consequence whereof the petitioners were unaware of further chance of exercise of option under DCRB.

10. The petitioners state that the decision to enable the employees to opt to come under the DCRB, 1985 generated a legitimate expectation in the petitioners that once again such option would be made available to them. However, the said expectation has been set at naught by the decision contained in the Circular dated 21st October, 2002 which virtually forced the petitioners, who were not optees under the DCRB, 1985 to opt for the Employees Pension Scheme, 1995.

11. In support of their contention, the petitioners have relied on the following judgments:-

a. Unreported judgment of the Special Bench of this Court delivered in the case of District Inspector of Schools (SE), Calcutta & Anr.-vs.-Abhijit Baidya & Ors. delivered on July 16, 2013. Reliance has been placed on paragraphs 50, 52 and 75 of the said judgment which are reproduced hereunder:

(i) The only other point that remains for our consideration is the version of the employees that they were not made aware of the amendments effected in para 13 of ROPA, 1998 and para 17 of ROPA 1990 with effect from 13th July, 1999 and 16th May, 2007 respectively.

(ii) The amendments in ROPA 1998 and ROPA 1990 sought to take away the accrued right of the employees, who had opted for the revised scales of pay. By introducing such amendments, the Government intended to bind the employees by the options exercised by them in terms of the DCRB Scheme, 1981 instead of their automatic entitlement of Pension-cum-Gratuity on opting for the revised

scales of pay and acceptance of reduced age of superannuation. There has been no endeavor on the part of the State Government to counter the version of the petitioners that they were not made aware of such amendments. On the authority of the decision in B.K. Srinivasan (supra), the amendments could be given effect if the same were published through reasonable mode of publication. Once the State Government decided that provisions in para 13 of ROPA 1998 and para 17 of ROPA 1990 required amendments, the employees who were to be governed by such amendments ought to have been notified directly and reliably of all changes and additions made to the original provisions by various process so as to enable them to exercise their option for Pension-cum-Gratuity, if they so wished, instead of binding them down to the option exercised under the DCRB Scheme, 1981. On this ground too, the submissions advanced on behalf of the State Government seeking to deny the employees the benefit of Pension-cum-Gratuity cannot be accepted.

(iii) Coming to the relief to be granted, it is clear that some of the employees are in service and some of them have retired and averments are on record that they are ready and willing to repay the amount of employer's share of contribution in the CPF together with interest and additional interest as option had not been called from them to switch over to Pension-cum-Gratuity while substituting of para 17(2) of ROPA 1990 on 16th May, 2007 with effect from 6th March, 1999.

b. The judgment of the Hon"ble Apex Court in the case of B.K. Srinivasan and Others Vs. State of Karnataka and Others, . Reliance has been placed on paragraph 15 of the said judgment which is reproduced hereunder:

There can be no doubt about the proposition that where a law, whether Parliamentary or Subordinate, demands compliance, those that are governed must be notified directly and reliably of the law and all changes and additions made to it by various processes. Whether law is viewed from the standpoint of the "conscientious good man" seeking to abide by the law or from the standpoint, of Justice Holman's "Unconscientious bad man" seeking to avoid the law, law must be known, that is to say, it must be so made that it can be known. We know that delegated or subordinate legislation is all pervasive and that there is hardly any field of activity where governance by delegated or subordinate legislative powers is not as important if not more important, that governance by Parliamentary legislation. But unlike Parliamentary legislation which is publicly made, delegated or subordinate legislation is often made unobtrusively in the chambers of a Minister, a Secretary to the Government or other official dignitary. It is, therefore, necessary that subordinate legislation, in order to take effect, must be published or promulgated in some suitable manner, whether such publication or promulgation is prescribed by the parent statute or not. It will then take effect from the date of such publication or promulgation. Where the parent statute prescribes the mode of publication or promulgation that mode must be followed. Where the parent statute is silent, but the subordinate legislation itself prescribes the manner of publication, such a mode of publication may be

sufficient, if reasonable. If the subordinate legislation does not prescribe the mode of publication or if the subordinate legislation prescribes a plainly unreasonable mode of publication, it will take effect only when it is published through the customarily recognized mode of publication. They may be subordinate legislation which is concerned with a few individuals or is confined to small local areas. In such cases publication or promulgation by other means may be sufficient. See *Narayana Reddy v. State of Andhra Pradesh*, 1969 (1) Andh WR 77.

