Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 19056 of 2010
with
IA no. CAN 4 of 2020 (Old CAN 1402 of 2020)
The Calcutta State Transport Corporation Retired Employees' Association & Ors.
Versus
Calcutta State Transport Corporation & Ors.

For the petitioners	:	Mr. Bikash Ranjan Neogi Ms. Ananya Neogi Mr. Guddu Singh
For the CSTC	:	Mr. Amal Kumar Sen Mr. Sabyaschi Mondal
Heard on	:	01.02.2024
Judgment on	:	**1st February, 2024**.

Raja Basu Chowdhury, J:

1. The present writ petition has been filed, *inter alia*, praying for grant of pensionary benefits in terms of Calcutta State Transport Corporation Death-cum-Retirement Benefit Regulations, 1990 (hereinafter referred to as the "said Regulation"). It is the petitioners' case that the petitioners were the employees of the Calcutta State Transport Corporation (hereinafter referred to as the "Corporation"). According to the petitioners, the said Regulation came into force with retrospective effect

from 1st April, 1984 which is applicable to the employees of the Corporation. The petitioners contend that in terms of the said Regulation which was subsequently amended in the year 2002, a further opportunity was made available to the employees of the Corporation to exercise their options for availing the benefits under the said Regulation.

2. According to the petitioners, they had exercised their option and had opted for pension cum gratuity and had thereby, relinquished their claim to the employer's contribution to their CPF account. According to the petitioners, notwithstanding exercising such option, since, pension was not disbursed in their favour in terms of the said Regulation, a writ petition was filed before this Court which was registered as WP no. 17861 (W) of 2008.

3. On contest, by an order dated 10th December, 2009, a Coordinate Bench of this Court, taking note of the petitioners' grievance had directed the Managing Director of the Corporation to examine the representations of the petitioners forming annexure P-7 to the said writ petition and to take a final decision in the matter within a period of 8 weeks from the date of communication of the order.

4. Pursuant to and in terms of the aforesaid order, the Managing Director of the Corporation after giving an opportunity of hearing to the parties had considered the case of the petitioners in the said writ petition and had, *inter alia*, come to the following finding: -

> *"Moreover, it is revealed after perusal of the Service Books of the petitioners that most of the petitioners did not exercise their option under DCRB*

> *Regulations. Some of them even exercised option for non-availing of the pensionary benefit under CSTC (DCRB) Regulation, 1990. Only 7 petitioners (Petitioner No. 21, 30, 31, 32, 33, 38 & 40) submitted their option in the year 2002 in terms of 3rd amendment of the pension regulations.*
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> *In such view of the matter, I am disinclined to create further financial burden on the Corporation by inviting the petitioners afresh to come within the purview of the Pension Regulations, 1990, as the petitioners voluntarily availed themselves of all the compensatory benefits and existing retiral benefits as per the stipulation of the Voluntary Retirement Scheme, 1998."*

5. According to the petitioners, since, the Managing Director of the Corporation had refused to grant the benefits citing the financial burden on the Corporation, the present writ petition has been filed. The aforesaid order of the Managing Director forms the subject matter of challenge in the present writ petition.

6. Mr. Neogi, learned advocate appearing for the petitioners at the time of hearing of the present writ petition has submitted that notwithstanding the Managing Director of the Corporation categorically identifying that seven several employees of the Corporation who were the petitioners in the previous writ petition to have exercised their option in terms of the 3rd amendment to the said Regulation, had illegally declined to afford such employees with the benefits of the said Regulation.

7. According to Mr. Neogi, the respondents cannot choose to act contrary to the said Regulation, once, the Managing Director of the corporation had identified that option had been exercised by such seven employees it was the obligation of the Corporation to make available the benefits under the said Regulation. The financial burden on the Corporation cannot be a ground for declining the benefits which the employees are otherwise legally entitled to.
8. By placing reliance on a judgment delivered by a Coordinate Bench of this Court in WP no. 6808 (W) of 2018 (***Ashit Chakraborty & Ors. v. Calcutta State Transport Corporation & Ors.***) 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 employees who had exercised similar option, had directed the Corporation to disbursed the monthly pension in favour of such employees including arrears pension, along with interest at the rate of 6 per cent.
9. It is submitted that although, an Intra-Court appeal was preferred, the Division Bench of this Court by judgment and order dated 5th March 2021 in FMA 692 of 2019 was, inter alia, pleased to affirm the said order. Mr. Neogi further submits 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 stake 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."*

10. Mr. Neogi submits that atleast in respect of the seven petitioners in the previous writ petition, the Corporation must be directed to make payment of their legal entitlements as regards pension.

