10.03.2025
Court No.23
DL-7
(pp/Asraf)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

WPA 5022 of 2024

Shambhu Nath Banerjee
versus
The State of West Bengal & Ors.

Mr. Manas Kumar Ghosh,
Ms. Susmita Dey (Basu)
....for the petitioner.
Mr. Amal Kumar Sen, AGP,
Mr. Sabyasachi Mondal
....for CSTC.
Mr. Saibal Acharyya
....for the State.

The petitioner was an employee of Calcutta State Transport Corporation (in short, CSTC) and was working as Record Supplier attached to Thakurpukur Depot of CSTC. The petitioner retired from services on 28th February, 2019. It is the case of the petitioner that Calcutta State Transport Corporation Employees' (Death-cum-Retirement Benefit) Regulations, 1990 (hereinafter referred to as the 'DCRB') was brought into effect on and from 22nd April, 1991. The DCRB clearly stated that those who were in employment of CSTC with effect from 1st April, 1984 shall have to exercise their option to specify as to whether such an employee would continue to remain under the Contributory Provident Fund (in shot, CPF) Scheme or will switch over to

General Provident Fund (in short, GPF) Scheme. It is the further case of the petitioner that on or about 20th April, 1992 the petitioner had exercised his option to be governed under the Pension-Gratuity that is under GPF Scheme instead of CPF Scheme. A copy of the option form is annexed at page 19 of the writ petition.

It is the further case of the petitioner that despite the option being exercised and CSTC being obliged to treat the petitioner to be under GPF Scheme in view of the provisions of DCRB continue to treat the petitioner under the CPF Scheme.

By citing the judgment of the Hon'ble Supreme Court reported in 2023 SSC Online 594 (Calcutta State Transport Corporation & Ors. vs. Ashit Chakraborty & Ors.), the petitioner says that after having exercised the option to be treated under the GPF Scheme, the employer that is CSTC was bound to treat the petitioner as an employee governed by such scheme and any deduction of money from the petitioner's salary inconsistent with the deductions required to be made for an employee under the GPF Scheme did not amount to the petitioner being treated under the CPF Scheme. The petitioner says that by failing to treat the petitioner as an employee under the GPF Scheme after the option being exercised is a violation of the statutory provisions, and as such, a void act which is required to be altered on being brought to the notice of this Court.

CSTC has filed its report in the form of an affidavit and had taken the following stand:

(i) Although, the petitioner had exercised his option, **but after his retirement the petitioner had filed a declaration by which** the petitioner expressed his intention to continue under the CPF Scheme instead of GPF Scheme. By filing such declaration, the petitioner had consciously waived a known right, and as such, is not entitled to the benefits under the GPF Scheme, which in view of waiver and acquiescence on the part of the petitioner. The respondents have cited 3 judgments respectively reported in (2022) 2 SCC 25, (2013) 10 SCC 83 and (2017) 8 SCC 237 to support its contention as to waiver of the petitioner's known right.

(ii) The claim of the petitioner at the highest may have arisen in 2018 on his voluntary retirement. The writ petition has been filed in 2024, after a substantial delay, and as such, the claim made by the petitioner should be rejected on the ground of inordinate delay and laches.

Responding to the arguments advanced by CSTC, the petitioner has cited the judgment of a Coordinate Bench delivered in WPA 388 of 2018 (Gopal Dutta vs.

The State of West Bengal & Ors.) on 2nd April, 2024 and the order of the Division Bench dated 7th August, 2024 passed in an appeal therefrom preferred by CSTC being MAT 985 of 2024 with CAN 1 of 2024. Relying upon the judgment of Gopal Dutta (supra), the petitioner says that the issue of waiver and/or acquiescence as propounded by CSTC is no more *res integra*.

In view of the circular issued by the Audit Cell of the Finance Department, Government of West Bengal which has been considered by the learned Single Judge as also the Division Bench, in Gopal Dutta (supra) it is crystal clear that the Government of West Bengal has taken a consistent stand that an option once exercised cannot be altered. As a consequence whereof, any request made subsequent to the promulgation of DCRB and after exercising the option should be refused. It is, as such, according to the petitioner, that the points taken by the respondents are untenable in law and should be rejected at the threshold.

The petitioner also says that immediately after a sum of Rs.7,32,555/- and a sum of Rs.13,13,914/- on having been credited in the petitioner's bank account after his retirement, the petitioner had made a demand for justice to treat him as an employee under the GPF Scheme with an undertaking to refund the amount received by him on account of the employer's share of provident fund and excess gratuity. The representation is dated 25.04.2019, and as such, there can be no inordinate delay on the part of the petitioner as alleged by CSTC.

After hearing the parties and considering the materials on record, I find that after an option has been exercised subsequent to the promulgation of DCRB in CSTC. There is no further scope to opt out from the same as neither the provisions of DCRB nor the Government circulars allow the petitioner to retract from the option already exercised. In the instant case, the petitioner had exercised his option in 1992, much prior to his retirement. It was, therefore, obligatory on the part of the CSTC to honour such option on being exercised by the employee. It is apparent that CSTC did not adhere to such request but continued to make deduction which, according to the ratio laid down in Asit Chakraborty (supra), is impermissible and does not permit the employer to agitate that the petitioner is governed under the CPF Scheme.

So far as the delay aspect as urged by CSTC is concerned, the judgment and order of the Co-ordinate Bench in Gopal Dutta (supra) as affirmed by the Division Bench in appeal does not leave any room for CSTC to contend that the declaration said to have been submitted by the petitioner amounts to waiver of a known right by the petitioner consciously. Moreover, with the refusal to treat the petitioner as an employee under GPF despite representation gives rise to a continuous cause in favour of the petitioner and as such there cannot be any inordinate delay.

In the aforesaid facts and circumstances, I allow the writ petition by directing CSTC to furnish the breakup of the principal sum and the interest at the rate of 6% per annum accrued thereon to be refunded by the petitioner for getting pension under the GPF Scheme. The breakup should be supplied by CSTC within three weeks from the date of communication of a server copy of this order without insisting upon production of a certified copy thereof.

Within three weeks from the date of receipt of the computation, if the same is found to be correct, the petitioner shall deposit the money.

Within four weeks from the date of refund of the money, CSTC shall pay the arrears of pension to the petitioner along with interest accrued on the principal sum at the rate of 6 % per annum from the date of his retirement till actual payment of the said sum.

The respondents shall also pay the current pension to the petitioner on and from **April, 2025** which shall fall due at the beginning of **May, 2025**. The monthly pension shall thereafter be paid month by month.

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

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

(Arindam Mukherjee, J.)