01.09.2023
DL-01
(Sanjay)
Ct.no.11

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 8511 of 2021

Bal Bahadur Biswakarma
Vs.
State of West Bengal & Ors.

Mr. Ekramul Bari,
Sk. Imtiaz Uddin,
Ms. Tanuja Basak …for the petitioner.

Mr. Gourav Das …for the State.

A retired Group-'D' employee of Kairgram High School (hereinafter referred to as the school) has knocked the door of this court with a prayer for a direction upon the concerned respondents for release of his '*pension, arrear pension and other retiral dues along with the statutory interest*' accrued thereon.

Mr. Bari, learned advocate representing the petitioner contends that after rendering service for more than three decades without any blemish, the petitioner retired from his service on 30th June, 2018. Initially, he opted for Contributory Provident Fund (in short, CPF). The petitioner exercised option to switch over to Pension-cum-Gratuity on 12.09.2014 which is well within the time stipulated in the notification dated 13th June, 2014.

The school authority prepared the statement showing the amount of the employer's share of CPF along with interest and additional interest, which was required to be deposited by the petitioner, at Rs.2,38,505.60, 12,100/- and 2425/- respectively and such statement was submitted to the D.I. of Schools concerned within the time fixed and D.I. of Schools also verified the statement and asked to refund the amounts.

Mr. Bari further contends that the petitioner being a poor employee had no sufficient fund to deposit and hence, he applied for a loan of that amount from his provident fund account. The loan was granted and ultimately, the amounts were credited in the account of the school on 12.02.2015. On 13.02.2015, the amount being Rs.2,38,506/- was deposed in State Bank of India (in short, SBI), Kalna Branch through T.R. Form no. 7 . Bank accepted the amount on 9.3.2015 and in the same manner, interest and additional interest were deposited.

In the meantime, the petitioner made a prayer for change of his surname from 'Thapa' to 'Biswakarma' and such prayer was allowed.

Mr. Bari strenuously contends that the delay was caused due to latches on the part of the school authority, Treasury and the bank and there was no fault on the part of the petitioner and hence, D.I. of Schools concerned also prayed for condonation of delay. However, ultimately, the pension, its arrear and other retiral dues have not been released. He submits that the petitioner is in acute financial hardship and hence, direction may be given upon the concerned respondents for release of pension and other dues to the petitioner along with statutory interest accrued thereon forthwith. In support of his contention he placed reliance upon an unreported judgment passed by the Hon'ble Division Bench presided over by Girish Chandra Gupta (as His Lordship then was) in MAT 1598 of 2015 (State of West Bengal & Ors.-Vs.- Smt. Jharna Bhattacharya & Ors).

Mr. Das, learned advocate representing the State vehemently opposes such prayer made by Mr. Bari. He submits that such delay cannot be condoned. He vociferously contends that the school authority has caused the delay in deposition of the amounts. He submits that if the prayer of the petitioner is allowed then a floodgate will be opened and the identically circumstanced persons will come up and will go on making such sorts of prayers. He submits that the concerned authority cannot be penalized due to the fault on the part of the school authority. Mr. Das further submits that the petitioner did not approach the competent authority seeking condonation of delay and hence such delay cannot be condoned.

To buttress his argument he placed a reliance upon an unreported judgment passed by the Hon'ble Division Bench of the Court presided over by the Hon'ble Justice Subrata Talukdar (as His Lordship then was) in MAT 1012 of 2022 (Sachchidanand Singh –Vs.- State of West Bengal & Ors).

Mr. Das submits that if this court direct release pension and arrear pension of the petitioner, specific observation may be made in the order that this case has been treated as a special case and this order shall not be treated as a precedent.

Heard the learned advocates of the parties and perused the materials on record.

