

Form No.J(2)

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

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 6461 of 2018

Nilotpal Chakraborty
Versus
The State of West Bengal & Ors.

For the petitioner : Mr. Swarup Paul
Mr. Guru Saday Dutta
Mr. Anish Roy

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

Heard on : 21.02.2024, 20.03.2024 & 27.03.2024

Judgment on : **27th March, 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 31st May, 2016.
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 disbursed for a limited period starting from June, 2016 to January, 2018. Since February, 2018 the same was stopped. 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 18th June, 2018, CSTC had filed a report in the form of an affidavit on 6th August, 2018. 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 28th January, 1992.
4. Mr. Paul learned advocate representing the petitioner submits that in the interregnum all on a sudden the petitioner received an intimation from its banker on 3rd July, 2017 that an amount of Rs.2396/- had been deposited in his bank account under Employees' Pension Scheme, 1995. Initially, the petitioner thought that such amount had been deposited by way of mistake. Later,

when a fresh deposit was made in August, 2017 and the petitioner was served with a Pension Payment Order dated 21st August, 2017, issued by the Employees Provident Fund Organization, the petitioner had immediately made a representation explaining all details as regards exercise of option under the said Regulation. Copy of such representation was duly forwarded by the petitioner to the Accounts Officer (Fund) of the Corporation. Since, the same did not yield any result, the petitioner was compelled to make a further representation to the Administrative Personal Officer of the Corporation and then again to the Accounts Officer (Fund) of the Corporation and the Regional Provident Fund Commissioner on 16th February, 2018. Consequent upon the same the above pension under the EPF Scheme 95 was stopped from March 2018.

5. According to Mr. Paul, the petitioner had signed a declaration sometimes in the year 2018 at the instance of the respondents claiming that he did not submit any option form under the said Regulation and will not claim any benefit in future. According to Mr. Paul, the aforesaid document was executed under a false premise. Be that as it may, according to Mr. Pal, the aforesaid document could not have disentitled the petitioner from claiming his pension under the said Regulation. Admittedly, the respondent had not disbursed the employer's share of provident fund contribution and/or the entire gratuity amount. According to Mr. Paul, the petitioner to be entitled to the benefits of the said Regulation, had

voluntarily by exercising option form, relinquished his right to receive the employer's share of contribution to his provident fund account. The respondents had acted on the basis of the aforesaid option form and had not made payment of employer's share of provident fund.

6. In the circumstances, as aforesaid, the respondents cannot be permitted to deny the petitioner the benefits under the said Regulation. According to the petitioner, 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.
7. 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. Paul 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”.

8. According to Mr. Paul the petitioner's case is identical to the case of **Ashit Chakraborty** (supra) and similar benefits should be afforded in favour of the petitioner.
9. *Per contra*, Mr. Sen, leaned 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.

10. 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 executed a declaration so as to give a go-by to the pensionary benefits under the said Regulations. According to Mr. Sen, the petitioner having executed the said declaration cannot be entitled to the benefits of pension scheme under the 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. Ikbali & Ors.**, reported in (2013) 10 SCC 83. Having regard to the aforesaid, he submits that no relief should be afforded in favour of the petitioner.
11. 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. It is noticed that the petitioner had exercised his option and the respondent had acted on the basis thereof and did not make payment/disburse the Corporation's contribution to the provident fund account of the petitioner. In fact, in furtherance to the aforesaid option exercised by the petitioner the respondents had also started disbursing pension under the said Regulation. Such pension was disbursed for the period between June, 2016 and January, 2018. Unfortunately, without any rhyme or reason such payment was stopped. Mr. Sen, however, by placing reliance on a declaration executed by the petitioner sometimes in August, 2018 contends that the petitioner had relinquished his right to be entitled to the benefits of the said Regulations. I find that the petitioner's signature appears on a declaration memo No. 002/593(23) dated 23rd December, 2000. The said document is a typed memorandum with blank spaces. The particulars as regards the name and designation of the employee concerned have been kept blank to be filled up later. The typed portion contains the words that *"I.....hereby declare that I did not submit any 'Option Form' for pension under the CSTC Employee DCRB Regulation in 1991-92 at any unit of this Corporation and I would not claim for pension in future."* Admittedly, the aforesaid declaration is contrary

to the record. For whatever reason the petitioner may have executed the said document, such document cannot be relied on by the respondents for the purpose of disentitling the petitioner of its legitimate rights especially when the Corporation had acted on the basis of the option exercised by the petitioner and had not made payment of the Corporation's share of contribution of provident fund to the contributory provident fund account of the petitioner and had also started disbursing pension in terms of the regulation prior to execution of the aforesaid memorandum.

12. It is also noticed that in an identical 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 judgment delivered in the case of **Galada Power & Telecommunication** (supra) and the **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.

The issues involved in those cases are entirely different to the present case the same does not assist the respondents. Admittedly in this case, the petitioner had already exercised his option by relinquishing his right to the employers share of provident fund and the respondents had acted on the basis of such option. Subsequent to the petitioner's retirement, the respondents could not have obtained a further declaration from the petitioner to disentitle him from his lawful entitlement. In any event, such declaration is contrary to the records and does not inspire confidence of the Court, the same cannot be relied upon. The petitioner having once, relinquished his right to the employers share of provident fund could not have subsequently given up the same by executing the defective declaration. It may be noted that the Hon'ble Supreme Court in the case of **Calcutta State Transport Corporation v. Ashit Chakraborty & Ors.**, SLP (C) No.11991 of 2021 while placing reliance on the case of **Kalpraj Dharamshi & Anr. v. Kotak Investment Advisors Limited & Anr.** in paragraph 10 was, *inter alia*, pleased to observe as follows:-

“10. 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”.

14. Having regard to the aforesaid, and the petitioner during his service tenure having not abandoned his right by purporting to execute

the declaration, the same cannot stand in the way of interfering with the petitioner's right to claim pension under the said Regulation.

15. 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.

16. 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.

17. 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.

18. Insofar as arrear pension, i.e. from February, 2018 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 February, 2018 till the same is actually disbursed.

19. The petitioner is directed to intimate the respondents the particulars of his bank account, for the respondents to credit pension in such account.

20. With the above observations/directions, the writ petition stands disposed of. There shall be no order as to costs.

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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