IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

FMA No. 762 of 2019

CSTC Retires' and Pensioners' Association and Anr.

Vs.

State of West Bengal & Ors.

For the Appellants	:	Mr. Piyush Chaturvedi, Adv. Mr. Chittapriya Ghosh, Adv. Mr. Goutam Acharya, Adv. Ms. Maitrayee Chatterjee, Adv.
For the C.S.T.C.	:	Mr. Amal Kumar Sen, Adv. Mr. Sabyasachi Mondal, Adv.
For the State	:	Mr. Tapan Kumar Mukherjee, Sr. Adv. Mr. Somnath Naskar, Adv. Mr. Alok Banerjee, Adv.
Hearing concluded on	:	December 04, 2024
Judgment on	:	December 13, 2024

<u>Md. Shabbar Rashidi, J.</u>:-

1. The appeal is in assailment of judgment and order dated March 22, 2017 passed in WP 4114 (W) of 2013 dismissing the writ petition without granting any relief to the appellants/writ petitioners.

2. The facts giving rise to the present litigation, in a nutshell, is that the writ petitioner is a registered association. All its members are the retired employees of Calcutta State Transport Corporation (CSTC) retired between 1999 and 2008. It was the claim of the members of the appellant organization that they are entitled to receive pension under the provisions of CSTC Employees (Death-cum-Retirement Benefits) Regulations, 1990. They claimed the benefits without refunding the employer's share of provident fund and gratuity rather; they claimed adjustment to the same out of the arrears of pension.

3. It is the case of the writ petitioners that the employees of CSTC were initially employees under the Directorate of Transport, Government of West Bengal governed by the Road Transport Corporations Act, 1950. Later on, being empowered by Section

45 of the Road Transport Corporations Act, 1950 and with the sanction of the State Government, Calcutta State Transport Corporation Employees Service Regulations were framed governing the service condition of the employees of the Corporation. Similarly, in exercise of such powers, CSTC Employees' (Death-cum-Retirement Benefits) Regulations, 1990 were framed which were brought into effect on April 22, 1991 with retrospective effect from April 1, 1984.

4. According to the case made out by the writ petitioners, in terms of DCRB Regulations, 1990 all employees of the Corporation who were on its payroll as on April 1, 1984 and retired subsequently were entitled to receive pension under the said Regulations, subject of course to, their option in this regard. Accordingly, according to the writ petitioners, all the members of the writ petitioner association opted for pension in terms of the provisions of the Regulations of 1990. However, the members of the petitioner association withdrew their option to receive pension as they were made to believe that the pension benefits extended under the Regulations were irregular.

5. It was the further case of the writ petitioners/appellants that subsequently the members of the appellant association observed that the pension under the Regulations of 1990 was quite regular. For this reason, the members of the appellant association again applied for the benefits of the pension scheme.

6. The appellants also submitted that by a memo dated July 2, 2007, respondent No. 5 called upon one of the members of the appellant association to deposit the amount of employer’s share of contributory provident fund and the amount of that gratuity in excess of ₹ 70,000/– in order to avail the benefits of the pension scheme under the DCRB Regulations, 1990. It was the contention of the appellants that its members had no money to refund the benefits they had already received including the employer’s share of contributory provident fund. As such, the appellant association prayed that such employer’s share of the contributory provident fund together with the amount of gratuity paid in excess of ₹ 70,000 may be adjusted against the arrears of pension and, if necessary, against future pension. The respondent authorities having not extended the benefits of pension scheme to the members of the appellant association on such terms, the present lis in the form of a writ petition being WP 4114 (W) of 2013, was initiated by the appellant association who is espousing the cause of its members.

7. In support of their contention, the appellants drew our attention to Clause 63 (2) of the DCRB Regulations which provided for refund of the employer's share of contributory provident fund and any other retirement benefits already drawn by the employee with the interest which he received under Payment of Gratuity Act or other rules and Acts, in order to be eligible for the pensionary benefits under the Regulations of 1990.

8. The appellants relied upon an unreported decision of this Court rendered in ***WP 6083 (W) of 2009 (Ranjit Kumar Ghosh vs. Calcutta State Transport Corporation & Ors.)*** and appeal thereof reported in ***2013 SCC OnLine Cal 15528 (Calcutta State Transport Corporation & Ors. vs. Ranjit Kumar Ghosh)***. In support of their contention, the appellants also relied upon ***2023 SCC OnLine SC 594 (Calcutta State Transport Corporation & Ors. vs. Ashit Chakraborty and Ors.)*** and

(2016) 13 Supreme Court Cases 797 (Asger Ibrahim Amin vs. Life Insurance Corporation of India).

