

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 388 of 2018

**Gopal Dutta
Versus
The State of West Bengal & Ors.**

For the petitioner : Mr. Manash Kumar Ghosh
Ms. Susmita Dey (Basu)

For the respondent : Mr. Amal Kumar Sen
CSTC Mr. Sabyasachi Mondal

Heard on : 02.04.2024

Judgment on : **02.04.2024**

Raja Basu Chowdhury, J:

1. The petitioner was an employee of Calcutta State Transport Corporation (hereinafter referred to as the "said Corporation"). The petitioner was superannuated on 30th April, 2017.
2. It is the petitioner's case that the (Death-cum-Retirement) Benefit Regulations, 1990 (hereinafter referred to as the "said Regulation") which came into force with retrospective effect from 1st April, 1984 is applicable to the employees of the said Corporation. The petitioner contends that in terms of the said Regulation, which was

subsequently amended in the year 2002, the time to exercise the option was extended till 4th June, 2002. The petitioner had duly exercised the option and had opted for pension cum gratuity and had relinquished his claim to the employer's contribution to his contributory provident fund account. It is the petitioner's case that notwithstanding exercising such option, pension was not disbursed in his favour. In such circumstances, the petitioner had made a representation for release of his monthly pension. Since, his representation was not adhered to, the petitioner had filed the instant writ petition.

3. Records reveal that in terms of the direction passed by a Coordinate Bench of this Court on 15th February, 2018, CSTC had filed a report in the form of an affidavit on 22nd April, 2019. From such report it would be apparent and clear that the petitioner during his service tenure in terms of the said Regulation, had exercised his option on 10th January, 2002.
4. Mr. Ghosh, learned advocate appearing for the petitioner submits that once, the respondents had recognized that the petitioner had exercised his option in terms of the said Regulation, it was the obligation of the respondents to disburse pension in favour of the petitioner consequent upon his retirement. By referring to Regulation 64 of the said Regulation it is submitted that the employees of the Corporation who will exercise their option for pension under the pension Regulations will be guided by the

General Provident Fund Rules, as applicable to the employees of the Government of West Bengal. Incidentally, however, before the retirement of the petitioner, he had written a letter dated 23rd July 2014, whereby, he had purported to withdraw the option exercised by him under the said Regulation. According to Mr. Ghosh, the said letter was issued on the basis of an incorrect advice. In any event, it is submitted that the said Regulation does not envisage withdrawal of option once the same is exercised. By placing a supplementary affidavit which is taken on record it is submitted that by a circular dated 21st June/7th July, 2001 issued by the Joint Secretary to the Government of West Bengal, Transport Department which has been annexed to the said supplementary affidavit at page 5, the Joint Secretary to the Government of West Bengal in his communication to the Managing Director of the Corporation, while referring to the said Regulation, had categorically clarified that there is no scope to withdraw an option, once, the same is exercised. By further referring to the judgment passed by a Coordinate Bench of this Court in WPA no. 6808 (W) of 2018 in the case of **Ashit Chakraborty v. The State of West Bengal & Ors.**, on 17th August, 2018, it is submitted that in an identical set of facts, the Coordinate Bench of this Court having found that the Corporation could not hold back the legitimate claim of the employees who had exercised similar option, had directed the Corporation to disburse the monthly pension in favour of such ex-employee of the

Corporation including arrears of pension along with interest @6% per annum.

5. It is submitted that although, an Intra-Court Appeal was preferred, the Division Bench of this Court by a judgment and order dated 5th March, 2021, in FMA 692 of 2019 was, *inter alia*, pleased to affirm the said order. Mr. Ghosh further submits that challenging the aforesaid direction passed by the Hon'ble Division Bench, the Corporation had applied before the Hon'ble Supreme Court by filing a Special Leave Petition, being Special Leave to Appeal (C) No.11991 of 2021. By a judgment and order dated 8th May, 2023 the Hon'ble Supreme Court after granting leave to appeal had dismissed the same by, *inter alia*, observing as follows:-

“ 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 state 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.”

