IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
<u>APPELLATE SIDE</u>

Present:-
The Hon'ble Justice Madhuresh Prasad
And
The Hon'ble Justice Prasenjit Biswas

<u>F.M.A. 1809 of 2018</u>

Haradhan Datta & Ors.
Vs.
State of West Bengal &Ors.

The Appellant (No. 1)-in-Person	: Mr. Haradhan Datta.
For the Appellant Nos. 2 to 54	: Mr. Nitish Samanta, Mr. Abhivaba Dan, Ms. Shreyashee Mitra.
For the State	: Mr. Amal Kr. Sen, Ld. AAG, Mr. L. Basu.
For the SBSTC	: Mr. Ayan Banerjee, Ms. DebasreeDhamali, Ms. Debolina Ghosh.
Judgment on	: March 30, 2026.

<u>Madhuresh Prasad, J.:</u>

1. The present appellants were the writ petitioners before the learned Single Judge. The appellant shall hereinafter be referred to as the petitioners. The petitioners are all retired employees of the South Bengal State Transport Corporation (in short "*SBSTC*").

2. The relief was prayed in the writ petition in the following terms:

> *"(a) A writ in the nature of Mandamus commanding the respondents and their men, agents and subordinates to implement the pensionary benefits as specified in the SBSTC Employees Pension Regulation, 2002 in favour of the petitioner immediately;*
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> *(b) A writ in the nature of Mandamus commanding the respondents and their men, agent and subordinates to pay all arrear dues on pension head to the petitioners after adjustment of the returnable amount if any from the payable amount as arrear after exercising option form each of them;*
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> *(c) A writ in the nature of Mandamus commanding the respondents and their men, agent and subordinates to pay the pension including arrear pension in favour of the petitioners in terms of the spirit of the judgment and subsequent order passed by the Hon'ble High Court and Hon'ble Supreme Court as well as in terms of the decision taken by the SBSTC Board in its 125th meeting dated June 10th 2010 to implement the Pension Regulation, 2002 in the line of North Bengal State Transport Corporation/ Calcutta State Transport Corporation immediately;"*

3. For the benefit of the employees of the SBSTC, The SBSTC Employees' Pension Regulation 2002 was framed. The Board of SBSTC on 08.04.2003 decided not to implement the Pension Regulation 2002 since only 189 retired employees of SBSTC opted for the scheme.

4. It was contended by the petitioners that the petitioners raised a grievance that the 2002 regulation was not at par with the pension regulations applicable to State Government employees. The petitioners sought modification of the 2002 pension regulations accordingly. It is not in dispute that the petitioners did not opt for benefit under the 2002 Regulations.

5. The decision of the SBSTC not to implement the 2002 Regulation was challenged by 60 retired employees of the Corporation, other than the petitioners. W.P. No. 13475 (W) of 2003 filed by the 60 retired

employees was disposed of by a judgment and order dated 25.04.2008, in the following terms:

> *"36. Considering all material facts and on considering the respective affidavits of the parties and having regard to the findings and observations as above, writ application, accordingly, succeeds.*
>
> *37. It is ordered that writ petitioners and all the retired employees who opted the Pension Regulations, 2002are entitled to get the benefits of death-cum-retirement benefits in terms of the South Bengal State Transport Corporation Employees' Pension Regulations, 2002. The respondents are directed to take steps for release of the pension and other death-cum-retirement benefits in terms of the said Regulations, 2002 by implementing the Pension Regulations, 2002 <u>in respect of the writ petitioners and the other employees who opted such Pension Regulations, 2002</u>(emphasis supplied) by releasing their all arrears amount of pension and other dues within four months from this date and to start to release the pension by issuing Pension Payment Order in terms of the Pension Regulations, 2002 within two months from this date. A compliance report to be submitted by the respondent corporation through its Managing Director to the High Court registry by complying with this order of release of current pension by filing such affidavit within two months from this date and by filing further affidavit of compliance to the High Court Registry by making payments of arrears amount of pension on adjusting the dues, if any, in terms of Pension Regulations, 2002 within six months from this date.*
>
> *38. The writ application, accordingly, is allowed. There will be a cost of Rs. 20,000/- to be paid to the writ petitioners, the retired employees who have been compelled to take shelter of the Writ Court due to arbitrary action of the Corporation who despite Introduction of the Pension Regulations, 2002 did not implement the same. Such cost to be paid within a month from this date and compliance report to be filed by the Managing Director of the Corporation to the High Court Registry."*