9. Learned advocate for the appellants also submitted that delayed approach to Courts does not vitiate the rights of the appellants, though; it may result in bringing down the relief to the period of limitation. To such proposition, learned advocate for the appellants relied upon ***(2008) 8 Supreme Court Cases 648 (Union of India and Others vs. Tarsem Singh)***.

10. Per contra, the respondents' case was that the writ petition filed by the appellant association on behalf of its members was not maintainable in law.

11. It was further contended by learned advocate for the respondents that the members of the appellant association, initially opted for the DCRB scheme. Thereafter, they voluntarily opted out of DCRB scheme and opted for CPF scheme, while they were still in service and received all their post retiral benefits under the CPF scheme. Now, after a lapse of over a decade, the appellants have again come up claiming the benefits of DCRB scheme. According to the respondents, the claim of the appellants cannot be acceded to for the delayed approach. In support of such contention, the respondents have relied upon the decisions reported in ***(2015) 15 Supreme Court Cases 1 (Prabhakar vs. Joint Director, Sericulture Department and Another)***, ***(2022) 2 Supreme Court Cases 25 (Union of India and Others vs. N. Murugesan and Others)*** and ***2024 SCC OnLine Cal 8083 (Indian Institute of Management Calcutta & Ors. Vs. Ananta Kumar De & Ors.)***.

12. It was further case of the respondents that the members of the appellant association voluntarily withdrew from the DCRB scheme and switched over to the CPF scheme. According to the respondents, the members of the appellant association opted for DCRB scheme and thereafter, at their own volition they opted to switch over to CPF scheme. They cannot be allowed to switch over the schemes at their whims and caprice. According to the respondents, the relief sought for by the appellant was barred by estoppel and acquiescence.

13. The respondents also submitted that the provisions of clause 63 of the DCRB Regulations will not come to the aid of the members of the appellant association. According to the respondents, the benefits in clause 63 of such Regulations, were available to the employees who had already withdrawn the retirement benefits under the CPF scheme and wanted to switch over to the benefits of DCRB Regulations. On the contrary, the members of the appellant association previously opted for pension scheme under DCRB regulations and thereafter, voluntarily switched over to the CPF scheme. Not only that, after switching over to the CPF scheme, the members of the appellant association received all retiral benefits including gratuity under the Payment of Gratuity Act.

14. The respondents further submitted that the offer afforded by the Managing Director of the corporation in 2007 to one of the members of the appellant association with regard to switching over from the CPF scheme to DCRB scheme, was beyond jurisdiction. The Managing Director had no authority to issue such letter. According to respondents, there was never any scheme or policy in place to extend the benefits of DCRB scheme to the employees who had initially opted for pension regulations and later opted to switch over to CPF scheme and having enjoyed all the post-retirement benefits including the gratuity.

15. It was further case of the respondents that the members of the appellant association previously opted for the pension scheme. Subsequently, they voluntarily switched over to the CPF scheme and have received all the retiral benefits under such a scheme. They, after a lapse of a period of over a decade, cannot be allowed to revert back to the pension scheme.

16. Upon hearing the parties and on consideration of the materials placed before it, the learned Single Judge, although, decided the issue of maintainability of the writ petition in favour of the writ petitioners but, learned Single Judge, dismissed the writ petition holding that whenever a scheme extending the benefit of option for switching over stipulates that the benefit will be available only to those who exercise the option within the specified time, the option should be exercised within such time.

17. It is admitted position that the members of the appellant association were employees of CSTC and that they retired between 1999 and 2008. The employees of the CSTC were entitled for retirement benefits under the scheme of contributory provident fund (CPF) under the provisions of the Road Transport Corporations Act, 1950. However, in terms of an amendment CSTC Employees' (Death-cum-Retirement Benefits) Regulations, 1990, were framed which were brought into effect on April 22, 1991 with retrospective effect from April 1, 1984. The said Regulations applied to all employees who retired on or after April 1, 1984. Accordingly, such employees were given the option to opt for the DCRB Regulations of 1990.

