

29 26.03.2021
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W.P.A. 6203 OF 2021

(Through Video Conference)

Annapurna Mondal

Vs.

The State of West Bengal & Ors.

Mr. Chandan Dutta

.... For the Petitioner

Mr. Joytosh Majumdar

Ms. Kakali Samajpaty

Mr. Sayan Ganguly.

.... For the State

1. This is an application under Article 226 of the Constitution of India wherein the writ petitioner is aggrieved by an order dated February 1, 2021, passed by the Principal Secretary, School Education Department in relation to rejection of the petitioner's claim for condoning the delay in exercising switch over option from CPF-cum-Gratuity to GPF-cum-Pension Scheme after the stipulated time of ninety days as per G.O. No. 496 -Edn.(B), dated 16.12.1991.

2. By an order dated March 13, 2020, a coordinate Bench of this High Court had directed the Principal Secretary, School Education Department to take a decision with regard to the above issue. An order was passed by the Principal Secretary, School Education Department dated September 16, 2020, wherein considering the fact that there was only one day's delay for submission of the switch over because of the fact that

the last date was a Sunday, the matter was referred by the Principal Secretary, School Education Department to the Finance Department, Government of West Bengal considering the case as a very special and rare case. Subsequently, by an order dated February 1, 2021 the Principal Secretary, School Education Department had rejected the condonation sought.

3. Mr. Joytosh Majumdar, learned Government Pleader, appearing on behalf of the State has submitted that the petitioner had an option of re-exercising his option after the passing of the order by the Special Bench in the matter of *District Inspector of Schools (S.E.), Kolkata & Anr. –Vs.- Abhijit Baidya & Ors.*, reported in 2013 (3) *CLJ (Cal)* 178. He also submitted that the petitioner did not exercise that option again and therefore, there is no scope for any condonation of delay.

3. I have heard counsel appearing on behalf of the parties and perused the materials on records. I find from the records that the petitioner has exercised her option in the year 1992 itself with a delay of one day and this was the issue to be decided by the Principal Secretary, School Education Department. In fact, the Principal Secretary, School Education Department found this to be a good case and, accordingly, referred it to the Finance Department, Government of West Bengal for consideration of the same as a rare and special case. However, in spite of the fact that the hundreds of people were allowed to make fresh applications after the

judgment passed in *Abhijit Baidya & Ors.* (supra) in the year 2014, the Finance Department, Government of West Bengal was of the opinion that the delay of one day, that too because of the last date being a Sunday, was not a good reason for allowing the condonation for the petitioner.

4. In my view, the decision of the Finance Department, Government of West Bengal subsequently conveyed to the petitioner by the Principal Secretary, School Education Department, is without basis in law, the factual matrix should have been considered keeping in mind that the last day was a Sunday. In fact, an application made on March 16, 1992 would, in fact, be within time even keeping in mind the Limitation Act. One need not go in the legal intricacies any further as the case of the petitioner had been directed to be considered as a special and rare case, in any case.

5. Accordingly, I direct the Principal Secretary, School Education Department to condone the delay and allow the switch over of the petitioner in accordance with law and issue Pension Payment Order to the petitioner within a period of ten weeks from date.

6. I make it clear that the above order has been passed in the peculiar facts and circumstances of this case and would not be applicable as a precedent unless the factual matrix is exactly similar in nature in future cases.

7. With the above direction, the writ petition is disposed of. There will be no order as to costs.

8. Since no affidavit-in-opposition is called for, the allegations made in the writ petition are deemed not to have been admitted.

9. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Shekhar B. Saraf, J.)