

Court No. 25

WPA 29057 of 2022

27.04.2023

(AD 94)

(S. Banerjee)

Aniruddha Bhattacharya

Vs.

The West Bengal Pollution Control Board & Ors.

Mr. Domingo Gomes
Mr. Shantanu Mishra

... for the petitioner

Mr. Arjun Roy Mukherjee
Mr. D. Mitra

... for the WBPCB

Mr. Pinaki Dhole
Mr. Pinaki Bhattacharya

... for the State

The petitioner's grievance is that he has not been allowed to switchover from Contributory Provident Fund Scheme (CPF) to General Provident Fund Scheme (GPF) along with pensionary benefits. The petitioner worked as an Assistant Engineer with the West Bengal Pollution Control Board (WBPCB). The petitioner was suspended from service on or about September 12, 2003 and the said suspension order was withdrawn on May 3, 2006. The petitioner joined his services with immediate effect since the withdrawal of the order of suspension.

Mr. Gomes, learned counsel appearing on behalf of the petitioner, submits that the employees of WBPCB were allowed to exercise their options for pensionary benefits on March 30, 2004. Under the said exercise of option granted by the respondent authorities, every employee who was in service on or after January 1,

2000 and willing to come under the West Bengal Pollution Control Board Employees' (Death-cum-Retirement benefit) Regulations, 2000, had to exercise their options within one month from the date of issue of the notice dated March 30, 2004 by the WBPCB. Admittedly, the petitioner was under suspension during that time and, therefore, was not able to exercise such option.

Upon resuming his services in May, 2006, the petitioner made several representations including the ones on March 27, 2007, January 15, 2008 and April 8, 2009 whereby the petitioner has repeatedly prayed for release of all the service benefits that were due and payable to him during the period of suspension, but the said prayer was turned down since a criminal case, being Case No. 206 dated May 30, 2003, lodged at the Behala Police Station was pending against the writ petitioner. The said letter dated April 8, 2009 was submitted in response to WBPCB's communication dated March 26, 2009 whereby the Board requested the petitioner to submit a certified copy of the order dated February 19, 2009 passed in the criminal case.

Thereafter, the petitioner on February 10, 2016 made a prayer before the Member Secretary, WBPCB for exercising his option from CPF to GPF scheme, but the said prayer was not considered by the respondent authorities.

Mr. Roy Mukherjee, learned counsel appearing for WBPCB, submits that pursuant to the notice dated

March 30, 2004, any employee who was on suspension during that period which was stipulated for exercising of option, had to exercise the option within one month from resumption of duty after suspension. If the option was not exercised by the employee within the time limit referred to in the notice, it would be deemed that the employee has not opted to come under the Death-cum-Retirement Benefit Regulations, 2000. The option once exercised would be considered to be final.

The WBPCB upon consideration of the representations made by their employees, took a decision to forward a request to the Principal Secretary, Department of Environment, Government of West Bengal to allow their employees to change their options after the period stipulated under Regulation 4A(iv) of the 2000 Regulations. However, the said request for approval was turned down by the Joint Secretary, Department of Environment, Government of West Bengal on January 5, 2018.

Mr. Dhole, learned counsel appearing for the State, submits that the order of the Department of Environment, Government of West Bengal was not under challenge in the present writ petition.

Considering the rival submissions of the parties and the materials placed on record, this court finds that the order of suspension was withdrawn on May 3, 2006. Under the notification dated March 30, 2004, the petitioner could have exercised his option for shifting from CPF to GPF scheme within June 2, 2006. The

petitioner did not exercise such option within one month. The petitioner almost after a decade sought to exercise such option. By letters dated July, 2007 and 2008, the petitioner did not pray for exercising his option to shift from CPF to GPF scheme.

The Hon'ble Division Bench of this court in FMA 34 of 2019 (**Amarnath Mukherjee & Ors. -Vs.- Union of India & Ors.**) held that since the appellant/retirees in that case consciously chose different paths covered under the CPF and EPS schemes, the appellant could no longer compare themselves with the retirees/employees covered under the pension scheme. The appellants were given an opportunity to switchover from one scheme to other, but did not choose to do so. Therefore, they could not be allowed to do so at a belated stage.

Mr. Gomes relies on an unreported judgement passed in WPA 5302 of 2019 (**Subhendu Chakraborty & Ors. -Vs.- Kolkata Metropolitan Development Authority & Ors.**) in support of his contention that the petitioner's case was allowed and the court held that an opportunity should be afforded to the petitioners to exercise their option for switching-over to GPF-cum-Pension Scheme from CPF scheme.

This court finds that the said decision of **Subhendu Chakraborty (supra)** is distinguishable on facts since the writ petition was filed in 2019 and the time to exercise such option was extended from time to time for the employees and the last of such extensions

was given till February 28, 2022. Therefore, it was held the petitioners could not be discriminated against the employees in whose case the extension was granted till 2022. The Finance Department also did not take a decision with regard to the extension of the time for exercise of option by the employees after the stipulated period and sat tight over the issue. Therefore, the court was of the view that since others were allowed to switchover by allowing extension from time to time on several occasions, the petitioners should also be allowed to do the same. Here, no issue of discrimination has been urged.

In the light of the discussions above, this court holds that due to delay and latches on the part of the writ petitioner in exercising the option of switching-over from CPF to GPF scheme for almost a decade without a plausible explanation, the writ petition cannot be allowed.

Therefore, **WPA 29057 of 2022** is **dismissed**.

Urgent certified copy of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Lapita Banerji, J.)