

07.02.2022

Court : 04
Item : 13
Matter : **MAT**
Status : ADJOURNED
Transcriber: nandy

MAT 21 of 2022
with
CAN 1 of 2021

Smriti Bhattacharya
Vs.
The State of West Bengal & Ors.

Mr. Partha Sarathi Bhattacharya, Senior Advocate
Mr. Sachindranath Mishra, Advocate
Mr. Raju Bhattacharya, Advocate

.....for the Appellant

Mr. Bhaskar Prasad Vaisya, Advocate
Mr. Arindam Chattopadhyay, Advocate

.....for the State

Mr. Biswaranjan Bhakat, Advocate

.....for the Respondent No. 12

The appellant has come up before this Court challenging an order dated December 17, 2021 passed in WPA 12421 of 2019 for the simple reason that the single Bench has not considered the release of Provisional Pension when admittedly no disciplinary proceeding was initiated against the appellant nor he was discharged/terminated/dismissed from service.

The pivotal issue is whether the petitioner has opted for a conversion of Contributory Provident Fund to General Provident Fund. Paragraph 34 of the West Bengal Recognized Non-Government Educational Institute Employees (Death-cum-Retiral) Scheme, 1981 is placed by the appellant providing for release of the provisional pension at the rate of cent percent of the pension calculated on the basis thereof.

It is submitted that the option form was submitted but it was relateable to pension including family pension-cum-gratuity and the School Authorities have treated the same differently. It is not in dispute that the pension would vary depending upon the fact whether the

petitioner has applied under the Contributory Provident Fund from General Provident Fund. The variation is imminent and unavoidable. Once the moot question remain in the writ-petition whether the petitioner has opted for a conversion from CPF to GPF, unless such question is decided, in our opinion, the paragraph 34 would not be of any assistance at this stage.

By the impugned order, direction was passed upon the authorities to exchange affidavits obviously to determine the core issue as indicated above and, therefore, we do not find that any interference is warranted in the instant appeal. However, we extend the time to exchange the affidavits because of the fact that the appeal was pending before us.

The respondents in the writ-petition are directed to file affidavit-on-opposition within two weeks from date, if not already filed. Reply thereto, if any, be filed within a week thereafter.

The learned Judge of the single Bench is requested to expedite the matter.

With these observations, the appeal being **MAT 21 of 2022** and the connected application being **CAN 1 of 2021** are **disposed of**.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)

