

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

**WPA 7450 of 2021
Monojendra Chakraborty & Ors.
Vs.
The State of West Bengal & Ors.**

For the Petitioners : Sardar Amjad Ali, Sr. Adv.
Mr. Masum Ali Sardaradvocates

For the respondent
nos.2 to 5 : Mr. Soumya Majumdar
Ms. Deblina Chattaraj ... advocates

For the State : Mr. Pantu Deb Roy
Mr. Subrata Ghosh Biswas
Mr. Pannalal Banerjee ... advocates

Reserved on : 14.07.2023

Judgment on : 26.07.2023

Hiranmay Bhattacharyya, J.:-

1. The writ petitioners have prayed for issuance of a mandamus commanding the respondents to allow them to opt for the pension scheme in terms of the Calcutta Tramways Co. (1978) Ltd. Employees Pension Regulations, 2001.
2. The petitioners claim that while they were in service, the Government of West Bengal, with the approval of the Department of Finance, introduced a pension scheme for the employees of the Calcutta Tramways Company (1978) Ltd. now known as West Bengal Transport Corporation Ltd. The petitioners further claim that the employees were given the option to switch over to the pension scheme. The petitioners state that the Managing Director of Calcutta Tramways Co. (1978) Ltd. (for short "CTC") issued a Circular dated 24.07.2006 (wrongly mentioned as 24.07.2007)

giving an opportunity to the employees who may prefer to come under the purview of the pension scheme to exercise their option within 31.07.2006. The said circular dated 24.07.2006 was followed by an advertisement published in the Ananda Bazar Patrika on 25.07.2006. By the said publication all the retired employees or the widows of the retired employees who expired on or after 02.04.1997 were given the final opportunity to exercise their option to avail the benefits of the pension scheme. The petitioners submitted a representation which was received by the office of the CTC on 18.12.2019 requesting the authorities to allow each of them to switch over to the pension scheme after necessary adjustments. Alleging inaction on the part of the respondent authorities, the writ petitioners have approached this Court.

3. Sardar Amjad Ali, learned Senior counsel representing the petitioners contended that fixation of cut-off date for exercising option to switch over to the pension scheme resulted in creation of two groups i.e., optee and non-optee of pension which is contrary to the law laid down by the Hon'ble Supreme Court in the case of ***D.S.Nakara vs. Union of India*** reported at **(1983) 1 SCC 305**. He further submitted that the respondent authorities have illegally denied the benefits of the pension scheme to those employees who did not exercise their options within the cut-off date. Mr. Ali further contended that the issuance of the circular thereby extending the last date for exercising the option to switch over to the pension scheme within 31.07.2006 and the subsequent publication made in the Bengali Daily, Ananda Bazar Patrika on 25.07.2006 cannot in any event be said to be an effective circulation as the last date for the exercising such option was 31.07.2006. In other words, according to Mr. Ali sufficient time was not given to the petitioners to exercise their option pursuant to the notification published on 25.07.2006. Mr. Ali also relied upon an unreported decision of a Hon'ble Division Bench of this Court in FMA 470 of 2021 in the case of ***State of West Bengal and ors. vs. Kamala Kanta Jana*** and ors. delivered on 05.05.2022.
4. Per contra Mr. Soumya Majumdar learned counsel representing CTC seriously disputed the submissions made by Mr. Ali. He contended that the petitioners were not at all ready and willing to switch over to the pension scheme since the introduction of the Pension Regulations, 2001 till the last extension for exercising such option. He submitted that the petitioners cannot be allowed to switch over to the pension scheme at

such a belated stage and in support of such contention he placed reliance upon a judgment and order dated 22.02.2016 passed by a Hon'ble Division Bench of this Court in APO 302 of 2015 in the case of ***Dilip Sankar Das and ors. vs. State of West Bengal and ors.***

