IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA No. 964 of 2022

Sitala Mandal (Chaudhuri)

Vs.

The State of West Bengal & Ors.

For the writ petitioner	:-	Mr. Sakti Pada Jana, Adv. Mr. Sourav Mitra, Adv.
For the State	:-	Mr. Anirban Ray, Ld. GP Mr. Rezaul Hossain, Adv.
Heard on	:-	28.01.2022
Judgment on	:-	08.02.2022

Amrita Sinha, J.:-

The issue to be decided in the present writ petition is whether an employee will be entitled to receive pension on and from the date following retirement or from the date of refund of the employer's share of contribution.

The petitioner retired from service on attaining the age of superannuation on 30th November, 2011.

In response to the notification published by the School Education Department being No. 79-SE(L)/SL/5S-56/13(Pt-V) dated 13th June, 2014 issued in compliance of the direction passed by the Hon'ble Special Bench of this Court in the judgment dated 16th July, 2013 in the matter of District Inspector of Schools (S.E.), Kolkata –vs- Abhijit Baidya the petitioner exercised option to switch over from CPF to GPF and refunded the employer's share of contribution with interest and additional interest on 3rd September, 2014.

Pension Payment Order was issued in favour of the petitioner with effect from 3rd September, 2014, that is the date of refund of the employer's share of contribution.

The grievance of the petitioner is that Pension Payment Order was erroneously issued on and from the date of refund of the employer's share of contribution with interest and additional interest instead from the date following retirement.

According to the petitioner, pension ought to have been released on and from the next date of retirement and not from the date of refund of the employer's share of contribution.

In support of the aforesaid stand the petitioner has relied upon the judgment delivered by the Court in ***District Inspector of Schools (S.E.), Kolkata –vs- Abhijit Baidya*** reported in ***2013 (3) CHN (CAL) 711*** and the judgment delivered on 30th September, 2019 by the Special Bench of this Court in the matter of ***Md. Abdul Ghani –vs- State of West Bengal & Ors.*** (GA No. 64 of 2018, APOT No. 104 of 2006, APO No. 121 of 207, GA No. 627 of 2006, WP No. 1528 of 2002).

The Court, in Abdul Ghani (supra), clarified that if an employee opted for Pension-cum-Gratuity Scheme within the time framed in the notice dated 13th June, 2014 and also refunded the quantum of money that was notified, the employee shall be entitled to be paid pension from the date following the date of retirement on superannuation in accordance with the provision of the DCRB Rules.

The petitioner submits that as the issue has been clarified by the Hon'ble Special Bench that the employee is entitled to receive pension on and from the date following the date of retirement, accordingly, the petitioner is entitled to receive pension from the date following the date of retirement and not from the date of refund of the employer's contribution.

The learned advocate representing the respondents opposes the prayer of the petitioner.

It has been submitted that the said clarificatory judgment dated 30th September, 2019 in the matter of Md. Abdul Ghani (supra) is applicable only in respect of the pending writ petitions. The said clarification cannot be made applicable in respect of the present petitioner as the writ petition of the petitioner was not pending on the date the clarification was issued by the Hon'ble Special Bench. It has been submitted that the benefit of the order cannot be enjoyed by the fence sitters who did not approach the Court in proper time.

A point of estoppel has also been raised by the respondents. It has been submitted that as the Court has already decided that the employee will be entitled to receive pension from the date of refund, accordingly, the petitioners are estopped from claiming pension from the date following their retirement.

It has been submitted that the petitioner will be entitled to receive pension only from the date of refund of the employer's contribution and not prior thereto.

I have heard the submissions made on behalf of both the parties and have perused the judgments relied upon by them.

The Court, in Abhijit Baidya (supra) in paragraph 77, laid down that if the employee exercises option he shall be entitled to pension cum gratuity, in accordance with law, with effect from the date refund is made.

In compliance of the direction passed in paragraph 76 of Abjijit Baidya's case (supra), the State Government issued notification on 13th June, 2014 giving three months' time to the employees to refund the employer's share of contribution with interest and additional interest if the employee elects to switch over to Pension-cum-Gratuity Scheme.

The petitioner refunded the employer's share of contribution along with interest and additional interest within the time specified in the notification dated 13th June, 2014.

The Court, in Md. Abdul Ghani (supra) in paragraph 55, clarified that the entitlement of pension will be from the date following the date of retirement in accordance with the provisions of the DCRB Rules.

