IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

BEFORE:
The Hon'ble Justice Soumen Sen
and
The Hon'ble Justice Siddhartha Roy Chowdhury

FMA 868 of 2017
CAN 3 of 2019 (Old CAN 6479 of 2019)

Jnan Ranjan Das & Ors.
Versus
South Bengal State Transport Corporation & Ors.

For the Appellant : Mr.Bikash Ranjan Bhattacharyya, Sr. Adv.
Mr. Samim Ahammed, Adv.
Mr. Arka Haiti, Adv. .

For the Respondents : Mr. Ayan Banerjee, Adv.
Ms. Debasree Dhamali, Adv.

Hearing concluded on :14th June, 2022

Judgment dated :28th June, 2022

Soumen Sen, J.:- The appeal is arising out of a judgment and order dated 2nd February, 2015 in connection with a writ petition filed by several of the employees of the South Bengal State Transport Corporation. In the writ petition the writ petitioners sought for similar benefits as that of the writ petitioners who had instituted another writ petition being WP 13475(W) of 2003.

The case of the appellants/writ petitioners is that the Pension Regulations were formulated by the South Bengal State Transport

Corporation (hereinafter referred to as the "Corporation") and several of the employees of the Corporation opted pension under the Regulations (to obtain pension). Upon the Corporation cancelling the Regulation and deciding not to pursue the pension scheme, the said decision was challenged in Court and the challenge was upheld. According to the appellants, they are similarly placed as that of the writ petitioners in WP No. 13475(W) of 2003 and are, accordingly, entitled to the same benefits as were extended to them under the order passed in the said writ petition on 25th April, 2008.

The learned Single Judge refused to extend similar benefit to the present appellants on the ground that the writ petitioners in the earlier proceeding had exercised their option within the time permitted under the Pension Regulations, 2002 and the present appellants having failed to demonstrate as to the exercise of such option within the stipulated time. As such, similar benefit cannot be extended to the appellants. However, the learned Single Judge has recorded the submission of the Corporation that the Corporation would extend the benefit of pension to such of the present appellants who may have exercised the option within the time permitted to exercise the option. The writ petition was, accordingly, disposed of by extending the benefits in terms of the order passed in *WP 13475(W) of 2003* (*Sri Sudarshanmoy Ghosh v. South Bengal State Transport Corporation)* to such of the appellants who had actually opted within the permitted time to receive the benefit under the Pension Regulations of 2002. The learned Single Judge in deciding the said issue has taken note of the fact that in the order dated 25th April, 2008 while deciding of the writ petition the benefit was extended to "the writ petitioners and the other employees who opted (for) such Pension Regulations, 2002 .....". This order was challenged in appeal.

The Appellate Court dismissed the appeal on July 18, 2008 by observing, inter alia, that since the petitioners had "legally opted" to come within the purview of the relevant Pension Regulations "the appellate Corporation is bound to give effect to the same." The Special Leave Petition carried from the appellate order was dismissed by the Supreme Court with only an observation that the payment ought to be made within three months from the date of the Supreme Court order.

Mr. Bikash Ranjan Bhattacharyya, the learned Senior Advocate appearing on behalf of the appellants submits that all the writ petitioners were the employees of the West Bengal government working in the directorate of transportation, which, under the Home Transport Department of the Government of West Bengal which had come into existence on and with effect from 31st July, 1948. All the writ petitioners were brought from the Home Transport Department of the West Bengal Government into the Durgapur State Transport Corporation since renamed as the South Bengal State Transport Corporation (in short 'Corporation'). All the writ petitioners were permanent and confirmed employees of the said directorate of transportation under the Home Department of the Government of

