

Heard Mr.Subharangsu Panda, learned counsel for the petitioner.

None appears for the respondents.

2. The petitioner has filed the writ petition for issuance of a writ of mandamus directing the respondents to consider the representation of the petitioner dated 8.8.2014 and to forthwith allow him to exercise the benefit and/or option in terms of Memo No.749-SE(L)/SL/5S-56/13(Pt-V) dated 13.6.2014 under the Death cum Retirement Benefit Scheme, 1981.

3. The case of the petitioner is that her husband Nikhil Kumar Gosh was initially appointed as Assistant Teacher of Bongaon Kabi Keshablal Vidyapith, P.O. Bongaon, District – North 24 Parganas on 13.3.1986 and the post of the petitioner's husband was subsequently approved by the Inspector of Schools with effect from 13.3.1986. The petitioner's husband after duly appointed in the said school has been opted all the benefits as specified in the West Bengal Board of Secondary Education Act, 1963 and the West Bengal Rules of Payment and Allowances (ROPA) as amended from time to time. Unfortunately, the petitioner's husband died on 19.9.2009 while in service, leaving behind the petitioner and two sons.

4. According to the petitioner, during the continuance of the service of the petitioner's husband, he was opted the scheme of West Bengal Non-Government recognized Educational Institution Employees (Death-cum-Retirement Benefit) Scheme, 1981, which was promulgated by

giving an option to the employees either to continue to be governed by the existing rules governing retirement benefit (Contributory Provident Fund-cum-Gratuity) or to come under the pension scheme (Pension-cum-Family Pension-cum-Gratuity). Initially, the petitioner's husband exercised the option to avail the benefit of CPF-cum-Gratuity and, accordingly, the scale of pay was revised.

5. Further case of the petitioner is that ROPA 1990 was promulgated on 7.3.1990, wherein a teaching and non-teaching staff can exercise his/her option to come under the revised scale of pay and accordingly the husband of the petitioner opted the option in the pension including family pension-cum-gratuity and the same had been accepted by the concerned school authority and pursuant to such option, the scale of pay was revised. The petitioner's husband opted various benefit of ROPA during the subsistence of his service and only gratuity has been sanctioned to the petitioner in the year 2012.

6. According to the petitioner, the school authority calculated the amount which has been refunded for government share of the husband of the petitioner and the petitioner is ready to refund the government share which was created to the husband of the petitioner at his service period. The petitioner came to understand that the Government of West Bengal

issued a Circular dated 13.6.2014 thereby revising the scale of pay and based upon the said Circular, the petitioner has submitted a representation dated 8.8.2014 to the school authority *inter alia* praying to allow her to exercise the said option on behalf of her late husband, as the husband of the petitioner will do the same, if he will be alive. Despite the submission of application to the concerned authority, the concerned authority has refused to switch over the pension including Family Pension-cum-Gratuity Scheme. The authority concerned cannot deny to give the beneficiary scheme for exercising the option of revised scale of pay to the petitioner on the ground that the employee vis-à-vis her husband is dead at the time of exercising the option. The action on the part of the respondent authorities by not giving the petitioner such opportunity to avail the option is not only bad in law, but arbitrary and gross injustice upon the petitioner. Hence, the writ petition.

7. Despite several opportunities granted to the respondents, no affidavit-in-opposition is filed and the matter is pending since 2016.

8. The learned counsel for the petitioner submitted that the action on the part of the respondent authorities by not allowing the petitioner to exercise the option under Death cum Retirement Benefit Scheme, 1981

as well as by not allowing her to exercise the option in terms of the Circular dated 13.6.2014 is illegal. Further, the inaction on the part of the respondent authorities by remaining a mute spectator and/or by declining to give the petitioner her right to exercise the option in terms of the Circular dated 13.6.2014 is violation of principles of natural justice and equity. The same is also nothing but violation of the order of the Larger Bench of this Court as well as violation of the fundamental rights guaranteed under Articles 14 and 21 of the Constitution of India.

9. The learned counsel for the petitioner would submit that unless and until a mandatory order is passed by this Court for allowing the petitioner to exercise the option in terms of the Circular dated 13.6.2014, she would put to irreparable loss and hardship. In fact, narrating all these things, the petitioner had submitted a representation on 8.8.2014 and despite receipt of the same, the respondent authorities have not considered the said representation.

10. The learned counsel further submitted that in similar circumstances, this Court considered the claim of the petitioner therein and also directed the respondent authorities to consider the representation made to the authorities concerned. Thus, a prayer has

been made to direct the respondent authorities to consider the representation of the petitioner dated 8.8.2014 and pass orders thereon. In support, the learned counsel has placed reliance upon the following orders of this Court:

- (i) *W.P.A.No.12722 of 2022, decided on 23.8.2022 [Manorama Mahata v. State of West Bengal and others].*
- (ii) *F.M.A.No.620 of 2018, decided on 24.8.2022 [State of West Bengal and others v. Sefali Jana and others].*

11. When the writ petition was taken up for hearing on 7.2.2024 and 8.2.2024, none appeared on behalf of the respondents. Upon hearing the arguments of the learned counsel for the petitioner, this Court reserved the matter for judgment.

