

16. 25.09.2023
bd. Ct.15

W.P.A. 13343 of 2018

Sri Priyatosh Sasmal & Ors.

-vs-

The State of West Bengal & Ors.

Mr. Saktipada Jana

Mr.Subhajyoti Das ... for the petitioners.

Mr. Rajendra Chaturvedi ... for the Municipality.

Mr. Avishek Prasad ... for the State.

Petitioners are employees of Rishra Municipality who have prayed for change of options from Contributory Provident Fund-cum-Gratuity to General Provident Fund-cum-Pension before the concerned respondent authorities.

On receipt of such application made by the petitioners Board of Councillors of Rishra Municipality took a decision on 30th August, 2004 thereby it was decided that the issue would be placed before the concerned authority of State Government for taking final decision since the employees who exercised option to be governed by Contributory Provident Fund-cum-Gratuity were not aware of the facilities under General Provident Fund-cum-Pension scheme. It further appears that vide memo dated 20th January, 2005 Deputy Director of Local Bodies, Burdwan Division wrote a letter to the Director of Local Bodies for changing options of some employees of Rishra Municipality. While issue was pending before the Director of Local Bodies, Chairman of Rishra Municipality was asked

to submit the details of the employees who were willing to come under pension-cum-gratuity scheme and the Chairman, in his turn submitted the lists of candidates and particulars of the candidates who expressed their desire before the municipality to be governed by General Provident Fund-cum-Pension scheme upon changing options. Ultimately, Director of Local Bodies, West Bengal, referred the matter to the Joint Secretary to the Government of West Bengal Department of Municipal Affairs vide memo dated 16th April, 2007 seeking necessary instructions whether such permission can be accorded thereby allowing some employees of Rishra Municipality to change their options as sought for.

It has been contended by Mr. Jana, learned advocate representing the petitioners that in spite of referring the matter to the Joint Secretary, West Bengal by the Director of Local Bodies vide memo dated 16th April, 2007 no decision has been taken by the Joint Secretary and a prayer has been made to direct the Joint Secretary to take a decision on the claim of the petitioners to switch over in order to come under the purview of General Provident Fund-cum- Pension Scheme.

Pursuant to the previous direction of this Court an affidavit has been affirmed on behalf of Rishra Municipality on 31st August, 2023 which has been filed today and taken on record. On perusal of paragraph 4 of the said affidavit it appears that notice was issued on 8th February, 1985 by the Rishra Municipality in terms of notification dated 14th January, 1985 issued by the Department of

Local Government and Urban Development, Government of West Bengal, to all employees of the said municipality and the employees were requested to exercise option to come under Death-cum-Retirement Benefit Rules within 90 days from the date of such notice. It has been specifically averred in the said affidavit on behalf of Rishra municipality that the petitioners opted to be governed under Contributory Provident Fund-cum-Gratuity scheme on different dates and the dates have been mentioned in paragraph 4(ii) of the said affidavit. Therefore, it is contended that after expiry of the period of 90 days as indicated in the notice dated 8th February, 1985 petitioners cannot pray for switching over from Contributory Provident Fund-cum-Gratuity to General Provident Fund-cum-Pension scheme.

State respondents are also represented by learned advocate who has filed a bunch of documents previously wherefrom it appears that a Model Pension Rules was issued vide office order dated 16th April, 1982 by the Deputy Secretary to the Government of West Bengal and in terms of Rule 8(A)(i) an employee willing to come under these rules have to exercise option in the form shown in Appendix-“B” within 90 days from the date of issue of notice by the Municipal Authority immediately after publication. It has also provided under Rule 8 (iv) that the option once exercised will be final. According to the State respondents in terms of Rule 8A(i) of Model Pension Rules since notice has been issued on 8th February, 1985 by Rishra Municipality and subsequent thereto petitioners exercised option

to be governed by Contributory Provident Fund-cum-Gratuity scheme after expiry of said period of 90 days there is no scope left open to change such option. In addition thereto notice of this Court has been drawn to one communication dated 11th September, 2012 issued by the Joint Secretary, Department of Municipal Affairs addressed to the Director of Local Bodies, Government of West Bengal wherefrom it appears that the Finance Department vide note dated 23rd August, 2012 has refused such proposal of changing options as forwarded by the Director of Local Bodies to the Joint Secretary. Such communication dated 11th September, 2012 is also taken on record.

Having perused the relevant materials available on record and in consideration of the Model Pension Rules which was forwarded vide memo dated 16th April, 1982 of the Deputy Secretary to the Government of West Bengal, Department of Local Government & Urban Development it appears that right of employees of the municipalities to be governed by General Provident Fund-cum-Pension scheme depends upon exercising option in terms of Rule 8A(i) in the event notice is issued by the concerned municipality. In the present case from the affidavit used on behalf of Rishra Municipality it appears that notice was issued on 8th February, 1985 and pursuant thereto petitioners exercised options to be governed by Contributory Provident Fund-cum-Gratuity scheme and within the stipulated time of 90 days there was no approach made by the petitioners before the concerned respondent authorities for changing options. Question arises for consideration whether after the

expiry of period of said 90 days as indicated in Rule 8 of the Model Pension Rules petitioners being the employees of Rishra municipality can be permitted to change their options. Under Rule 8(B) of the Model Pension Rules it has also been provided that any person appointed by the Municipality after the date of issuing the notice as referred to in sub-rule 8(A)(i) will come under these rules automatically and no exercise option is necessary in that case.

Learned advocate representing the petitioners has submitted that some of the employees were appointed after the notice issued by the Rishra Municipality on 8th February, 1985 therefore their cases are required to be considered separately. However, it has been disputed by the learned advocate representing the municipality since according to the municipality all the petitioners were appointed before the notice issued on 8th February, 1985.

In view of the provisions as contained in 8(B) if some of the petitioners were appointed after 8th February, 1985 they are required to be treated separately in view of provisions as contained in Model Pension Rules.

However, since it has already been communicated by the Joint Secretary, Department of Municipal Affairs vide communication dated 11th September, 2012 to the Director of Local Bodies that Finance Department vide note dated 23rd August, 2012 has refused the proposal of switching over the same will govern the employees who have exercised options in terms of Rule 8A(i). Therefore,

the prayer of the petitioners who were appointed prior to 8th February, 1985 need not be reopened.

However, if amongst the petitioners there are employees who were appointed after 8th February, 1985 being the date of notice in that event they may prefer a comprehensive representation to the Joint Secretary, Government of West Bengal, Department of Municipal Affairs within three weeks from date. If such representation is made by the employees described above the Joint Secretary shall take decision in terms of Rule 8B of the Model Pension Rules within a period of eight weeks thereafter on granting opportunity of hearing to one representative of such employees and the decision to be taken by the Joint Secretary shall be communicated to those employees within one week thereafter.

With the aforesaid 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.)