Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 27665 of 2017

Tamal Kumar Dutta, since deceased,
represented by Smt. Kakali Dutta & Anr.
Versus
The State of West Bengal & Ors.

For the petitioners	:	Mr. Manas Kumar Ghosh Ms. Susmita Dey (Basu)
For the respondent CSTC	:	Mr. Amal Kumar Sen Mr. Sabyasachi Mondal
Heard on	:	4th January, 2024
Judgment on	:	**4th January, 2024.**

Raja Basu Chowdhury, J:

1. The original petitioner was an employee of Calcutta State Transport Corporation (hereinafter referred to as the "said Corporation"). The petitioner was superannuated on 31st March, 2017. Consequent upon the death of the original petitioner, during the pendency of the writ petition his legal heirs have been substituted.
2. It is the petitioners' 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 petitioners contend that in terms of the said Regulation the original petitioner 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 petitioners' case that notwithstanding exercising such option pension was not disbursed in favour of the original petitioner in terms of the said Regulation. In such circumstances, the original petitioner had made a representation for release of his monthly pension. Since his representation was not adhered to, the original 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 7th December, 2017, CSTC had filed a report in the form of an affidavit on 2nd January, 2020. From such report it would be apparent and clear that the original petitioner during his service tenure in terms of the said Regulation had exercised his option on 13th September, 1991.

4. Mr. Ghosh, learned advocate representing the petitioners submit that once the respondents had recognized that the original 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 original 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.

5. 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".*

6. Mr. Ghosh submits that the original petitioner's case is identical and similar benefits should be afforded in favour of the petitioners who are the legal heirs of the original petitioner.

7. *Per contra*, Mr. Sen leaned advocate representing the Calcutta State Transport Corporation submits that in the instant case although, the original petitioner had exercised his option, however, unfortunately, 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 employers' share of provident fund contribution. He, however, does not dispute the fact that in an identical case 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.

8. Heard the learned advocates appearing for the respective parties and considered the materials on record. In this case it is noticed that the original petitioner had duly exercised the option in terms of the aforesaid Regulation. It is also noticed that in an identical case this Hon'ble Court taking note of the option exercised on the part of the employee 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 Original Petitioner, I find that it was obligation of the respondents to give effect to the same. If the respondents had deposited provident fund contributions by ignoring the option, the original petitioner cannot be made responsible therefor.

9. 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 recognised right.

10. 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 petitioners, though the current benefit in this case may be restricted to family pension only.

11. In view thereof, I direct the petitioners 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 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/respondents shall release family pension in favour of the petitioners for the month of March, 2024 and onwards and shall continue to pay the same as per the entitlement of the petitioners in accordance with law.

12. Insofar as arrear pension, i.e. from April, 2017 till February, 2024 is concerned, the same shall be disbursed in favour of the petitioners, 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 the date of superannuation of the original petitioner till the same is actually disbursed.

13. The petitioners are directed to intimate the respondents the particulars of their bank account, for the respondents to credit pension in such account.

14. With the above observations/directions the writ petition stands disposed of.

15. There shall be no order as to costs.

16. 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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