12. As could be seen from the records, the petitioner's husband was appointed as Assistant Teacher in Bongaon Kabi Keshablal Vidyapith and he opted all the benefits as specified in the West Bengal Board of Secondary Education Act, 1963 and the West Bengal Rules of Payment and Allowances. While in service, on 19.9.2009, the petitioner's husband died leaving the petitioner and two sons. After the death of her husband, the petitioner has submitted all the papers relating to pension and

pensionary benefits to the school authority and the school authority had also received the same. After passing the order by the Larger Bench of this Court, the Government of West Bengal issued a Circular dated 13.6.2014, wherein the Government of West Bengal revised the scale of pay and due to financial discrepancy of the petitioner after her husband's death, the petitioner has submitted a representation dated 8.8.2014 praying to allow her to exercise the said option on behalf of her deceased husband in terms of the said Circular.

13. In the instant case, despite several opportunities given to the respondents, none represented on behalf of the respondents, which clearly establishes the attitude of the respondent authorities in not conducting the matter in proper manner. Moreover, this Court is handicapped to know about the status of the representation given by the petitioner, which is admittedly pending with the respondent authorities.

14. It appears that the issue of conversion of CPF to GPF was initially decided by the learned Single Judge of this Court wherein it has been observed that the employees who had availed revised scale of pay in terms of ROPA 1990 and 1998 would automatically entitled to avail pensionary benefits, including dearness relief at par with the State

Government employees irrespective of the option exercised under the Scheme. Several writ petitions were filed and as against the order passed in the writ petitions, an appeal was preferred by the respondent State. A Division Bench of this Court affirmed the order of the learned Single Judge and aggrieved by the same, the respondent State preferred SLP and the same was dismissed by the Hon'ble Supreme Court. A Larger Bench was constituted to resolve the whole issue qua switch over of the option from CPF to Pension-cum-Gratuity in the case of District Inspector of Schools (SE), Kolkata v. Abhijit Baidya. The appeal preferred by the State was also dismissed and affirmed the order of the Larger Bench. In terms of the order of the Larger Bench, the Government accepted the order and to comply the order, it had issued the Circular dated 13.6.2014.

15. On 8.8.2014, the petitioner has submitted a representation seeking monthly pension. In the said representation, the petitioner has categorically stated that her husband died in harness during service and when the petitioner's husband was in service, he obtained CPF. However, in terms of ROPA 1990 and 1998, the petitioner's husband also exercised such pay fixation.

16. On a perusal of the copy of the representation dated 8.8.2014 annexed to the writ petition, it is seen that the same has been received by the Teacher-in-Charge of Bongaon Kabi Keshablal Vidyapith (HS) on the same date. However, no order has been passed on the said representation of the petitioner.

17. In W.P.A.No.12722 of 2022 dated 23.8.2022, relied upon by the learned counsel for the petitioner, the learned Single Judge of this Court, after citing the decision of a Co-ordinate Bench of this Court in the case of *Putul Mondal v. State of West Bengal and others in W.P.No.614 (W) of 2016*, directed the respondent No.4 therein to consider the petitioner's representation and dispose of the same in accordance with law.

18. In *Sefali Jana*, supra, the Division Bench considered the order of the learned Single Judge passed in WP No.9534 (W) of 2015, dated 16.3.2017. In *Sefali Jana*, supra, the Division Bench held that pursuant to the three—month period granted in para 76 of the Abhijit Baidya (supra) decision to all teachers in the State, the writ petitioners/widows of the said teachers, went to the authorities to exercise options for pension on account of the service of their deceased husbands. The authorities refused to entertain the writ petitioners and turned them

down. The State held that the decision in Abhijit Baidya and the notification issued by the State pursuant thereto applied only to the living teachers and not to their family members. While upholding the order of the learned Single Judge, the Division Bench observed that the respondents therein shall be entitled to refund the entire PF amount received by their husbands, together with any interest as has been specified under the Circular of the State issued pursuant to the Abhijit Baidya judgment. Upon refund of the said sum of money, the District Inspector of School was directed to forward the recommendations to the DPPG for issuance of pension payment order.

19. Be that as it may, the petitioner has also placed reliance on the decision of this Court in W.P.No.614(W) of 2016, dated 13.4.2017 [*Putul Mondal v. State of West Bengal and others*] and the orders passed by the Director, Pension Provident Fund and Group Insurance, Government of West Bengal. The petitioner claims to be similarly situated as *Putul Mondal*.

20. Considering the facts and circumstances of the case and limited prayer that has been sought by the petitioner, the respondent authorities are directed to consider and pass orders on the representation

of the petitioner dated 8.8.2014 in accordance with law, after affording opportunity to the petitioner, within a period of four months from the date of receipt of a copy of this order. The Director, Pension Provident Fund and Group Insurance shall be entitled to call for all the records from the office of the concerned District Inspector of Schools or from the school. The petitioner and/or her legal heir may be heard by the Director, Pension Provident Fund and Group Insurance, if necessary. It is made clear that the Director, Pension Provident Fund and Group Insurance shall consider the case of the petitioner strictly on its merit and the law after verifying all the records.

21. With the aforesaid directions, the writ petition is disposed of.
No costs.

(M.V. Muralidaran, J.)