[REPORTABLE]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No.3462 of 2023
(Arising out of SLP(C) No. 11991/2021

Calcutta State Transport Corporation & Ors. **…Appellants**

Versus

Ashit Chakraborty & Ors. **…Respondents**

J U D G M E N T

Rajesh Bindal, J.

Leave granted.

1. The order dated 5.3.2021 passed in F.M.A. No. 692 of 2019 by the Division Bench of the High Court at Calcutta has been challenged before this Court wherein order dated 17.8.2018 passed by the Single Bench in Writ Petition bearing W.P. No. 6808 (W) of 2018 was upheld.

2. It is a case in which the respondent no.1 was appointed as a Conductor with the appellant Corporation. At that time there was no pension scheme in force, only

Contributory Provident Fund Scheme was applicable. In 1991, in exercise of powers conferred under Section 45 of the Road Transport Corporation Act, 1950, the Corporation, with the previous sanction of the State Government, framed The Calcutta State Transport Corporation Employees' Service (Death cum Retirement Benefits) Regulations, 1990 (for short, "the 1990 Regulations"). The aforesaid Regulations came into force with retrospective effect from 1.4.1984. The 1990 Regulations mandated that in order to get the benefit of the said scheme, existing employees of the Corporation will have to submit written option within six months from the date of publication of the 1990 Regulations expressing their willingness to switch over to the said pension scheme instead of maintaining their status as C.P.F. holder. The 1990 Regulations also provided that it shall be optional to the existing employees, however, it shall be binding upon the new entrants on and after the date of Notification of the 1990 Regulations.

3. The respondent no.1 opted for pension scheme. On 21.7.2017, he opted for voluntary retirement, which was accepted by the Corporation and he retired on 31.7.2017.

On his retirement the respondent no. 1 was paid an amount of ₹13,28,495/- towards CPF contribution, ₹ 7,44,265/- towards gratuity, ₹ 2,58,012/- towards VRS Compensation and a sum of ₹ 2,409/- towards leave salary. As no pension was paid to the respondent no.1, he made a representation on 8.5.2018. As his claim was not considered, he filed writ petition, which was allowed by the Single Judge vide order dated 17.8.2018. The operative part of the order reads as under:

> "I direct the petitioner to refund the employer's share of the provident fund as well as the amount of gratuity paid in excess of the pensionable amount to the Corporation with interest @ 6% per annum within a period of two weeks. Upon receipt of such payment, the respondents shall release the pension in favour of the petitioner within two weeks for the month of August 2018 and shall go on paying the monthly pension as per the usual practice with the Corporation.
>
> So far as the arrear pension is concerned, i.e. from August, 2018 to July 2018, the respondents are directed to liquidate the same in three equal monthly instalments, the first of which shall be paid by September 15, 2018.

> The arrear of pension shall carry an interest @ 6% per annum to be evenly distributed in three instalments. In case the pension amount is sent to the bank account of the petitioner, the respondent authorities shall the petitioner a copy of the break-up calculation for each monthly instalment."

The order was challenged by the Corporation in appeal. The Division Bench of the High Court upheld the order passed by the Single Bench.

4. Learned counsel for the appellant submitted that no doubt the respondent no.1 submitted his option in 1991 for the pension scheme in terms of the 1990 Regulations. However, thereafter repeated conduct of the respondent no.1 shows that he in fact was not interested in that. There were regular deductions from his salary towards provident fund. The statements were being sent to him. However, he never objected to it. He raised the issue only after his retirement. In such circumstances, he should not be allowed to avail the benefit of the pension scheme.

5. On the other hand, learned counsel for the respondent no. 1 submitted that the requirement under the 1990 Regulations was to submit an option within the prescribed time. The respondent no.1 had submitted his option for availing the pension scheme. Thereafter, it was the duty of the employer, namely, the appellant to have properly calculated his salary and the deductions required to be made therefrom under different heads. In case any error was committed by the Corporation, he should not be made to suffer on that account. Whatever amount was paid to the respondent no.1 on his retirement, he accepted the same considering that the same may be due on his retirement. He did not know that the Corporation will not pay pension to him and some other amount has been paid in excess. It was the fault of the Corporation only. It is only after the retirement of respondent no.1 that he came to know that the pension was not being paid to him. As the representation made by him was not considered, he had to approach the High Court. There is no error in the orders passed by the Single Judge and Division Bench of the High Court. Equities have been

balanced. The amount, which was not due to the respondent no.1, has been directed to be refunded to the appellant Corporation along with interest and same interest is required to be paid to him on release of arrears of pension. In fact, when the respondent no.1 approached the High Court and the writ petition was allowed, it was immediately after his retirement. However, the Corporation has wasted about five years' time in avoidable litigation and deprived the respondent no.1 of his rightful claim.

6. Heard learned counsel for the parties and perused the paper book.

7. The undisputed facts are that the respondent no.1 was appointed in the Corporation as conductor on 6.7.1981. The 1990 Regulations were framed providing for pension scheme for the employees, which was effective from 1.4.1984. In terms thereof, the existing employees were to give an option to avail benefit under the 1990 Regulations. Prior to this Contributory Pension Scheme was in force. It is not in dispute that the respondent no.1 had submitted his option within time. He sought voluntary retirement on 21.7.2017, w.e.f. 31.07.2017. Certain retiral benefits were

paid to him, however, no pension was paid to him for which he had exercised the option. He filed a representation on 8.5.2018. No action was taken thereon. Hence, he filed writ petition before the High Court.

8. Initially the stand taken before the Single Judge was that the respondent no.1 had not submitted his option within the stipulated time. However, on perusal of the various documents produced before the Court, it was found that the respondent no.1 had submitted his option way back in the year 1991 immediately after the 1990 Regulations were notified. The claim of the respondent no.1 was sought to be defeated on the ground that even after exercising the option, contribution was being deducted from his salary in terms of the membership in the CPF scheme to which he never objected. Further, the plea was sought to be raised that there are large number of similarly situated employees who will raise this claim.

9. 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.

10. 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 and Another v. Kotak Investment Advisors Limited and Another***[1]. 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,

1 (2021) 10 SCC 401

> unless it has altered its position in reliance on the same."

11. 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 there 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 stake 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.

12. We do not find any error in the orders passed by the High Court. The appeal is accordingly dismissed.

_____, J.
(Abhay S. Oka)

_____, J.
(Rajesh Bindal)

New Delhi
May 8, 2023

// NR, PM //