26
23.11.2023
Ct. No. 11
rrc

FMA 239 of 2023
(State of West Bengal & Anr. Vs. Subhendu Chakraborty & Ors.)

Mr. T. M. Siddiqui, Ld. AGP
Mr. S. Adak
..... For the petitioners

Mr. Sardar Amjad Ali, Sr. Adv.
Mr. Samir Kumar Ghosh
..... For the respondent nos. 1, 3 to 7

Mr. Satyajit Talukder
..... For the K.M.D.A.

The present appeal has been preferred by the State and its functionaries challenging the judgment dated 21st December, 2022 passed in a writ petition being WPA 5302 of 2022 filed by the writ petitioners/respondent nos. 1 to 7 herein *inter alia* praying for a writ of mandamus commanding the respondents to allow them to switch over to the General Provident Fund-cum-Pension Scheme (hereinafter referred to as GPF Scheme) from the Contributory Provident Fund and Gratuity Scheme (hereinafter referred to as the CPF Scheme).

Mr. Siddiqui, learned Additional Government Pleader appearing for the appellants submits that admittedly the respondent nos. 1 to 7 were members of the CPF Scheme maintained by the Kolkata Metropolitan Development Authority (in short, KMDA) and they did not exercise option to switch over to GPF Scheme within the time stipulated under the Calcutta Development Authority Employees' (Death-cum-Retirement Benefit) Regulations, 1988 (hereinafter referred to as DCRB Regulations) and as subsequently extended from time to time till 28th February, 2002. No suitable explanation was furnished by the said respondents as to why such option was not exercised within the time stipulated. The learned Judge glossed over the said issue, as urged, and did not return any finding on the same and such infirmity warrants interference of this Court.

He further submits that the decision taken by the KMDA authorities in its 181st meeting approving the proposal for inviting fresh option towards conversion from CPF to GPF had not been approved by the Finance Department, Government of West Bengal. In the absence of such approval, the learned Single Judge erred in law in issuing mandatory direction upon the Principal Secretary, Department of Finance to accord approval to such proposal of KMDA.

He further argues that the impugned judgment was delivered being oblivious of the fact that the KMDA authorities did not comply with the direction to resubmit the proposal along with all relevant documents as contained in a memo dated 17th December, 2018.

Per contra, Mr. Ali, learned senior advocate appearing for the writ petitioners/respondent nos.1 to 7 submits that the appellants acted in an arbitrary and unreasonable manner in not extending the benefits, as granted to other employees of KMDA, similarly situated with the writ petitioners. The issue as regards extension of time towards filing of option for availing the benefits under GPF Scheme is no longer *res integra* and the said issue had already been decided by a Special Bench of this Court in the case of *District Inspector of Schools Vs. Abhijit Baidya & Ors.* reported in *(2013) 3 CHN 711*. The Special Leave Petition preferred against the said judgment had also been rejected. The ratio of the judgment delivered in *Abhijit Baidya (supra)* is squarely applicable to facts of this case and as such there is no infirmity in the judgment impugned.

Drawing our attention to the documents at pages 173 to 177 of the stay application, Mr. Ali submits that the proposal for inviting fresh option was forwarded by the KMDA authorities to the Commissioner, Government of West Bengal, Department of Urban Development and Municipal Affairs (in short, UD/MA Department) *vide* memo dated 24th January, 2018. In response thereto, the Joint Secretary, UD/MA Department *vide* memo dated 29th March, 2018 sought for reply to certain queries detailed therein. The same was replied to by the Joint Secretary, Establishment Wing, KMDA *vide* memo dated 20th April, 2018. However, the Finance Department did not take necessary steps towards approval of the proposal of KMDA and for such inaction on their part, the writ petitioners had been the worst sufferers. The pensionary benefits is a property in the hand of a retired employee and it partakes a character of a fundamental right and by withholding necessary approval, the appellants had acted arbitrarily and sought to scuttle a beneficent scheme.

Mr. Talukder, learned advocate appearing for the KMDA submits that the decision adopted in the 181st meeting on 23rd February, 2017 was confirmed in the 182nd meeting held on 25th May, 2017. Drawing our attention to memoranda dated 24th March, 2017, 3rd May, 2017, 5th June, 2017, 22nd December, 2017, 29th March, 2018 and 20th April, 2018, he submits that the KMDA authorities made a sincere endeavour to avail necessary approval from the Finance Department upon answering all queries, but in vain. There had been no laches on the part of the KMDA authorities.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

In the DCRB Regulations it was stipulated that an employee who retired on or after 1st January, 1986 and who is in service and is willing to come under the said Regulations shall exercise option in writing in Form A within six months from the date of issue of the notice on behalf of the authority. The period towards exercise of such option was extended from time to time thereafter up to 28th February, 2022. As the relevant regulations and guidelines were not appropriately circulated, the writ petitioners failed to exercise option. However, such issue was considered and the KMDA authorities approved the proposal for inviting fresh option since employees similarly situated had been extended the benefits.

Records further reveal that the KMDA authorities did respond to the earlier queries raised by the appellants and forwarded all relevant documents and as such, the learned Single Judge rightly discounted the argument that the KMDA authorities ought to have resubmitted the documents in terms of the letter dated 17th December, 2018.

Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. The provisions towards exercise of option contained in the DCRB Regulations are similar to the provisions towards such exercise of option as provided under the West Bengal Recognized Non-Government Educational Institution Employees (Death-cum-Retirement Benefit) Scheme, 1981. The issue as regards extension of time to file option came up for consideration before the Hon'ble High Court in the case of *Abhijit Baidya & Ors. (supra)* and State was directed to give opportunity to exercise option.

In the said conspectus, the Court rightly directed the appellants to approve the proposal forwarded by KMDA moreso when the writ petitioners were willing to refund the amount as stipulated in the Scheme.

The learned Judge, upon dealing with all the factual issues arrived at specific findings and we do not find any error, least to say any patent error of law in the judgment impugned. The impugned judgment does not suffer from any jurisdictional error or any substantial failure of justice or any manifest injustice warranting interference of this Court.

Accordingly, the appeal and the connected application are dismissed.

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

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Uday Kumar, J.) **(Tapabrata Chakraborty, J.)**