c. The Hon'ble Apex Court judgment in the case of *Dakshin Haryana Bijli Vitran Nigam and Others Vs. Bachan Singh*, which is quoted below:

In view of the law as has been articulated in a large number of cases where this Court has observed that any discriminatory action on the part of the Government would be liable to be struck down. Hence, in this case, it would be totally unreasonable and irrational to deny the respondent the pensionary benefits under the scheme particularly when the appellants have failed to produce any record showing that the instructions dated 6.8.1993 and 9.8.1994 were actually got noted in writing by the respondent. In the absence of any such material it can well be inferred that the respondent had no knowledge about the options called by the appellants.

d. Decision of the Apex Court in the case of *State of Assam and Another Vs. Bharat Kala Bhandar Ltd. and Others*, which is reproduced hereunder:

We have already set out sub-r.(4) and a perusal of its language will show that there is nothing in the words themselves which plainly and unambiguously indicates that the power exercised thereunder depends purely on the subjective satisfaction of Government. It is true that sub-r.(4) so far as it applies to employments other than those of Government is consequential on a notification under sub-r.(1). But that does not mean in the absence of express words in sub-r.(4) that the power exercised thereunder depends purely on the subjective satisfaction of Government. We have already indicated that the power under sub-r.(4) is analogous to the power of industrial tribunals to decide disputes between employers and employees. The result of the exercise of the power under sub-r.(4) is to vary the contractual relations between employers and employees concerned in employments with respect to which a notification under sub-r.(1) has been issued. The effect of the exercise of such power is to unsettle settled relations between employers and employees which may be existing for a long time and which may be the outcome either of contractual relations or even of industrial awards. Sub-rule (4) not only deals with wages but also with other conditions of service and thus in a real emergency may practically supersede all industrial adjudication. The power conferred is thus a far-reaching nature in the field of industrial relations and may have the effect of disturbing all such relations for the duration of a real emergency. The question therefore arises whether in the absence of express words in sub-r.(4) to indicate that the power is to be exercised purely on the subjective satisfaction of Government we should

hold that an order under sub-r.(4) can be passed purely on such subjective satisfaction. When the effect of orders passed under sub-r.(4) can be so far-reaching and so wide in its impact we would be loath to hold that such wide and far-reaching powers were conferred in Government to be exercised purely on its subjective satisfaction without even consulting the interests concerned specially when the language is not plain and unambiguous and there is no indication in the sub-rule itself that the power can be exercised purely on the subjective satisfaction of Government. We are not unmindful of the fact that the power under sub-r.(4) has to be exercised in a real emergency. But the ambit of the power therein is analogous to the power of industrial courts. The power under sub-r.(4) may be exercised instead of referring industrial disputes relating to wages and other conditions of service to industrial tribunals. We are also not unmindful of the fact that in a real emergency, decisions may have to be taken quickly and delay inevitable in the elaborate procedure provided for resolution of industrial disputes by industrial tribunals may not be desirable. Even so in the absence of express words in sub-r.(4) to show that the power thereunder depends for its exercise entirely on the subjective satisfaction of Government we would not be prepared to hold that that is what sub-r.(4) indicates. We have already said that the effect of sub-r.(4) is to disturb settled industrial relations whether based on contracts or on industrial awards, and it seems to us that before Government exercises the power under sub-r.(4) it should even in a real emergency consult the interests concerned before taking action thereunder.

12. It would appear from the above that the basic grievance of the petitioners is that they were not made aware of the various Government Circulars which gave option to the employees of the Distribution Company and the Transmission Company to opt for the DCRB Scheme.

