

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Original Side

Present :- Hon'ble Justice Amrita Sinha

W.P.O. No. 86 of 2019

Bhagwan Singh

Vs.

The State of West Bengal & Ors.

For the writ petitioner	:-	Mr. Sakti Pada Jana, Adv. Mrs. Ujani Pal (Samanta), Adv.
For the State	:-	Mr. Subhabrata Datta. Adv. Mr. Debashis Sarkar, Adv. Mr. Paritosh Sinha, Adv.
Hearing concluded on	:-	02.08.2021
Judgment on	:-	24.08.2021

Amrita Sinha, J.

The petitioner retired from service as Darwan of Calcutta Girls' College, Kolkata on attaining his normal age of superannuation on 31st December, 2010. After his retirement a sum of Rs.12,000/- only was sanctioned on account of Death-cum-retiring gratuity in accordance with Rule 41 of the West Bengal Non-Government College Teacher's Death cum Retirement Benefit Scheme, 1973.

According to the petitioner he joined service in the college on 1st December, 1978 and he retired from service on 31st December, 2010 after rendering more than 32 years of service. He submits that Rs. 12,000/- is an extremely meagre amount which has been paid to him on account of his gratuity. According to him he ought to receive gratuity at a higher rate and is also eligible to receive pension. The petitioner claims that he is entitled to receive retirement benefit under the

General Provident Fund (Pension-cum-Gratuity Scheme) and he has been illegally and arbitrarily deprived from getting the benefit in terms of the aforesaid scheme.

The petitioner relies upon a communication dated 12th April, 2017 by the Principal/ Secretary of the College to the Director of Public Instruction wherein it has been mentioned that the Governing body of the College has intimated that from 2008 GPF and CPF both have been deducted from the salary of the petitioner and deposited in the Treasury. The letter mentions that the petitioner is ready to refund the CPF amount to the Government with interest till date so that he may receive pension in accordance with the GPF scheme. He relies upon his salary statement wherein it has been indicated that his pay has been revised under ROPA 1990 and ROPA 1998.

The revision of pay and allowances under ROPA 1990 is applicable in respect of the non-teaching employees of aided non-government colleges and the same is notionally effective from 1st January, 1985. Paragraph 17 of ROPA 1990 mentions that the teaching and non-teaching employees of aided /sponsored educational institution or organisation who opts for the revised scales of pay shall be allowed to enjoy pensionary benefits including dearness relief at par with State government employees. The maximum amount of gratuity shall be raised from Rs. 36,000/- to Rs. 60,000/-. According to the petitioner as his pay was revised in accordance with ROPA 1990 and ROPA 1998, he is entitled to enjoy pension including dearness relief and he is also entitled to a higher rate of gratuity.

The petitioner relies upon the Full Bench judgment of this Court in the matter of ***District Inspector of Schools (SE), Kolkata -Vs- Abhijit Baidya*** reported in ***2013 (3) CHN (CAL) 711***.

In Abhijit Baidya (supra) the Full Bench framed certain questions for determination of the Court. Question 5 as framed in paragraph 9 is whether the

time limit fixed under the DCRB Scheme, 1981 to submit option can be extended in suitable cases? At the time of deciding the aforesaid issue the Court relied on the judgment delivered by the Hon'ble Supreme Court in the matter of **B. K. Srinivasan -Vs- State of Karnataka** reported in **AIR 1987 SC 1059** and held that once the State Government decided the provisions in paragraph 13 of ROPA 1998 and paragraph 17 of ROPA 1990 required amendments, the employees who were to be governed by such amendments ought to have been notified directly and reliably of all changes and additions made to the original provisions by various processes so as to enable them exercise their option for pension-cum-gratuity, if they so wished, instead of binding them down to the option exercised under the DCRB Scheme, 1981.

The Court noticed that neither ROPA 1990 nor ROPA 1998 were published in the official gazette. The Court was of the opinion that the ROPAs in its original forms were required to be published along with the amendments.

While deciding the aforesaid case the Court also took into consideration the judgment delivered by the Hon'ble Supreme Court in the matter of **Dakshin Haryana Bijli Vitran Nigam and Ors -Vs- Bachan Singh** reported in **(2009) 14 SCC 793** wherein the Supreme Court held that in the absence of any material to show that the employees had the knowledge about the option that was called for, it would be totally unreasonable and irrational to deny the pensionary benefits under the Scheme.