West Bengal and accordingly became permanent and confirmed employees of the respondent/corporation. Before transferring them to the respondent/corporation and treating them employees of the said corporation the government of West Bengal by an amendment inserted in Section 47B (1) (f) in the Road Transport Corporations (West Bengal Amendment) Act, 1959, made it clear that the persons who were employed by the State Government in connection with said undertaking and continuing in office immediately before the establishment of the corporation shall be employed by the corporation on such terms and conditions not less advantageous than what they were entitled to immediately before such establishment. At the time of their initial appointment and working under the Home Transport department of the government of West Bengal they were entitled to pension. However, upon attaining the age of superannuation they were denied to pension. It is argued that though the petitioners joined the service of the respondent corporation on the basis of an assurance that the government of West Bengal made by virtue of amendment to Section 47 of the Road Transport Corporations (West Bengal Amendment) Act, 1959, but the corporation failed to honour their commitment and to act in terms of the amended provision of Section 47(B) (1) (f) of the Road Transport Corporations (West Bengal Amendment) Act, 1959. All the departments of the government have pension or family pension scheme. However, there were no pension and the family pension scheme in the respondent/corporation. This state of affair has caused discontentment amongst the employees of the corporation for which they started agitation in introduction of its suitable scheme for pension. This has resulted in the introduction of the South Bengal State Transport Corporation employee's Pension Regulations Act, 2002 "in short the said pension regulations" on 30th March, 2002 which was published in the Calcutta Gazette extraordinary on 4th July, 2002. After publication of the pension regulation the respondent corporation published a communiqué in various vernacular inspectors clearly stating that the scheme was introduced with the previous sanctioned of the government of West Bengal and in accordance with the said pension regulations the employees who have retired on or after 1st April, 1987 or who would retire thereafter would get the benefit of pension regulations subject to their observance of the conditions of the said pension regulations. The said communiqué also clarified that similar benefits would be extended to the employees who have retired even before 1st April, 1997.

Mr. Bhattacharyya submits that although it requires the employees for the purpose of availing the benefits to submit their options within these months from the date of publication of the pension regulations in view of the judgment of the learned Single Judge in WP 13475(W) of 2003, Sri Sudarshanmoy Ghosh (supra) by Justice Pratap Kumar Ray (as His Lordship then was) on 25th April, 2008 since affirmed by the Hon'ble Division Bench on 18th July, 2008 in MAT 465 of 2008. It is no more open for the Corporation to contend that the appellants are not entitled to pensionary benefits.

Mr. Bhattachryya has drawn our attention to the following observation of the learned Single Judge in this regard:

> *"It is the case of the writ petitioners that they are all retired employees and by Pension Regulation, 2002 there past service has been declared as pensionable service with retrospective effect from 1st April, 1984. It is also the case of the writ petitioners that earlier they were in the employment of the State Government, where the Pension and Provident Fund Scheme was existing under service rule and their service was pensionable service and as such, when they have been brought to the service of the erstwhile Durgapur State Transport Board, subsequently, named as Durgapur State Transport Corporation, under Section 45(2C) their service condition cannot be less advantageous than the service condition in which they were earlier continuing being the employee of the State Government. It is also their case that under the Service Regulation of Corporation as was existing prior to Pension Regulations of 2002, the service in the Corporation was not pensionable service for which they lodged grievance, which produced the resultant effect "the Pension Regulation of 2002". On a reading of the said protective umbrella under Section 45(1C), which is already quoted, it appears that the writ petitioners who were brought from the cadre of State Government in the service of Corporation are entitled to seek the protection of service condition and their service condition should not be less advantageous than the service condition as prevalent while they were in State Government Service. Hence, the issue of pensionable service, under the Pension Regulations, 2002 should be analysed in the angle of protective umbrella under Section 45(1C) above."*

The learned Single Judge disposed of the writ petition by the following direction:

> *"It is ordered that writ petitioners and all the retired employees who opted the Pension Regulations, 2002 are entitled to get the benefits of death-cum-retirement benefits in terms of the South Bengal State Transport Corporation Employees' Pension Regulations, 2002. The respondents are directed to take steps for release of the pension and other death-cum-retirement benefits in terms of the said Regulations, 2002 by implementing the Pension Regulations, 2002 in respect of the writ petitioners and the other employees who opted such Pension Regulations, 2002 by releasing their all arrears amount of pension and other dues within four months from this date and to start to release the pension by issuing Pension Payment Order in terms of the pension Regulations, 2002 within two months from this date. A compliance report to be submitted by the respondent Corporation through its Managing Director to the High Court Registry by complying with this order of release of current pension by filing such affidavit within two months from this date and by filing further affidavit of compliance to the High court Registry by making payments of arrears amount of pension on adjusting the dues, if any, in terms of Pension Regulations, 2002 within six months from this date."*

Our attention is also drawn to similar conclusions arrived at by the Hon'ble Division Bench affirming the judgment of Justice Ray. The conclusion as summarised by the Division Bench of the judgment of Justice Ray are:

> *"1.That prior to the framing of the 2002 resolution there was no problem. Earlier, under the DSTC Employees Service*

Regulation, Family Scheme was applicable, even though service in the Corporation was non-pensionable. Even if the Clause 14(4) making such a provision had not been repealed by operation of the 2002 Pension Regulation it shall be deemed to have been repealed.

2.The Pension Regulations, 2002 are valid as they have been framed in accordance with Road Transport Corporation Act, 1950.

3.In view of Section 47B(1)(f) the service conditions of the retired Employees could not be less advantageous than the service condition in which they were earlier continuing being the Employees of the State Government.

4.In view of Section 16 of the Provident Fund Act, 1952, it was not necessary for the Corporation to seek exemption under Section 17.

5.As the retired Employees 'such as the writ petitioners' have given their option to be governed by Pension Regulation 2002, the same must be implemented. This cannot be refused by the employer on the ground that existing Employees do not accept Pension Regulations, 2002 but have accepted the Employees' Pension Scheme, 1995. This cannot be an embargo 'for applicability of Pension Regulations, 2002, so far as the retired employees are concerned who opted that Scheme in lieu of Contributory Provident Fund Regulation of the Corporation and the benefit of gratuity under Gratuity Rules.

6.The pension benefit will be available to the retired employees under the Pension Regulations, 2022 with a rider that no arrears on account of introduction of the Pension Regulations, 2002 would be available to them for the period up to 31st March, 1997.

7.The fact that all the retired employees had withdrawn the benefits under the Provident Fund as well as Gratuity would not be a bar to opt for the Pension Regulations, 2002.

8.Exemption under Section 17 of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 is required to be taken where an establishment is not entitled to remain outside of the ambit of the 1952 Act in terms of Section 16(1)(c) of the aforesaid Act. Since the Corporation falls within the ambit of Section 16(1)(c) the plea for non implementing the Pension Regulations, 2002 on the ground that the majority of existing employees did not agree in terms of proviso of Sub-Section (2) of Section 17 of the 1952 Act has no legal basis and foundation.

9.Since the Regulations have come into effect retrospectively from 1.4.1984, 'for all purposes for retire employees it will be deemed that prior to 1.4.1984, the retired employees were under the control of South Bengal State Transport Corporation Employees' Contributory Provident Fund Regulations and they came under the umbrella of Pension Regulation, 2002 with effect from 1.4.1984 subject to payment of revised pattern of pension with effect from 1.4.1997 on waiving their rights to get the benefits of pension prior to 31st March, 1997 with the condition that they would not be liable to refund the employers' shares of contribution towards Contributory Provident Fund together with interest accrued thereon from the period upto 31st March, 1997.

10.The Board's decision of 8th April, 2003 is a decision passed without jurisdiction to nullify the Pension Regulations, 2002 das effected from 1st April, 1984."

