IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Subrata Talukdar

And

The Hon'ble Justice Supratim Bhattacharya

MAT 1012 of 2022

With

CAN 1 of 2022

Sachchidanand Singh

–Vs-

State of West Bengal & Others

For the Appellant	: Mr. Piush Chaturvedi Mr. Tarun Kumar Das
For the Respondents	: Mr. Suman Dey Mr. Pinaki Dhole
Heard On	: 01.09.2022
Judgement Delivered On	: 22.12.2022

Supratim Bhattacharya, J.:- This instant appeal has been preferred by the appellant/writ petitioner assailing the Order, dated the 24th day of June 2022, of the Hon'ble Single Bench passed in the writ petition being WPA 22641 of 2017.

The respondents in the writ petition are the respondents to the instant appeal in the same sequence.

The issue before the Hon'ble Single Bench was as to whether the prayer of the writ petitioner for including his retiring gratuity and lifetime pension in the retiral benefit after refunding the employer's share of contribution of Provident Fund with interest as accrued thereon is to be allowed or not.

Through the impugned Order the Hon'ble Single Bench was pleased not to accede to the prayer of the writ petitioner who is the appellant in the instant appeal, praying for including his retiring gratuity and lifetime pension in the retiral benefit after refunding the employer's share of contribution of Provident Fund with interest as accrued thereon.

The Learned Counsel appearing on behalf of the appellant/ writ petitioner has submitted that the writ petitioner has prayed for conversion of his retiral benefit from Contributory Provident Fund (in short *CPF*) to General Provident Fund (for short *GPF*) within the scheduled time, i.e. the 31st day of December 1985, in terms of the provisions of the Death cum Retirement Benefit Scheme of 1981 (hereinafter referred to as *DCRB Scheme, 1981*)

He has further submitted that in spite of the prayer being made within time the said application was not forwarded to the appropriate authority, who was to deal with the same, by the then Headmaster of Banksimulia Group High School, Post Office Pariharpur, District Burdwan, for which the instant appellant writ petitioner is suffering for no fault of his. He has further contended that the respondent no.5, i.e the Additional District Inspector of Schools (S.E), Asansol Sub-Division, had called for a statement as regards to the amount of money which was to be refunded being received from the end of the Government as the employer's share in the *CPF,* which amounts to acceptance of the prayer of the petitioner for conversion from *CPF* to *GPF* and also goes to show that the earlier orders were reconsidered. Learned Counsel has further submitted that the writ petitioner had once again prayed for conversion from *CPF* to *GPF* and had refunded the amount received as share of the employer from the Government in respect of the *CPF* amounting to Rs. 4,37, 161/- (Four Lakh Thirty Seven Thousand One Hundred and Sixty One). On behalf of the writ petitioner it has been further contended that the writ petitioner has deposited the entire amount through challan and thus has expressed his view once again as regards to conversion of his retiral benefits from *CPF* to *GPF* and as such there was *bona fide* intention on behalf of the appellant to have the conversion of his retiral benefit from *CPF* to *GPF*. Under no circumstance the writ petitioner could be said to have not availed of the opportunity of conversion from *CPF* to *GPF*.

The Learned Counsel appearing for the appellant/ writ petitioner has submitted that the appellant/ writ petitioner has availed the opportunity for conversion from CPF to *GPF* within the stipulated time frame and there was no fault on his part. The question of delay in submission of form was due to the laches on the part of the school authority, who were lethargic and had not transmitted the prayer within the requisite time. It has further been contended that the request of the Additional District Inspector of Schools (S.E.), Asansol Sub-Division establishes the fact that the appellant/ writ petitioner was requested to refund the share of the employeer in respect of *CPF*. This also goes to show that the prayer of the appellant/writ petitioner was taken into consideration. He further submitted that the Hon'ble Single Bench did not take into consideration the intention shown by the petitioner, as such the appellant had to prefer this appeal.

On the contrary the Learned Counsel appearing on behalf of the respondents has stressed upon the point that under no circumstance the writ petitioner is said to have acted with *bona fides* as regards to conversion of his retiral benefits from *CPF* to *GPF*. It had been contended that the Memo. dated 31st August 2005 issued by the Commissioner of School Education and another dated 1st December 2004 issued by the Deputy Secretary, School Education Department, will reflect that there was no approval for conversion from *CPF* to *GPF*. Learned Counsel has further submitted that the writ petitioner was subsequently appointed as the Headmaster of the said school in the year 1995 and in spite of holding the chair of the Headmaster the employer's share of the *CPF* was deposited till the month of March 2006. Relying upon such evidence, the Learned Counsel has prayed for dismissal of the writ application.

He has further submitted that it is the appellant/ writ petitioner himself for whose fault the said prayer for conversion cannot be given effect to as the said prayer for conversion from *CPF* to *GPF* was not made within time, instead it was made at a time much beyond the statutory period as was prescribed.