13. Appearing for the respondent authorities Mr. Sumit Panja, Learned Senior Counsel, has submitted as follows:

a. The writ petitions are not maintainable in their present form. Several persons have been clubbed as petitioners in one writ petition which is not permissible because the right accrued, if any, is personal and individual right and, therefore, the writ petitions should have been filed by individual persons. Each and every petitioner has a different date of appointment, first posting, holding posts throughout service carrier, responsibilities, duties etc and as such each one of them has separate and individual cause of action. The petitions are not maintainable in their present form since they were not filed in representative capacity as per Rule 12 of the Rules framed by this Court under Article 226 of the Constitution of India.

b. The petitions are not maintainable also because the petitioners did not disclose their employees identification number not did they disclose in which posts and which office they work and how many times they have been transferred from one office to another. In the absence of these details it is not possible to identify the petitioners as employees of the respondent authorities.

c. Delay defeats equity. The petitions have been filed after inordinate delay which has not been explained sufficiently or at all. The contention of the petitioners that they were not aware of the option is not credible. Co-employees of the petitioners exercised their options on the basis of the notice displayed in the office notice board and most of the employees exercised their option within the original date whereas others did so within the extended time period. The petitioners during their long service carrier have been posted in different offices in West Bengal and it is unbelievable that they were not aware of the DCRB Scheme although their co-employees and, in fact, a majority of them exercised such option.

d. The petitioners were given enough chance to exercise the option between 1985 to 2002 i.e. for 17 long years but they chose not to exercise such option.

e. The contention of the petitioners that they had no information regarding the DCRB Scheme is preposterous. The time for switching over to the said scheme was extended from time to time through different circulars which were well circulated amongst the employees. Press-publications were also made in the "Ananda Bazar Partika" on 20th December, 1993 and 26th December, 1996 for general awareness of the existing employees/retired employees/legal heirs of expired employees.

f. The then Board did not hide the beneficial status of the several pension schemes including the DCRB Scheme and a comparative analysis between the Board's Pension Scheme, 1985 and the Employees' Pension Scheme, 1995 was enclosed with the Circular No. 34/01 dated 14.12.2001. Similarly, a comparative analysis of the Family Pension Scheme, 1971 and the Employees' Pension Scheme, 1995 was enclosed with Circular No. 13/2002 dated 21.10.2002.

g. It would appear from paragraph 18 of the writ petition being W.P. No. 5570(w) of 2011 that 24,652 employees opted for the DCRB Scheme whereas 3012 did not opt. This would also show that the option for switching over to DCRB Scheme got wide circulation amongst the employees as otherwise such huge number of employees could not have switched over to the DCRB Scheme.

h. The allegation in paragraph 21 of the said writ petition that the petitioners were not aware that options were invited from the employees through circulars dated 4.12.1993 and 14.12.2001 since the same were not circulated properly and not brought to the knowledge of all the employees is incorrect and is a deliberate misstatement. The circular was issued by virtue of the order of the Hon'ble High Court and was widely circulated. The Pension Scheme, 1971 was amended to Employees Pension Scheme, 1995 with effect from 16.11.1995. On introduction of such scheme, the then employees filed a writ petition in this Hon'ble Court being W.P. No. 2153(w) of 1999 on which an order dated 21.12.1999 was passed. Pursuant to such order the WBSEB reopened the scope for exercising option for DCRB Scheme up to 30.6.2002. There was a reason for fixing the last date for exercise of option as 30.6.2002. The General Secretary of

WBSEB Workers" Union being the largest Union of the Board, approached the then Board Authority with a request to discharge its obligation to extend the time for exercising option for DCRB Scheme and with a request that six months time should be given to all employees for completion of the circulation procedure. Accordingly the authority decided to give six and half months time between the circular date and the last date of exercise of option.

i. It is a general practice/convention that benefits like the present one are made known to the employees through general office orders/circulars which has been done in this case also. There is no practice for personal service as more than 30,000 employees are employed throughout the State of West Bengal in different sectors.

j. On the ground of alleged hardship of a handful of employees a scheme can neither be struck down nor be extended and that too after so many years and particularly after the last extended date as per the order of this Hon"ble Court.

k. The petitioners are blowing hot and cold. On one hand the petitioners say that in terms of Section 79(c) of the Electricity Supply Act, condition of service cannot be changed by way of a notification without publishing in the official gazette and on the other hand the petitioners seek implementation of such change by exercising the option. If the DCRB, 1985 is bad in terms of Section 79(c) of the Electricity Supply Act, the petitioners cannot claim benefit of the same.