Mr. Bhattachryya submits that the judgment of the Hon'ble Division Bench has clearly stated that the service under the State Government is pensionable and Section 47B (1)(f) of the Road Transport Corporations (West Bengal Amendment) Act, 1959 clearly preserve the service conditions which were enjoyed by the erstwhile employees of the State Government who had been taken into the service of the transport corporation established under the 1950 Act. Accordingly, the submission made on behalf of Corporation that appellants in that matter in respect of 2002 regulations having been framed as retired employees could not be given the benefit of the said regulations would be clearly unaccepted. Merely because the existing employees have declined to accept the benefits under the 2002 pension regulations cannot be a ground to deny the said benefit to the retired employees.

Mr. Bhattachrayya further submits that the plea of financial inability to grant such benefit to the appellants was also not accepted by the Hon'ble Division Bench.

Mr. Bhattacharyya submits that all the appellants have submitted their option forms in terms of the Regulation 6 of the Pension Regulations. It is for the Corporation to substantiate that they have not received any such option forms. Moreover, in view of the declaration of law by the learned Single Judge since affirmed by the Hon'ble Division Bench, the appellants are entitled to the benefit under the Pension Regulations of 2002 irrespective of their exercising option within the time limit as specified under Regulation 6(C) of the said Pension Regulation. Mr. Bhattacharyya submits that the said Regulation is a welfare measure and the Regulation of 2002 is an admission of the Corporation of their mistakes of not extending pension to the writ petitioners. The said pension Regulation is recognition of their right to receive pension that was arbitrarily denied to their earlier. Once this right has accrued in their favour by reason of their initial service condition since reaffirmed in the said pension Regulation, it is no more open for the Corporation to deny such benefit to the appellants/writ petitioners irrespective of exercising any option. Mr. Bhattacharyya has emphasized the expression used by the Hon'ble Division Bench in the appeal preferred by the State against the judgment dated 25th April, 2008, namely, "legally opted" reaffirming the view that the failure to exercise in option would not make any difference.

Mr. Bhattachryya submits that the exercising option is irrelevant by reason of the fact that their initial service was a pensionable service and the right to receive pension has accrued at the time when they joined the home transport department before their employment was transferred to the respondent/corporation. The corporation has no legal right or authority to deny such accrued right in fact the regulation of 2002 is an affirmation of the right had accrued in favour of the writ petitioners by reason of their initial appointment and continuity in the service.

According to Mr. Bhattacharyya 28 writ petitioners have retired on or before 31st March, 1997, 23 petitioners have retired between 31st March, 1997 and 31st March, 2002. 130 Writ petitioners have retired after 31st March 2002.

Mr. Bhattacharyya submits that in a similar issue came up for consideration before the Full Bench of this court in a series of matters the first of which is ***District Inspector of Schools (SE),*** in ***Kolkata V. Abhijit Baidya*** reported at **2003 (3) CHN 711 (Cal).**

Mr. Bhattachryya has drawn our attention to para 3, 9, 46 and 52 of the said judgment and submits that on consideration of similar issues the Hon'ble Full Bench decided whereby Justice Arun Misra (the then Chief Justice of the Calcutta High Court before his Lordship's elevation of the Hon'ble Supreme Court) has unequivocally recognized that principle that a benefit once accrued cannot be taken away by any amendment. It is immaterial whether the person has exercised option during his period of employment or even thereafter once it is established that his service is pensionable.

On the contrary Mr. Ayan Banerjee learned Counsel representing the respondent submits that unlike the writ petitioners in Sri Sudarshanmoy Ghosh (supra) the present appellants are not the employees of the government working the directorate of transportation which had under the home transport department of the government of West Bengal come into existence on and with effect from 31st July, 1948.

Our attention is drawn to paragraph 4(c) of the affidavit in opposition to show their nature of employment. It is submitted that the said paragraph would show that the majority of the writ petitioners were appointed in the service of Durgapur State Transport

Board, Durgapur State Transport Corporation on various dates between 1963 and 1971 and all of them retired from service of the corporation between the periods from 1989 to 2010.