The Learned Counsel appearing on behalf of the State during his argument submitted that the appellant did not have the intention of converting his retiral benefit from *CPF* to *GPF* which is reflected from the facts. It reveals from the incidents that the prayer for conversion of the retiral benefit of the appellant was sent to the appropriate authority for consideration after long period of its scheduled time for submission of the prayer which goes to show that the intention of the appellant was not at all *bona fide* in respect of conversion of the writ petitioner's retiral benefit from *CPF* to *GPF*.

It has further been contended that through the letters issued by the Commissioner of School Education and the Duputy Secretary of School Education it reveals that the prayer of the petitioner was rejected against which the appellant did not move the Court of Law. In the writ petition even nothing has been agitated as regards to the aforesaid two letters, as such the rejection has attained finality.

He further submitted that the letter of the Additional District Inspector of Schools does not request for refund of the employer's share of *CPF,* on the contrary it lays down the rules and procedure as regards to the refund. Considering the aforesaid facts and circumstances the Learned Counsel submitted that the Order passed by the Hon'ble Single Bench is appropriate and has prayed for non-interference in this instant appeal.

The Hon'ble Single Bench has held that on consideration of the decision of the Commissioner of School Education dated 31st day of August 2005 and another decision dated the 1st day of December 2004 of the Deputy Secretary of the School Education Department, it appears that the prayer of the petitioner for acceptance of the option form on refund of the employer's share of

CPF was negated by the concerned respondent authorities. It has also been discussed that through the said writ petition there is no express challenge made against those two decisions. The Hon'ble Single Bench has also discussed the point that on behalf of the writ petitioner, reliance has been placed on the communication made by the respondent No. 5 based on the inquiry report dated the 9th day of October 2012 and also the Memo. dated the 7th day of February 2013 of the Joint Secretary of School Education Department and has expressed the view that on going through those documents it appears that those relate to the procedure which requires to be adopted for preparation of statement relating to refund of the employer's share of *CPF* to be made by the petitioner.

It has also been expressed by the Hon'ble Single Bench that those communication of the respondent No.5 as well as the Memo. dated the 7th day of February 2013 have been issued without taking into consideration the decisions of the Commissioner of School Education as well as the Deputy Secretary of the School Education Department which had negated the prayer of the petitioner for grant of benefit of pension.

The Learned Counsel appearing on behalf of the appellant during his argument before the Hon'ble Division Bench has submitted that the appellant/petitioner prayed for conversion of his retiral benefit from *CPF to GPF* within the scheduled time, that is the 31st day of December 1985 in terms of the provisions of the Death cum Retirement scheme of 1981. He further submitted that the school authority somehow did not forward the said prayer of the appellant to the appropriate authority within the statutory period.

He further submitted that subsequently as per the request of respondent No.5, that is the Additional District Inspector of Schools (SE), Asansol Sub-Division the amount received as contribution by the employer that is the Government, amounting to Rs. 4,37, 161/- was refunded through challan.

From the above averments of the Learned Counsel appearing on behalf of the appellant/ writ petitioner and the Learned Counsel appearing for the State, it reveals that the moot point for consideration is as to whether the appellant writ petitioner had prayed for conversion from *CPF* to *GPF* or not.

From the option form which is annexure P-1 it reveals that the signature of the writ petitioner namely, Sachhinanda Singh was dated 31.12.85.

From the order of the Commissioner of School Education, West Bengal dated 31.08.2005 addressed to the District Inspector of Schools (S.E.) Burdwan it reveals that the Commissioner of School Education had informed that the prayer for change of option under DCRB-81 has already been decided by the Government School Education Department and the question of reconsideration has been regretted.

Through the letter of the Additional District Inspector of Schools, Asansol Sub Divn. dated 20.11.2006 addressed to the Commissioner of School Education West Bengal it reveals that the said Additional District Inspector of Schools, Asansol Sub Divn. had forwarded the prayers requesting the Commissioner of School Education for reconsideration of the prayer for conversion as the previous prayer has been regretted vide Memo. Mo.52/GA dated 22.12.2004 and 34-GA PF dated 31.08.2005.

From the report, on the affairs in respect of the application of Sachhinanda Singh regarding refunding of Government share of PF money, dated 09.10.2012 it reveals that from the documents produced by the school authority it appears that the incumbent has opted for pension including family pension cum gratuity as per *DCRB scheme* on 31.12.1985 and the school office has drawn Government share of *CPF* upto March 2006. It also reveals that the retiral benefits have not been settled even after retirement since long and without order for refunding the Government share of *CPF* from the Education Department, Government of West Bngal retiral benefits could not be settled in accordance with the option for pension benefits as per DCRB-81.

