Item-112. 20-07-2023

sg Ct. 8

FMA 318 of 2023
CAN 2 of 2023

Parimalendu Banerjee
Versus
The State of West Bengal & Ors.

Mr. Pankaj Halder, Adv.
Mr. Sanatan Panja, Adv.
Mr. Tapas Manna, Adv.
…for the petitioner

Mr. L.K. Gupta, Adv.
Mr. Ranjay De, Adv.
…for the respondent nos.5-6

Mr. Avishek Prasad, Adv.
… for the State

The petitioner has filed the writ petition in the year 2022. He retired from service on superannuation on 31st May, 1997. The petitioner alleged that he was a member of the Contributory Provident Fund-cum-Gratuity (CPF) scheme but in terms of the Memorandum bearing No. 496-Edn(B)/IM-39/31 dated December 16, 1991, he had opted for pension including Family Pension-cum-Gratuity (GPF) scheme and exercised option to the said effect within the time prescribed by the said memorandum but till date the authorities have not provided him the benefit of the said GPF scheme.

The status report filed by the school would show that the writ petitioner exercised option for Contributory Provident Fund-cum-Gratuity under D.C.R.B. 1981 on 31st August, 1985 and from the audit report of 1992 till 1998, it would appear that he was under CPF scheme till his retirement. The letter of Headmaster of the school dated 29th March, 2001 and the audit report of 1997-98 would show that the entire amount of

Contributory Provident Fund together with interest had been released in favour of the petitioner. The Managing Committee resolution No. 64 dated 20th January, 1995 would show that the writ petitioner expressed his willingness to come to the pension including Family Pension-cum-Gratuity. In response whereof, the Managing Committee resolved to forward the appeal of the writ petitioner to the higher authorities in the meeting. However, since the last date of switchover to the pension including Family Pension-cum-Gratuity was on 15th March, 1992 in terms of GO No. 496-Edn(B) dated 16th December, 1991, the said prayer was not considered. Subsequently, Mr. Banerjee was requested to submit option to switchover to Pension-cum-Gratuity scheme in terms of GO No. 749-SE(L) dated 13th June, 2014 vide letter dated 15th September, 2014 of the school. But he did not submit his option and share any information with the school regarding the refund of the employer's share of contributory provident fund with interest and additional interest till date.

Mr. Pankaj Halder, learned Counsel appearing on behalf of the petitioner has submitted that once the option was accepted, it is the duty of the school authorities to accept the same and process the application so that he gets the benefit of GPF scheme.

It appears that when he retired, he was aware of the fact that he was receiving the financial benefits including the Provident Fund-cum-Gratuity under CPF scheme and he did not protest. It clearly shows that he accepted that his case was considered under CPF scheme and not under GPF scheme.

After 22 years, the writ petitioner cannot complain that he has been arbitrarily dealt with by the authorities including the school concerned. Noting has been shown to us wherefrom he volunteered to refund the employer’s share and provident fund with interest. He was all throughout treated under the GPF scheme till retired.

By reason thereof, we do not find any reason to interfere with the order passed by the learned Single Judge. However, having regard to the fact that the gratuity was released on 28th November, 2022, the petitioner shall be entitled to interest at the rate of 8% per annum on and from 4th April, 2001 till 27th November, 2022 on the gratuity amount released.

The appeal and the application are accordingly, dismissed. however, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Uday Kumar, J.) **(Soumen Sen, J.)**