

05.05.2022
KC(AD 3)

F.M.A. 470 of 2021
State of West Bengal and Ors.
-versus-
Kamala Kanta Jana and Ors.

Mr. Tapan Kumar Mukherjee,
Mr. Rajat Dutta.....For the appellants.

Mr. Kamalesh Bhattacharya,
Ms. Bratati Datta.....For the respondents.

This is an appeal from a judgment and order dated 25th November, 2019 by a learned single judge in a writ application holding and directing that the respondent writ petitioners (petitioners) would be entitled to exercise the option of switching over from C.P.F. to G.P.F. scheme complying with its conditions and due procedure, which mainly was that the petitioners would have to surrender all the benefits received under the C.P.F. scheme.

By a judgment and order dated 16th July, 2013 made by a Special Bench of this court in an appeal [APO No. 94 of 2009 (State of West Bengal and Ors. -vs- Abhijit Baidya and Ors.)], the Special Bench inter alia directed as follows:

“We direct the State Government to give opportunity to all the petitioners and other employees similarly situated to submit option to switch-over to Pension-cum-Gratuity by issuing public notice in at least four newspapers having wide circulation in this State. Three months’ time

period be given to them to exercise option and let the amount be specified to each and every employee who elects to switch over to Pension-cum-Gratuity, to deposit the amount of employer's share of contribution with interest and additional interest which is required to be refunded to the Government within the period specified.

If an 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 with that order, on 13th June, 2014 the Government of West Bengal published a notification, inter alia, to the following effect:

"(i) Three months time period shall be given to the teaching and non-teaching staff of recognized non-government aided educational institutions whether in service or retired, (hereinafter referred to as the 'said employees') to switch over to Pension-cum-Gratuity Scheme under the West Bengal Recognized Non-Government Educational Institutions (Death-cum-Retirement Benefit) Scheme, 1931."

The petitioners in that case were teaching and non-teaching staff of recognised non-government aided educational institution.

The learned judge in the impugned judgment and order made a specific finding of fact that the petitioners were retired and current employees of such a recognised non-government aided educational institution, namely, The Ramakrishna Mission Industrial Training Centre, Rahara. He ruled that they were covered by the said notification.

In support of the appeal Mr. Mukherjee tried to argue that the institution in question being a technical institute could not be classified as an educational institution. This notification, according to him, had been issued by the School Education Department and applied to institutions under that particular department. He also tried to contend that the petitioners did not do any teaching work.

All the submissions are meritless. It has not been pleaded in the affidavit in opposition or in the grounds of appeal that Ramakrishna Mission Industrial Training Centre could not be termed to be an educational institution. Neither has it been averred anywhere that the petitioners did not do teaching work. Hence, this novel argument cannot be entertained.

We have carefully scrutinised the notification. The preamble of this notification is based on the Special Bench judgment of our court which specifically provided for switching over from C.P.F. to the Pension-cum-Gratuity scheme to the petitioners in that case and “other employees similarly situated”.

If one makes a literal meaning of the notification it is absolutely clear that it gives an option to teaching and non-teaching staff of recognised non-government aided educational institutions, without any further classification or condition to avail of switching over to the Pension-cum-Gratuity scheme.

In our opinion, the learned judge very rightly held that being teaching staff of a recognised non-government aided educational institution, the petitioners were entitled to the benefit of switching over from C.P.F. to Pension-cum-Gratuity scheme.

We find no reason to interfere with the impugned judgment and order. We affirm the same. The appeal is dismissed.

We vacate the order of stay. We grant the petitioners three months' time to exercise the option provided in the notification dated 13th June, 2014.

No order as to costs.

(I.P. MUKERJI, J.)

(ANIRUDDHA ROY, J.)