5. Heard the learned advocates for the parties and perused the materials on record.
6. Calcutta Tramways Company (1978) Ltd. Employees Pension Regulations, 2001 (hereinafter referred to as the "2001 Regulations") was framed by the Calcutta Tramways Company (1978) Ltd. and the said Regulations were notified in the Kolkata Gazette on December 24, 2001. The 2001 Regulations came into force with retrospective effect from 01.04.1997.
7. Regulation 2(2) of the 2001 Regulations states that the pension shall normally be treated as death-cum-retirement benefits admissible to the employees who were on pay roll of the company on 01.04.1997 and are on pay roll of the company and remain on the pay roll of the company till the date of actual notification of such regulations in the official gazette, in lieu of the benefits of the contributory provident fund as provided in the provident fund regulation of the company but including the benefits of gratuity under the Gratuity Rules of the State Government.
8. Regulations 2(3) states that the 2001 Regulation shall be optional in case of the employees covered under Regulations 2(2).
9. Regulation 2(4), however, provides that the Pension Regulations shall be binding upon the new entrants on and after the date of official notification.
10. The provisions for exercising option to switch over to the pension scheme have been laid down in Regulation 6 of 2001 Regulation which is extracted hereinafter.

"6. (1) The employee who may prefer to come under the purview of these regulations shall have to exercise his option within six months from the date of actual publication of these regulations in the Official Gazette.

(2) The employees who were on pay roll of the Company on the date on which these regulations came into effect and onwards but retired on subsequent dates, but before the publication of these regulations

may exercise their option within six months from the date of publication of these regulations provided they refund to the Company the full amount of the share of Company's contribution towards Contributory Provident Fund together with interest accrued thereon plus an additional interest @ 5% simple chargeable from the date of receipt of the Company's share upto the month preceeding the month of refund. They will however, be entitled to get the benefit of pension from the date they retired and disbursement of pension shall be made only after they refund the Company's contribution of P.F. together with interest they received.

(3) Failure to exercise option by an employee within the stipulated period as referred to in Regulation 6(1) and (2) shall be treated as if he had not opted towards the pension regulations.

(4) If an employee expires before exercising his option as referred to in Regulations 6(1) and 6(2) it should be taken as if he had not exercised his option in favour of the pension."

11. Regulation 6(1) states that the employee who may prefer to come under the purview of 2001 Regulations shall have to exercise the options within six months from the date of actual publication of such regulations in the official gazette.
12. The Regulations 6(2) are applicable in case of employees who were on the pay roll of the company on the date on which 2001 Regulations came into effect and onwards but retired on subsequent dates but before the publication of 2001 Regulations and they may exercise their option within six months from the date of publication of 2001 Regulations provided thus refund to the company the full amount of the share of company's contribution towards contributory provident fund together with interest accrued thereon plus an additional interest at the rate of 5% simply chargeable from the date of receipt of the company's share up to the month preceding the month of refund. It was further provided therein that such employees will however be entitled to get the benefit of pension from the date they retired and disbursement of pension shall be made only after they refunded the company's contribution of provident fund together with interest they received.
13. Regulation 6(3) states that failure to exercise option by an employee within the stipulated period as referred to in Regulation 6(1) and (2) shall be treated as if he had not opted towards the Pension Regulation.

