Sl. No. 17

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

FMA 319 of 2024
with
CAN 1 of 2024

Smt. Sitima Kolay
-Vs-
State of West Bengal & Ors.

For the Appellant	:	Mr. Baidurya Ghosal Ms. Aatreyee Dutta Mr. Saikat Mikherjee
For the State	:	Mr. Pinaki Dhole Ms. Indrani Nandi
For the Municipality	:	Ms. Mousumi Bhowal Mr. Aman Gupta Mr. Ishan Bhattacharya
Heard on	:	10.06.2024
Judgment on	:	10.06.2024

Joymalya Bagchi, J. :-

1. Appellant was employed as an Assistant Teacher in a Free primary school run by respondent-South Dumdum Municipality since 1969. In

1982 pay and allowances of the employees were revised. As per Clause 'G' of the Scheme all employees were entitled to exercise option whether to opt for the revised scale of pay or to continue under the existing pay scale. The option so exercised was to be final. In terms of the aforesaid Clause in 1982, the appellant had opted for Contributory Provident Fund-cum-Gratuity instead of Family Pension-cum-Gratuity. Couple of years prior to his retirement in 2004, appellant wrote a letter seeking to change his option and avail General Family Pension-cum-Gratuity Scheme. He retired in 2007 and approached this Court seeking direction upon the respondent authorities to permit him to avail the General Family Pension-cum-Gratuity Scheme. Learned Single Judge declined his prayer.

2. Learned Counsel for the appellant submits his client had erroneously availed the Contributory Provident Fund Scheme. Subsequently he made a prayer to correct the error but the respondent authorities unfairly did not accede to such prayer. He had not received the benefits under the Contributory Pension Scheme till date and no prejudice would be caused to the respondent authorities if they favourably considered such prayer.

3. Per contra, learned Counsels for the respondents/State and Municipality submit the relevant Clause under the Scheme under Revision of Pay and Allowances (ROPA for short) lays down option

exercised by an employee shall be final. There is no scope to alter the option.

4. We have considered the impugned order in the light of the submissions made before us. The Hon'ble Single Judge, inter alia, observed no provision permitting switch over from Contributory Provident Fund to General Family Pension-cum-Gratuity Scheme had been placed. Relevant Clause 'G' relating to exercise of option under ROPA reads as follows :

> **"G. Exercise of option -**
>
> 1. The option to come under the revised scales of pay will have to be exercised in the prescribed form as per Annexure B within 90 days from the date of issue of a circular by the Municipality duly accepting the Government decision for implementation of the revised scales of pay etc. provided that in the case of an employee who is on leave or on deputation or on foreign service or under suspension on the date of issue of circular by the Municipality in this regard, the said option shall be exercised not later than 90 days of the date of his return from such leave, deputation, foreign service or on resumption of duty after suspension, as the case may be ;
>
> 2. If option is not exercised by any individual employee within the time limit referred to above, his pay shall be fixed in the revised scale of pay –
>   (a) in the case of an employee in service on 31st March 1981 – with effect from 1st April, 1981 ; and
>
> (b) in the case of an employee appointed after 31st March, 1981 with effect from the date of appointment.

3. A person who was in service on 31st March, 1981 but could not exercise option within the prescribed time limit due to death, shall be deemed to have opted for the revised scales of pay from 1st April, 1981 or such later date as is admissible and most beneficial to his/her dependents if the revised scale of pay is more favourable.

4. The option once exercised will be final."

5. Sub Clause (4) unequivocally states that option exercised by an employee shall be final. Appellant had exercised his option in 1983 in favour of Contributory Provident Fund Scheme. After more than three decades he claimed he had erroneously done so and prayed to switch over to General Family Pension-cum-Gratuity Scheme. Factual matrix of the case does not demonstrate that the exercise of option was non-voluntary. When an employee has voluntarily exercised his option under ROPA and availed Contributory Provident Fund Scheme the option so exercised becomes final and binding and cannot be subsequently altered.

6. Respondent municipality submits they were ready and willing to hand over a cheque of Rs.6,17,807/- as Contributory Provident Fund to the appellant but the latter had refused to accept the same. Under such circumstances, we direct the appellant to collect the benefits under the Contributory Provident Fund Scheme from the municipality concerned and in the event the appellant approaches the municipality the amount

shall be forthwith handed over to him within two working days but without interest.

7. In the light of the aforesaid discussion, we are of the opinion the impugned order does not call for interference. Appeal is accordingly dismissed.

8. In view of dismissal of appeal, connected application being CAN 1 of 2024 is also dismissed. There will be no order as to costs.

I agree.

(Gaurang Kanth, J.) **(Joymalya Bagchi, J.)**

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