14. 20.02.2023
bd. Ct.15

W.P.A. 20473 of 2022

Pares Chandra Das
-vs-
The State of West Bengal & Ors.

Mr. Raghunath Das
Ms. Monalisa Das
... for the petitioner
Mr. Pinaki Dhole
Mr. Ananya Neogi
... for the State

Petitioner was headmaster of a Government aided recognised high school who retired on superannuation on 31st December, 2002. At the time of superannuation petitioner was under the Contributory Provident Fund Scheme. However, it has been submitted on behalf of the petitioner that petitioner did not claim Government's contribution under the contributory provident fund scheme and accordingly Government's contribution which was lying in the provident fund account of the petitioner was actually not paid.

It has also been submitted that subsequently in terms of the judgment of the Special Bench dated 16th July, 2013 on an intra Court Appeal being **APO 94 of 2009 (District Inspector of Schools (SE), Calcutta and Anr. –vs- Abhijit Baidya and Ors.)** as well as notification dated 13th June, 2014 issued in terms of the direction contained in the judgment dated 16th July, 2013 the petitioner exercised option to come under the pension scheme on 20th June, 2014. In view of exercise of such option pension payment order was issued vide memo dated 2nd February, 2015 whereby the concerned respondent authorities sanctioned pension in favour of the petitioner with effect from 18th September, 2014.

The grievance of the petitioner is non-payment of pension to him from the date following the date of superannuation on 31st December, 2002 in consideration of fact that petitioner never received Government's contribution under contributory provident fund scheme; therefore the case has been made out in this writ petition that petitioner is entitled to receive pensionary benefits with effect from 1st January, 2003 and for sanctioning such pensionary benefits refund of employer's contribution made to the provident fund account of the petitioner under the contributory provident fund scheme is not required.

Mr. Dhole, learned advocate, representing the State respondents submits on instructions that though petitioner was under the contributory provident fund scheme and retired on 31st December, 2002 but he did not claim Government's contribution under the Contributory Provident Fund Scheme which is reflected from the option exercised by the petitioner in terms of Government notification dated 13th June, 2014, page 15 of the supplementary affidavit.

Having considered the submissions made on behalf of the respective parties and on perusal of records it appears that by issuing pension payment order vide memo dated 2nd February, 2015 pensionary benefits were released in favour of the petitioner with effect from 18th September, 2014. In terms of the Government notification dated 13th

June, 2014 a teacher for obtaining pension is required to refund Government's share under the contributory provident fund scheme along with interest. But here in the instant case, petitioner has not claimed Government's share of contribution under the contributory provident fund scheme, therefore, question of refunding the Government's contribution under the contributory provident fund scheme made in favour of the petitioner along with necessary interest does not arise for extending the benefit of pension from the date following the date of retirement of the petitioner.

The issue of releasing the pension from the date following the date of retirement has already been decided by the Special Bench by delivering judgment dated **30th September, 2019 in Md. Abdul Ghani -vs- State of West Bengal & Ors.** In paragraph 45 and 55 of the said judgment it has been decided by the Special Bench that on completion of formalities and refund a teacher concerned is entitled to receive pension from the date following the date of superannuation.

In terms of the judgement of the Special Bench dated 30th September, 2019 it appears that petitioner is entitled to receive pension from the date following the date of his superannuation since the petitioner did not claim Government's contribution under the contributory provident fund scheme after his superannuation on 31st December, 2002. There is no requirement so far as the petitioner is concerned to refund the Government's contribution under contributory provident fund scheme for getting pension from the date following the date of his superannuation.

Accordingly, the concerned respondent authorities are directed to release pensionary benefits in favour of the petitioner from the date following the date of his superannuation i.e., from 1st January, 2003 upon issuing revised pension payment order within a period of eight weeks from the date of communication of this order.

However, it is also clarified that petitioner is receiving pensionary benefits from 18th September, 2014, therefore such benefits to be released in favour of the petitioner for the period from 1st January, 2003 till 17th September, 2014.

The pensionary benefits which are required to be released in favour of the petitioner pursuant to the aforesaid direction are to be released within a period of four weeks from the date of issuance of revised pension payment order.

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.)