6. Mr. Ghosh submits that the petitioner's case is identical and similar to the above case, and similar benefits should be afforded in favour of the petitioner.
7. *Per contra*, Mr. Sen, learned advocate representing the Calcutta State Transport Corporation, submits that in the instant case although, the petitioner had exercised his option, however, the Corporation had been depositing the employer's share of contribution which was enhanced from time to time in terms of the Employees' Pension Scheme, 1995, with the provident fund authorities. He submits, if the aforesaid writ petition is allowed the respondents shall face serious difficulties in recovering the aforesaid amount, even if the petitioner is directed to refund the employer's share of provident fund contribution.
8. It is still further submitted that the present case is not identical to the case of **Ashit Chakraborty** (supra). In the instant case, the petitioner had subsequently during his service tenure had issued a letter dated 23rd July, 2014 thereby withdrawing the option exercised by him. According to Mr. Sen, the petitioner having issued the said letter cannot be entitled to the benefits of pension scheme under the said Regulation. In support of his aforesaid contention, he has placed reliance on the judgment delivered by the Hon'ble Supreme Court in the case of **Galada Power and**

Telecommunication Limited v. United India Insurance Company Limited & Anr., reported in **(2016) 14 SCC 161**, and the case of **General Manager, Sri Siddeshwara Cooperative Bank Limited & Anr. v. Ikbal & Ors.**, reported in **(2013) 10 SCC 83**. By placing before this court, a reply/rejoinder to the supplementary affidavit filed by the petitioner, which is taken on record, it is submitted that the letter dated 21st June/7th July, 2001, written by the Joint Secretary to the Government of West Bengal, Transport Department cannot have the effect of diluting the withdrawal of option by the petitioner from the pension scheme, by issuing the letter dated 23rd July, 2014. Having regard to the aforesaid, he submits that no relief should be afforded in favour of the petitioner.

9. Heard the learned advocates appearing for the respective parties and considered the materials on record. In this case it is noticed that the petitioner had duly exercised the option in terms of the aforesaid Regulation. If the respondents had deposited provident fund contributions by ignoring the option, the petitioner cannot be made responsible therefor. Mr. Sen, however, by placing reliance on a letter dated 23rd July, 2014 issued by the petitioner contends that the petitioner had relinquished his right to be entitled to the benefits of the said Regulation by purporting to withdraw the said option. I find that the petitioner's signature appears on the said withdrawal letter.

10. In this context, it would be relevant to take note of the circular dated 21st June/7th July, 2001 issued by the Joint Secretary to the Government of West Bengal, Transport Department which has been annexed to the supplementary affidavit filed by the petitioner. From the aforesaid document it would be apparent that the Joint Secretary to the Government of West Bengal in his communication to the Managing Director of the Corporation while referring to the said Regulation had categorically observed and directed as follows:-

“I am directed to refer to your letter No.002/703 dt. 3.2.2001 on the subject noted above and to say that the Finance Deptt. has informed their inability to agree with the proposal of withdrawal of option for pension by the employees as there is not scope in the CSTC D.C.R.B. Regulation for re-option to remain outside the pension scheme after exercising option to be guided by the said Regulations.”

11. Having regard to the aforesaid, I find that there is no scope on the part of the Corporation to accept the letter of withdrawal dated 23rd July, 2014 and to act on the basis thereof. Further, Regulation 64 of the said Regulation also does not provide any opportunity for withdrawal of option, once the same is exercised. Having regard to the aforesaid, I am of the view that the respondents could not have acted on the basis of the letter dated 23rd July, 2014.

