

07 08.12.2023
rkd Ct.15

W.P.A. 17274 of 2023

Sadhan Mitra

-vs-

The State of West Bengal & Ors.

Mr. Banshi Badan Maity

....for the petitioner.

Mr. Pinaki Dhole,
Ms. Indrani Nandi

....for the State.

Affidavit-of-service filed by the petitioner is taken on record.

Petitioner is the husband of a retired assistant headmistress, who superannuated on 31st January, 2009 and got the benefit under the Contributory Provident Fund Scheme (CPF). Subsequently, wife of the petitioner exercised option to come under the Pension-cum-Gratuity Scheme in terms of Government notification dated 13th June, 2014 which was issued in terms of the judgment of the Special Bench dated 16th July, 2013 passed on intra court appeal being APO No.94 of 2009 (State of West Bengal & Ors. -vs- Abhijit Baidya & Ors.).

The wife of the petitioner died on 27th November, 2021 and accordingly the claim is laid by the present petitioner for issuance of revised Pension Payment Order.

It has also been submitted on behalf of the petitioner that as per demand of the State

respondents retired employee has deposited the amount along with interest and additional interest which the employee received under CPF Scheme.

However, the grievance of the petitioner is after taking steps in terms of the said notification dated 13th June, 2014 by issuing pension payment order dated 13th April, 2015 pensionary benefit was sanctioned in favour of the employee not from the date following the date of retirement but from the date of refund which employee made after exercising option in terms of the said notification dated 13th June, 2014. Petitioner claims issuance of revised pension payment order thereby sanctioning pensionary benefits/family pension from the date following the date of employee's superannuation based on the judgment of the Special Bench dated 30th September, 2019 passed on intra Court appeal being APO No.121 of 2007.

The State respondents are represented by learned advocates who has also submitted that based on the judgment dated 30th September, 2019 of the Special Bench the benefit of pension is accorded to other similarly circumstanced family pensioners from the date following the date of employee's superannuation provided exercise of option has been made within time in terms of said notification dated 13th June, 2014 and if the refund

is made by the concerned teacher as per the calculation of the State respondents.

This Court has heard the learned advocates representing the parties and has perused the relevant materials available on record.

It is nobody's case that the employee did not exercise option within time in terms of the said notification dated 13th June, 2014 and the employee on duly exercising option in terms of notification dated 13th June, 2014 switched over from CPF to Pension-cum-Gratuity Scheme. On placing reliance on paragraph 55 of the judgment of the Special Bench dated 30th September, 2019, this Court does not find any impediment in extending the benefit of pension/family pension to the petitioner from the date following the date of employee's retirement provided exercise of option is made within time and refund has been made as per the calculation of the State respondents.

Accordingly, this Court directs the State respondents to issue revised pension payment order in favour of the petitioner within twelve weeks from the date of communication of this order thereby extending the benefit of pension/family pension from the date following the date of employee's superannuation.

With the above 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.)