

04 12.04.2023
rkd Ct.15

W.P.A. 1432 of 2023

Tejendra Nath Mukhopadhyay & Anr.

-vs-

The State of West Bengal & Ors.

Mr. Kamalesh Bhattacharya,
Mr. Aninda Bhattacharya

....for the petitioners.

Mr. Shamim-ul-Bari

....for the State.

The writ petition is instituted by two petitioners claiming pensionary benefits from the date following the date of superannuation and not from the date of refund of the amount in terms of the option exercised by the petitioners pursuant to the Government Notification dated 13th June, 2014. On query being raised by this Court that how two teachers can maintain the single petition claiming aforesaid relief Mr. Bhattacharya, learned counsel representing the petitioners submits that both the teachers are working in same school therefore they have joined in a single writ petition being petitioners.

Having considered this submission this Court is not satisfied on the point of maintainability of this writ petition at the instance of two petitioners in consideration of the fact that though both the

teachers were working in the same school but they held different posts of assistant teachers and their dates of retirement are also different.

According to this Court the relief which has been sought for needs to be extended upon issuance of two separate revised pension payment orders. There is no denying fact that both the petitioners have received pensionary benefits on issuance of two separate pension payment orders therefore cause of action is different in respect of claims of the petitioners and they are required to approach this Court by filing separate writ petitions.

In view of aforesaid discussion, this writ petition is being entertained in respect of petitioner no.1.

Affidavit-of-service filed by the petitioners is taken on record.

Petitioner No.1 is a retired assistant teacher who superannuated on 28th February, 2013 and got the benefit under the Contributory Provident Fund Scheme (CPF). Subsequently, petitioner no.1 exercised option to come under the Pension-cum-Gratuity Scheme in terms of Government notification dated 13th June, 2014 which was issued in terms of the judgment of the Special Bench dated 16th July, 2013 passed on intra court

appeal being APO No.94 of 2009 (State of West Bengal & Ors. –vs- Abhijit Baidya & Ors.).

It has also been submitted on behalf of the petitioner no.1 that as per demand of the State respondents he has deposited the amount along with interest and additional interest which he received under CPF Scheme.

However, the grievance of the petitioner no.1 is after taking steps in terms of the said notification dated 13th June, 2014 by issuing pension payment order dated 1st December, 2014 pensionary benefit was sanctioned in favour of the petitioner no.1 not from the date following the date of his retirement but from the date of refund which he made after exercising option in terms of the said notification dated 13th June, 2014. Petitioner no.1 claims issuance of revised pension payment order thereby sanctioning pensionary benefits from the date following the date of his superannuation based on the judgement of the Special Bench dated 30th September, 2019 passed on intra Court appeal being APO No.121 of 2007.

The State respondents are represented by the learned advocates.

Mr. Bhattacharya, learned counsel representing the petitioner no.1 has placed reliance

on the order passed by this Court dated 5th September, 2022 on a writ petition being WPA 30384 of 2015 (Dipak Kumar Sinha –vs- The State of West Bengal & Ors.). It appears from the said order dated 5th September, 2022 that in the similar fact situation this Court has passed an order directing the respondent authorities to issue revised pension payment order in favour of the retired teacher thereby sanctioning pensionary benefits from the date following the date of superannuation of the teacher.

It appears that the petitioner no.1 did exercise option within time in terms of the said notification dated 13th June, 2014 and the petitioner no.1 on duly exercising option in terms of notification dated 13th June, 2014 switched over from CPF to Pension-cum-Gratuity Scheme. On placing reliance on paragraph 55 of the judgment of the Special Bench dated 30th September, 2019, this Court does not find any impediment in extending the benefit of pension to the petitioner no.1 from the date following the date of his retirement provided exercise of option is made within time and refund has been made as per the calculation of the State respondents.

Accordingly, this Court directs the State

respondents to issue revised pension payment order in favour of the petitioner no.1 within twelve weeks from date thereby extending the benefit of pension from the date following the date of his superannuation.

With the above direction, the writ petition stands disposed of.

However, there shall be no order as to costs.

However, this order shall not preclude the petitioner no.2 to file a writ petition afresh on the selfsame cause of action.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Saugata Bhattacharyya, J.)