12. It is also noticed that in a similar case, this Hon’ble Court taking note of the option exercised on the part of the ex-employee of the Corporation and the failure of the Corporation to give effect to the same, had been pleased to hold that there was no justification for

the Corporation to hold back the legitimate claim of the employee, and had accordingly directed disbursal of pension. In view thereof, and taking note of the option exercised by the petitioner, I find that it was the obligation of the respondents to give effect to the same. Although Mr. Sen, learned advocate by placing reliance on the judgments delivered in the cases of ***Galada Power & Telecommunication*** (supra), and ***General Manager, Sri Siddeshwara Cooperative Bank Limited*** (supra) has, *inter alia*, tried to contend that the petitioner having relinquished his right is not entitled to claim pensionary benefits, I find that the judgments relied on by Mr. Sen have been rendered in different set of facts. In the case of ***Galada Power & Telecommunication*** (supra) the question involved was whether the insurer having acted on the basis of a complaint made by the insured and having nominated a surveyor to verify the loss could not be subsequently permitted to contend that the claim is hit by the clause pertaining to duration. In absence of any mention in the letter of repudiation as also from the conduct of the insurer in appointing a surveyor, the Hon'ble Supreme Court had concluded that the insurer had waived the right which was in its favour under the duration clause. The judgment delivered in the case of ***General Manager, Sri Siddeshwara Cooperative Bank Limited*** (supra) dealt with waiver of mandatory conditions prescribed under the Security Interest (Enforcement) Rules 2002. Both the judgments are distinguishable on facts. The

issues involved in those cases are entirely different to the present case, the same does not assist the respondents. It is well settled that a judgment is an authority for what it decides. A slight variation in facts may alter the final outcome. Admittedly in this case, the petitioner had already exercised his option by relinquishing his right to the employer's share of provident fund and the respondents had acted on the basis of such option. Subsequent letter of withdrawal, could not have been acted upon by the respondents for reasons discussed above so as to disentitle the petitioner from his lawful entitlement. The petitioner having once, relinquished his right to the employer's share of provident fund, could not have subsequently given up the same by executing the letter dated 23rd July, 2014.

13. Having regard to the aforesaid, and since, the petitioner during his service tenure having no further opportunity available to him to withdraw the option, in the light of the circular dated 21st June/7th July, 2001 and the respondents not being in a position to act on the basis of the letter dated 23rd July, 2014, the same cannot stand in the way of interfering with the petitioner's right to claim pension under the said Regulation.
14. It is a matter of record that both the Division Bench of this Hon'ble Court as also the Hon'ble Supreme Court had concluded that it is the duty of the Corporation to give effect to the option once, the same is exercised. Merely because there had been some

wrong deductions from the salary of the employee, the said employee cannot be treated to be a member of CPF Scheme or a member of Employees' Pension Scheme, 1995, and the respondents cannot be permitted to raise the same as a ground to defeat the rightful claim for such person. The right to get pension immediately after retirement is a recognised right.

15. Having regard to the aforesaid and taking note of the fact that in similar circumstances, the Hon'ble Supreme Court had directed the Corporation to release pension in favour of the employee who had exercised option, I am of the view that similar benefit cannot be denied to the petitioner.
16. In view thereof, I direct the petitioner to refund the employer's share of contribution on provident fund as also the amount of gratuity already paid in excess of pensionable amount, if any, to the Corporation with interest @6% per annum within a period of two weeks from the date of the Corporation raising a demand on the petitioner. Upon receipt of such payment or in the alternative, if no such demand is raised within a period of four weeks from the date of communication of this order, the Corporation/respondents shall release pension in favour of the petitioner for the month of May, 2024 and onwards and shall continue to pay the same as per the entitlement of the petitioner in accordance with law.
17. Insofar as arrear pension, i.e. from May, 2017 till April, 2024 is concerned, the same shall be disbursed in favour of the petitioner,

in the manner provided herein, within a period of six weeks from the date of communication of this order, along with a computation sheet and the arrear pension shall also carry an interest @6% per annum from May, 2017 till the same is actually disbursed.

18. The petitioner is directed to intimate the respondents the particulars of his bank account, for the respondents to credit pension in such account.
19. With the above observations/directions, the writ petition stands disposed of. There shall be no order as to costs.
20. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Raja Basu Chowdhury, J.)