

Item No.4.

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

HEARD ON: 23.06.2022

DELIVERED ON:23.06.2022

CORAM:

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

WPA 5602 of 2021

**Shyam Pada Maity & Ors.
VERSUS
State of West Bengal & Ors.**

Appearance:-

**Mr. Kamalesh Bhattacharya,
Mr. Aninda Bhattacharya,
Mrs. Ankita Das Chakraborty**

.....for the Petitioners

**Mr. Pinaki Dhole,
Ms. Kakli Samajpati**

.. for the State.

JUDGMENT

(Judgment of the Court was delivered by HIRANMAY BHATTACHARYYA, J.)

1. As prayed for by Mr. Bhattacharjee, learned Advocate for the petitioners, leave is granted to the Learned Advocate-on-record for the petitioners to correct the typographical mistakes in the cause title of the instant writ petition, here and now.

2. The petitioners are retired teachers of different secondary schools. They exercised their option to come over to the GPF scheme from the Contributory Provident Fund Scheme. The issue as to whether an employee under the CPF Scheme can come over to the GPF Scheme was considered by the Full Bench in a batch of writ petitions being APO 94 of 2009 along with G.A. 665 of 2013 & Ors. (District Inspector of Schools (SE), Kolkata & Anr. Vs. Abhijit Baidya & Ors.) and by a judgment and order dated July 16, 2013, the Full Bench held as follows:-

“76. 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 among 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.

77. If an employee exercises option, he shall be entitled to Pension-cum-Gratuity in accordance with law within effect from the date refund is made.”

3. Thereafter, on an application for clarification filed at the instance of one applicant, the Full Bench passed an order on September 30, 2019, the operative portion of which reads as follows:-

“55. This Bench, to obviate future complications, issues this clarification too that if in terms of paragraph 77 of the said order an employee has opted for the Pension-cum-Gratuity scheme within the time frame fixed in the notice dated June 13, 2014 and has also refunded the quantum of money that was notified to him/her, he/she shall be entitled to be paid pension from the date following the date of his/her retirement on superannuation in accordance with the provisions in the DCRB Rules.”

4. From the judgment and order dated September 30, 2019, it is evident that an employee, who has opted for Pension-cum-Gratuity Scheme within the time frame fixed in the notice dated June 30, 2014 and has also refunded the quantum of money that was notified to him/her, he/she shall be entitled to be paid pension from the date following the date of his/her superannuation in accordance with the provision in the DCRB Rules.

5. Thus, the earlier order, which provided that the pension shall be effective from the date of refund was clarified by holding that such optee shall be entitled to be paid pension from the date following the date of his/her retirement on superannuation.

6. It is the case of the petitioners that pension was sanctioned in their favour with effect from the date the amount was refunded in terms of the judgment and order dated July 16, 2013 whereas they are entitled to pension from the date following the date of retirement pursuant to the subsequent judgment and order dated September 30, 2019.

7. The learned Advocate appearing for the State, by referring to the statements made in the affidavit-in-opposition, submitted that pension was sanctioned in favour of the petitioners pursuant to the judgment and order passed by the Full Bench dated July 16, 2013 and the petitioners have accepted the same without raising any objection thereto. It has been further submitted by Mr. Dhole, that against the judgment and order dated September 30, 2019, a Special Leave Petition was preferred by the State, which stood dismissed and thereafter a review

application has been filed, which is pending consideration before this Hon'ble Court. Thus, he submits that no order should be passed at this stage directing the respondent authorities to release the arrear pension for the period from the date following the date of retirement of the individual petitioners till date of the refund of the amount.

8. Mr. Bhattacharya, learned Advocate appearing for the petitioners, submits that several optees have already been paid the benefits of pension in terms of the subsequent judgment and order dated September 30, 2019 and as such, the petitioners being similarly situated ought not to have been discriminated against.

9. Heard the learned Advocates for the parties and considered the materials on record.

10. Since the Full Bench by a judgment and order dated September 30, 2019 directed that the employees, who have opted for Pension-cum-Gratuity Scheme shall be entitled to be paid pension from the date following the date of his retirement on superannuation in accordance with the provisions in the DCRB

Rules, this Court feels that mere pendency of a review application shall not preclude this Court at this stage from passing a direction to pay arrear pension as the Learned Advocate for the State failed to produce any order of stay of operation of the judgment and order dated September 30, 2019.

11. In view thereof, this Court directs the respondent authorities to take appropriate steps that are required for releasing the arrear pension in favour of the petitioners from the date following the date of retirement till the date of refund and to release the same within a period of 10 weeks from the date of receiving the server of this judgment and order.

12. With the aforesaid direction, the writ petition is disposed of.

13. There shall be, however, no order as to costs.

14. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)

NAREN, AR (Ct.)