6. The judgment in W.P. No. 13475 (W) of 2003 was put to challenge by the SBSTC as well as the State of West Bengal. The Division Bench by its order dated 18.07.2008 dismissed the appeals in the following terms:

> *"On due consideration of the entire matter, we are of the opinion that the petitioners having legally opted to come under the purview of Pension Regulations, 2002, the appellant Corporation is bound to give effect to the same. We see no reason at all to interfere with the conclusions reached by the Learned Single Judge. We, therefore, dismiss these appeals and uphold the judgment of the Learned Single Judge."*

7. The SLP filed by the SBSTC before the Apex Court was also dismissed, vide order dated 16.10.2014 passed in Civil Appeal. 6084 of 2014.

8. In the above background, the present appellants filed a writ petition bearing No. W.P No 33393(W) of 2014, seeking benefit of the 2002 Regulation. The same was dismissed by the learned Single Judge by judgment dated 29.06.2017. The same is the subject matter of the present intra Court Appeal.

9. Mr. Haradhan Dutta, the Appellant no.1, appears in person.

10. Referring to various communications, including the communications dated 20.10.1971, 19.01.1998, 22.04.1998, 23.06.2000, 27.09.2005 and 01.12.2006, he submits that there is a series of communications form the highest officials in the Corporation to the State Government recommending and requesting the State Government to approve grant of benefits such as CAS, ROPA, and other benefits applicable to State Government employees, to employees of the respondent Corporation. He further submits that there is also issuance of similar directions from the Government authorities.

11. The appellant however did not point out existence of any pension scheme applicable to the writ petitioners.

12. The Appellant relies on Section 47(B)(1)(f) of the Road Transport Corporations Act, 1950 (for short 1950 Act) to submit that the petitioners were entitled to the same terms and conditions applicable to State Government Employees, including granting of pensionary benefit. Section 47(B)(f) reads :

> *"(f) persons employed by the State Government in connection with the State undertaking and continuing in the office immediately before the establishment of the corporation shall be employed by the corporation on such terms and conditions, not less advantageous than what they were entitled to immediately before such establishment, as may be determined by the Corporation".*

13. It is also submitted that in view of the decision passed by this Court in WPST 13475/2003, the petitioners being similarly and identically situated, with petitioners of WPST No.13475 of 2003, are entitled to grant of pensionary benefits, at par with those petitioners.

14. The appellant relies upon decision of the Apex Court in the case of ***State of Rajasthan and Ors. Vs. Mahendra Nath Sharma*** reported in ***(2015) 9 SCC 540*** a copy of the judgment has been enclosed along with the petitioners' reply to the affidavit-in-opposition. Specific reliance is placed on paragraphs 28 of the judgment wherein extract from earlier decision of the Apex Court in the case of ***D.S. Nakara vs. Union of India***, reported in ***(1983) 1 SCC 305*** was taken note of by the Hon'ble Supreme Court of India.

15. The appellant no.1 thus submitted that pension is not a bounty, but a matter of right and it is not dependent on the sweet-will of the authorities, or the State Government. This Court should direct for

extending the benefit of pension to the appellants; and the order of the Hon'ble Single Judge declining to grant such relief should be set aside.

16. The learned Advocate for the SBSTC, Mr. Ayan Banerjee, submitted that the petitioner did not pray for parity with State Government employees in their writ petition. In fact they have sought benefit of the 2002 Pension Regulation, framed specifically for the Corporation. The plea raised regarding parity with State Government employees, therefore, is untenable and is a mutually destructive plea.

17. Learned Counsel referred to Regulation 2(3), 6(1)(3) of the 2002 Pension Regulation,to submit that benefit under the 2002 Pension Regulation was contingent upon exercise of an option within the six months time specified therein, subject to certain terms and conditions specified therein. Therefore, the Writ Court while deciding the writ petition bearing W.P. No. 13475 (W) of 2003 filed by the 60 persons who had exercised option under the 2002 Regulation confined the relief to the writ petitioners. The same is apparent from a reading of paragraph 37 of the judgment passed by the Writ Court in W.P. No. 13475(W) of 2003.

