

239
04.10.2023
S.D.

W.P.A. 26979 of 2022

Anjan Chakraborty
Vs.
The State of West Bengal & Ors.

Mr. Anil Kumar Chattopadhyay
..For the Petitioner
Mr. Arjun Roy Mukherjee
....For the WBPCB

By an order dated September 19, 2022, this Court directed the Member Secretary/respondent no. 3 to consider the representation of the writ petitioner in accordance with law and their internal Rules for switching over from Contributory Provident Fund Scheme to General Provident Fund Scheme. The petitioner worked as a Clerk-cum-Typist with the West Bengal Pollution Control Board. He was superannuated on August 10, 2022.

Mr. Chattopadhyay, learned counsel appearing on behalf of the petitioner submits that 9 employees were given the benefit/option of switching over from CPF to GPF Scheme. However, the petitioner was discriminated against.

Mr. Roy Mukherjee, learned counsel appearing on behalf of the respondent nos. 2 to 5/employer submits that

an option was given to the employees in 1995 for opting to be a part of CPF Scheme or GPF Scheme. The petitioner opted for being a member of CPF Scheme. At the fag end of his career on February 3, 2021, he made his first representation for such switch over. As such, no legal right of the petitioner has been violated by the employer by not allowing his prayer for switch over.

He draws the attention of this Court to the Report affirmed on January 31, 2023 to contend that the names of all the 13 employees who prayed for a switch over were sent by the West Bengal Pollution Control Board (WBPCB)/the employer to the Finance Department for consideration of such prayer. The issue that fell for consideration was whether Clause 4A(iv) of the Employees' (Death cum Retirement Benefit) Regulations, 2000-WBPCB could be omitted and the said 13 employees could be given the benefit of such switch over. Within one month of coming into force of the 2000 Regulations option had to be exercised by the employees for payment of pension. Such communication was made by WBPCB on May 26, 2017. By a communication dated January 5, 2018, the Joint Secretary, Department of Environment informed the Member Secretary, WBPCB that the proposal for omittance of

paragraph 4A(iv) of the (DCRB) Rules, 2000 could not be accepted.

4A(iv) of the (DCRB) Rules, 2000 reads as follows:-

“(iv) The option once exercised will be final.”

He also distinguishes the Special Bench judgment reported in 2013 (3) CLJ (Cal) 178 {**District Inspector of Schools (SE), Kolkata & Anr. Vs. Abhijit Baidya & Ors.**} referred to by the learned counsel appearing on behalf of the petitioner. He submits that in the said case, the Hon’ble Special Bench held that an accrued right of the petitioner could not be taken away by the State/could not be altered retrospectively by substitution of different provisions by subsequent memorandumS.

In the present case, the petitioner has no accrued right at all.

From the Report also, it appears that the 9 employees sought to be referred to by the petitioner were not given any extra benefits by way of consideration of the prayer for switch over from CPF to GPF Scheme.

Considering the materials placed on record and the submissions of the parties, it appears that there is no infirmity in the decision making process of the employer/WBPCB. The employer prayed for omission of

Rule 4A(iv) of the (DCRB)-2000 Rules. The said prayer for omission was not permitted by the State of West Bengal. The petitioner had exercised his option in 1995, knowing fully well that such exercise of option is *final*. Therefore, at the fag end of his career in 2021, he cannot be permitted to pray for switch over from CPF to GPF Scheme since the terms of CPF Scheme may not be found to be suitable by the employee/petitioner, at present.

This Court also finds that no discriminatory treatment is meted out to the petitioner as alleged in the writ petition.

Therefore, there is no arbitrariness or perversity in the decision making process.

Accordingly, **W.P.A. 26979 of 2022** is **dismissed**.

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

