20-12-2023
ct no. 13
Sl. 13
sp

WPA 28266 of 2023

Bandana Dutta
-Versus-
The State of West Bengal & Ors.

Mr. Sourav Mitra,
Mr. Dwarikanath Mukherjee,
Ms. Sreyasree Choudhury
..for the petitioner

Mr. Avishek Prasad
...for the State

1. The State has come up with a compilation of several decisions. Relevant decisions have already been referred to in this Court's order dated December 11, 2023.
2. The petitioner has, however, placed another decision of a Division Bench of this Court also dated December 11, 2023 in **FMA 864 of 2022 (Pramila Behra Vs. The State of West Bengal and Ors.)**.
3. In the said case, the Division Bench had occasion to consider the decisions of other Division Benches of this Court in **FMA 620 of 2018 (State of West Bengal & Ors. Vs. Sefali Jana & Ors.)** dated August 24, 2023 and **MAT 2066 of 2014 (Renuka Khatua Vs. State of West Bengal & Ors.)**.

4. The Division Bench has also considered the decision of another Division Bench in MAT 1559 of 2016 **[The State of West Bengal & Ors. Vs. Bithika Bagchi (Gupta)]** decided on August 23, 2017.

5. The basis of the order of the Division Bench was the decision dated June 28, 2016 passed in **RVW 68 of 2016 (The State of West Bengal & Ors. Vs. Smt. Jharna Bhattacharya & Ors.)**. The conclusion of the Division Bench in RVW 68 of 2016 has been set out in detail in the aforesaid **Pramila Behra decision (supra)**.

The aforesaid questions were answered in the said judgment as follows:-

1) An employee who has opted for revised pay scale under ROPA, 1990 becomes entitled to pension and gratuity by virtue of operation of para 17 of ROPA 1990. It was not necessary for him to exercise fresh option as per Memo dated 16th December, 1991, which was applicable to employees who had not opted for ROPA 1990. Benefit of Pension-cum-Gratuity was conferred due to acceptance of reduced for age of superannuation of 60 years under para 17(1) of ROPA 1990 and his right for Pension- cum-Gratuity so accrued could not have been taken away retrospectively by substitution of the provisions of para 17 in 2007 or by substitution of para 13 of ROPA 1998 in 1999.
2) Once option has been exercised under ROPA 1990, a person cannot be subjected to the rider of the option exercised under the DCRB Scheme, 1981 as the invitation of the option under the said Scheme was with respect to the employees who elected to continue in service till the age of 65 years and to have the benefit of the old scheme. For such employees, opportunity was

given to submit fresh options as per Memo dated 16th December, 1991.

The amendment made in para 17 (2) of ROPA 1990 on May 16, 2007 cannot be said to be valid piece of law as such provisions cannot be substituted with retrospective effect to take away the rights already accrued to an employee. So as to validate provisions of para 17(2) of ROPA 1990, as substituted, it was necessary to invite option for switching over to Pension-cum-Gratuity from CPF-cum-Gratuity when the substitution of para 17(2) of ROPA 1990 was made on 16th May, 2007 with retrospective effect.

3) Para 13 of the ROPA 1998 as amended on 13th July, 1999 cannot be said to be valid in the eye of law as it has the effect of taking away benefit conferred by para 17(2) of ROPA 1990, as the ROPA 1998 was made applicable to the employees who had opted for ROPA 1990 and the benefit conferred could not have been taken away by substitution of provisions contained in para 13 of ROPA 1998. It was clearly arbitrary and an unreasonable exercise of power and to treat it as valid and legal, it was necessary to invite fresh option under the DCRB Scheme, 1981 for switching over to Pension-cum-Gratuity as the provisions had been amended drastically which could not operate to the prejudice of the employees in whose favour right to claim Pension-cum-Gratuity had accrued. The substituted provisions of para 13 of ROPA 1998 fail to qualify Wednesbury principles of reasonableness. The action was in utter violation of fair play and justice.

4) In our opinion, after substitution of para 13 of ROPA 1998 on 13th July, 1999 and para 17 of ROPA 1990 on 16th May, 2007, in order to save the provisions from the vice of arbitrariness, it was necessary to give an opportunity to the employees to submit fresh option under DCRB Scheme, 1981. As the option exercised earlier in terms of the DCRB Scheme, 1981 was made applicable, it was necessary to give fresh opportunity to exercise an option for switching over to Pension-cum-Gratuity and the State could not have acted to the detriment of the employees opting for ROPA 1990 who chose the rider of reduced age of superannuation i.e. 60 years under para 17(1) of ROPA 1990.

