

02. 17.05.2023
bd. Ct.15

W.P.A. 1523 of 2020
(IA No. CAN 1 of 2021)

Lal Babu Jha

-vs-

The State of West Bengal & Ors.

Mr. S.S. Arefin

Ms. Nadira Abedin ... for the petitioner.

Mr. Biswanath Samanta ... for the State.

Affidavit of service filed on behalf of the petitioner pursuant to the order dated 3rd May, 2023 is taken on record.

State respondents are represented by learned advocate.

One application being CAN 1 of 2021 is taken out in view of death of sole petitioner on 16th September, 2020 prompting the son of the petitioner to approach this Court with this application.

Having seen the averments made in the said application the same is allowed thereby granting leave to the learned advocate for the applicant to amend the cause-title of the writ petition and to substitute the name of the son of the petitioner Ghanshyam Kumar Jha in place and stead of Lal

Babu Jha in course of this day.

Accordingly, the application being CAN 1 of 2021 stands disposed of.

Since the application for substitution being CAN 1 of 2021 is allowed granting leave to the learned advocate for the petitioner to amend the cause-title of the writ petition in course of this day this Court also decides to take up the writ petition.

Petitioner's father is a retired assistant teacher who superannuated on 31st May, 2006 and got the benefit under the Contributory Provident Fund Scheme (CPF). Subsequently, petitioner's father 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 that as per demand of the State respondents his father deposited the amount along with interest and additional interest which petitioner's father received under CPF Scheme.

However, the grievance of the petitioner is after taking steps in terms of the said notification dated 13th June, 2014 by issuing pension payment order dated 15th June, 2015 pensionary benefit was sanctioned in favour of his father not from the date following the date of retirement but from the date of refund which his father made after exercising option in terms of the said notification dated 13th June, 2014. Petitioner claims issuance of revised pension payment order thereby sanctioning pensionary benefits from the date following the date of his father's 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 Mr. Biswanath Samanta, learned advocate who has also submitted that based on the judgment dated 30th September, 2019 of the Special Bench the benefit of pension is accorded to other similarly circumstanced retired teachers from the date following the date of their superannuation provided exercise of option has been made within time in terms of said notification dated 13th June, 2014 and if the refund is made by the concerned teacher as per the calculation of the State respondents.

This Court has heard the learned advocates representing the parties and has perused the relevant materials available on record.

It is nobody's case that the petitioner's father did not exercise option within time in terms of the said notification dated 13th June, 2014 since petitioner's father duly on 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 heir/heirs of the deceased teacher from the date following the date of 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 heir/heirs of the deceased teacher within twelve weeks from this date thereby extending the benefit of pension from the date following the date of his superannuation on compliance of necessary formalities by the heir/heirs.

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

However, there shall be no order as to costs.

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

(Saugata Bhattacharyya, J.)