14. The employees covered under Regulation 2(2) have been given a right to switch over to the Pension Scheme. However, in case such employees decide to switch over to the Pension Scheme, they have to exercise their option in terms of Regulation 6 of the 2001 Regulations. Failure to exercise such option shall be treated as if such employee had not opted for the Pension Scheme.
15. Record reveals that the Deputy Secretary of Government of West Bengal by a Memo dated 21.07.2006 informed the Managing Director, CTC Limited that the Finance Department of the Government of West Bengal has agreed to extend the last date of submission of option on or before 31.07.2006. Pursuant to the said letter dated 21.07.2006 the Managing Director of CTC Limited issued a circular dated 24.07.2007 wherein it was stated that the employees who may prefer to come under the purview of the scheme have to exercise their option within 31.07.2006.
16. It is not in dispute that the petitioners did not exercise their option to come under the purview of 2001 Regulations within the time limit specified in Regulation 6 of 2001 Regulations. The petitioners also did not exercise their option to come under the purview of 2001 Regulations within 31.07.2006. The petitioners submitted a representation for the first time which was received by the office of the CTC Limited only on 18.12.2019. It has been stated by the writ petitioners in the said representation that a Circular dated 26.12.2001 was issued from the office of the Managing Director of CTC Limited to all the departments including the offices of all the unions notifying the introduction of the 2001 Regulations and also the main features of such Regulations. It has also been specifically stated therein that thereafter a Memo dated 01.03.2002 was issued by the Chief Accounts Officer to all the Offices and departments to circulate the scheme amongst the employees. The writ petitioners have specifically admitted in the writ petition that the said pension scheme was introduced while they were in service. Therefore, this Court holds that the petitioners were well aware of the introduction of the pension scheme. The reasons for which the petitioners did not exercise their option within the time limits specified under Regulation 6 of the 2001 Regulations or within 31.07.2006 as stated in the said representation was that the amount of pension offered under the 2001 Regulations was less attractive compared to the contributory provident fund for which the signatories to the

representation though eligible to apply under the 2001 Regulations refrained themselves from exercise options for availing pension. According to the petitioners, previously there was serious anomaly in fixation of the pension amount and the employees have decided to come under the purview of 2001 Regulations after the pension was made at par with the rate as applicable to the retired employees of other departments under the Government of West Bengal.

17. The writ petitioners took a conscious decision not to switch over to the pension scheme either within the time limit mentioned under Regulation 6 of 2001 Regulations or within 31.07.2006 i.e., within the extended time limit. It is not the case of the writ petitioners that they were not aware about the introduction of the 2001 Regulations at the relevant point of time. The mere fact that the extension of time for exercising the option to switch over to the pension scheme till 31.07.2006 was notified in the newspaper only on 25.07.2006 cannot in any event justify the action of the writ petitioners in approaching the authorities for exercising option to switch over to the pension scheme for the first time only on 18.11.2019.
18. Mr. Ali would contend that the stipulation made in the 2001 Regulations for exercising option to come within the purview of 2001 Regulation amounts to creation of two classes within the employees for the benefit of whom the 2001 Regulations were framed. In other words it is the contention of Mr. Ali that the authorities ought to have allowed the employees including the retired employees who are willing to switch over to the pension scheme even if such option was not exercised within the time limits specified thereunder. Such submission of Mr. Ali cannot be accepted in view of the fact that in respect of employees covered under Regulation 2(2) option is to be exercised within the time limit mentioned in Regulation 6(1) and 6(2) and failure to exercise option within such time limit shall be treated as if he had not opted for the Pension Regulations. Therefore, in order to switch over to the pension scheme option is to be exercised either within the time limit mentioned in Regulation 6(1) and 6(2) of the 2001 Regulations or within the extended time i.e., within 31.07.2006.
19. In **D.S.Nakara** (supra) the issues which fell for consideration was whether the pensioners entitled to receive superannuation or retiring pension under the Central Civil Service (Pension) Rules, 1972 form a class as a whole and whether the date of retirement is a relevant

consideration for eligibility when a revised formula for computation of pension is made effective from a specified date. **D.S. Nakara** (supra) dealt with liberalization of pension formula. While dealing with these aforesaid issues the Hon'ble Supreme Court observed that if pensioners form a class their computation cannot be by different formula affording unequal treatment solely on the ground that some retired earlier and some retired later.

20. In the case on hand the petitioners are all Provident Fund retirees. It is not in dispute that they have been paid their gratuity as well as provident fund amount including the employer's contribution after they had retired from service. The petitioners herein intend to switch over to pension scheme from the Contributory Provident Fund scheme.
21. Five Hon'ble Judges of the Supreme Court of India in the case of **Krishena Kumar vs. Union of India and ors.** reported at **(1990) 4 SCC 207** posed to itself the question of law as to what was the ratio decidendi in Nakara Case and how far that would be applicable to the case of Provident Fund retirees. The Hon'ble Supreme Court in **Krishena Kumar** (supra) observed that in Nakara it was never held that both the pension retirees and the PF retirees form a homogeneous class and that further classification among them would be violative of Article 14. The Hon'ble Supreme Court in paragraph 32 of the said retirees held thus-