5) In our opinion, as there was drastic change of provisions of para 17(2) of ROPA 1990 made by way of substitution in 2007, and ROPA 1998 also *interfered with the rights conferred upon the employees under pa para 17(2) of ROPA 1990, all the employees who opted for ROPA 1990 ought to be given fresh opportunity to submit the option to switch over to Pension-cum-Gratuity."*

6. At paragraph 10 of the **Pramila Behra decision (supra)**, the Division Bench recorded that the DPPG had acted upon the conclusion arrived at in RVW 68 of 2016, Smt. Jharna Bhattacharya decision (supra).

7. The Division Bench also went on to consider the case of **Muktimoyee Pal (Dey) (supra)**.

8. After discussing all the applicable cases and the dicta in the RVW 68 of 2016 (supra), the Division Bench in **Pramila Behra case (supra)** concluded as follows,

   a) The family of the deceased employee who was paid gratuity in terms of ROPA 1990, need not exercise a fresh option for sitting over from CPF to GPF.

   b) Such person who received terminal benefits under ROPA 1990 are automatically entitled to pension.

   c) A widow of a deceased employee cannot be blamed for the delay by Courts in interpreting the pension entitlement and exercise of option by an employee (which finally culminated in the decision of the Supreme Court dated 05.01.2022 in SLP (Civil) Diary

No(s).1398 of 2020 (The State of West Bengal & Ors. Vs. Abdul Ghani & Ors.).

9. Counsel for the State places reliance on a decision of the Supreme Court in the case of ***State of jammu and Kashmir Vs. R.K. Zalpuri and others*** reported in ***(2015) 15 SCC 602***, particularly paragraphs 20 to 28. It is argued that the reliefs in the instant writ petition are barred by delay and latches.

10. This Court notes that indeed delay and laches, often defeats a right to writ of mandamus. It is, however, seen that the subject matter of the **R.K. Zalpuri case (supra)** was a disciplinary proceeding against an employee. The entertainment of the writ petition notwithstanding delay of 2 years in the instant case has already been discussed at some length in the subsequent and preceding paragraphs. Family pension and terminal benefits or claims thereto cannot even otherwise be hit by the principles of delay and laches or even bound by any period of limitation.

11. It is seen in the instant case as observed and approved by several other decisions referred to hereinabove that the State

benefited from the employee concerned in paying lessor gratuity in terms of ROPA 1990 since the length of service of the employee stood reduced to 60 years from 65 years.

12. The petitioner who is the widow of the employee Dinabandhu Dutta, who retired from service on May 31, 2002 and died in April 2020.

13. The petitioner's husband was therefore covered under ROPA 1990 and automatically entitled pension. There was no need for any fresh exercise of option by the petitioner.

14. The requirement of formal exercise of option arose pursuant to the decision of the Full Bench in the case of **Abhijit Baidya (supra).** The challenge to the said decision ended only on 15.01.2022 when SLP (Civil) No.1398 of 2020 was dismissed.

15. In the backdrop of the above, it cannot be said that there was a delay of 2 years in filing of option. The said delay cannot stand in the way of permitting the petitioner to exercise option afresh in terms of the **Abhijit Baidya decision (supra)** and its clarification. The delay in the instant case

is therefore not attributable to the petitioner.

16. In those circumstances, this Court directs the concerned District Inspector of Schools (Primary Education), Purba Bardhaman to calculate the quantum of refund to be made by the petitioner and the interest component thereon in terms of the memorandum dated June 13, 2014 already given effect to by DPPG as referred to in paragraph 10 of the **Pramila Behra decision (supra)**, within a period of one month from date upon receipt of the calculation from the D.I.

17. The petitioner shall deposit the said amount together with interest within a period of one month thereafter.

18. The DPPG shall within a period of 2 weeks thereafter issue PPO in favour of the petitioner.

19. Let arrears of family pension be paid to the petitioner from the date of retirement in the instant case of the employee concerned, namely, Dinabandhu Dutta, till the date of actual payment, however, without interest, within a period of 2 months thereafter. The pension shall, however, commence immediately upon the issuance of PPO.

20. With the aforesaid observations, the instant writ petition shall stand disposed of.

21. There shall be no order as to costs.

22. Urgent photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of all formalities

(Rajasekhar Mantha, J.)