

**(2006) 03 CAL CK 0003**

**Calcutta High Court**

**Case No:** Writ Petition No. 4847 (W) of 2006

Sisir Kumar Mondal

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

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**Date of Decision:** March 9, 2006

**Citation:** (2007) 2 CHN 224

**Hon'ble Judges:** Jayanta Kumar Biswas, J

**Bench:** Single Bench

**Advocate:** Kazi Sajjad Alam, for the Appellant;

**Final Decision:** Dismissed

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### **Judgement**

Jayanta Kumar Biswas, J.

The petitioner alleges that the authorities are guilty of inaction in that his revised option exercised on January 24, 1992 has not been considered by them till date.

2. Case of the petitioner is this. Under the previous rules he exercised option in favour of Contributory Provident Fund-cum-Gratuity. When the Government by order dated December 16, 1991 gave fresh opportunity of submitting revised option in favour of pension including family pension-cum-gratuity, he changed his mind and decided to submit the revised option in favour of pension including family pension-cum-gratuity. Consequently, he submitted the option form dated January 24, 1992. He did not refund the employer's share of contributions (to provident fund) together with interest and additional interest, out of the impression that the amount was to be refunded by him after acceptance of his revised option by the authority. From time to time he made representations, but the authorities did not take any action in the matter. Hence, he was compelled to take out this writ petition dated March 2, 2006.

3. Counsel submits that in view of the Government decision dated December 16, 1991, the authorities were bound to accept the petitioner's revised option exercised in favour of pension including family pension-cum-gratuity. He says that in the case

of Bijoli Bhattacharya v. State of West Bengal and Ors. Civil Appeal No. 5061 of 2004, the Apex Court gave the decision dated August 6, 2004 that option exercised, though belatedly, should be accepted by the authority concerned.

4. In my view, this is a grossly belated writ petition, and that apart there is also no merit in it. There is absolutely no reason to permit the petitioner to rake up the stale issue that he allegedly raised in the year 1992. Accordingly to him the revised option was submitted by him in January 1992. Though his revised option, allegedly exercised by him, was not accepted by the authority concerned, he did not take any steps to approach the Court of Law. On the other hand he continued to be governed by the Contributory Provident Fund-cum-Gratuity Scheme. Contributions (including employer's share) deposited in that fund regularly. This fact was known to him. He took advantage of the subsequent rules revising the pay and allowances. Hence by his conduct, he consciously abandoned the right, if any, that he was entitled to exercise on the basis of the Government order dated December 16, 1991. His case that from time to time he continued to make representations is absolutely of no significance. If he was aggrieved by inaction on the part of the authority, he ought to have approached the Court with utmost expedition. The Apex Court decision I am referred to has no manner of application to the present case.

5. As to the merits of the case of the petitioner, I find that even if the revised option was exercised by him within the period mentioned in the Government order dated December 16, 1991, that was not fit for acceptance, for the simple reason that was not accompanied by refund of employer's share of contributions together with interest and additional interest. In terms of that Government order an employee intending to exercise revised option was under the obligation to submit such option within ninety days from December 16, 1991, and he was also under the unqualified obligation to refund forthwith the employer's share of contributions (to the provident fund) together with interest and additional interest. Not only the petitioner did not refund the amount, but he also compelled the Government to go on depositing contributions to his provident fund. Hence the revised option, even if it was filed within the time, was not a valid one. The presumption is also in favour of such a conclusion, since the authority concerned did not give any attention to the revised option allegedly submitted by the petitioner.

6. For these reasons the writ petition is dismissed. There shall be no order for costs in it.

7. Urgent certified xerox copy of this order shall be supplied to the parties, if applied for.