Court No. 22

16.6.2022

(Item No. 179)

(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 23725 of 2012

Lalu Mahato
VS
Coal India Limited & Ors.

Mr. Jayanta Das
Ms. Soumita Ghosh
.... for the petitioner
Mr. Debasish Sutradhar
Ms. Somasree Saha
.... for the respondent No. 8

The writ petitioner had joined in service with the Coal India Limited, the first respondent herein, on June 19, 1967 at Amritnagar Colliery (for short the said Colliery) as 'Mining Sardar' and was superannuated from his service in usual course of retirement on January 1, 2007. From the superannuation notice dated November 13/15, 2006 read with a communication of the second respondent dated September 22, 2006, it appears that, the employer informed the petitioner that his Pension and Provident Fund claims were to be sent to Coal Mines Provident Fund Organization (for short CMPFO) in due course of time for settlement of his retirement claim/dues.

After retirement the petitioner had duly received his Provident Fund dues and all other retirement dues except Pension. Despite repeated requests made, the employer informed the petitioner that he was not entitled to receive any Pension as he did not opt for the necessary

Family Pension Scheme. Thus being aggrieved by this, writ petition was filed.

Mr. Jayanta Das, learned counsel appearing for the petitioner referring to the documents at pages 15, 17 and 18 to the writ petition submitted that, there was a categorical and unambiguous admission on the part of the employer Coal India Limited and/or the second respondent that the contribution of the petitioner, as an employee by way of Pension was deducted and thus made the petitioner eligible to receive such Family Pension after serving the employer since 1967 till 2007. According to Mr. Das the contribution deducted from the petitioner by way of Pension Fund had not been refunded or returned to the petitioner and the same is still lying with the employer, which gives right to the petitioner to claim Family Pension and for being eligible for the same. It was specific submission on behalf of the writ petitioner that, the petitioner had exercised his option to avail the 1998 Family Pension Scheme of the first respondent. It was also submitted on behalf of the petitioner that, the petitioner when joined in the service and immediately thereafter became a member of the Family Pension Scheme, 1971, prevailing then. Subsequently the Family Pension Scheme 1998 was introduced, and there was an automatic and consequential process for switch over from 1971 Scheme to 1998 Family Pension Scheme. As such, the petitioner is eligible for the said 1998 Family Pension Scheme and is entitled to receive the benefit there under.

Mr. Das relying upon clauses 3 and 4 from the notification issued by Ministry Of Labour, Employment and Rehabilitation dated March 1, 1971, issued in exercise of the powers conferred by Section 3E of the Coal Mines Provident Fund, Family Pension and Bonus Schemes Act, 1948, he submitted that the class of employees eligible to join the Scheme were those who came members on or after the 1st day of March, 1971 and who had been a member immediately before the commencement of that Scheme and did not exercise option under paragraph 4. Clause 4 of the said notification specified every employee who was a member of the Fund immediately before the commencement of this Scheme should have the option not to join the Scheme and the option referred to in the said clause should be exercised by filling up a specified form within a period of six months from the 1st day of March, 1971. If option is exercised the same shall be final and those who do not exercise the option within the time specified as stated above should be deemed to have become members of the Family Pension Scheme.

Learned counsel for the petitioner then submitted that, the Scheme for Family Pension of an employee comes within the meaning of beneficial legislation to advance the welfare of employees and accordingly even if the employees who do not exercise their option to opt for such Scheme may be given a chance for the same. In support, he relied upon a decision of a co-ordinate Bench of this Court in the matter of ***Sankar Majhi Vs. Coal India Limited & Ors. reported at (2013) 4 CAL LT 520 (HC)***. He then submitted that, an employee who had served the employer for long must not be deprived of a pensionary benefit when the State had come with a Liberalised Pension Scheme and gave an option to the retired employees to join such Scheme. In support, the learned counsel had relied upon a decision of the Hon'ble Supreme Court in the matter of ***Union of India and Others Vs. D.R.R. Sastri reported at (1997) 1 Supreme Court Cases 514***.