l. It would appear from the written representation dated 7th April, 2011 (copy whereof is at page 36 of the A/R in W.P. No. 5570(w) of 2001) that the petitioners were aware of the DCRB Scheme but they were apprehensive and thought that it would be prudent not to exercise the option.

m. In paragraph 14 of W.P. No. 5570(w) of 2011, the petitioners have stated that they have "recently come to learn" regarding the DCRB Scheme. However, it is not stated as to when, how and from whom they came to know about it. The said paragraph has been verified as "true to my information derived from the records". No particulars of the alleged records have been disclosed. The said statements have been made only to try and cover up the huge delay in moving the instant writ petitions. The Full Bench decision referred to in the written notes of submission filed on behalf of the petitioners is not applicable in the instant case in view of the following decisions:-

a. Uttaranchal Road Transport Corpn. and Others Vs. Mansaram Nainwal, : It has been held in this case that reliance on a decision without looking into the factual background in the case is not permissible. A decision is precedent on its own fact.

b. Union of India (UOI) Vs. Chajju Ram (Dead) by Lrs. and Others, : A little difference in facts or additional facts may lead to a different conclusion.

14. It is further contended that the Full Bench judgment relied upon by the petitioners have no application in the instant case since the facts, controversy and legal points involved in that case were completely different from those

involved in the instant case. The question involved in that case was whether the employees had to be given opportunity to switch over to the Pension-cum-Gratuity Scheme, in view of the change made in paragraph 17(3) of ROPA 1990 and also in view of the paragraph 13 of ROPA, 1998. The petitioners have sought to rely on some paragraphs of the said Special Bench judgment but those observations of the Special Bench are based on completely different facts and have no relevance in the instant case.

15. Reliance has been placed by the respondents on the decisions reported in CSIR and Others Vs. Ramesh Chandra Agrawal and Another, . The said decisions, in my opinion, are not necessary to be discussed for the purpose of disposal of these writ petitions.

16. I have considered the rival contentions of the parties carefully. The first grievance of the petitioners is that the option for switching over to the DCRB Scheme, 1985 and the extension from time to time of the time period for exercising such option was not brought to the notice of the petitioners and the petitioners were, therefore, not aware of the same. Hence, the petitioners were prevented from switching over to the SCRB Scheme. From the records, however, I find that the scheme was published in the newspapers and were displayed on notice boards in the various offices of the respondent authorities. This would amount to sufficient circulation and/or publication. It would be impractical and practically impossible to personally inform to each of the approximately 30 thousand employees of the Distribution and Transmission Companies. It is significant that a vast majority of the employees opted for the DCRB Scheme which shows that they obviously had knowledge of this Scheme. The petitioners are only a handful of employees who claim that they had no knowledge of the Scheme. This is not credible. I am of the view that the petitioners are feigning ignorance of the scheme only to cover up the huge delay in approaching the Court. The employers are entitled to fix the cut off date for every scheme. In the instant case the cut off date was extended from time to time and finally up to 30th June, 2002. The petitioners have approached the Court after nine years. It will not be proper after this long lapse of time to direct the respondent authorities to allow the petitioners to exercise option to switch over to the DCRB Scheme, 1985. The petitioners had long 17 years to exercise the option but they chose not to. The claim of the petitioner that they were not aware of the relative benefits under the DCRB Scheme cannot also be accepted. It is seen from record that along with the Circulation No. 34/01 dated 14.12.2001 whereby the cut-off date for exercising the option for extended till 30th June, 2002, a comparative analysis of benefits under the DCRB Scheme and the Employees' Pension Scheme, 1995 was circulated.

17. Thus, from the facts and circumstances discussed above it appears that the petitioners were at all material times aware of the DCRB Scheme but for reasons best known to them chose not to exercise their option to switch over to that scheme during the 17 years when such option could be exercised. Suddenly, it

appears that they have woken up from slumber and have approached this Court nine years after the cut off date for exercising such option. This is a Court of equity and it is well-known that delay defeats equity.

18. For the reasons aforestated the writ petitions fail and are dismissed. There will be no order as to costs.