

ML- 03.08.2023
134 Ct.15
rkd

W.P.A. 15979 of 2013
(IA NO: CAN 1/2016 (Old No: CAN 1007/2016))

Monohar Kumar Saha & Ors.
-vs-
The State of West Bengal & Ors.

Mr. Bikash Chandra Das

....for the petitioners.

Mr. Arindam Chattopadhyay,
Ms. Lipika Chatterjee

....for the State.

Petitioners are employees of Dum Dum Municipality who have laid a common prayer by presenting this writ petition for switching over from Contributory Provident Fund-Cum-Gratuity to Pension-Cum-Gratuity and such prayer was refused by the authority as it has been communicated vide communication dated 11th September, 2012 of the Joint Secretary, Department of Municipal Affairs, Government of West Bengal to the Director of Local Bodies in reference to a note dated 23rd August, 2012 of the Finance Department.

Having considered this refusal based on the note of the Finance Department dated 23rd August, 2012 Court directed the Secretary, Finance Department, Government of West Bengal to submit a report disclosing reasons for refusal to switch over from Contributory Provident Fund-Cum-

Gratuity to Pension-Cum-Gratuity.

Today a report has been filed by the Additional Chief Secretary, Finance Department, Government of West Bengal dated 19th June, 2023 which is taken on record.

On perusal of such report, it appears that there is admission on the part of the Finance Department that the note dated 23rd August, 2012 is not traceable. However, reliance has been placed on Model Pension Rules issued vide memo dated 16th April, 1982 of the Deputy Secretary to the Government of West Bengal, Department of Local Government and Urban Development.

According to the Finance Department in terms of Rule 8 of the said Model Pension Rules opportunity was granted to the petitioners to exercise option within ninety days from the date of issuance of notice by the Municipal Authority whether petitioners would like to come under Contributory Provident Fund-Cum-Gratuity Scheme or Pension-Cum-Gratuity Scheme.

According to the respondent authorities petitioners exercised option within the specified time as per said Rule 8 and they opted to be governed under Contributory Provident Fund-Cum-Gratuity Scheme. Therefore, it is contended that

after the expiry of time no scope is left open to the petitioners to switch over from Contributory Provident Fund-Cum-Gratuity to Pension-Cum-Gratuity.

It is true that there is an admission on the part of the petitioners in writ petition that they exercised option to be governed by Contributory Provident Fund-Cum-Gratuity and not under Pension-Cum-Gratuity but subsequently, they found that if they are permitted to be governed by Pension-Cum-Gratuity Scheme, financially they would be more benefited. Therefore prayer has been made to permit the petitioners to switch over.

Having considered the case made out in the writ petition as well as taking note of Rule 8 of the Model Pension Rules as appended to the report filed on behalf of the Finance Department it appears that unless the legality and validity of the relevant rules of Model Pension Rules are questioned the issue couched in this writ petition cannot be delved into.

Accordingly, the writ petition stands dismissed.

Application, if pending, also stands dismissed.

However, this order shall not preclude the

petitioner to take steps in accordance with law, if so advised.

If the Government takes fresh decision relating to switching over from Contributory Provident Fund-Cum-Gratuity Scheme to Pension-Cum-Gratuity Scheme upon relaxation of conditions as contained in Rule 8 of the Model Pension Rules petitioners shall be at liberty to pray for extending the benefit of such relaxation.

However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Saugata Bhattacharyya, J.)