05.02.2025
Court No.23
ML/Item No.–303
[Milan, A.R. (Ct.)]

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

WPA 5614 of 2024

Tapan Kumar Banerjee
versus
The State of West Bengal & Ors.

Mr. Manas Kr. Ghosh,
Mr. Dilip Kr. Chattejee,
Ms. Susmita Dey (Basu),
Mr. Prabir Chatterjee,
Mr. Durga Bhusan Mukherjee

….for the Petitioner

Mr. Amal Kumar Sen,
Mr. Sabyasachi Mondal

….for CSTC

A report in the form of an affidavit affirmed by Calcutta State Transport Corporation (in short, "CSTC") in terms of the order dated 27th June, 2024 is filed in Court today and the same is taken on record.

The petitioner retired from services of CSTC on 31st October, 2021. 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 had joined CSTC prior to the said Regulations were promulgated but was covered under the same due to its retrospective implementation. The petitioner opted for being governed by the provisions of the General Provident Fund (GPF) Scheme under the said Regulations. 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 in the same manner as he was treated prior to implementation of the said Regulations. Deductions were made from his salary by the employer and were deposited along with the employer's contribution with the subject Provident Fund Authorities. This system continued till the petitioner's retirement on 31st October, 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, the said employee cannot be treated as a member of CPF Scheme and such ground cannot be permitted to be raised 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 within four weeks from the date.

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

Subject to refund of money, CSTC shall provide pension to the petitioner at the applicable rate for the month of March, 2025, which falls due in April, 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 30th June, 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.)