

IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)
Appellate Jurisdiction

Present:

The Hon'ble Justice Krishna Rao

WPA 27226 of 2012

Dilip Kumar Chakraborty

Versus

The State of West Bengal & Ors.

For the petitioner : Mr. Phatick Chandra Das,
Mr. Ujjal Roy
..... Advocates

For the respondents : Mr. Sumit Kumar Panja
Ms. Mitali Bhattacharyya
.....Advocates

Heard lastly on : 16.12.2021

Judgment on : 23.12.2021

Krishna Rao, J.: The writ petitioner has filed the instant writ application praying for a direction upon the respondents to allow the petitioner to exercise option to switch over to Pension Scheme.

The petitioner was initially appointed as an Assistant on 06.06.1973 in the then West Bengal State Electricity Board, Kharagpur now it is called as West Bengal State Electricity Distribution Company Limited (herein after called as WBSEDCL). On 20.03.1985 vide order no. 227-Power/III the State Government had approved the West Bengal State Electricity Board Employees (Death-Cum-Retirement Benefit) Regulation, 1985 (herein after referred DCRB Regulation, 1985). The board in its meeting held on 04.05.1985 adopted the DCRB and issued Circular No. Pension/1/48 dt. 20.04.1985 for the information of all concern in which the last date for the option was 03.11.1985. Vide Circular No. Pension/2/48 extended the time for exercising option of DCRB for another three months from 04.11.1985 to 03.02.1986. The benefit of opting DCRB was extend by the authorities from time to time and lastly on 04.12.1993 the respondents have extended to opt the benefit of DCRB for a further period of two years from 04.12.1993 and the same was also published in the News Paper Anand Bazar Patrika for the information of all the concerns.

Due to the long absence of the petitioner from his service without any intimation to the authorities, the service of the petitioner was terminated with effect from 12.10.1994 vide order dt. 20.11.1995. The petitioner had challenged the order of termination before this Court in a writ proceeding and this Court had set aside and quashed the order of termination on 18.06.2002 and directed the respondents to treat the petitioner as in deemed suspension and directed to proceed departmentally in accordance with the relevant rules pertaining to disciplinary proceeding and this Court

had further directed to complete the disciplinary proceeding within three months from the date of the order.

As per the direction of this Court the respondents have started disciplinary proceeding against the petitioner but the same was not completed within three months as directed by this Court, the petitioner had filed a writ application before this Court and the said writ petition was disposed of on 03.09.2002 by directing the respondents to complete the proceeding within three months. The disciplinary proceeding initiated against the petitioner was concluded and the disciplinary authority had passed an order of termination of the petitioner from service on 10.02.2003.

Being aggrieved and dissatisfied with the order of termination, the petitioner had preferred an appeal before the appellate authority and on 17.06.2003, the appellate authority had dismissed the appeal preferred by the petitioner. The petitioner had preferred a writ petition before this Court challenging the order of disciplinary authority and the appellate authority. This Court had disposed of the writ petition preferred by the petitioner on 30.11.2006 by passing the following order :-

“In view of the above, the impugned order of termination of the petitioner’s employment as passed by the disciplinary authority on 10 February 2003 and the order of the appellate authority, namely, “standing appellate committee” of the Board dated 17 June 2003 as contained in the letter of the Chief Personnel Manager, A.K. Pal, addressed to the petitioner dated 11 July 2003 are both set aside.

In consequence of the above, the petitioner is hereby reinstated in service and will be allowed to join his office forthwith. The petitioner will be entitled to receive 50 % of his salary and 50 % of his monthly allowance or allowances, if any,

together with all increments as he would have been entitled to had he be in service through out with effect from 12 October 1992 till 23 August 1997 and he will be entitled to receive his full salary together with all other benefits with effect from 24 August 1997 till the date of his joining pursuant to this order. However the payments that he has received by way of subsistence allowance by virtue of the order of this Court will accordingly be adjusted against his salaries. The respondents or rather the Board is directed to make the above payments, namely, salaries and all other benefit or benefits, positively within a period of four weeks from the date of his joining in terms of this order.”

In compliance of the order passed by this Court dt. 30.11.2006 the petitioner was reinstated in his service vide order dt. 24.01.2007 and accordingly the petitioner resumed his duty. On 14th July 2008 the petitioner had submitted his representation by expressing his desire to switch over the option for pension instead of Contribution Provident Fund Scheme. After reinstatement, the petitioner was promoted to the post of Head Clerk on 09.06.2011 with retrospective effect i.e.25.04.2004 and thereafter the petitioner was promoted to the post of Junior Manager (HR&A) with effect from 25.04.2007.

As the representation of the petitioner was pending in which the petitioner has prayed for allowing to switch over to pension scheme and the respondents have not taken any decision, the petitioner had filed the instant writ application.