Even if it is assumed that the said regulation is applicable to the appellants not a single scrap of paper has been disclosed to show that the appellants have exercised their option in terms of 6(c) of the said pension regulation. The writ petition has been filed in the year 2015 almost 13 years, after the introduction of the pension scheme. There is no explanation for delay in filing the writ petition. Moreover, exercising of option within the time stipulated under the regulation is pre-requisite for considering the case of the appellants.

Mr. Banerjee submits that similar matter came up for consideration before the learned Single Judge in ***Haradhan & Ors. v. State of West Bengal & Ors.,*** reported in **WP 3339 (w) of 2014,** ***Haradhan Dutta v. State of West Bengal,*** reported at **2017 SCC Online Cal 8437** where upon considering of a catena of decisions the learned Single Judge declined to extend the benefit to the writ petitioners as none of the writ petitioners in Haradhan (supra) exercised option in favour of pension.

Mr. Banerjee submits that the learned Single Judge has rightly decided the matter between the parties and it does not call for any interference.

We have considered the arguments made on behalf of the parties.

We are inclined to hold that the appellants are entitled to the benefits of the Pension Regulations of 2002 for the reasons we are going to state now.

The argument of Mr. Banerjee that the appellants are not similarly placed as that of Sri Sudarshanmoy Ghosh & Ors. at the relevant time as Sri Sudarshanmoy Ghosh & Ors. were the employees of the West Bengal Government working in the directorate of transport, which was under the Transport department of the Government of West Bengal and had come into existence on and with effect from 31st April, 1948 and all the said petitioners were subsequently brought from the said department of the West Bengal Government into the Durgapur State Transport Corporation since renamed as the South Bengal State Transport Corporation and they were permanent and confirmed employees of the directorate of Transport under the Home Transport department unlike the appellants who were appointed initially as temporary employees by the Corporation between 1963 to 1971 and in view of such nature of employment the appellants cannot claim similar benefits. Apart from the aforesaid fact they had failed to exercise their options in time.

We are unable to accept the said submission on two-fold reasons:

> Firstly, Regulation 3 of the pension regulation 2002 has clearly mentioned the categories of the employees who would be entitled to pension under the scheme. The said regulation reads:
>
> *(a) Persons paid at daily rates;*

(b) Persons not in whole-time employment;

(c) Persons on deputation service from the Government of West Bengal;

(d) Chief Executive Officer and the Chief Accounts Officer on contract basis under Regulation 9(2) of the West Bengal State Transport Corporation Rules, 1960.

The appellants without any hesitation and undoubtedly come within the purview of the said regulation. The said regulation is squarely applicable to the appellants.

Secondly, the denial of rights to Sri Sudarshanmoy Ghosh & Ors. were not on the ground of any failure to exercise option. The Corporation denied to extend the benefit of the said regulation in view of the lukewarm response from the existing employees. The Corporation alleged that 189 employees opted or exercised their option in favour of the scheme which only constitutes 6% of its total strength of employees.

The Corporation was evasive in acknowledging the option exercised by the employees. The evasive denial of receipt of the option forms also suggest that the Corporation was not very serious with regard to a claim that the appellants exercised their option in time.

The writ petitioners in their pleadings claimed to have exercised their option by submitting the Option forms but without any acknowledgment of receipt, as the same was not given by the corporation. Learned Single Judge refused to accept such contention of the writ petitioners in absence of anything to demonstrate as to the exercise of such option within the stipulated time by the petitioners. Our attention is drawn to the averments made paragraphs 10 and 11 of the writ petition where from it appears that two representations were submitted to the Chairman and Managing Director of the South Bengal State Transport Corporation on 4th June, 2007 and 8th August, 2010 respectively, by some of the writ petitioners, wherein they claimed to have exercised option within the time prescribed by the Corporation. Both the Chairman and Managing Director of South Bengal State Corporation were requested to extend the benefit of the Regulations in their favour. But the Respondent Corporation neither took any action nor gave any reply to such representation. The Respondent Corporation dealt with such averment in paragraph 10 and 11 of the affidavit-in-opposition as reproduced herein below :-