Ms. Somasree Saha, learned advocate appearing with Mr. Debasish Sutradhar, learned advocate for the 8th respondent in the writ petition placed the affidavit-in-opposition and contended that the inclusion of the petitioner under the 1998 Family Pension Scheme was not an automatic process just because he was a member of the earlier 1971 Family Pension Scheme. Concerned employee must exercise its option expressly and in writing. She then drew attention of this Court to the annexure of the said affidavit-in-opposition being "FORM PS-I" and submitted that the petitioner specifically did not opt for the Pension to join in the Family Pension Scheme and on the contrary he had refused to do so by putting his own signature on the said form. The petitioner thus could not turn around at and claim Family Pension. Drawing attention to this Court to another document dated December 20, 2006 which was signed by the concerned in-charge on December 29, 2006, she submitted that, whatever amount was payable to the petitioner to the extent of more than 13 lakhs was duly paid to him and the petitioner had received the same without any protest.

Learned Counsel for the writ petitioner in reply denied the contention of the 8th respondent advanced before this Court. He specifically denied the said document by which the petitioner refused to opt for the 1998 Pension Scheme, to which attention of this Court, was drawn as referred to above. He submitted that, the signature appearing on the said document was not that of the petitioner. He submitted that this was a manufactured document and the original document was not produced. Learned counsel for the petitioner also denied that the amount deducted on account of Pension from the petitioner was also not returned to the petitioner.

The Coal Companies are not represented, though they were the principal employers of the petitioner.

After considering the submissions made on behalf of the appearing parties and upon perusal of records, it appears to this Court that this Family Pension Scheme was framed and issued by exercising with some statutory force.

The relevant clauses of the said Family Pension Scheme specifically provided for opting for Pension to join in such Schemes and by filling up the necessary prescribed form as mentioned therein. Thus, even if, this court takes the submission advanced on behalf of the writ petitioner to be correct that it is an automatic switchover from the 1971 Pension Scheme to 1998 Pension Scheme, such switchover is also necessarily to be exercised by filling up the prescribed form mentioned under the relevant Rules of the Pension Scheme. The 8^{th} respondent had disclosed the relevant format in its affidavit-in-opposition which bears the signature of the petitioner to the effect that he did not opt for the relevant Family Pension Scheme. The further disclosure from the affidavit of the 8^{th} respondent, it appeared that, whatever was payable to the petitioner was duly paid. It is, therefore, clear that in absence of exercising the Family Pension Scheme by the petitioner and on the contrary by not accepting the same as it was reflected from the said prescribed format, the question of inclusion of the petitioner within the said relevant Family Pension Scheme did not and could not and/or does not or cannot arise. Thus, the petitioner is not eligible for the said relevant Family Pension Scheme.

In as much as, the submissions made on behalf of the writ petitioner denying and disputing the execution and existence of the said prescribed form by his client or that the petitioner did not receive the amount deducted by his employer on account of pension, in the facts of this case gave rise disputed question of facts, which cannot be gone into by this Court in exercising its high prerogative writ jurisdiction.

In the matter of ***Sankar Majhi (Supra)*** the petitioner contended that while he was in employment duly filled up the requisite forms for availing the Pension Scheme and ultimately after a thorough scrutiny on records by the writ Court, it was found that the petitioner had exercised its option to join the relevant Pension Scheme. Such is not the fact in the instant case, as the petitioner deliberately did not opt for such Scheme and accordingly filled up the requisite form. Hence the ratio in the said judgment is not applicable in the facts and situation of this case. In the matter of ***D.R.R. Sastri (Supra)*** the relevant notice through which the Family Pension Scheme was introduced by the employer was not brought to the notice of the employee and as such he could not avail of the option to join the relevant Pension Scheme. Such is not the fact in the instant case, as discussed above, since, the petitioner had exercised his option for not availing of the said relevant Pension Scheme. Hence, the ratio decided in this judgment will not apply in the facts and situation of this case.

In view of the foregoing discussions and reasons, this Court is of the firm view, that the petitioner is not eligible to claim Family Pension.

The writ petition being **W.P.A. 23725 of 2012** stands dismissed.

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

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)