11. Mr. Sen, learned advocate appearing for the Corporation has, however, been candid enough to produce the records of this case and

has, *inter alia*, attempted to demonstrate by relying on the records the options if any exercised by the aforesaid seven employees of the Corporation.

12. To summarize the submission made by Mr. Sen, the names of the employees, their date of retirement, the date on which they have exercised the option either for accepting or for not accepting the pensionary benefits in writing, if any, by such employees are extracted below:-

Name of the employee	**Date of retirement**	**Date of notification of DCRB notification 1990/Last date for exercise of option as per the 3rd amendment**	**Date of expressing unwillingness to accept pensionary benefit**	**Date of exercise of option in terms of the amended notification**	**Remarks**
Radharamon Mondal (petitioner no.21 in the previous writ application being 17861 (W) of 2008)	31.5.1999	4.1.1991/ 4.6.2002	10.8.1999	2002, as recorded in the order dated 22.03.2010 issued by the MD of the Corporation (willingness to accept pensionary benefit)	Option currently not traceable in the records
Debabrata Banerjee (Petitioner no.25 herein)	31.5.1999	4.1.1991/ 4.6.2002	15.6.2001	14.5.2002 (Option exercised willingness to accept pension) The above position is also confirmed by the MD	Option available in the records

Gopal Chandra Bera (Petitioner no.26 herein)	31.12.1999	4.1.1991/ 4.6.2002	14.5.2001	15.5.2002 (Option exercised willingness to accept pension) The above position is also confirmed by the MD	Option currently not traceable in the records
Gandha Adak W/o Basari Adak (Petitioner no.27 herein)	31.5.1999	4.1.1991/ 4.6.2002	6.3.2000	2002, as recorded in the order dated 22.03.2010 issued by the MD of the Corporation (willingness to accept pensionary benefit)	Option currently not traceable in the records
Mukunda Behari Mullick (Petitioner no.28 herein)	31.5.1999	4.1.1991/ 4.6.2002	25.8.1999	2002, as recorded in the order dated 22.03.2010 issued by the MD of the Corporation (willingness to accept pensionary benefit)	Option currently not traceable in the records
Ramanath Dutta (Petitioner no.35 herein)	31.5.1999	4.1.1991/ 4.6.2002	25.8.1999/ 5.12.2001	17.5.2002 (Option exercised willingness to accept pension) The above position is also confirmed by the MD	Option available on record
Anandi Bhusan Patra	30.09.1999	4.1.1999/ 4.6.2002	-	2002, as recorded in the order dated 22.03.2010 issued by the MD of the	File not traceable

(Petitioner no.33 herein)				Corporation (willingness to accept pensionary benefit)	

13. Having regard to the aforesaid, he submits that only the petitioner nos. 25, 26 and 35 can at best be entitled to the benefits of the said Regulation.

14. Heard the learned advocates appearing for the respective parties and considered the materials on record. In this case, it is noticed that previously a writ petition was filed challenging the failure on the part of the Corporation to make available the pensionary benefits in terms of the said Regulation. Such writ petition was disposed of by an order dated 10th December, 2009 directing the Managing Director of the Corporation to examine the representations of the petitioners to such writ petition and take a decision thereon, within a period of 8 weeks from the date of communication of the order.

15. Pursuant to the aforesaid, the Managing Director of the Corporation after giving opportunity of hearing and upon taking into consideration all materials on record, was of the view that only seven employees of the Corporation who were arrayed as petitioner nos. 21, 30, 31, 32, 33, 38 and 40 in the previous writ petition, had exercised their option in terms of the 3rd amendment to the said Regulation for availing pensionary benefits. The Managing Director of the Corporation, however, citing the financial burden on the Corporation had rejected the prayer for grant of pensionary benefits. It was further recorded in the order that as the

petitioners having voluntarily availed themselves of all compensatory benefits as per the stipulation of the Voluntary Retirement Scheme, 1998, are otherwise not entitled to the benefits of the Regulation.

16. In this case it may be thus, noticed that the Managing Director of the Corporation had atleast identified seven several employees of the Corporation who were otherwise eligible to get the benefits of the said Regulation. It is also noticed that in an identical case, a Coordinate Bench of this Court by taking note of the option exercised on the part of the employees 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 said employer and had accordingly directed disbursal of the pension.

17. Although, Mr Sen had strenuously argued that save and except the petitioner nos. 25, 26 and 35, no other employees had exercised option and as such, apart from the aforesaid three petitioners no other petitioners are entitled to the benefits of the said Regulation, I am afraid and unable to accept the same. Although, certain records have been produced to highlight that certain option forms are available in the file, I find that it is too late in the day for the respondents to take a contrary stand than the stand taken by its Managing Director in the year 2010.