18. It was the case of the members of the appellant association themselves, in the writ petition that they initially opted for the DCRB benefits. However, subsequently they voluntarily chose to opt out of the Regulations of 1990 and opted back for the benefits under CPF scheme on the ground that payment of DCRB benefits was irregular. The names of the members of the appellant association were entered in the list of employees who had opted for pension scheme in terms of Regulation 6 of DCRB Regulations, 1990, but later on, their names had to be struck out by CSTC on the basis of subsequent withdrawal of such option by the members of appellant association coupled with a fresh proposal to allow them to switch over to their earlier status of "employees covered under the Contributory Provident fund Scheme as well as under the Payment of Gratuity Act, 1972".

19. Subsequently, the members of the appellant association again, after lapse of a considerable time period, tried to get the benefit of DCRB Regulations, 1990 citing the provisions of Clause 63(2) of the Regulations, which provided for switching over to the benefits of Regulations of 1990 by the employees who had already received their retiral benefits under the CPF scheme, subject of course, to the condition that the concerned employee was required to refund the employer's share of provident fund and the amount of gratuity received by him in excess of ₹. 70,000/- Such attempt on the part of the members of the appellant association, was rejected by the authorities.

20. The DCRB Regulations were framed in the year 1990 and were made applicable with effect from a retrospective date of April 1, 1984. It is evident that the provisions of Clause 63 (2) were incorporated for the employees who had superannuated between

April 1, 1984 and the date of promulgation/framing of Regulations of 1990. Such employees must have received their retiral benefits under the CPF scheme before the Regulations of 1990 had seen the light of the day. Such employees were provided with a choice to opt for the DCRB scheme, on refund of employer's share of provident fund and the amount of gratuity in excess of ₹ 70,000/- received by them.

21. At no stretch of imagination, such benefits could reasonably have been extended to an employee who opted for DCRB scheme and voluntarily chose to opt out of such scheme, while still in service and had not received any benefit under the CPF scheme. It is after such employee exercising his option to be governed by DCRB scheme, voluntarily opted out of such scheme and having received all the benefits under CPF scheme, when DCRB scheme was already operational, the employee again claimed the benefits of DCRB scheme. In our view, an employee cannot be allowed to switch over between available options at his whims and caprice. The same must be governed by well defined rules and regulations.

22. The appellant has cited a writing dated July 2, 2007 addressed to one of the members of appellant association, asking him to refund the employer's share of provident fund together with the amount of gratuity, in excess of ₹ 70,000/-, received by him as retirement benefits, in order to avail the benefits of DCRB Regulations. Such writing, however, was denounced by the respondents on the ground of being issued in excess of jurisdiction vested in the Managing Director.

23. The choice to opt either the CPF scheme or the DCRB scheme, upon framing of DCRB Regulations, 1990, was a onetime offer in terms of Clause 63 (2) of the Regulations of 1990. The members of the appellant association, opted for the benefits of DCRB scheme, and thereafter, of their own volition, opted out of it and chose to be governed by the CPF scheme, much after such Regulations were framed and promulgated. Such offer was no longer available to them, as a matter of rule, since they had already exercised such option earlier.

24. However, we should not be unmindful of the fact that Clause 63 (2) of the Regulations of 1990 was a beneficial legislation and it should be construed in favour of the employee. A concession granted by the dominant partner of service agreement should not be allowed to be taken back from the subservient partner merely on some technical grounds especially when such concession forms part of a beneficial legislation for the benefits of subservient party. Moreover, the General Manager, by his writing dated July 2, 2007, addressed to one of the members of appellant association, offered the benefits of DCRB Regulations to him on condition of refund of the employer's share of provident fund together with the amount of gratuity, in excess of ₹ 70,000/-, received by him as retirement benefits. Such action on the part of the General Manager indicated that the option to opt for the benefits of DCRB Regulations was still available to the appellants.

25. In the case of ***Ranjit Ghosh*** (supra), the petitioner in WP 6083 (W) of 2009 initially did not opt for the DCRB scheme. He retired from service on July 31, 1999 and was provided with contributory provident fund benefits. He was, however, made to sign a declaration to opt for provident fund scheme after going through the provisions of the Regulations of 1990. An additional opportunity was, however, provided to him in terms of amendment in the Regulations.