The annexure P-7, i.e. the letter issued by the Additional District Inspector of Schools, Asansol Sub Division dated 12.03.2013 addressed to the Teacher-In-Charge, Banksimulia Group High School, it reflects that he was requested to arrange for the verification of the statement of Governemnt share of *CPF* in respect of the writ petitioner along with others.

So from the aforementioned documents it reveals that there was outright rejection of the application of conversion from *CPF* to G*PF*. Thereafter request was made for reconsideration of the same while the document dated 07.02.2013 reveals that there was a request made as regards to the verification of the statement of contribution of Government share in respect of *CPF*. From nowhere it will reveal that the prayer for conversion from *CPF* to *GPF* was ever accorded to. Thus, the said rejection of the prayer for conversion from CPF to GPF still subsists and nothing has ever been preferred praying for reconsideration of the aforesaid orders.

From the record it also reveals that the appellant/petitioner for the second time exercised the option vide Memo. dated 13.06.2014 on 28.03.2018 for availing the benefit of pension which was much beyond the statutory period, whereas the change of option ought to have been exercised within 90 days from the date of issue of the Memo.

It is a fact that the said appellant was promoted to the post of Headmaster with effect from 18.05.1995 whereas it also reveals that the appellant drew employer's share of *CPF* till April 2006, i.e.

much beyond the period of being appointed as the Headmaster of the said school.

For the sake of argument if at all it is accepted that the school authority was negligent in forwarding the option of the appellant to the concerned authority who were to deal with the retiral benefits, but it is beyond imagination that the appellant after taking over as the Head of the institution on 18.05.1995 had not cared to look into the Government's share of CPF in respect of his Provident Fund which continued till the month of April, 2006.

Thus from the aforementioned documents and the averments it is clear that the appellant had not preferred his option for change from *CPF* to *GPF* on 31.12.1985 which the appellant seeks to impress. The Hon'ble Single Bench has also discussed on the point of exercise of option on the 31st day of December 1985 and was surprised to note that the employer's share of *CPF* was drawn till the month of April 2006. It has also been stated that due to fault of the school authority, option exercised by the petitioner on the 31st day of December 1985, was not forwarded to the District Inspector of Schools and in this aspect the Hon'ble Single Bench has expressed that more alacrity was expected of the petitioner in addressing the situation and has also expressed that he is at a loss as to how after exercising option on the 31st day of December 1985 the petitioner drew employer's share of *CPF* till the month of April 2006.

The Hon'ble Single Bench has also pointed out that the situation has further aggravated as regards to the case of the petitioner as it emanates that the appellant/petitioner for the second time exercised the option on the 28th day of March 2018 in terms of the Government Order dated 13th June 2014. In this regard the Hon'ble Single Bench has also stated that such fresh exercise of option by the petitioner further goes to show that in desperation such step was taken after the refund was made by the petitioner through treasury challan on the 27th day of March 2018 and has also expressed that perhaps the petitioner realized that in view of the orders passed by the Commissioner of School Education as well as the Deputy Secretary of the School Education Department dated the 31st day of December 1985, the benefit of pension may not be sanctioned in favour of the petitioner and it is an afterthought of the petitioner upon shifting his stand which was a desperate attempt to get the benefit of the Government Order dated the 13th day of June 2014 and such stand of the petitioner cannot be countenanced. Based on such fact and discussion the Hon'ble Single Bench did not find any merit in the writ petition and as such has negated the prayer.

Thus, from the aforesaid discussion it is clear that the contention of the writ petitioner that he exercised his option for conversion from Contributory Provident Fund to General Provident Fund on the 31st day of December 1985 is hard to believe as from the facts it reveals that till the month of April 2006 the employer's share of the Contributory Provident Fund was allowed and withdrawn, in spite of the appellant/ petitioner himself being the Headmaster of the said school.

The writ petitioner has not challenged the orders dated 31st day of August 2005 passed by the Commissioner of School Education and the order dated the 1st day of December 2004 passed by the Deputy Secretary School Education Department negating the prayer of the writ petitioner of conversion from *CPF* to *GPF,* which is still in force, which ought to have been challenged through the writ petition. Until and unless the two orders mentioned (*supra*) have been negated by a Court of Law the said orders of denial subsist, which goes against the petitioner in respect of his prayer for conversion from *CPF* to *GPF*.

Considering the aforesaid discussion, this Court finds no infirmity on the part of the Hon'ble Single Bench which is required to be addressed.

In view of the above, **MAT 1012 of 2022** with **CAN 1 of 2022** stands accordingly **dismissed**.

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I Agree.

(**Subrata Talukdar**, **J.**) **(Supratim Bhattacharya**, **J**.)

Later:-

Learned Counsel for the appellant prays for stay of the Judgement and Order.

The prayer is considered and refused.

I agree.

(**Subrata Talukdar**, **J.**) **(Supratim Bhattacharya, J.)**