

Dwipendra Nath Mukherji

v.

The Board of Trustees for the Port of Kolkata & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE G.S. SINGHVI HON'BLE MR. JUSTICE C. NAGAPPAN

C. A. No. 7153 of 2008 | 28-11-2013

1. This appeal is directed against judgment dated 26.3.2007 by which the Division Bench of the Calcutta High Court dismissed the appeal filed by the appellant and confirmed the order of the learned Single Judge, who rejected the appellant's prayer for issue of a mandamus to the respondents to allow him to opt for Pension Scheme.

2. The appellant who joined service in the Kolkata Port Trust was compulsorily retired vide order dated 6.3.1991. C.O. No.1021(W) of 1991 filed by the appellant for quashing that order was allowed by the learned Single Judge of the High Court and a direction was issued for his reinstatement with full back wages and other consequential benefits. The appeal filed by the Kolkata Port Trust was dismissed by the Division Bench of the High Court.

3. In compliance of the High Courts order, the appellant was reinstated on 20.2.1996. He retired from service with effect from 1.3.1996 on attaining the age of superannuation.

4. After about nine months of his retirement, the Government of India, Ministry of Surface Transport sent letter dated 9.1.1997 to the Chairman of Major Port Trusts informing them that all the CPF retirees or their families that they can opt for Pension Scheme subject to the condition that they will have to refund the element of contribution of the Port Trust with interest accrued thereon. The last date for exercise of option was 31.3.1997.

5. In compliance of the direction contained in the aforesaid letter, the Calcutta (now Kolkata) Port Trust issued circular dated 1.2.1997 to all Heads of Departments and asked them to widely circulate the policy decision taken by the Government of India so as to enable the willing and eligible retired employees or their family members to exercise option for Pension Scheme. A notice to this effect was also published in daily newspapers dated 17.2.1997. Later on, the cut off date specified in circular dated 10.2.1997 was extended to 30.6.1997.

6. In the meanwhile, the Ministry of Surface Transport sent telex dated 15.4.1997 and removed the condition of refund of CPF contribution with interest. The Kolkata Port Trust sent copies of the telex to all Heads of Departments for the purpose of wide circulation

amongst the eligible retired employees but information about the same was not published in any newspaper.

7. There were further extension in the cut off date specified in letter dated 9.1.1997, the last being 31.12.1997. However, information about the revised cut off date was not given to the retired employees and/or their families by sending individual communication or by making publication in the newspaper.

8. On 6.6.2003, the appellant made a representation to the Chairman of Calcutta Port Trust to allow him to exercise option for Pension Scheme by stating that he came to know about the liberalized Pension Scheme from a colleague in May 2003. The same was rejected vide letter dated 22.10.2003, the relevant portions of which are extracted below:

"Your representation dated 6.6.2003 was examined by the Administration in consultation with the relevant rules. It has been observed that you adopted for settlement under CPF Scheme on your retirement w.e.f. 01.05.1996. In January, 1997 the Govt, of India allowed CPF retirees who retired between 01.1.1996 and 31.1.1997 to exercise option to switch over to the Pension Scheme. This was widely circulated through press insertions. The last date for exercising such option was 31.12.1997. None of the CPF retirees was intimated individually. Accordingly your contention is not considered tenable. Moreover the last date for exercising option to switch over to pension scheme was fixed by the Ministry and KoPT has no discretion in the matter.

2. Your subject appeal dated 06.6.2003 was placed before the Competent Authority who has rejected the same with the advice that the ministry allows similar option in future your case may be considered in accordance with relevant order of the Central Govt.."

9. The appellant challenged the rejection of his prayer for being allowed to exercise option for the Pension Scheme in Writ Petition No.792/2004, which was dismissed by the learned Single Judge of the Calcutta High Court on the ground that the appellant had not explained the long time gap of over six years between the date of circulation of the policy decision taken by the Government of India and the making of representation in 2003. The appeal filed against the order of the learned Single Judge was dismissed by the Division Bench of the High Court.

10. We have heard Shri Rana Mukherjee, learned counsel for the appellant and Shri Jayant Bhushan, learned senior counsel for the Kolkata Port Trust and carefully scanned the record.

11. An issue substantially similar to the one arising in this appeal was recently considered in Civil Appeal No. 7148 of 2008 - The Calcutta Port Trust and others v. Anadi Kumar Das (Capt.) and others decided on 13.11.2013 and it was held that the plea of lack of knowledge taken by the respondent lacked merit and the Division Bench of the High Court committed an error by upsetting the order of the learned Single Judge who had recorded a firm conclusion that the respondent in that case was aware of the Pension Scheme and the circulars issued by the Kolkatta Port Trust. This Court referred to the earlier decisions in Union of India v. D.R.R. Sastri (1997) 1 SCC 514 and Union of India v. M.K. Sarkar (2010) 2 SCC 59 and observed:

"18. The question whether it was incumbent upon appellant No.1 to get the circulars published in the newspapers and communicate the same to the individual employees was considered by a two-Judge Bench in Union of India and others v. M.K. Sarkar(supra) and answered in the following words:

