HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.46642 of 2016

ORDER

This Writit Petition is filed seeking the following relief:

> "to issue an order or a direction or a Writ, more particularly one in the nature of Writ of Mandamus directing the respondents to have the benefit of pension scheme extended to the petitioner and pass such other order or orders as this Hon'ble Court deems fit and proper in the circumstances of the case."

Heard Sri S.Ravindranath, learned counsel appearing for the petitioner, and learned Standing Counsel appearing for the respondent.

It is the case of the petitioner that he worked as a Manager in the respondent-Corporation. After attaining the age of superannuation, he retired from service on 28.02.2011. The respondent had framed a pension scheme which was applicable to such of those employees, who were on the rolls as on 27.06.2011. The respondent is not extending the said pension scheme to the petitioner since he has retired from service on 28.2.2011 i.e., four months prior to the cut off date. Hence, the present writ petition.

Learned counsel appearing for the petitioner submits that fixing the cut off date as on 27.06.2011 is an arbitrary

exercise; that when the petitioner was in service, there were proposals from the management as well as union of the respondent-Corporation to formulate pension scheme during the year 2010 and the respondent has taken the entire aspect into consideration and given options to the employees, who were on the rolls during the year 2010. It is submitted that 464 employees out of 499 opted for pension scheme and the petitioner is one amongst them who opted for pension scheme. The operational guidelines of the scheme were formulated and circulated to all the employees *vide* order dated 29.3.2014. It is contended that fixing the cut off date as 27.6.2011 is contrary to the judgment of the Apex Court in *D.S.Nakara vs. Union of India*[1] and that the petitioner has submitted a representation to the respondent 23.02.2015, but so far no orders have been passed. It is prayed that appropriate orders be passed directing the respondent to extend pensionary benefits to the petitioner in terms of the pension scheme with all consequential benefits by relaxing the cut off date.

Learned Standing Counsel appearing for the respondent submits that the respondent-Corporation has taken a decision to extend the pension scheme to the

[1] 1983 SC 130

permanent employees, who were on the rolls of the Corporation as on 27.06.2011, but as the petitioner has retired from service prior to 27.06.2011, her case was not considered. It is contended that when the Corporation has taken a decision to extend the pension scheme in favour of the employees who were on the rolls as on 27.06.2011, the petitioner cannot contend that she is entitled for pension scheme; and that there are no merits in the writ petition and the same is liable to be dismissed.

Having considered the rival submissions made by the learned counsel on either side, this Court is of the considered view that pension proposals were initiated during the year 2010. The petitioner is one of the employees, who opted for pension scheme. Later, the respondent has passed a resolution extending the pension scheme to the employees who were on the rolls as on 27.06.2011. Hence, the petitioner has submitted a representation dated 23.2.2015 to the respondent-Corporation to consider her case for extension of pension scheme in terms of the order dated 29.3.2014. So far, the respondent-Corporation has not passed any orders on the said representation. In the Memorandum to the Board Meeting held on 25.02.2011, at paragraph No.4, it is stated that the employees union *vide* their letter dated 18.2.2011,

while conveying their consent for draft proposal, informed that 464 employees out of 499 in all the cadres opted for pension scheme, which would mean that there were proposals to extend pension scheme to its employees even in February, 2011. Hence, it is clear that 464 employees have opted for pension scheme. Therefore, it is for the respondent to decide as to whether the petitioner forms part of 464 employees, who opted for pension scheme or not.

Accordingly, the Writ Petition is disposed of directing the respondent-Corporation to consider the representation dated 23.2.2015 of the petitioner and pass appropriate orders thereon, in accordance with law, within a period of six weeks from the date of receipt of a copy of this order. No costs.

Miscellaneous petitions, pending, if any, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

29th July, 2019
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