> *"With reference to the statements made in paragraphs 10 and 11 of the said application, I deny and dispute each and every statement and/or allegation, which are incorrect and misleading. It is denied that the applicants are eligible to get Pension under the said Regulation of 2002 or that they had submitted Option form in terms of said Regulation. Since no Option form was filed by them, question of granting receipt did not arise. It is denied that the respondents authority had any malafide intention to deprive the petitioners of their retirement benefits. Since no Option was filed by the petitioners, there was no scope to act upon the representations filed by the petitioners which proceeded, on an incorrect basis that Option form has been submitted by the representationist.*
>
> *With reference to the statements made in paragraphs 12, 13 and 14 of the said application, I deny and dispute each and every statement and/or allegation, save and except what appears from the records of W.P. No. 13475 (W) of 2003, M.A.T.*

No. 465 of 2008 and Civil Appeal No. 7200 of 2008 and the various Orders passed therein. The Hon'ble Single Judge, Hon'ble Division Bench as well as the Hon'ble Apex Court had specifically directed that the benefits of the Pension Regulation, 2002 shall be extended only to the writ petitioners of W.P. No. 13475 (W) of 2003 and the Optees. It is pertinent to mention here that in the said writ application the minutes of the 110th Meeting of the Board was challenge where it was recorded that only 189 employees opted for Pension Regulation 2002, which constitute about 6% of the total employees of the Corporation. Corporation was clear in its stand from the very beginning that only 189 employees had exercised Options and such fact was recorded only 11th Meeting of the Board. While disposing of the writ application, the Hon'ble Single Judge as well as the Hon'ble Division Bench did not set aside the minutes of the 110th Meeting but directed that all the writ petitioners and Optees shall be extended the benefits of the 2002 Pension Regulation. <u>Thus it is clear that the representation made in 2007 by some of the writ petitioners contending that they had exercised Option is a clear after thought.</u> It is stated that the Order of the Hon'ble High Court was implemented in respect of the 189 employees only who had exercised their Options. It is denied that there is no document in support of their exercising Option or that no receipt was handed over to all. A copy of the Minutes of the 110th Meeting of the Corporation Board held on 08.04.2003 is annexed hereto and marked as Annexure-"R-5." (emphasis supplied)

Therefore, the factum of submission of representation by some of the petitioners stands admitted but according to the respondent it was an afterthought.

The writ petition no. 13475 (W) of 2003, ***Sri Sudarshanmoy Ghosh and Others vs. South Bengal State Transport Corporation*** was decided on 25th April, 2008 subsequent to 4th June, 2007 when such representation was made by some of the writ petitioners. Therefore, the representation dated 4th June, 2007 neither can be considered as an afterthought inspired by the judgment pronounced in the aforesaid case nor can be the petitioner be termed as 'fence sitter'.

The Chairman and the Managing Director ought to have denied the claim of those retired employees regarding their exercise of Option made in the representations. But the Corporation did not respond rather preferred to maintain stoic silence.

In this case, when in 2007 the writ petitioners, admittedly submitted representation claiming to have exercised their option, it was the duty of the Respondent Corporation to speak in clear terms denying such claim of those retired employees, but they remained silent and their stunning silence becomes eloquent to inspire us to hold that had there been no such exercise of Option, the Chairman or the Managing Director or any of the officials of the corporation would have given a reply refuting such claim of those retired employees.

In view of the stand taken by the Corporation in **Sudarshanmoy Ghosh** (supra) that the scheme was not enforceable and workable because of poor response, the reason for non denial now in the affidavit on the ground of non exercise of option is a clear afterthought. Even if it is assumed that the appellants have exercised their option the result would have been the same.

The failure to exercise option had never been raised by the Corporation in denying the benefits under the Pension Regulation, 2002. Moreover, from the pleadings and materials on record we are of the view that the options were exercised by the petitioners/appellants.