18. It is further submitted by the learned Advocate for the respondent Corporation that the writ petition was filed by the petitioners about 12 years after coming into force of the 2002 Regulation; and between 5 to 15 years after retirement of the writ petitioners. Therefore, the writ petition is barred by delay and latches, and the writ petitioners are

not entitled to any relief. The petitioners in fact were fence sitter. They were waiting to see the fate of the writ petition 1347 (W) of 2003 filed by others. Only after the writ petition succeeded, the present writ proceeding was instituted in the year 2014. Otherwise, the writ petitioners would not have filed any writ petition.

19. Apart from the fact that they are fence sitter it is emphasized that the petitioners are not similarly situated with the writ petitioners of W.P. No.1347 (W) of 2003, since the present writ petitioners never exercised their option under the 2002 Regulation.

20. The learned AAG submitted that the petitioners are not in a position to claim the benefit to Section 47(B)(f) of the Road Transport Corporation Act since earlier they were not employees of the State Government. The benefit under Section 47(B)(f) was to be availed by the State Government employees, at the time of their appointment in the Corporation.

21. It is also submitted that petitioners chose not to exercise their option under the 2002 Regulation. Therefore, the petitioners waived their individual rights under the 2002 Regulation. They have also availed of their admissible retiral dues. Therefore, the petitioners now cannot be permitted to claim benefit of pension under the 2002 Regulation.

22. He has relied upon decision of the Apex Court in the case of ***Pepsu Road Transport Corporation, Patiala vs. Amandeep Singh and Others*** reported in ***(2017) 2 SCC 766***:

"25. In view of the above, it is well settled that the notice inviting option need not to be personally served to the employees unless the Regulation or any instruction so provides. The 1992 Regulations which are being considered in the present case had already been interpreted in Pepsu RTC v. MangalSingh [Pepsu RTC v. Mangal Singh, (2011) 11 SCC 702 : (2011) 2 SCC (L&S) 322] as noticed above. This Court having already held that the 1992 Regulations do not contemplate any personal service of notice to the employees the finding in the judgment of the courts below holding otherwise for decreeing the suit of the plaintiff are unsustainable. From the facts of the present case, it is clear that although the Regulations were in force from 1992, the plaintiff retired on 30-11-2011 and after retirement received CPF benefits without any protest and at no point of time before retirement he has raised any grievance. The benefit which was available to him under the CPF Scheme was received by the plaintiff, he cannot be allowed to have another benefit flowing from the pension scheme which he never opted. Extending benefit of the pension scheme to the plaintiff shall be extending double benefits— CPF benefit as well as pension scheme which was never contemplated by the Regulations. In any view of the matter, the issue in the present case is covered by the judgment in Pepsu RTC v. Mangal Singh [Pepsu RTC v. Mangal Singh, (2011) 11 SCC 702 : (2011) 2 SCC (L&S) 322] and we do not propose to take any different view in the matter."

23. It is further submitted that 2002 Regulation was a Regulation framed by the State Government with specific conditions. The petitioners have chosen not to apply and, therefore, they cannot seek a direction for any benefit under the Regulation which is not applicable to them. It is for the State Government to decide whether any pension scheme is to be implemented in respect to any employee in the Corporation. Though Corporation would be coming within the meaning of Article 12 of the Constitution of India, employees of a

Corporation cannot claim parity with employees of the State Government who are civil employees. It is open to the employer to maintain separate and distinct terms and conditions for employees of a Corporation having regard to the functions, financial viability and other such issues. Employees of any Corporation cannot seek parity with terms and conditions being extended to an employee of the State Government. The learned AAG relied also on the decision of the Apex Court in the case of ***State of Himachal Pradesh and Others vs. Rajesh ChanderSood and Others*** reported in ***(2016) 10 SCC 77***:

> *"90. We have given our thoughtful consideration of the plea of discrimination, advanced at the behest of the respondent employees. It is not possible for us to accept that the employees of corporate bodies, can demand as of right, to be similarly treated as government employees. Whilst it can be stated that government employees of the State of Himachal Pradesh are civil servants, the same is not true for employees of corporate bodies. Corporate bodies are independent entities, and their employees cannot claim parity with employees of the State Government. The State Government has a master-servant relationship with the civil servants of the State, whilst it has no such direct or indirect nexus with the employees of corporate bodies. The State Government may legitimately choose to extend different rights in terms of pay scales and retiral benefits to civil servants. It may disagree to extend the same benefits to employees of corporate bodies. The State Government would be well within its right, to deny similar benefits to employees of corporate bodies, which are financially unviable, or if their activities have resulted in financial losses. It is common knowledge that when pay scales are periodically reviewed for civil servants, they do not automatically become applicable to employees of corporate bodies, which are wholly financed by the Government. And*

similarly, not even to employees of government companies. Likewise, there cannot be parity with government employees, in respect of allowances. So also, of retiral benefits. The claim for parity with government employees is, therefore, wholly misconceived. It is, therefore, not possible for us to accept the contention advanced on behalf of the respondent employees, that the action of the State Government was discriminatory."

24. We have heard the appellant in person, the advocates representing the Corporation and the learned AAG. The learned Advocate representing the remaining appellants has adopted the argument advanced by the appellant No. 1 in-person.

25. The first submission is relying upon the communication dated 26.05.1970, 20.10.1971 and 27.09.2005 and Section 47(B)(1)(f) of the 1950 Act. We find that a bare perusal of the correspondence relied upon reveals an intention of authorities of the corporation as well as the State Government to frame a pension regulation for employees of the Corporation. However, there is no material on record to show that the correspondence ever culminated into framing of a pension regulation for the employees of the corporation. In absence of any such pension regulation, other than the 2002 Pension Regulation, forming a basis for the admissibility of pension for employees of the corporation, there is no basis for the petitioners to claim a benefit of pension. No material has been brought to the notice of the Court to show that the alleged intention emerging from the various correspondence, to provide a pension ever crystalized into a decision/ notification, based on which the petitioners may claim any pensionary benefit. The correspondence, therefore, cannot lay the foundation for

any claim to pension as canvased before the Court.

26. Insofar as Section 47 (B)(1)(f) of 1950 Act, the same also does not lay the foundation based on which the petitioners desire to obtain pensionary benefit can be elevated to a right which may be enforceable by issuance of a writ granting them a benefit of pensionary benefit. The provision relied upon does not apply to the petitioners and cannot be made a basis for the petitioners to claim pension at par with State Government employees. The writ petitioners have failed to show their induction in the SBSTC as State Government employees. We find that none of the writ petitioners exercised option in favour of the 2002 Pension Regulation. In fact, the pension regulation 2002 appears to have been withdrawn or cancelled because very few people opted for benefit under the same. A large number of employees found the option of getting benefits under the CPF Scheme to be more lucrative. Since a handsome and lumpsum amount was being paid, they chose not to opt for the benefit under the 2002 Regulation. The 2002 Regulation was, therefore, cancelled.

27. At the time the scheme was cancelled also the petitioners raised no grievance. The grievance was raised only by the 60 writ petitioners of W.P. No. 13475 (W) of 2003 and, therefore, the benefit was extended only to the writ petitioners of the said writ proceeding, affirmed by the Division Bench and SLP against order of the Division Bench dismissed by the Apex Court. The judgment in W.P. No. 13475 (W) of 2003, therefore, could not enure to the petitioners benefit. Therefore, we are of the view that conclusion of the learned Single Judge in this regard,

in the present proceeding requires no interference. The learned Single Judge has considered such submission and rightly rejected the same. The learned Single Judge has also rightly held that the judgment in W.P. No. 13475 (W) of 2003 cannot be said to be in rem, so as to vest any right in favour of the writ petitioners for claiming any benefit based on the judgment. The Single Judge found that despite an opportunity given in Clause 6 of the 2002 Regulation, to exercise an option for benefits thereunder within six months, the writ petitioners chose not to exercise such option. The learned Single Judge, therefore, rightly concluded that not having exercised an option within the stipulated time it must be deemed that the writ petitioners have foregone their right to come under the 2002 Regulation.