In compliance with the judgment passed by the Hon'ble Special Bench of this Court in APO 94 of 2009 (District Inspector of Schools (SE), Kolkata & Anr. –Vs.- Abhijit Baidya & Ors.), the Secretary to the Government of West Bengal issued and/or published a notification dated 13th June, 2014 giving an opportunity to the employees of the School Education Department to submit option to switch over to Pension-cum-Gratuity within three months from the first date of publication of the notice in newspapers.

The petitioner elected to switch over to Pension-cum-Gratuity and submitted option on 12.9.2014. On receipt of such option, the school authority prepared and submitted the statement showing the amount of Employer's share of CPF with interest and additional interest to the D.I. of Schools concerned on 26.09.2014 i.e. within 15 days from the date of receipt of the option.

From the letter dated 20.08.2019 written by D.I. of Schools concerned to the Principal Secretary, Govt. of W.B., School Education Department (Annexed with the report submitted the learned advocate for the State), it would be explicit that the statement was verified the statement by A.I/S(SE) School, Kalna Sub-Division on 10.10.2014 and the petitioner was asked to deposit the amounts.

As per the assessment, the petitioner was required to refund Rs. 2,38,505.60/-, Rs.12100/- and Rs.2425/- as the employer's share to CPF till the date of exercising option, interest and additional interest. The petitioner applied to the school authority to enable him to withdraw the amount being Rs.2,38,506/- from his provident fund account. The school authority accepted such prayer on 19.12.2014.

The school authority deposited the cheque on 30.12.2014. The amount was credited in the account of the school on 12.02.2015. On 13.02.2015, the school deposited the amount in SBI, Kalna Branch through T.R. Form no. 7 and the amount and additional interest were accepted by the bank on 09.03.2015.

So, it is clear as day that the school authority and the bank concerned caused the delay in deposition of the amount and hence, the D.I. of Schools concerned by a letter vide. Memo. no. 41/Pen dated 20.08.2019, earnestly requested the Principal Secretary, Govt. of W.B., School Education Department to consider the matter of delayed deposition of employer's share of CPF.

By a letter dated 12.10.2020, the Joint Secretary concerned asked the D.I. of Schools to clarify the exact cause of delay and whether or not the petitioner was responsible for the delay. However, by a letter dated 17.12.2020, prayer for condonation of delayed refund of employer's share of CPF was regretted.

A coordinate bench of this court by passing an order dated 10.03.2022 held that the letters dated 12.10.2020 and 17.12.2020 cannot stand in the way for conversion of the CPF to GPF. The order dated 10.03.2022 has not been assailed by the State.

I do not find any material to infer that delay in deposition of the Government's share of CPF is attributable to the petitioner and due to fault of the school authority, bank or the office of the D.I. of Schools, the petitioner cannot be penalized. I have carefully gone through the judgment relied upon by Mr. Das but the same is distinguishable on facts.

Taking stock of the chronological events and resume, the instant writ petition being WPA 8511 of 2021 stands disposed of with the following directions:

The concerned District Inspector of Schools (SE) shall send the pension papers to the respondent no.8, the Director of Pension Provident Fund and Group Insurance and upon completion of all requisite formalities, the respondent no.8 shall issue Pension Payment Order directing payment of pension of the petitioner from the date of refund, arrear pension and all admissible dues together with statutory interest accrued thereon and send to the respondent no.7, the Treasury Officer, Kalna, Purba Bardhaman who upon receipt of Pension Payment Order shall release pension along with arrears pension and all the admissible dues in favour of the petitioner. All such exercise must be completed within eight weeks from date.

It is clarified that the order or orders , if passed by any authority refusing to condone the delay in deposition of the refund amount shall not stand in the way in releasing the pension , its arrear and other admissible dues along with interest in favour of the petitioner. It is further clarified that this order shall not operate as a precedent for future cases.

There shall be no order as to costs.

Urgent photostat certified copy of this judgment and order, if applied for, be given to the parties on fulfilling necessary formalities.

(Partha Sarathi Chatterjee, J.)