

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

Present:
The Hon'ble Justice Hiranmay Bhattacharyya

W.P.A. 5302 of 2019

**Subhendu Chakraborty & Ors.
Vs.
The Kolkata Metropolitan Development
Authority & Ors.**

Appearance:

For the petitioners : Mr. Sarder Amjad Ali, Adv.
Mr. Masum Ali Sarder, Adv.

For the KMDA : Mr. Satyajit Talukdar, Adv.

For the State : Ms. Sudipa Roy, Adv.

Judgment reserved on : 28.11.2022.

Judgment Delivered on : 21.12.2022.

Hiranmay Bhattacharyya, J.:

1. This Writ petition is at the instance of some serving as well as some retired employees praying for a writ of Mandamus commanding the respondents to allow them to switch over to the

General Provident Fund-cum-Pension Scheme from the Contributory Provident Fund and Gratuity Scheme.

- 2.** The Writ petitioners were members of the Contributory Provident Fund scheme maintained by the Calcutta Metropolitan Development Authority presently known as Kolkata Metropolitan Development Authority (for short “KMDA”). Calcutta Metropolitan Development Authority Employees (Death-cum-Retirement Benefit) Regulations, 1988 (for short “the 1988 Regulation”) was promulgated with the previous approval of the State Government giving opportunity to the employees to exercise option to switch over to the GPF cum Pension Scheme from CPF Scheme . A notice dated 06.11.1990 was issued inviting the willing employees to exercise option within a period of six months. Time to exercise such option was extended from time to time and the last of such extension was up to February 28, 2022. The petitioners exercised their option to switch over after the stipulated time limit. The writ petitioners allege inaction on the part of the respondent authorities and have filed this writ petition.
- 3.** Sardar Amjad Ali, learned Senior Counsel for the petitioners contended that the writ petitioners could not exercise their option within the stipulated time frame due to communication gap. He further contended that the KMDA approved the proposal for fresh options and sought for approval of the Finance Department of the

State of West Bengal which, according to him, is not necessary. He submitted that the writ petitioners have been discriminated against as several other employees, who submitted their option belatedly, was allowed to switch over to the GPF-cum-Pension Scheme. He concluded by submitting that the writ petitioners are willing to refund the total amount received on account of CPF along with approved interest if the event they are allowed to switch over to the GPF-cum-Pension Scheme.

4. Mr. Talukdar, learned Advocate for KMDA contended that since a few number of employees, who could not exercise their option within the stipulated time frame, prayed before the authority for extension of time to allow them to switch over, a proposal for inviting fresh option was placed before the concerned authority. After a thorough deliberation, KMDA approved the proposal for inviting fresh option for conversion from CPF to GPF-cum-Pension Scheme subject to approval of the Finance Department, Government of West Bengal. He further contended that the KMDA forwarded the copy of the resolution along with other relevant documents to the Special Secretary to the Government of West Bengal. He submitted that the KMDA duly replied to the queries made by the Government but KMDA did not receive any intimation from the Government.

5. Ms. Sudipa Roy, learned Advocate representing the State referred to a letter dated 17.12.2018 which has been annexed to the affidavit –in-opposition filed by the respondent no. 5 and contended that the KMDA did not comply with the direction to resubmit the proposal along with documents for which the Urban Development and Municipal Affairs Department could not record views in the matter.
6. Heard the learned Advocates for the parties and perused the materials placed.
7. Record reveals that the 1988 Regulations was approved by the Governor, State of West Bengal. The said Regulation, which was notified on 9th August, 1990, was given a retrospective effect from the 1st day of January, 1986.

Clause 6 of the 1988 Regulations provided for exercise of option by the employees of KMDA to come under 1988 Regulations. Clause 6 reads as hereunder:

“6. Exercise of option-

(1) An employee who retired on or after the 1st January, 1986 and who is in service and is willing to come under these regulations shall exercise an option in writing in Form A within six months from the date of issue of the notice in this

behalf from the Authority and furnish his photograph and present himself at the time of option.

Provided that in the case of an employee who is on leave or on deputation or on foreign service or under suspension on the date of the notice in this regard, the said option shall be exercised within six months from the date of his return from such leave, deputation, foreign service or on resumption of duty after suspension, as the case may be.

Provided that in the case of an employee who is on leave or on deputation or on foreign service or under suspension on the date of the notice in this regard, the said option shall be exercised within six months from the date of his return from such leave, deputation, foreign service or on resumption of duty after suspension, as the case may be.

(2) If the option is not exercised by any individual employee within six months as aforesaid, it will be deemed that he has not opted for coming under these regulations.

Provided that if an employee who was in service on the date of issue of the aforesaid notice dies before exercising option within the said period of six months he shall be deemed to have opted for the contributory Provident Fund.

(3) The option once exercised shall be final.”

