

115 24.06.2022
Ct.15
BD

WPA 22641 of 2017

Sachchidanand Singh

-vs-

State of West Bengal & Ors.

Mr. Piyush Chaturvedi

Mr. Tarun Kumar Das

Mr. Anindya Bose

... for the Petitioner

Mr. Pinaki Dhole

Mr. Suman Dey

... for the State

Petitioner was primarily an assistant teacher of a non-Government aided recognised high school and subsequently he was appointed in the post of head master.

Issue involved in this writ petition relates to sanction of retiral benefits in terms of pension including family pension cum gratuity scheme on acceptance of the option which according to the petitioner he had exercised on 31st December, 1985 in terms of the relevant provision of the death-cum-retirement benefit scheme of 1981 (for short “DCRB Scheme 1981”).

The case has been made out in the writ petition that though within time the option was exercised by the petitioner being the assistant teacher of the school but the school authority did

not forward the option to the office of the concerned District Inspector of Schools (SE), Burdwan. As a result thereof the State-respondents found that there was delay in exercising option by the petitioner which according to the petitioner prevented him from getting the benefit under pension including family pension cum gratuity scheme.

Mr. Chaturvedi, learned counsel representing the petitioner has strenuously argued that notwithstanding the order of the Commissioner of School Education dated 31st August, 2005 and the order of the Deputy Secretary, School Education, dated 1st December, 2004 which went against sanction of benefits under pension including family pension-cum-gratuity scheme in favour of the petitioner but subsequently the Additional District Inspector of Schools (SE) Asansol, Sub-Division being the respondent no.5 took up the issue and forwarded the prayer for reconsideration of the petitioner for grant of retiral benefits in terms of the said pension scheme vide Memo dated 20th November, 2006. Subsequently, by issuing another Memo dated 9th October, 2012 the respondent no.5 again approached the Deputy Secretary to the Government of West Bengal upon

enclosing one enquiry report for initiating the process of refund to be made by the petitioner as per requirement in order to get the benefit under said pension including family pension-cum-gratuity scheme. Placing reliance on the report of the Sub-Inspector of Schools dated 9th October, 2012, it has been submitted that the pension files were pending in the Office of the Joint Director, Burdwan, for necessary order of the School Education Department for determination of nature of retirement benefit admissible to the petitioner as the petitioner has drawn employer's share of CPF upto April, 2006 from the Government.

It also appears that vide subsequent Memo dated 7th February, 2013 the Joint Secretary, School Education Department requested the concerned District Inspector of Schools (SE), Burdwan for preparation of statement of refund in order to extend the benefit of pension to the petitioner and subsequently sum of Rs.4,37,161/- was refunded through treasury challan by the petitioner on 27th March, 2018.

It has been contended on behalf of the petitioner that the aforesaid steps taken by the respondent no.5 and the Memo dated 7th February, 2013 by the Joint Secretary, School Education

Department goes to show that there has been implied review of the decision as contained in the order of the Commissioner dated 31st August, 2005 and the order of the Deputy Secretary as contained in Memo dated 1st December, 2004.

Lastly, it has been submitted that the petitioner exercised option in terms of Memo dated 13th June, 2014 on 28th March, 2018 for availing the benefit of pension and that subsequent exercise of fresh option is on the insistence of the District Inspector of Schools (SE) Purba Burdwan as well as the present headmaster of the school wherefrom petitioner retired.

Mr. Dhole, learned advocate appears on behalf of the State respondents and has drawn attention of this Court to the memoranda 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 in order to demonstrate before this Court that the claim of the petitioner for getting the benefit of pension based on exercise of option in terms of DCRB Scheme of 1981 has been negated by the highest authority of the Education Department therefore in absence of challenge being thrown to these two decisions as aforesaid there is

no scope for granting relief to the petitioner by extending the benefit of pension. It has also been submitted that subsequent exercise made by the respondent no.5 and the Memo of the Joint Secretary, School Education Department dated 7th February, 2013 do not confer any right on the petitioner to get the benefit of pension since as on date the earlier two decisions of the Commissioner of School Education and Deputy Secretary are in vogue. Such steps of the respondent No. 5 and the Joint Secretary are in derogation to the decision taken by the higher authorities in Education Department.