In the affidavit-in-opposition, in a paragraph 4 (e) it is contended by the Deputy Chief Accounts Officer of the Corporation:-

> *"It is pertinent to mention here that the Hon'ble Court was not pleased to upset the findings/decisions of the Board taken in its 110th Meeting on 08.04.2003 so far as the non optees are concerned."*

The said decision of the Board was held to have been passed without jurisdiction to nullify the Pension Regulations 2002 as effected from 1st April, 1984 by the Hon'ble Single Bench. With the risk of repetition, but without being tutologous we would like to say that the judgment of the Hon'ble Single Bench was affirmed by the Hon'ble Division Bench of this Court by its judgment dated 18th July, 2008 and also by Hon'ble Apex Court. Therefore, the claim of the respondent Corporation regarding validity of the decision of the meeting of the Board dated 8th April, 2003 is far from being correct, virtually it has come to a naught.

While deciding the writ application learned Single Judge came to the following conclusions:-

1. **********

2. "The Board's decision of 8th April, 2003 is a decision passed without jurisdiction to nullify the Pension Regulations, 2002 as effected from 1st April, 1984."

Now, the question that comes under consideration as to whether the writ petitioners should be treated at par that the writ petitioners of **W.P. 13475 (W) of 2013**, Hon'ble Apex Court in the case of **State of Uttar Pradesh and Ors. v. Arvind Kumar Srivastava and Ors.** decided the question of parity and some of the legal principles in the following manner :-

> *22. "The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under.*
>
> *22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.*
>
> *22.2. However, this principle is subject to well-recognized exceptions in the form of lathes and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time*

succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitter and latches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon policy matters, like scheme of regularization and the like (see K.C. Sharma v. Union of India). On the other hand, if the judgment of the court was in personam holding of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either latches and delays or acquiescence."

Since the decision in the writ petition no. 13475 (W) 2003 which has been affirmed by the Hon'ble Division Bench and Supreme Court touches upon the policy matters like Scheme of Regularization, the judgment should be considered to be a judgment in rem and not in personam. Therefore, the South Bengal State Transport Corporation is under an obligation to extend the benefit of the Regulation of 2002 to all similarly situated persons and thereby the protective umbrella, as created by Regulation 2002 should also be extended to the petitioners.

It may not be out of place to mention here that in the affidavit-in-opposition of the Corporation in paragraph 4(C) it is stated that "………. majority of the writ petitioners were appointed in the sendee of Durgapur State Transport Board/ Durgapur State Transport Corporation (hereinafter referred to as DSTS DSTB 85 and DSTC respectively on various dates from the order of 1963 up to the order 1971. All of them retired from services of the corporation between the periods from 1989 to 2010." When it is said that majority of the writ petitioners were appointed in the sendee of Durgapur State Transport Corporation, by necessary implication, it indicates that at least minority group of employees were drawn from the services of State of West Bengal, if not all of them as claimed by the writ petitioners.

The members of that minority group are well protected under Section 47 (B) (1) (f) of the Road Transport Corporation (West Bengal Amendment) Act read with Regulation 3 of the said Pension Regulation, 2002. Therefore, their service conditions cannot be less advantageous than what they were entitled to immediately before such establishment as may be determined by the corporation.

Mr. Banerjee submits that similar matter came up for consideration before the learned Single Judge in ***Haradhan Dutta and Others vs. State of West Bengal in WP 339 (W) of 2014*** reported at **2017 SCC Online Cal 8437** whereupon considering of a catena of decision, learned Single Judge declined to extend the benefit to the writ petitioners as none of them exercised option in favour of pension. Learned Single Judge while pronouncing judgment in Haradhan Dutta and Others (supra) was pleased to rely on the following decisions of the Apex Court :-

(i) ***Pepsu Road Transport Corporation, Patiala v. Mangal Singh,* (2011) 11 SCC, 702**, paras 3-6, 51, 52, 55 and 56.

