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S.D.

W.P.A. 26481 of 2022

**Utpal Ranjan Dey
Vs.
The State of West Bengal & Ors.**

Mr. Sanjoy Mukherjee
...For the petitioner

Mr. Satyajit Talukdar
...For the K.M.D.A.

Ms. Ananya Neogi
...For the State

The petitioner's case is that he has been working as an Executive Engineer (Civil) with the Kolkata Metropolitan Development Authority (KMDA). Pursuant to the resolution of the Finance Department dated November 25, 2015, the present pay structure and conditions of the State Government employees were revised. By a Notification dated January 14, 2020 issued by the department of Urban Development and Municipal Affairs, the Governor was pleased to direct the revision of Pay Allowances for the regular and full time employees of the Development Authorities under the West Bengal Town and Country (Planning and Development) Act, 1979. The revision of Pay Structure was made notionally from January 1, 2016 and with actual financial effect from

January 1, 2020. The employees were given an opportunity to exercise their option as per Clause 6 of the said Notification dated January 14, 2020. The option once exercised by an employee was stipulated to be final under Clause 6(4) of the said Notification.

Under Revision of Pay and Allowances (ROPA) Rules 2019, the employees could either pray for implementation of the benefits from January 1, 2016 or from the date of promotion. The date of promotion for the petitioner was August 4, 2017. The petitioner exercised his option for implementation of the benefits under ROPA, 2019 with effect from January 1, 2016.

Mr. Mukherjee, learned counsel appearing on behalf of the petitioner submits that such an option was exercised wrongly by the petitioner. The petitioner's mistake was inadvertent. The petitioner should have exercised the option for ROPA, 2019 benefits from the date of promotion on August 4, 2017. The petitioner's colleagues who have exercised the option from the date of promotion were getting better pay and emoluments since they had exercised their options from the date of their promotion.

The petitioner has prayed for consideration of the representation made on August 16, 2021 for revision of

exercise of his option. The said prayer for reconsideration of exercise of option was rejected by the Deputy Secretary on September 9, 2021. In the present writ petition, the petitioner has challenged the order of the Deputy Secretary dated September 9, 2021.

Mr. Talukdar, learned counsel appears on behalf of the K.M.D.A. Ms. Neogi, learned counsel appears on behalf of the State of West Bengal.

Having considered the submissions of the parties and the materials placed on record, this Court finds that no illegality has been committed by the Deputy Secretary by rejecting the prayer of the petitioner by office order dated September 9, 2021. The said office order has been passed in terms of the Clause 6(4) of the Notification dated January 14, 2020.

The petitioner should not be allowed to approbate and reprobate. This Court finds no merits in the writ petition.

The decision of the Supreme Court reported in **Union of India and Ors. Vs. Tarsem Singh** reported in (2008) 8 SCC 648 does not come to the aid of the petitioner.

In that case, the petitioner approached the High Court belatedly for payment of disability pension to him. The petitioner was entitled to in law to claim disability pension.

Therefore, the Supreme Court restricted the arrears of pension to only 3 years 2 months instead of 16 years since the petitioner approached the Hon'ble Court after a delay of 16 years. The Hon'ble Apex Court upheld the order passed by the single Bench and set aside the judgement/order passed by the Division Bench. In the present case, the petitioner applied his mind to the benefits of ROPA and exercised his option from January 1, 2016 instead of August 4, 2017 and after application of his mind, the petitioner cannot be allowed to resile from his position since his other colleagues are getting better benefits by exercising a different option. If such an option is allowed to be exercised by the petitioner at a much belated stage, it will lead to opening of floodgates whereby various disgruntled employees may approach this Court seeking to exercise a different option which seems more beneficial to them leading to severe administrative difficulty on the part of the Employer for no fault of its own.

No legal right of the petitioner is violated in the present case.

The writ petition being **W.P.A. 26481 of 2022** is **dismissed**.

Since no affidavits have been directed to be exchanged in the present writ petition, all the allegations contained therein are deemed not to have been admitted by the parties.

Needless to mention that since the writ petition has been dismissed, there is no question of not giving effect to the order dated June 28, 2021 for recovery of the overdrawn amount of Rs.1,02,390/- in the present case as a result of the erroneous pay fixation under ROPA 2019.

All parties shall act on the server copy of this order duly downloaded from the **website** of this Court.

Urgent photostat certified copies of this order, if applied for, be given to the parties upon compliance of all the formalities.

(Lapita Banerji, J.)