It has also been pointed out on behalf of the State respondents if the case of the petitioner is of non-acceptance of option which the petitioner exercised on 31st December, 1985 in that event there was no necessity to exercise option on 28th March, 2018 in terms of the Government Order dated 13th June, 2014. It is submitted that the Memo dated 13th June, 2014 has been issued by the Education Department granting opportunity to the retirees to exercise option for switching over from contributory provident fund scheme to pension including family pension-cum-gratuity scheme in terms of the judgement of the Special

Bench dated 16th July, 2013 and as per the said Memo dated 13th June, 2014 retirees were afforded opportunity to exercise option within three months. According to the respondents such period expired in the month of September, 2014 and thereafter there was no scope to accept option form of the retirees including the petitioner. In the present case petitioner exercised option under the Government order dated 13th June, 2014 on 28th March, 2018. Therefore on expiry of time such option form after the judgement delivered by the Hon'ble Division Bench dated 23rd August, 2017 on MAT 1559 of 2016 (State of West Bengal & Ors. Vs. Bithika Bagchi (Gupta)) ought not to be accepted.

This Court has heard the learned advocates representing the parties and perused the relevant materials available on record. The writ petition has been instituted with the prayer for sanction of retiral benefit upon acceptance of option exercised by the petitioner on 31st December, 1985. On consideration of the decision of the Commissioner of School Education dated 31st August, 2005 and another decision dated 1st December, 2004 of the Deputy Secretary, School Education Department it appears that such prayer of the petitioner for acceptance of option form upon refund of

employer's share of CPF was negated by the concerned respondent authorities. In the writ petition there is no express challenge made to these two decisions one taken by the Commissioner of School Education and another by the Deputy Secretary School Education Department.

On behalf of the writ petitioner reliance has been made on the communication made by the respondent no. 5 based on enquiry report dated 9th October, 2012 and also the memo dated 7th February, 2013 of the Joint Secretary, School Education Department but on perusal of these documents it appears that those relate to the procedure which requires to be adopted for preparation of statement relating to refund and the refund of employer's share of CPF to be made by the petitioner. These communications of the respondent no. 5 as well as the memo dated 7th February, 2013, as it appears, 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 spurned the prayer of the petitioner for grant of benefit of pension.

It also transpires that petitioner exercised option on 31st December, 1985 but surprisingly

drew employer's share of CPF till April 2006. It is stated that due to fault of school authority option exercised on 31st December, 1985 was not forwarded to the District Inspector of Schools. More alacrity was expected of the petitioner in addressing the situation. This Court is at a loss as to how after exercising option on 31st December, 1985 petitioner drew employer's share of CPF till April 2006.

The situation has further been aggravated so far as the case made out by the petitioner as it emanates from page 19 of the affidavit-in-opposition affirmed by the District Inspector of Schools (SE), Purba Burdwan which contains the option exercised by the petitioner on 28th March, 2018 in terms of the Government Order dated 13th June, 2014.

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 27th March, 2018. Perhaps petitioner realised that in view of the orders passed by the Commissioner of School Education as well as Deputy Secretary of the School Education Department based on exercise of option dated 31st December, 1985 the benefit of pension may not be sanctioned in his

favour and as an afterthought upon shifting his stand he made such desperate attempt to get the benefit of the Government order dated 13th June, 2014. Such stand of the petitioner cannot be countenanced.

In view of the above discussion, this Court does not find any merit in the writ petition and the same stands dismissed. However, there shall be no order as to costs.

However, the petitioner refunded employer's share of CPF to the tune of Rs.4,37,161 on 27th March, 2018. Accordingly, the concerned respondent-authority is directed to pay the said amount of Rs.4,37,161 to the petitioner along with interest at the rate of 8 per cent per annum from the date of refund till the date of release within a period of four weeks from the date.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)