(ii) ***Rajasthan State Road Transport Corporation v. Madu Giri (Dead) through LRs*, (2013) 11 SCC 603**, paras 2, 4 and 8.

(iii) ***Dwipendra Nath Mukherji v. Board of Trustees for the Port of Kolkata*, (2015) 13 SCC 573**.

(iv) ***Pepsu Road Transport Corporation, Patiala v. S.K. Sharma,* (2016) 9 SCC 206**, paras 13 and 23.

(v) ***Rajasthan Rajya Vidyut Vitran Nigam Limited v. Dwarka Prasad Koolwal*, (2015) 12 SCC 51** (68).

It is trite to say that the judgments are not to be read as statute. In the aforesaid cases referred to hereinabove, the employees petitioners despite having given opportunity of switching over to the Pension Scheme and GPF Scheme, chose not to do so.

On the other hand the appellants/ writ petitioners exercised their option in favour of getting the benefit under regulations of 2002. On the factual matrix the case of the appellants is different from than that of the writ petitioners of the cases as relied upon by the learned Single Judge in Haradhan Dutta and Others (supra).

It goes without saying that the regulations made under the statute laying down terms and conditions of services of the employees, including the grant of retirement benefits, have the force of law. Therefore, both the Corporation as well as appellants are obliged and bound to comply with the terms and conditions of the regulations.

In our considered opinion, the petitioners being similarly situated with that of the petitioners of Sudarshanmoy Ghosh and Others should be allowed to enjoy the benefit of Regulations 2002 in identical terms and conditions as laid down in writ petition no. 13475 (W) 2013. It is well settled that when a particular set of employees is given relief by court, all other identically situated persons should be treated alike by extending same benefit since not doing so would amount to discrimination and be violative of Article 14 of the constitution. The judgment in Sudharsanmay (supra) was intended to benefit all similarly situated persons irrespective of whether that had approached court or not. (See. **State of U.P. v. Arvind Kumar Srivastava; 2015(1) SCC 347).**

It is equally well settled principle of law that pension is not a charity or bounty payable of will but it is right conferred under the Constitution.

The concept of pension has been considered by this Court time and again and in a catena of cases it has been observed that the pension is not a charity or bounty nor is it a conditional payment solely dependent on the sweet will of the employer. It is earned for rendering a long and satisfactory service. It is in the nature of deferred payment for the past services. Pension is succour for port-retirement period and is a social welfare measure as post-retirement entitlement to maintain dignity of employee. It is a social security plan consistent with the socio-economic requirements of the Constitution when the employer is State within the meaning of Article 12 of the Constitution rendering social justice to a superannuated servant. It is a right attached to the office and cannot be arbitrarily denied. (See.**V. Sukumaran vs. State of Kerela; 2020(8) SCC 106**).

It has been specifically provided in the scheme that with effect from 1st April, 1984 till 1st April, 1997, whatever benefit has been received by the employees shall be treated as benefit received under the Pension Scheme. The Corporation would not have to pay any arrears between 1st April, 1984 till 1st April, 1997. Furthermore, no provision has been made to enable the employees, who retired prior to 1997, to refund the amount received by them and, thereafter, to claim pensionary benefits with effect from 1st April, 1984. Accordingly, we hold that the appellants are entitled to get the death-cum-retirement benefits in terms of the South Bengal State Transport Corporation Employees' Pension Regulations, 2002. The respondents are directed to take steps for release of the pension and other death-cum-retirement benefits in terms of the said Regulations, 2002 by implementing the Pension Regulations, 2002 in respect of the appellants by releasing their all arrears amount of pension and other dues within four months from this date and to start releasing in the pension by issuing Pension Payment Order in terms of the Pension Regulations, 2002 within two months from this date.

In view of the aforesaid we set aside the judgment and order dated 2nd February, 2015.

The appeal is allowed.

However, there shall be no order as to costs.

I agree **(Soumen Sen, J.)**

(Siddhartha Roy Chowdhury, J.)