The submission of the State respondents that the clarification was applicable only in respect of pending writ petitions appears to be a submission made in desperation. It is a desperate attempt on the part of the State to not pay the employees their legitimate dues.

The Court clearly clarified that there has been no curtailment in respect of the right to receive pension from the date following the date of retirement as per the DCRB Rules, but liability of the State Government to pay was deferred till such time refund was made. According to the provisions of the DCRB Rules the employee is entitled to receive pension on and from the date following his retirement. The Special Bench laid down, in no uncertain terms, that the employee was entitled to 'pension cum gratuity in accordance with law', meaning thereby the DCRB Rules, not from the date of exercising option or from the date of acceptance of option but from the date following retirement.

In Md. Abdul Ghani (supra) the Court laid down that the Full Bench was quite clear that payment of pension would be with effect from the date the refund is made and not before, but the entitlement would relate back to the date of retirement on superannuation.

The State ought to appreciate that as the employee refunded the amount of employer's share of contribution along with interest and additional interest calculated till the date of refund, accordingly, the State cannot negate the claim of the employee to receive pension on and from the date following retirement.

The direction of the Court regarding adjudication of pending writ petitions came to be passed as the State adopted a very constricted approach in interpreting the direction passed in paragraph 77 of the judgment in Abhijit Baidya (supra).

It can never be that the benefit of a judgment passed *in rem* will be restricted only in respect of pending writ petitions and the same will not be applicable in respect of similarly situated persons.

The respondents have failed to appreciate that the Special Bench in Abhijit Baidya (supra) in paragraph 76 clearly specified that opportunity to be given to all the petitioners and other employees similarly situated to submit option to switch over to pension cum gratuity by issuing public notice.

The expression "employees similarly situated" clearly means that any employee similarly situated as the writ petitioners in Abhijit Baidya (supra) will get the benefit of the judgment passed by the Court. The petitioners being similarly situated will certainly be entitled to reap the benefits of the aforesaid judgment.

There cannot be two interpretations to the direction in paragraphs 76 and 77 of Abhijit Baidya's case. The respondents are relying upon paragraph 59 of the judgment in Md. Adbul Ghani (supra) but, for obvious reasons, are overlooking the direction passed by the Court in paragraph 76 of Abhijit Baidya (supra).

The issue of estoppel also does not come to the aid of the State in any manner whatsoever. It is settled law that there can be no estoppel against law. According to the prevailing Rules, an employee is entitled to receive pension from the day following the date of superannuation. The entitlement to receive pension being settled by the Special Bench in the earlier judgments, the State is estopped from raising the same issue all over again.

To obviate future complications the Special Bench issued the clarification in Abdul Ghani (supra) making it clear with regard to the entitlement of the employee to receive pension from the date following the date of retirement on superannuation in accordance with the provisions of the DCRB Rules.

If the submission of the State is accepted then it will lead to a situation where each and every retired employee who has acted in accordance with the notification dated 13th June, 2014 will have to approach Court for getting relief in terms of the Special Bench judgment in Abhijit Baidya (supra) and the clarificatory judgment in Abdul Ghani (supra).

The respondents ought to appreciate that not paying pension to the pensioners from the date following their superannuation even though the pensioners refunded the employer's share of contribution with interest and additional interest will amount to unlawful enrichment by the State by depriving the pensioners of their rightful dues. The State has received interest as well as additional interest for the period the employee enjoyed the employer's contribution, and the moment the said share is refunded, the employee becomes entitled to receive pension on and from the date following his date of superannuation.

The contention of the State, accordingly, cannot be accepted by the Court.

In view of the above, instant writ petition is disposed of by directing the Director of Pension, Provident Fund and Group Insurance and the concerned Treasury Officer to verify the records, and in the event, it is found, that the petitioner exercised option and refunded the employer's share of contribution within the time specified in the notification dated 13th June, 2014, then steps shall be taken to issue Revised Pension Payment Order in favour of the petitioner with effect from the date following the date of retirement on superannuation and to release the pension in accordance with the Revised Pension Payment Order. Such steps shall be taken within a period of twelve weeks from the date of communication of a copy of this order. Payment shall positively be released immediately upon issuance of the Revised Pension Payment Order.

Affidavit of service taken on record.

WPA 964 of 2022 is disposed of.

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

(Amrita Sinha, J.)