The counsel for the petitioner submitted that since 12.10.1992 till 24.01.2007 the petitioner was not in service and the petitioner has resumed his duty only on 24.01.2007 and immediately after joining of service the

petitioner has submitted his representation for allowing the petitioner to switch over to pension scheme in terms Circular dt. 14.12.2001. It is further submitted that the petitioner came to know about the option for pension scheme when the petitioner reinstated in his service after the long period, as in between the petitioner was not aware of the said scheme. It is further submitted that immediately when the petitioner came to know about the scheme the petitioner had opted for the same but the respondents have not considered and finding no other alternative the petitioner had filed the instant writ application. It is further submitted that during the pendency of the writ application the petitioner has retired from his service on 31.08.2013. The counsel for the petitioner has further submitted that the respondents have extended the benefit of pension scheme from time to time and have given the benefit to similar circumstance employees but the respondents have not granted the said benefit to the petitioner. The petitioner relied upon the judgement reported in (2016)16 SCC 538 (DTC – versus- Gian Chand):

“4. We make it clear that in case the respondent has denied an option for pension in view of the fact that at the relevant time of option, he was not in service, now that he is deemed to be in service for all other benefits except the monetary benefits, he shall be given fresh opportunity for an option for pension before his date of superannuation.”

The counsel for the respondent submitted that the petitioner was initially appointed in the year 1973 and the DCRB Regulation, 1985 was implemented firstly on 20.04.10985 and thereafter the same was extended

from time to time till the year 1995 when the petitioner was in service and the service of the petitioner was terminated only on 20.11.1995 with effect from 12.10.1994. It is further submitted that the petitioner ought to have opted the same within the said period but the petitioner failed to opt the same. It is further submitted that the petitioner was reinstate in his service on 24.01.2007 but the petitioner has opted for pension scheme only on 18.07.2008 i.e. after the lapse of more than one and half years. The respondents have relied upon Regulation 5A of the DCRB Regulation which reads as follows :

- 5.A “(i) Every employee who had retired on or after 01.04.1981 and who is in service and is willing to come under these Regulations will have to exercise option, in writing, in the prescribed proforma as per Annexure-I within 6 months from the date of issue of notice by the West Bengal State Electricity Board (immediately after publication of these Regulations) [extended from time to time and last extended upto 30.06.2002-Circular no. 34/2001] dt. 14.12.2001] and furnish his photograph at the time of option. Provided that in the case of an employee, who is on leave or on deputation or on foreign service or under suspension on the date of issue of the notice in this regard, the said option shall be exercised not later than 6 months of the date of his return from such leave, deputation, foreign service or on resumption of duty after suspension as the case may be;
- (i) If the option is not exercised by an individual employee within the time limit referred to above it will be deemed that he has not opted for coming under the Death-Cum-Retirement benefit Regulations, 1985;
- (ii) An employee who was in service on the date of issuing the aforesaid notice, but could not exercise option within the prescribed time limit due to death shall be deemed to have opted for the Contributory Provident Fund;
- (iii) The option once exercised will be final.”

The respondents have also submitted that the similar issue has been decided by the Hon'ble Division Bench of Calcutta High Court and relied upon the unreported Judgement passed in FMA 34 of 2019 (MAT 1387 of 2014) (Amar Nath Mukherjee and Others -versus- Union of India & Ors) dt. 27th September 2019

“44. Having dealt with the argument in theory, it must be noticed that none of the petitioners even remotely perceived that by virtue of clause 2A(a) of the DCRB regulations they stood covered thereby and were not required to exercise any option. Since the proof of the pudding is in the eating, it may also be noticed that all the petitioners obtained their provident fund contribution and the lump sum amounts at the time of their retirement with full consciousness that they had not opted for the DCRB regulations. In a sense, the argument as to the perceived conflict between clause 2A(a) and clause 5A(ii) was not available to the petitioners by virtue of their admitted conduct.

45. The ground of discrimination urged by the petitioners, in the sense that certain benefits are perceived to have been conferred on those governed by the pension scheme to the exclusion of the other retirees, attractive as it may seem, is of no legal consequence. To appreciate the argument, the mechanics of the two schemes have to be seen. Notwithstanding EPS 1995, which replaced the CPF scheme, providing for nominal monthly pension, the essence of both CPF and EPS 1995 was that the entire contribution of the employee and the matching contribution of the employer would be wholly, or substantially, made over to the retirees covered by such schemes at or immediately upon retirement. On the other hand, such money, including the contribution made by the retiring employees covered by the pension scheme, would be retained by the employer to be released on a monthly basis whether to the retiree or, upon his death, to his family. While there was an element of certainty about the lump sum amount that a retiree covered by CPF or EPS 1995 would receive at the time of retirement, the ultimate pay-out to the retirees or the families of the retirees covered by the pension scheme would be governed by several uncertainties like the life-span of a retiree or that of the members of the family entitled to receive pension after him.