- 8.** Clause 6 of the said Regulations provided for a time limit within which the option to come over to the said regulations is to be exercised. It was further provided that if no option is exercised, it will be deemed that he has not opted for coming over to the Regulations. It was also stated that option once exercised shall be final.
- 9.** Thereafter a notice was issued on November 6, 1990 inviting the willing employees to exercise their option within 6 months from the date of issuance of such notice. Record further reveals that subsequently the time for exercising option was extended from time to time and lastly the Chief Executive Officer, KMDA issued a notice dated 18.01.2002 thereby extending the last date for exercising option till 28th February, 2002.
- 10.** The Regulations further provide that in case the employees who retired on or after 01.01.1986 and received benefits under the Contributory Provident Fund-cum-Gratuity Scheme, they shall have to refund the employer's share of Contributory Provident Fund and Gratuity/retiring gratuity along with interest as payable at the prescribed rate.
- 11.** The writ petitioners claim that though they are willing to switch over to the 1988 Regulations by making a refund of the amount together with interest as stipulated in the scheme but they could not exercise the option due to communication gap.

- 12.** It is evident from the records that the proposal for consideration for extension of time for submission of option for coming over to the GPF-cum-Pension Scheme from CPF Scheme was placed for consideration in the meeting of the Authority. In the 181st meeting of the Authority held on 10.08.2016, the Authority approved the proposal for inviting fresh option towards conversion from CPF to GPF-cum-Pension scheme subject to approval of the Finance Department, Government of West Bengal.
- 13.** The said meeting was presided over by the Hon'ble Minister-in-charge, Municipal Affairs and Urban Development Department, Government of West Bengal. However, the Principal Secretary to the Government of West Bengal, Finance Department, who is also the member of KMDA, was absent for reasons best known to him.
- 14.** It further appears from the record that the KMDA was asked by the Commissioner, Government of West Bengal to reply to some queries which were raised after consulting with the Finance Department.
- 15.** It is evident from the records that KMDA duly replied to the queries raised by the State Government. Financial implication for conversion from CPF to GPF was also indicated in the letter which was forwarded to the UD&MA Department of the Government of West Bengal. Since, all the relevant materials have been forwarded by the KMDA to respondent no. 5, this Court fails to understand

as to what prompted the said respondent to issue the letter dated December 17, 2018 directing resubmission of documents.

16. It is however, admitted by the respondent no. 5 in Affidavit-in-opposition that the CPF Gratuity Regulation as prevailed in KMDA was never revised in line with the payment of Gratuity Act and the employees who retired under CPF Scheme only received a maximum amount of Rs. 50,000/-.

17. It appears from the record that a Coordinate Bench of this Court by an order dated 17.06.2019, directed the learned Counsel to take specific instruction from the Principal Secretary of the Urban Development Department as well as the Department of Finance about the fate of the proposal forwarded by KMDA for extension of time for conversion from CPF to GPF. In spite of issuance of directions to file affidavit-in-opposition as well as grant of several extensions of time for filing such affidavit, no affidavit – in-opposition is forthcoming from the end of the Finance Department, Government of West Bengal. The complete silence on the part of the Finance Department at almost every stage is not appreciated by this Court. This, Court, therefore, holds that the Finance Department does not have any valid reasons for withholding the approval sought for by the KMDA.

18. It is evident from the records that most of the employees barring a few, who were governed under the CPF-cum-Gratuity

Scheme, were allowed to switch over to the 1988 Regulations. Some of them were allowed to switch over pursuant to the time limit stipulated as per the Notification while others were allowed to switch over by allowing extension of time on several occasions. It appears from the record that only 39 such employees are left for switch over and the petitioners fall within such 39 employees.

19. The petitioners are similarly situated with the other employees who were allowed to switch over to the GPF-cum-Pension Scheme from the CPF Scheme by extending the time to exercise option. The petitioners, therefore, cannot be treated differently. Furthermore, the respondents are also willing to refund the amount together with interest as per the scheme at the prescribed rate. Thus, the writ petitioners cannot be said to have been benefitted by approaching KMDA to exercise option at a belated stage as they have to pay interest at the prescribed rate on the amount to be refunded. This Court is, therefore, of the considered view that an opportunity is to be afforded to the petitioners to exercise their option to switch over to the GPF-cum-Pension Scheme i.e., the 1988 Regulations.

20. For the reasons as aforesaid, the writ petition stands allowed by passing the following direction:

- i) The Principal Secretary, Department of Finance, State of West Bengal is directed to accord approval to the proposal forwarded by the KMDA for inviting fresh option towards conversion from CPF to GPF-cum-Pension Scheme as expeditiously as possible but positively within a period of three weeks from the date of communication of a server copy of this order and to immediately intimate the KMDA accordingly through the Urban Development and Municipal Affairs Department not later than a week from the date of grant of such approval.
- ii) Immediately upon receipt of such approval, KMDA shall give opportunity to the petitioners and other similarly placed employees to submit their option to switch over from CPF to GPF-cum-Pension Scheme by issuing public notice in newspapers having wide circulation in the State of West Bengal. Sufficient time is to be allowed to willing persons to exercise such option and to refund the employer's share of Contributory Provident Fund and Gratuity/retiring gratuity along with interest payable at the prescribed rate.
- iii) KMDA shall issue public notice as directed under Clause (ii) hereinbefore, as expeditiously as possible but positively within a

period of three weeks from the date of receipt of intimation under Clause (i) hereinbefore.

- iv) In the event such option is exercised, the writ petitioners shall be entitled to the benefits of GPF-cum-Pension Scheme with effect from the date such refund is made.

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

Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)

(P.A.- Saurav)