26. The benefits of DCRB Scheme were further extended to certain class of employee in 2002. The relevant amendment in the Regulations, more specifically addition of clause (b) to sub-clause (iv) of sub Regulation (2) of Regulation 6, notified vide communication dated March 5, 2002 read as follows: -

> *"(b) Each employee/retiree who did not exercise option or given express consent but now prefer to come under the revised DCRB Scheme may exercise their option to come under this scheme within three months from the date of publication of this notification."*

27. The writ petitioner therein, in terms of the fresh opportunity provided to him by memo dated March 5, 2002, chose for the pension scheme which was not accepted by the authorities. It is in this context, a Single Judge of this Court allowed the writ petition extending the benefit of pension scheme to the petitioner.

28. The respondents CSTC carried an appeal against the order of learned Single Judge. The Coordinate bench upheld the judgment of the learned Single Judge holding that the writ petitioner availed of the fresh opportunity provided to him in terms of the notification of 2002 and as such he was entitled to the DCRB scheme.

29. As noted earlier, in the case at hand, the writ petitioner/respondent had exercised such option. They opted out of it for some reason and exercised fresh option in terms of the notification of 2002. The General Manager accepted such option exercised by one of the members of the appellant subject, however, to certain conditions.

30. In ***Ashit Chakraborty*** (supra), the writ petitioner had exercised his option to be governed by the DCRB scheme. However, such option was never given effect to. The authorities went on making deductions from his salary in terms of the CPF scheme. The Hon'ble Supreme Court, in consideration of the facts obtaining in the said case were pleased to observe that,

> *"13. It is not in dispute that the respondent no. 1 had exercised his right to receive pension under the 1990 Regulations in the year 1991. Thereafter, it was the duty of the Corporation to have given effect to the same. Merely*

because there were some wrong deductions from his salary and he was treated as member of the CPF Scheme, cannot be permitted to be raised as a ground to defeat his rightful claim. The pension was to start after retirement of the respondent. When the same was not released to him, immediately representation was made by him. As no response was received from the appellant, the writ petition was filed. The argument that there are number of similarly situated employees who will also stake their claims, will not deter this Court in granting the relief to the respondent, which is legitimately due to him. Rather this argument shows that the Corporation was at fault in implementing the 1990 Regulations in the cases of number of employees though these were notified on 4.1.1991 and were given retrospective effect from 1.4.1984. Technical objections are sought to be raised, which are not tenable. For any fault on the part of the Corporation, the employees cannot be made to suffer."

31. In ***Ashit Chakraborty*** (supra), the Hon'ble Supreme Court also observed in the following terms,

"12. We do not find any merit in the same argument raised by the counsel for the appellant as was rejected by the High Court, namely, the waiver of the right to receive pension by the respondent no. 1. There was no conscious abandonment of right to receive pension by the respondent no. 1 to deprive him of his pension. Reference can be made to judgment of this Court in Kalpraj Dharamshi v. Kotak Investment Advisors Limited1. Relevant para 119 thereof is extracted below:—

> *"119. For considering, as to whether a party has waived its rights or not, it will be relevant to consider the conduct of a party. For establishing waiver, it will have to be established, that a party expressly or by its conduct acted in a manner, which is inconsistent with the continuance of its rights. However, the mere acts of indulgence will not amount to waiver. A party claiming waiver would also not be entitled to claim the benefit of waiver, unless it has altered its position in reliance on the same."*

32. In the present case, the members of the appellant association, although, exercised option to be governed by the DCRB Scheme, opted out of it consciously on a notion that payment under the Scheme was not regular but later on they realized it to be otherwise and wanted to come back into such scheme. The General Manager, as late as in 2007 found the same to be still available to them subject to conditions detailed in Clause 63 (2) of the Regulations of 1990. The Regulations were promulgated in 1991 with retrospective effect of 1984. The benefits were further extended by an amendment made in the Regulation in the year 2002. The benefits of such beneficial legislation to the employees could not have been curtailed on technical grounds.

33. In ***Tarsem Singh*** (supra), the Supreme Court, on the point of delayed approach, laid down that,

> *"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition."*

34. Similarly in the case of ***Asger Ibrahim Amin*** (supra), Supreme Court noted that, as regards the issue of delay in matters pertaining to claim of pension, the same being a continuing or successive wrong, delay and latches or limitation will not thwart the claim so long as the claim, if allowed, does not have any adverse repercussion on the settled third-party rights.