"32. In Nakara it was never held that both the pension retirees and the P.F. retirees formed a homogeneous class and that any further classification among them would be violative of Article 14. On the other hand the court clearly observed that it was not dealing with the problem of a "fund". The Railway Contributory Provident Fund is by definition a fund. Besides, the Government's obligation towards an employee under CPF Scheme to give the matching contribution begins as soon as his account is opened and ends with his retirement when his rights qua the government in respect of the Provident Fund is finally crystallized and thereafter no statutory obligation continues. Whether there still remained a moral obligation is a different matter. On the other hand under the Pension Scheme the Government's obligation does not begin until the employee retires when only it begins and it continues till the death of the employee. Thus, on the retirement of an employee government's legal obligation under the Provident Fund account ends while under the Pension Scheme it begins. The rules governing the Provident Fund and its contribution are entirely different from the rules governing pension. It

would not, therefore, be reasonable to argue that what is applicable to the pension retirees must also equally be applicable to PF retirees. This being the legal position the rights of each individual PF retiree finally crystallized on his retirement whereafter no continuing obligation remained while, on the other hand, as regard Pension retirees, the obligation continued till their death. The continuing obligation of the State in respect of pension retirees is adversely affected by fall in rupee value and rising prices which, considering the corpus already received by the PF retirees they would not be so adversely affected ipso facto. It cannot, therefore, be said that it was the ratio decidendi in Nakara that the State's obligation towards its PF retirees must be the same as that towards the pension retirees. An imaginary definition of obligation to include all the government retirees in a class was not decided and could not form the basis for any classification for the purpose of this case. Nakara cannot, therefore, be an authority for this case."

22. The writ petitioners in the case on hand, as observed by this Court hereinbefore are PF retirees. Therefore, the writ petitioners cannot claim that they and the retirees who are enjoying the benefits of the pension scheme form a homogeneous class. Therefore, the fixation of the cut-off date for exercising option to switch over to the 2001 Regulations from the contributory provident fund regulations cannot be said to be violative of Article 14 of the Constitution of India. The decision in the case of **D.S. Nakara** (supra) cannot be applied to the facts of the case on hand for the reasons as stated hereinbefore.
23. The Hon'ble Division Bench in the case of **Dilip Sankar Das** (supra) held that since the appellants therein chose not to exercise their option within the time frame stipulated in the 2001 Regulations and as extended by the CTC, thereunder are not entitled to claim the pension under the aforesaid regulations at such a belated stage more so when all of them have received their gratuity and provident fund dues upon retirement. The Hon'ble Division Bench held thus-

"There is no doubt that right to receive pension has now been considered as a fundamental right by the Supreme Court as pension is the property of an employee. However, when a Scheme for pension is made applicable to existing employees conditional upon them opting for the same and such option is not exercised within the stipulated time, they cannot claim the pension as a matter of right. The pension is payable under the Pension Regulations of 2001

which have been notified in the Official Gazette. Since, the appellants chose not to exercise their option within the time framed stipulated in the Pension Regulations and as extended by the CTC, they are not entitled to claim the pension under the aforesaid Regulations.”

24. The decision of the Hon’ble Division Bench in **Dilip Sankar Das** (supra) shall squarely apply to the case on hand. For such reason this Court is of the considered view that the petitioners cannot be now allowed to exercise option to switch over to the pension scheme introduced by the 2001 Regulation.
25. In **Kamala Kanta Jana** (supra) the issue which fell for consideration was whether the retired and current employees of a Technical Institute can be said to be covered by the notification issued by the School Education Department. The said decision being distinguishable on facts cannot come to the aid of the petitioners herein.
26. For all the reasons as aforesaid this Court is of the considered view that the writ petition is devoid of any merit and the same is liable to be dismissed and is accordingly dismissed. There shall be no order as to costs.
27. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)

(P.A.-Sanchita)