Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA**
**CONSTITUTIONAL WRIT JURISDICTION**
**APPELLATE SIDE**

Present :

**The Hon'ble Justice Arindam Mukherjee**

**WPA 27225 of 2013**

**West Bengal Scheduled Castes and Scheduled Tribes Development & Finance Corporation Employees' Association & Ors.**
***Vs.***
**The State of West Bengal & Ors.**

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| For the petitioners | : | Mr. Joyak Kumar Gupta,<br>Mr. Susanta Saha |
| For the State | : | Mr. Arjun Ray Mukherjee |
| For the respondent nos. 4 to 6 | : | Mr. Raghunath Chakraborty<br>Mr. Mehboob Ahmed,<br>Ms. Amrita De |

Heard on : 11.11.2021 & 18.11.2021

Judgment on : 18th November, 2021.

**Arindam Mukherjee, J:**

The West Bengal Scheduled Castes and Scheduled Tribes Development and Finance Corporation Employees' Association through its General Secretary and four other members have approached this Court, inter alia, praying for a mandatory order to grant the employees of the said Corporation including the members of such association the benefit of pension at par with the State government employees as also for cancelling the memo dated 18th December, 2012 issued by the Deputy Secretary to the Government of West Bengal Backward Classes Welfare Department rejecting their prayer to allow them to switch over from Contributory Provident Fund (in short CPF) to General Provident Fund (in short, GPF) cum pension scheme.

The grievance of the petitioners are that the members of the petitioner no.1, being employees including the retired employees of West Bengal Scheduled Castes and Scheduled Tribes Development and Finance Corporation (hereinafter referred to as the said Corporation) under the West Bengal Scheduled Castes Development and Finance Corporation Act, 1976 (hereinafter referred to as the 1976 Act) which has now been repealed by the West Bengal Scheduled Castes, Scheduled Tribes and Other Backward Classes Development and Finance Corporation Act, 2017 (hereinafter referred to as the 2017 Act) are covered by the CPF Scheme. They say that they should have been allowed to switch over to the GPF cum pension scheme after the introduction of such scheme in the year 1995. The petitioners have made representations to this effect before the said Corporation, being the respondent no.4. The issue was considered by the respondent no.4 in its 63rd meeting held on 9th December, 2011. It appears from the extract of the said memo that the Hon'ble Members, the Hon'ble Minister-in-Charge of the concerned department recorded an assurance of such issue to be taken up at the appropriate level of the State government. By a memo dated 18th December, 2012, a decision taken by the State government rejecting the proposal for switching over from CPF to GPF-cum-pension scheme for the employees of the respondent no.4 was duly communicated. The petitioners have challenged such rejection and also sought a mandatory order for granting them the benefits of GPF-cum-pension scheme.

The respondent no. 4, is a Corporation set up under the 1976 Act. It is an autonomous Corporation under the control of the State government and as such its employees are not the employees of the State government although section 28 of the 1976 Act and section 26 of 2017 Act allow the State government to give directions relating to the conditions of service of the employees of the said Corporation. Section 16(1)(b) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the said Act) excludes the application of the said Act in respect of the respondent no.4, Corporation. The State Government therefor has the right to either allow or disallow any proposal of the said Corporation relating to switching of the employees of the said Corporation from CPF to GPF and pension scheme. The Financial autonomy of the respondent no.4 is also under pervasive control of the State government in view of the provisions of sections 18, 21 and 26 of the 1976 Act and section 24 of the 2017 Act but the said Corporation has an independent existence in view of the provisions of section 3 of the 1976 Act as also section 3 of the 2017 Act separate from the State government. It is well settled that the statutory Corporations under the State and Central Government are not State but authorities under Article 12 of the Constitution.

The issue in respect of which the petitioners want the Court's interference is thus a policy matter. The Courts loath in interfering into policy matters of the Government unless it is shown that the same is operating in contrary to the basic structure of the Constitution of India. Judicial review in the matters of policy decision involving complicated economic issues is normally avoided. It is neither within the domain of the Courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether a better public policy can be evolved as held in **2009 (7) SCC 561 [Villianur Iyarkkai Padukappu Maiyam vs. Union of India And Others]**. This view has been further upheld in **2013 (7) SCC 1 [Arun Kumar Agarwal vs. Union of India And Others]**. In the instant case, the petitioners are covered by the CPF Scheme as per their appointment. The prayer to allow switch over is not only a policy matter but also involves complicated economic issues. There is also no arbitrariness in the decision making process. It is also not the case of the petitioners that they are subjected to hostile discrimination or that the existing scheme has been repealed for which the State government is obliged to provide for an alternative scheme of like nature. The petitioners had prayed for allowing them to switch over from the existing scheme to another scheme which has been duly considered by the employer, being the respondent no.4 and the State government, being the respondent no.1

and as such there can be no grievance of the petitioners that their prayers have not been considered. Venturing into the correctness of the decision to reject switch over will amount to transgressing into a domain left to the executive.

The petitioners although contend that in respect of some other statutory Corporation, switching over has been allowed but such contention cannot be accepted once the prayer of the petitioners have been considered and rejected by the State government as it will amount to embarking to an enquiry as to the correctness of a policy decision. The allegation that the petitioner ought to have been heard prior to taking the decision and as such there is violation of natural justice is also ruled out as in case of policy matter there is no mandatory requirement to hear the petitioners prior to the decision being taken.

The petitioners have also urged the principle of equal pay for equal work as held in **2017 (1) SCC 148 [State of Punjab and Ors. Vs. Jagjit Singh & Ors]** but I do not find any application of the ratio laid down therein to the case in hand. That apart and in any event the pay scale, emoluments and allowances of the employees of the Corporation are different from that of State government employees. The service rules are also different. The employees of the said Corporation therefor, cannot be placed at par with the State government employees to grant them all facilities as a State government employee including the implementation of GPF cum pension scheme.

The writ petition therefor is devoid of merits and is dismissed, however, without any order as to costs.

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

**(Arindam Mukherjee, J.)**

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