35. In the instant case, however, the issue involved is not of delay or latches. The members of writ petitioner association, initially, opted for the pension scheme within the stipulated time. Thereafter, they of their own volition opted out of it and chose to be governed by CPF scheme. After so many years of their superannuation, they are again claiming a right which they consciously relinquished. Subsequent legislations extending the benefits as late as in 2002 coupled with its acknowledgement by the General Manager in 2007, comes to the aid of the appellant to the effect that the claim of the appellant is not a stale and belated one.

36. ***Indian Institute of Management*** (supra) dealt with the delay and latches as well as acquiescence in approaching the court in the following terms that's to say: -

> *"25. The private respondents herein have fallen within the purview of paragraph 22.2 of Arvind Kumar Srivastava (supra). Private respondents have not been able to establish that they are governed by the exception noted in paragraph 22.3 thereof. The last judgment and order of the High Court on the issue of entitlement of pay as library staff had been rendered by the Division Bench on June 3, 2008. Division bench on June 2008 had upheld the order of the learned Single Judge dated September 17, 2003 passed in the writ petition filed by a section of the library staffs. The private respondents were not parties in such writ petition or in the appeal preferred therefrom. Neither the order dated September 17, 2003 nor the order of the appeal court dated June 3, 2008 directed grant of pay revision benefits to all library staffs of the appellant No. 1. Neither of these 2 orders can be construed to be orders that have been passed in rem. Neither the writ petition nor the appeal had been filed in representative character. No steps akin to Order I Rule 8 of the Civil Procedure Code, 1908 had been taken therein. All parties affected thereby have not been made parties therein.*
>
> *26. Private respondents had delayed approaching the Court in respect of a cause of action which arose on February 28, 1989 till 2022 when they filed the writ petition which resulted in the impugned judgment and order. Private respondents have not explained the delay in approaching the writ court."*

37. In ***Prabhakar*** (supra), the Supreme Court held that,

> *"38. It is now a well-recognised principle of jurisprudence that a right not exercised for a long time is non-existent. Even when there is no limitation period prescribed by any statute relating to certain proceedings, in such cases courts have coined the doctrine of laches and delays as well as doctrine of acquiescence and non-suited the litigants who approached the Court belatedly without any justifiable explanation for bringing the action after unreasonable delay. Doctrine of laches is in fact an application of maxim of equity "delay defeats equities".*

38. Similarly, in the case of ***N. Murugesan*** (supra), the Hon'ble Supreme Court observed that,

> *"25. Acquiescence would mean a tacit or passive acceptance. It is implied and reluctant consent to an act. In other words, such an action would qualify a passive assent. Thus, when acquiescence takes place, it presupposes knowledge against a particular act. From the knowledge comes passive acceptance, therefore instead of taking any action against any alleged refusal to perform the original contract, despite adequate knowledge of its terms, and instead being allowed to continue by consciously ignoring it and thereafter proceeding further, acquiescence does take place. As a consequence, it reintroduces a new implied agreement between the parties. Once such a situation arises, it is not open to the party that acquiesced itself to insist upon the compliance of the original terms. Hence, what is essential, is the conduct of the parties. We only dealt with the distinction involving a mere acquiescence. When*

> *acquiescence is followed by delay, it may become laches. Here again, we are inclined to hold that the concept of acquiescence is to be seen on a case-to-case basis."*

39. In the case at hand, the members of the appellant association consciously abdicated their claim to be governed by the DCRB scheme. They opted for CPF scheme after opting out of the scheme under Regulations of 1990. Now they are again claiming to be governed by DCRB scheme. They have all along been pursuing their cause which crystallized in 2007. The appellant approached the court in 2013. The chronology of events does not and cannot brandish the claim of the appellant as stale claim.

40. In the light of discussions made hereinabove, we set aside the impugned judgment and order. The members of the appellant association shall be at liberty to opt for the DCRB Scheme subject to fulfillment of the conditions envisaged under Clause 63 (2) of the DCRB Regulations, 1990, as contained in memo dated July 2, 2007, issued by respondent no. 5.

41. The writ petitioners shall be entitled to apply for the benefits of DCRB Regulations within eight weeks from date. If applied, the respondent authorities shall decide such claim within four weeks from the date of such application and communicate its decision to the applicant forthwith.

42. Accordingly, the instant appeal being **FMA 762 of 2019** is hereby allowed and thus, disposed of without any order as to costs. Connected applications, if any, shall also stand disposed of.

43. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

44. I agree.

[DEBANGSU BASAK, J.]