46. It was possible for a retiree under the CPF or EPS 1995 schemes to invest the lump sum amount wherever he chose. It is possible that one retiree under such schemes invested in a company that later sunk; while another invested in gold, the prices whereof sky-rocketed over time. Just as it would not be possible for the retiree whose investment was lost to complain of the other retiree whose investment prospered, *retirees covered*

by the CPF and EPS 1995 schemes, as a class, cannot be heard to complain of the monies received or receivable by those covered under the pension scheme after their retirement. On the side of the pension scheme, just as it was possible for a retiree to survive 30 or 40 years after retirement and the family pension to continue for several years thereafter, it was equally possible that the retiree or other members of the family entitled to the family pension died within a short time after retirement. Thus, it depended on the quantum of the fund available under pension scheme for the managers thereof to decide on varying the monthly payments or passing on the returns on the investments to the retirees since the fund belonged to the pension scheme retirees as class.

47. In view of the different paths consciously chosen by the retirees covered by the *CPF and the EPS 1995 schemes*, they could no longer compare themselves with the retirees covered by the pension scheme. It would be a case of apples and oranges.

48. Since it appears that these petitioners may all have been aware of the circular of December 14, 2001 and consciously chose not to switch over to the pension scheme despite the opportunity afforded by such circular and the other grounds urged are found to be of no merit, the order impugned cannot be faulted and there can be no cheer for the petitioners in the matter which has been directly heard along with the three appeals.”

The Counsel for the respondent submitted that the issue raised by the petitioner has already decided by the Hon’ble Division Bench and prayed for dismissal of the writ application.

This court has considered the rival submissions of the parties. The petitioner was initially appointed as Assistant in the year 1973 and the DCRB Regulation was implemented in the year 1985 and the time to opt to switch over to the Pension Scheme was extended from to time till 1995 and at that point of time the petitioner was in service and only on 20.11.1995 the petitioner was terminated from service with effect from 12.10.1994. The

respondents have again reopen the scope for exercising the option for pension scheme on 14.12.2001 which was valid till 30.06.2002 and during this period this Court had set aside the order of termination on 18.06.2002 and the petitioner was placed under suspension but in the said period also the petitioner failed to opt for pension scheme. The respondents have again terminated the petitioner on 10.2.2003 in the disciplinary proceedings and subsequently the this Court had set aside the order of termination and the petitioner was reinstated on 24.01.2007 but the petitioner had opted for pension scheme only on 14.07.2008 i.e, more than one and half years.

Clause 5A of the DCRB Regulation stipulated the time of six months and in the Circular dt. 14.12.2001 also the time was extended only for six months. The petitioner was reinstated in his service in terms of the order passed by this Court on 24.01.2007 but the petitioner has opted for pension scheme on 14.07.2008 i.e, after the period of six months.

The Hon'ble Division bench of this Court in the case of Amar Nath Mukherjee and Others (supra) held that:

“39. It is just not believable that any one of the several petitioners who are before the court may not have been aware of the circular of December 14, 2001. To be fair to the petitioners, they have not been coy, and the arguments have been on the basis that the petitioners may have been aware of such circular but chose not to exercise the option there under. Of course, the petitions contain a line that in view of the several previous opportunities afforded to exercise the option, the petitioners expected a future window to be opened up and are aggrieved by no further opportunity in such regard being afforded after the expiry of the right to exercise the option under the December 14, 2001 circular. It must be said in such context that the petitioners had no legal right to demand any further opportunity nor could they have harboured any legitimate expectation in

such regard. Equally, neither the original employer nor its successor companies were under any legal duty or even a moral obligation to provide another opportunity to exercise the option. After all, the December 14, 2001 circular was issued more than 15 years after the pension scheme under the DCRB regulations had been introduced and, effectively, more than 20 years after the DCRB regulations took effect retrospectively from 1981. Indeed, even if the December 14, 2001 circular had not been published and the opportunity provided thereby had not been afforded, no employee or former employee of the Board could have walked into a writ court to seek or obtain a mandamus for such purpose.”

In view of the observation made herein above this court is of the opinion that the petitioner was well aware of the circular issued in the year 1985 which was extended from time to time till 1995 and after his reinstatement in service on 24.01.2007 the petitioner has opted the same after one and half year. Thereafter the petitioner has filed the instant writ petition after the period of four years from the date of filing his representation and thus the petitioner is not entitled to get any relief in the instant writ application.

W.P.No. 27226(W) of 2012 is thus dismissed. No order as to cost.

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)

