04
11.09.2025
KAUSHIK

WPA 15825 of 2023

Jayanta Sen
Vs.
The State of West Bengal & Ors.

Mr. Manas Kr. Ghosh
Ms. Susmita Dey (Basu)
…………….for the petitioner

Mr. Tarun Kumar Ghosh
Ms. Suvasree Ghose
…………………for the CSTC

The grievance of the petitioner is directed against non-payment of pension payable to the petitioner by the respondent authorities under the Calcutta State Transport Corporation Employees' Death-cum-Retirement Benefits Regulation, 1990 and also arrear pension with effect from October, 2022 alongwith interest thereon.

Briefly, the petitioner was an employee of Calcutta State Transport Corporation, Government of West Bengal and retired from service on 30 September, 2022.

It is contended on behalf of the petitioner that though he had opted for pension under the Calcutta State Transport Corporation Employees' Death-cum-Retirement Benefits Regulation, 1990, the respondent Corporation has deliberately and intentionally not paid pension and treated the petitioner as a contributory provident fund member. It is also submitted that the issue raised in this writ petition is covered by similar decisions of the High Court as well as the decision of the Supreme Court in *Calcutta State Transport Corporation and Ors. Vs. Ashit Chakraborty and Ors. reported in 2023 SCC OnLine SC 594.*

The petitioner has submitted representation on 22 June, 2023 but the same has not been redressed by the respondent Corporation.

On behalf of the respondent Corporation, it is submitted that most of the issues urged on behalf of the writ petitioner are no longer res integra in view of the decision of the Hon'ble Supreme Court.

It is submitted that the Memorandum dated 7 July, 2001 is no bar towards payment of pension. This was the practice and has been taken into account in the above decision of the Supreme Court and the Co-ordinate Bench.

In *Calcutta State Transport Corporation & Ors. Vs. Ashit Chakraborty & Ors. (Supra*) it has been held as follows:

> *"11. However, the aforesaid arguments were not found to be meritorious, hence rejected by the High Court. It was found that the Corporation was at fault in not acting upon the option exercised by the respondent no. 1. Finally, direction was given to the respondent no. 1 to refund the employer share of provident fund as well as the amount of gratuity paid in excess to the Corporation along with interest @ 6% per annum within two weeks. On receipt of the amount, the Corporation was directed to release the pension within two weeks from August 2018 onwards. As far as arrears of pension from August 2017 to July 2018 was concerned, direction was given to liquidate the same in three equal monthly instalments from September 15, 2018 onwards. The arrears were also to carry interest @ 6% per annum. The amount was to be transferred in the bank account of respondent no. 1. Despite the legally sustainable and equitable order passed by the learned Single Judge, the Corporation filed intra-court appeal. Vide order dated 25.6.2019, the Division Bench stayed the operation of the order passed by the learned Single Judge. On consideration of the application filed by the respondent no. 1 for vacation of the interim stay, the appeal itself was heard and decided finally vide impugned*

judgment. The only argument raised before the Division Bench was regarding waiver. However, the same was not accepted. This principle could be applied in case there was conscious abandonment of existing legal right.

12. We do not find any merit in the same argument raised by the counsel for the appellant as was rejected by the High Court, namely, the waiver of the right to receive pension by the respondent no. 1. There was no conscious abandonment of right to receive pension by the respondent no. 1 to deprive him of his pension. Reference can be made to judgment of this Court in Kalpraj Dharamshi v. Kotak Investment Advisors Limited. Relevant para 119 thereof is extracted below:-

> *"119. For considering, as to whether a party has waived its rights or not, it will be relevant to consider the conduct of a party. For establishing waiver, it will have to be established, that a party expressly or by its conduct acted in a manner, which is inconsistent with the continuance of its rights. However, the mere acts of indulgence will not amount to waiver. A party claiming waiver would also not be entitled to claim the benefit of waiver, unless it has altered its position in reliance on the same."*

In view of the above, there is no scope for the respondent Corporation to re-agitate issues which have already been decided in the decision in *Calcutta State Transport Corporation & Ors. Vs. Ashit Chakraborty & Ors. (Supra*). There is simply no merit in the defence of waiver or any other ground urged by the respondent corporation.

The petitioner cannot be considered to have consciously and deliberately abandoned the right to receive pension.

In view of the above, there shall be an order directing arrears towards pension to be paid to the petitioner which shall carry interest @ 6 per cent per annum. The amount should be transferred to the bank account of the petitioner. The above payment is conditional on the petitioner refunding to the employer corporation, the share of provident fund as well as amount of gratuity paid by Corporation @ 6 per cent per annum within four weeks from the date of communication of this order and after the respondent Corporation has duly intimated the writ petitioner the exact quantum. The above payment towards pension shall commence from 1 November, 2025.

Insofar as the arrear payments to the petitioner is concerned, the same should be paid within three months from the date of communication of this order.

It is clarified that the above payment be paid after the petitioner has reimbursed the excess amount. It is reiterated to mention that the above payment to the petitioner shall carry interest @ 6 per cent per annum.

With the above directions, WPA 15825 of 2023 stands disposed of.

There shall be no order as to costs.

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

(Ravi Krishan Kapur, J.)