26.11.2024
Ct. 23
D/L 5
Ab/PP

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 21666 of 2024

Asim Kumar Kundal
-Vs-
The State of West Bengal & Ors.

Mr. Manas Kumar Ghosh,
Ms. Susmita Dey (Basu),
... for the petitioner

Mr. Amal Kr. Sen,
Mr. Sabyasachi Mondal
... for the CSTC

The report in the form of an affidavit filed on behalf of Calcutta State Transport Corporation (in short, 'CSTC') in Court today is taken on record.

The petitioner retired from services of CSTC on 31st January, 2021. It is the case of the petitioner that he was an employee of CSTC since 1st June, 1983. It is also the case of the petitioner that the Calcutta State Transport Corporation Employees' Service (Death-cum-Retirement Benefits) Regulations, 1990 (in short, DCRB Scheme, 1990) was brought into operation on 22nd April, 1991 from a retrospective date of 1st April, 1984. The petitioner was an employee of CSTC when the said Regulations were promulgated. The petitioner opted for being governed by the provisions of the General Provident Fund (GPF) Scheme under that Regulations. In any event, on the said Regulations coming into operation, all employees, who opted for being governed by the provisions of the said Regulations, had to be treated as an employee under the GPF Scheme. The petitioner says that despite such option, the petitioner was treated as an employee governed under the Contributory Provident Fund (CPF) Scheme. Deductions were made from his salary by the employer and were deposited with the employer's contribution with the subject Provident Fund Authorities, which continued till the petitioner's retirement on 31st January, 2021. The petitioner was, therefore, provided with the retiral benefits, which included the provident fund amount, gratuity and other benefits as per CPF Scheme.

The law is now well-settled in view of the judgment of the Hon'ble Supreme Court reported in 2023 SCC Online SC 594 (The Calcutta State Transport Corporation & Ors. vs. Ashit Chakraborty & Ors.) that once an employee exercises his right to receive pension under the 1990 Regulations it was the duty of CSTC, the employer to have given effect to the same. Merely because there were some wrong deductions from the salary of the employee and the said employee was treated as a member of CPF Scheme, the same cannot be permitted to be raised as a ground to defeat the rightful claim of the employee.

In the instant case, once an option was exercised by the petitioner it was the duty of CSTC to treat the petitioner as a member of the GPF Scheme. By making deductions and treating the petitioner to be under CPF Scheme will not defeat the petitioner's claim to receive pension under GPF Scheme.

In the aforesaid facts and circumstances, the petitioner has to refund the excess money received on account of provident fund and gratuity with interest @ 6% per annum as the deduction under CPF Scheme is more than that under GPF Scheme towards employee's contribution.

CSTC will provide the calculation as to the amount which has to be refunded by the petitioner with applicable interest computed @ 6% per annum by 20th December, 2024.

The petitioner shall, immediately after receiving such computation, refund the money, if he is satisfied with the same.

Subject to refund of money, CSTC shall provide pension to the petitioner at the applicable rate for the month of December, 2024, which falls due in January, 2025 and will thereafter continue to pay the monthly pension on regular basis. So far as arrears of pension is concerned, the same shall be paid by 31st March, 2025 with interest computed on such arrears on and from the date it fell due till the actual date of payment. The interest payable on the arrears of pension shall be @ 6% simple interest per annum.

Nothing further remains to be adjudicated in this writ petition. The same is accordingly disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(**Arindam Mukherjee, J**.)