The Court was of the opinion that it was necessary to invite fresh option under the DCRB Scheme, 1981 for switching over to pension-cum-gratuity and in order to save the amended provisions from the vice of arbitrariness, it was necessary to give an opportunity to the employees to submit fresh option under DCRB Scheme, 1981.

According to the State respondents the dues have been paid to the petitioner in accordance with the option exercised by him. It has been submitted that the petitioner did not change his option even after opportunity was given for change of option vide G.O No- 997-Edn (CS) dated 30th August, 2001 when the petitioner was in service. As the petitioner did not exercise option within the stipulated period, presently no opportunity can be extended to the petitioner for change of option from CPF to Pension and Gratuity Scheme after his retirement.

I have heard and considered the respective submissions made on behalf of the petitioner and the State respondents. The College remains unrepresented.

In the instant case, there is nothing on record to show that the petitioner was ever made aware of the provision to exercise his option. On the contrary, it appears from records, that the College authority forwarded the documents relating to the terminal benefit of the petitioner who retired on 31st December, 2010 for sanction only on 31st December, 2013. The gratuity of the petitioner was thereafter sanctioned in June 2014. It was the incumbent duty of the College to forward the necessary documents of the employee to the sanctioning authority prior to his retirement so that the employee receives his retiral dues immediately upon his retirement. It is highly improper and unjust of the employer to not submit the documents of the retiring employee to the concerned authority on time and forward the same three years after retirement. As held by the Supreme Court pension and gratuity are not bounty but valuable asset in the hands of the retired employees which are paid to them for the valuable service they have rendered during their service tenure.

Being aware that the petitioner was a class five educated darwan of the College, it was not only the duty but the obligation of the College to appraise him and guide him in the proper way so that he could have exercised his choice in an informed manner. It appears that the petitioner was appointed in the College in

December 1978 and thereafter exercised option only once in 1983 to come under the Contributory Provident Fund Scheme, but thereafter, probably, the petitioner was not even made aware of the changes in the law relating to grant of pensionary benefit of the employees. Pay was revised twice by the time he retired.

The petitioner has averred in the writ petition that being a Group- D staff without appreciating the actual procedure of exercising option to come under the Pension Scheme he opted to come under the Contributory Provident Fund Scheme. The College has written to the Director of Public Instruction on 11th April, 2017 that after repeated circulars from DPI the petitioner did not change his option after 1983 though from 2008 GPF and CPF both have been deducted from his salary and deposited in the treasury.

It is not expected that a darwan of a College will have each and every information about the circular(s) published by the authority. It was the solemn duty of the College to make him aware of his service benefits. In the absence of an option the College could not have deducted GPF from the salary of the petitioner as it appears that GPF was deducted from his salary from 2008 till his retirement on 31st December, 2010. In such situation the option is deemed to have been exercised by the petitioner to come under the Pension Scheme.

After nearly 32 years of service it is not acceptable that a paltry sum of Rs. 12,000/- only be sanctioned in favour of an employee as gratuity. The amount of gratuity payable to an employee on superannuation had, in the meantime, been enhanced to a considerable extent. There is no reason as to why the petitioner will not be extended the benefit of getting gratuity at the enhanced rate fixed by the Government.

The College after realizing the mistake on their part and the prejudice faced by the petitioner took a resolution in the meeting of the Governing Body to forward

the papers of the petitioner to the Director of Public Instruction for taking a favourable decision for grant of pension in his favour. In the said letter it has been specially mentioned that the employee is ready to refund the Contributory Provident Fund amount, if any, received by him to the Government with interest. The respondent authority has been requested to ensure that the employee may not suffer any more.

I am of the opinion that in the facts and circumstances of the case, the petitioner is liable to be given a chance to exercise option to come within the purview of the Pension Scheme.

In view of the above, the Director of Public Instruction is directed to afford an opportunity to the petitioner to exercise option in accordance with the amended provision of ROPA 1998. The Director of Public Instruction shall intimate the petitioner the formalities that he is required to comply for availing the benefit in accordance with ROPA 1998 to come under the purview of the Pension Scheme. The College is directed to render all sorts of cooperation to the petitioner so that the petitioner receives his due.

In the event, such an option is exercised by the petitioner then necessary steps shall be taken to process his case so as to ensure that the petitioner receives his retiral dues at the earliest, but latest within a period of six (6) months from the date of compliance of all necessary formalities. The amount deducted on account of General Provident Fund from the salary of the petitioner and deposited in the treasury will also be taken into consideration by the respondent authority at the time of calculating his dues.

WPO 86 of 2019 stands disposed of. No costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties on compliance of usual legal formalities.

(Amrita Sinha, J.)