IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

M.A.T. 727 of 2019
with
CAN 1 of 2023

Dulal Chandra Paul
VS.
The State of West Bengal & Anr.

For the Appellant : Mr. Bikash Ranjan Bhattacharya, Sr. Adv.,
Mr. Sankar Paul
Mr. Goutam Malik

For the CSTC : Mr. Amal Kumar Sen, A.G.P.,
Mr. Sabyasachi Mondal

Heard on : June 24, 2024

Judgment on : June 24, 2024

DEBANGSU BASAK, J.:-

1. The appeal is directed against the order dated April 2, 2019 passed in W.P. 7216 (W) of 2019 by which the prayer for grant of pension under the Calcutta State Transport Corporation Employees (Death cum Gratuity Benefit) Regulations 1990 was disallowed on the ground that the appellant before the Court permitted the Corporation to deduct on account of Contributory Provident Fund (CPF)(Employer's share) for a considerable period of time.

2. Learned senior Advocate appearing for the appellant submits that the appellant exercised his option to come within the purview of the Regulations of 1990 subsequent to such Regulations coming into effect. He refers to page 134 of the stay application where the exercise of option was recorded in the service records of the appellant.

3. Learned senior advocate appearing for the appellant relies upon **2023 SCC online 594** (**Calcutta State Transport Corporation & Ors. Vs. Ashit Chakraborty & Ors.**) and submits that the same issue was considered by the Hon'ble Supreme Court and the Corporation was directed to grant the benefits under the Regulations of 1990 to the employee concerned therein. He submits that the present facts and circumstances of the case are similar to those obtaining in **Asit Chakraborty** (supra). Consequently same benefit should be extended to the appellant herein.

4. The appeal was taken up for consideration on previous date when we requested the learned advocate appearing for the Corporation to check as to whether page 134 of the stay petition, i.e. the option form was available in the records of the Corporation or not.

5. Pursuant to such query being raised by the Court, learned advocate appearing for the Corporation submits that he received instructions from his client that the option form of the appellant is in the records of the Corporation. He, however, contends that there are certain issues with regard

to employees coming within the purview of the Regulations of 1990 although such issues are not germane so far as the present appeal is concerned.

6. Contentions of the Corporation with regard to other employees coming within the purview of the Regulations of 1990 or being entitled to the benefits thereof being not germane in this appeal, are kept open.

7. It appears from the records made available to Court that the appellant joined the service of the Corporation on January 27, 1983. Appellant superannuated from service on April 30, 2017.

8. So far as the service of the employees of the Corporation is concerned, the Regulations of 1990 came into effect from April 22, 1991. Interested employees opting to come within the ambit of the Regulations of 1990 were asked to exercise their option within a period of six months from coming into force of the Regulations of 1990, initially. Thereafter, time for exercise of such option was extended till June 4, 2002.

9. It appears from the records that the appellant submitted option form for pension and gratuity under the Regulations of 1990 on June 26, 1991. That exercise of option is at page 134 of the stay application. As noted above, learned advocate for the Corporation, on instruction, stated that such option form is available in the records of the Corporation.

10. On his superannuation, appellant was favoured with his retirement benefits. Being aggrieved by the non-grant of the benefits under the

Regulations of 1990, the appellant approached the Writ Court by filing a writ petition being W.P. No. 16771 (W) of 2018 which was disposed of on January 3, 2018 by directing the authorities to consider the request of the appellant after giving him an opportunity of hearing.

11. Pursuant to such order dated January 3, 2018, the authorities passed an order dated February 15, 2019 rejecting the claim of the appellant. Aggrieved thereby, the appellant preferred another writ petition on April 2, 2019 being W.P. No. 7216 (W) of 2019 which resulted in the impugned order.

12. During the pendency of the writ petition, appellant received certain other benefits from the Corporation.

13. In the facts of the present case, it appears that despite the appellant exercising his option to come within the Regulations of 1990, he allowed and the Corporation deducted Contributory Provident Fund from the salary of the appellant month by month.

14. Similar issue as to the fate of employees whose salary was deducted with Contributory Provident Fund despite such employee opting to come within the purview with the Regulations of 1990 was considered by the Supreme Court in **Asit Chakraborty** (supra). There the Supreme Court as observed follows:-

> "13. *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 stake their claims, will not deter this Court in grant ting 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*."

15. In such circumstances, it would be appropriate to issue similar directions in the present matter as that of **Asit Chakraborty** (supra).

16. The appellant will refund to the Corporation share of provident fund as well as the amount of gratuity paid in excess along with the interest @ 6% p.a. within four weeks from date. On receipt of such amount, Corporation will release the pension within four weeks thereafter. Arrears of pension receivable by the appellant will be liquidated in three equal monthly instalments commencing from November 1, 2024 onwards. The arrears will also carry interest @ 6% p.a. Such benefits will be transferred to the bank account of the appellant.

17. Needless to say that pensionary benefits receivable by the appellant henceforth, will be paid by the Corporation month by month in accordance with law.

18. **M.A.T. 727 of 2019** and the connected application being **CAN 1 of 2023** are disposed of accordingly without any order as to costs.

(**Debangsu Basak, J.**)

19. I agree

(**Md. Shabbar Rashidi, J.**)