18. Although, an affidavit-in-opposition has been filed by the respondents, the order passed by the Managing Director has never been questioned. Having regard to the aforesaid, simply because all option forms are not traceable in the file, with the Corporation, the same cannot

be conclusive proof of the fact that the aforesaid petitioners had not exercised the option to avail pensionary benefits especially when the Managing Director of the Corporation in the year 2010 had categorically come to a finding that seven several petitioners had exercised their option for availing pensionary benefits. This apart, for all these years there was no challenge to such order passed by the Managing Director.

19. In view thereof, and taking note of the option exercised by the petitioners and the order passed by the Managing Director, I am of the view that financial burden on the Corporation cannot be a ground for the Corporation to refuse payment of the benefits, nor can disbursal of provident fund benefits in their favour stand in the way of refusing benefits under the said Regulation. It is a matter of record that not only the Division Bench of this Court but the Hon'ble Supreme Court taking note of the provisions of the said Regulation had concluded that it was the duty of the Corporation to give effect to the option, once the same is exercised.

20. The only other point raised by Mr. Sen with regard to the plea of relinquishment of the right of the petitioner nos. 21, 30, 31, 32, 33, 38 and 40 (of the previous writ petition), I find from the materials on record that the date of alleged relinquishment is prior to the date of publication of the notification, notifying the 3rd amendment to the said Regulation. The order passed by the Managing Director of the Corporation records that the options exercised by the respective petitioners were in terms of the 3rd amendment. Since, the said Regulation itself had granted the

employees of the Corporation with further opportunity to review and/or re-think and re-consider their earlier decisions, in my view, the previous decision of not to accept pension cannot stand in the way for grant of benefits in favour of the respective petitioners as noted hereinabove.

21. Having regard to the aforesaid and taking note of the fact that in similar situation, the Hon'ble Supreme Court had directed the Corporation to release pensionary benefits in favour of the employees who had previously exercised their option, the refusal to accept pension prior to the date of notification of the 3rd amendment cannot stand in the way for grant of benefits in favour of the respective petitioners as noted hereinabove. On such 3rd amendment being notified, the prior refusal to accept pensionary benefit could no longer constitute relinquishment of their right to claim pensionary benefit under the 3rd amendment to the said Regulation. The Managing Director of the Corporation had accepted the aforesaid position. The respondents are, thus, estopped from taking a contradictory stand. The right of the petitioners to be entitled to pensionary benefits which flows from the Regulations and is recognised by the Managing Director of the Corporation, cannot be defeated at this stage on the basis of the above inconsistent and belated plea.

22. In view of the above, I direct the petitioner nos.25, 26, 27, 28, 35 and 33 being, Debabrata Banerjee, Gopal Chandra Bera, Gandha Adak (W/o Basari Adak), Mukunda Behari Mullick, Ramanath Dutta and Anadi Bhusan Patra respectively to refund the employer's share of contribution of provident fund as also the amount of gratuity, if any, to the

Corporation with interest at the rate of 6 per cent per annum within a period of two weeks from the date of the Corporation raising a demand on the petitioners. 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 shall release pension in favour of the petitioners noted above for the month of April, 2024 and onwards and shall continue to pay the same as per the entitlement of the petitioners in accordance with law.

23. Insofar as the arrear pension, i.e., from the month subsequent to the date of retirement of the respective petitioners till March, 2024 is concerned, the same shall be disbursed in favour of the petitioners in the manner provided hereinabove within a period of twelve weeks from the date of communication of this order along with a computation sheet and arrear pension shall also carry an interest at the rate of 6 per cent per annum from the date of superannuation of the petitioners till the same is actually disbursed.

24. The petitioners are directed to intimate the respondents the particulars of the bank account for the respondents to credit the pension in such accounts.

25. The writ petition is accordingly disposed of.

26. There shall be no order as to costs.

<u>In re : IA no. CAN 4 of 2020 (Old CAN 1402 of 2020)</u>

1. Mr. Neogi, learned advocate representing the applicants in IA no. CAN 4 of 2020 (Old CAN 1402 of 2020) submits that the General Secretary of

the petitioner no. 1 had died during pendency of the writ petition and the instant application has been filed seeking substitution.

2. Since, the concerned employees are the petitioners in the instant writ petition, Mr. Neogi does not wish to press the same.

3. In view of the above, the application being IA no. CAN 4 of 2020 (Old CAN 1402 of 2020) is accordingly ***dismissed as withdrawn.***

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

(Raja Basu Chowdhury, J.)