"The Tribunal in this case has assumed that being "aware" of the scheme was not sufficient notice to a retiree to exercise the option and individual written communication was mandatory. The Tribunal was of the view that as the Railways remained unrepresented and failed to prove by positive evidence, that the respondent was informed of the availability of the option, it should be assumed that there was noncompliance with the requirements relating to notice. The High Court has impliedly accepted and affirmed this view. The assumption is not sound. The Tribunal was examining the issue with reference to a case where there was a delay of 22 years. A person, who is aware of the availability of option, cannot contend that he was not served a written notice of the availability of the option after 22 years. In such a case, even if Railway Administration was represented, it was not reasonable to expect the department to maintain the records of such intimation(s) of individual notice to each employee after 22 years. In fact by the time the matter was considered more than nearly 27 years had elapsed. Further when notice or knowledge of the availability of the option was clearly inferable, the employee cannot after a long time (in this case 22 years) be heard to contend that in the absence of written intimation of the option, he is still entitled to exercise the option."

In the above noted case, the Court found that the respondent had made application after 22 years of his retirement for grant of opportunity to opt for the Pension Scheme. The Chairman, Railway Board rejected his representation on the ground that it was highly belated. The Tribunal set aside the decision of the Chairman, Railway Board and the Division Bench of the Calcutta High Court upheld the same. This Court reversed the orders of the Tribunal and the High Court and observed:

"When a belated representation in regard to a "stale" or "dead" issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the "dead" issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an

order is passed in compliance with a courts direction. Neither a courts direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

A court or tribunal, before directing "consideration" of a claim or representation should examine whether the claim or representation is with reference to a "live" issue or whether it is with reference to a "dead" or "stale" issue. If it is with reference to a "dead" or "stale" issue or dispute, the court/tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or tribunal deciding to direct "consideration" without itself examining the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect."

The Court then proceeded to record the following observations:

"20. We would like to observe that whenever an employer introduces the Pension Scheme or makes the same applicable to retired employees and give them opportunity to exercise option, the circulars/instructions issued for that purpose should either be communicated to the retirees or made known to them by some reasonable mode. Mere display of such notice/instructions on the notice board of the Head Office cannot be treated as an intimation thereof to the retired employees/officers. The employer cannot presume that all the retirees have settled in the city where the Head Office is located. If the employees belong to the services of the Central Government or its agencies/instrumentalities, they are likely to settle in their native places which may be far away from the seat of the Government or Head Office of the establishment or organisation. The retirees are not expected to frequently travel from their native places to the seat of the Government or Head Office to know about additional benefits, if any, extended by the Government or their establishment/organization and it is the duty of the employer to adopt a suitable mechanism for communicating the decision to the retired employees so as to enable them to exercise option. This could be done either by publishing a notice in the newspaper about which the retirees are told at the time of their retirement or by sending copies of the circulars/instructions to the retirees or by sending a copy thereof to the association of the employees and/or officers with a direction to them to circulate the same among the concerned retirees. By taking advantage of the modern technology, the employer can also display the circulars/instructions on a designated website about which prior information is made available to the employees at the time of their retirement. If one of these modes is not adopted, the retired employees can legitimately complain that they have been denied right to exercise the option and can seek intervention of the Court.

21. If an aggrieved retiree seeks intervention of the Court for issue of a direction to the employer to give him opportunity to exercise option to switch over from one scheme to the other, the employer can produce evidence to show that the concerned employee had

knowledge about the particular scheme etc. The employer can also show that even though the scheme etc. had not been communicated to the concerned employee in person, he was aware of the same. Each such case will have to be decided by the competent Court keeping in view the pleadings and evidence produced by the parties and it cannot be laid down as a general rule that each and every circular/instruction issued by the employer giving additional monetary benefits to the retired employees must be published in the newspapers and that in the absence of such publication or personal communication to the retired employee would entitle him to seek intervention of the Court after lapse of many years."

12. In this case, the appellant has tried to project a picture of innocent ignorance by asserting that he came to know about Pension Scheme for the first time in 2003 from a colleague. However, for the reasons best known to him, the appellant omitted to disclose the name of the colleague. This omission on the appellant's part is inexplicable and we do not find any valid ground to interfere with the discretion exercised by the learned Single Judge and the Division Bench of the High Court not to entertain his prayer for issue of a direction to the respondents to allow him to opt for Pension Scheme.

13. In the result, the appeal is dismissed.

14. At this stage, Shri Rana Mukherjee, learned counsel for the appellant made a fervent appeal that relief in terms of the one granted to Anadi Kumar Das may be granted to his client, but keeping in view the fact that the Court had adopted a sympathetic approach in the case of Anadi Kumar Das because the Division Bench of the High Court had allowed the appeal and granted relief to him, the same course cannot be adopted in the appellant's case for the simple reason that both the learned Single Judge and Division Bench of the High Court declined relief to him.