Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 4686 of 2018

Ramprasad Sengupta
Versus
The State of West Bengal & Ors.

For the petitioner	:	Mr. Manas Kumar Ghosh Ms. Susmita Dey (Basu)
For the respondent CSTC	:	Mr. Amal Kumar Sen Mr. Sabyasachi Mondal
Heard on	:	8th February, 2024
Judgment on	:	**8th February 2024.**

Raja Basu Chowdhury, J:

1. The petitioner was an employee of Calcutta State Transport Corporation (hereinafter referred to as the "said Corporation"). He was superannuated on 31st December, 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, whereby the time to exercise the option was extended till 4th June, 2002. The petitioner claims to have 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 favour of the petitioner in terms of the said Regulation. 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. Mr. Ghosh, learned advocate representing the petitioner by placing reliance on the statements made in the rejoinder affirmed by the petitioner on 20th August 2018 submits that the petitioner had opted for pension on 23rd September 1991. By further placing reliance on the copy of the option form which is taken on record, it is submitted that the petitioner had already made over a copy of such option form to the learned advocate representing the respondents. From the aforesaid document it would be apparent and clear that the petitioner had opted for pension-cum-gratuity and had thereby relinquished his claim to the authority's contribution to the petitioner's CPF. It is submitted that there is no denial to the statements made in the rejoinder. The respondents did not question the said document. The respondents only contend that

the said document may be defective. It is submitted 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 placing reliance on a judgment delivered by a Coordinate Bench of this Court in the case of ***Ashit Chakraborty v. The State of West Bengal & Ors***. on 17th August, 2018 in **WP 6808 (W) of 2018**, it is submitted that in identical set of facts, the Coordinate Bench having found that the Corporation could not hold back the legitimate claim of the employee 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.

4. 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 thee 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".*

5. Mr. Ghosh submits that the petitioner is similarly placed with the petitioner in W.P. 6808(W) of 2018 and as such similar benefits should be afforded in favour of the petitioner.
6. *Per contra*, Mr. Sen, learned advocate representing the Calcutta State Transport Corporation submits that although, the option form disclosed by the petitioner is found on record, however, the same is a defective document. By referring to the said document, it is

submitted that the signature of the departmental head is absent on the said document. The authorities while scrutinizing the same had identified the absence of signature of the competent authority as is recorded on the copy thereof by the noting dated 4^{th} August 2017. He submits that the same cannot constitute a regular exercise of option by the petitioner. It is submitted that 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. He, however, does not dispute the fact that in somewhat similar circumstances the Coordinate Bench of this Hon'ble Court had directed the Corporation to make payment of pension in terms of the said Regulation and the ultimate challenge to the same before the Hon'ble Supreme Court, at the instance of the Corporation did not succeed.

7. Heard the learned advocates appearing for the respective parties and considered the materials on record. It is apparent and clear from the unchallenged copy of the option form that the petitioner had opted for pension-cum-gratuity and had relinquished his claim to the authority's contribution to the petitioner's provident fund account. Such option appears to have been exercised by the

petitioner on 23rd September 1991. Although, it has been contended by Mr. Sen that the aforesaid option exercised by the petitioner is an irregular exercise of option since, the signature of the competent authority is absent on such document, the report filed on behalf of the Corporation pursuant to the orders dated 5th July 2018 and 6th August 2018 does not mention any such irregularity in the option form. It is further not in dispute that the aforesaid option form disclosed by the petitioner is available in the records of the Corporation. It may also be noticed that in somewhat similar circumstances, this Court taking note of the option exercised on the part of the employee and the failure on the part 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, 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. If the option form had not been countersigned by the competent authority of the respondents and if the respondents had deposited the provident fund contributions by ignoring the option, the petitioner cannot be made responsible therefor.

8. 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 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 recognized right.

9. 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, and failure of the competent authority to countersign the option form cannot be attributable to the petitioner, I am of the view that pensionary benefits cannot be denied to the petitioner.

10. 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 six weeks from the date of communication of this order, the Corporation/respondents shall release pension in favour of the petitioner for the month of April, 2024 and onwards and shall continue to pay the same as per the entitlement of the petitioner in accordance with law.

11. Insofar as arrear pension, i.e. from January 2018 till March, 2024 is concerned, the same shall be disbursed in favour of the petitioner, in the manner provided herein, within a period of twelve (12) 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 the date of superannuation of the petitioner till the same is actually disbursed.
12. The petitioner is directed to intimate the respondents the particulars of his bank account, for the respondents to credit pension in such account.
13. With the above observations/directions the writ petition stands disposed of.
14. There shall be no order as to costs.
15. 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.)

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