28. The learned Single Judge further took notice of an admitted fact that the petitioners receive their full retiral benefits under the CPF Scheme.They were enjoying such benefit for more than a decade while the writ petitioners of W.P. No. 13475 (W) of 2003 were espousing their right to grant of pensionary benefits under the 2002 Regulation. The petitioners, therefore, were found to have opted and availed a benefit of pension under the CPF Scheme along with gratuity leaving no scope for the petitioners to rely upon decision of the Apex Court in the case of ***D.S. Nakara*** (Supra). Such consideration and conclusion of the Hon'ble Single Judge, in our opinion cannot be said to be flawed in any manner, so as to require any interference in the present intra Court appeal.

29. The judgment of the Apex Court in the case of ***Mahendra Nath***

Sharma (Supra) also does not lend any sustenance to the petitioner's claim. In the case of ***Mahendra Nath Sharma*** (Supra) the issue before the Apex Court was whether paragraph 5 of the memorandum dated 12.09.2008 was applicable to the respondents therein for fixation of their pension at minimum of 50% in the running pay band plus grade pay introduced vide notification dated 12.10.2009. The respondents therein were given the lower of the two pay bands existing for lecturers (selection grade) for fixation of their pension grade prior to their retirement. The Supreme Court found that the respondents therein had completed the requisite three years of service and others with similar qualification were kept in higher pay band plusgrade pay. Since the respondents therein were found to be meeting the criteria, the Apex Court took notice of the legal position in its earlier decision in the case of ***D.S. Nakara*** (Supra). The decision in the case of ***D.S. Nakara*** (Supra) was considered in the facts arising for consideration in ***Mahendra Nath Sharma*** (Supra), which are distinguishable from the facts and issue arising for consideration in the present case. In the present case the writ petitioners have not been able to show that there was any pension scheme at par with State Government employees. They have also not been able to show that 2002 Pension Regulation was applicable to the pensioners or that the judgment in W.P. No. 13475 (W) of 2003 was a judgment *in rem*. Therefore, ongoing through judgment in the case of ***Mahendra Nath Sharma*** (Supra) we find that the same has no application to the facts and circumstances of the present case.

30. We find substance in the submission of the learned AAG relying upon decision of the Apex Court in the case of ***Rajesh Chander Sood and Others*** (Supra) to contend that it is the prerogative of the State Government to prescribe and apply service benefits including pensionary benefits to employees of Government Corporations and Corporate Bodies at variance with Government employees. The writ petitioners had availed the CPF benefits including gratuity under the Pension Scheme applicable to them. Nearly a decade thereafter they have approached the writ Court for grant of another/ second pensionary benefits at par with the State Government employees, or under the 2002 Regulation. We therefore, also find substance in the submissions advanced relying upon decision of the Apex Court in the case of ***Pepsu Road Transport Corporation, Patiala*** (Supra), that such benefit was never contemplated to be extended to the writ petitioners and, therefore, the petitioner's claim was not enforceable through a writ proceeding.

31. We are also in agreement with the conclusion of the learned Single judge regarding the petitioners being fence sitter. It is not in dispute that they chose not to exercise their option for grant of pensionary benefits under the 2002 Regulation. While sixty others, similarly situated as the writ petitioners approached the Court for the benefit of pension under the 2002 Regulation, the petitioners did not even exercise an option for the benefit. In fact the petitioners were averse to the benefits contemplated under the 2002 Regulation. While the others (60 retired employees) were pursuing their litigation in W.P. No.

13475 (W) of 2003 up to the Apex Court, the writ petitioners were sitting on the fence. They have filed the writ petition 12 years after coming into force to the 2002 Regulation and about 5 to 15 years after the individual date/(s) of retirement of the present petitioners. The present writ proceeding was instituted only after the petitioners of W.P. No. 13475 (W) of 2003 emerged successful. The facts, therefore, leave no scope for doubt that the petitioners were fence sitters and approached to the writ Court was also barred by delay and latches.

32. The Hon'ble Single Judge has accorded a detailed consideration and dealt with all the issues by an elaborate judgment, which in view of our consideration above requires no interference.

33. Therefore, we find no reason to interfere with the decision of the learned Single Judge.

34. The appeal is accordingly dismissed.

35. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Madhuresh Prasad, J.)

I agree.

(Prasenjit Biswas, J.)