

**(2007) 09 CAL CK 0018**

**Calcutta High Court**

**Case No:** Writ Petition 14384 (W) of 2007 with 14386 (W) of 2007 with W.P. 14387 (W) of 2007 with W.P. 14389 (W) of 2007 with W.P. 14390 (W) of 2007

Asit Baran Maiti and Others

APPELLANT

Vs

The State of West Bengal and  
Others

RESPONDENT

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**Date of Decision:** Sept. 14, 2007

**Citation:** 112 CWN 667

**Hon'ble Judges:** Biswanath Somadder, J

**Bench:** Single Bench

**Advocate:** Sadananda Ganguly and Kamalesh Bhattacharyya, for the Appellant; P.S. Bhattacharyya and Tulsidas Maity, for the Respondent

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**Judgement**

Biswanath Somadder, J.

A common question of law is involved in these writ petitions. Therefore, all the matters are taken up together and disposed of by the judgment and order that follows :

The writ petitioners are all serving as teachers in various schools. All these schools are recognized by the State of West Bengal as Non-Government Aided Educational Institutions.

Some time in the year 1985, the State of West Bengal promulgated a scheme. The scheme was called, West Bengal Recognised Non-Government Educational Institutions Employees (Death-cum-Retirement Benefit) Scheme, 1981. In the said scheme, option was given to the existing employees, either to continue to be governed by the existing Rules at that point of time, which governed retirement benefits for existing employees (which was Contributory Provident Fund-cum-Gratuity), or to come under the new 1981 Scheme (Pension-cum-Family Pension-cum-Gratuity).

2. In all these cases, the writ petitioners initially opted for the earlier retired scheme, i.e. Contributory Provident Fund-cum-Gratuity Scheme. However, after coming into effect of a subsequent Memorandum dated 16th December 1991, issued by the Government of West Bengal Education (Budget Branch) Department, an option to change from Contributory Provident Fund-cum-Gratuity Scheme to Pension, including Family Pension-cum-Gratuity Scheme, was provided for, by the State Government. The said Memorandum dated 16th December 1991 is set out herein below:

GOVERNMENT OF WEST BENGAL EDUCATION (BUDGET BRANCH) DEPARTMENT  
WEITERS" BUILDING, CALCUTTA - 700 001

496-EDN.(B)

No. -----

IM-39/91

Dated, Calcutta the 16th December, 1991

#### MEMORANDUM

Sub: Change of option in terms of Memo No. 136-End)(B) dated 15.5.85.

1. The undersigned is directed by order of the Governor to say that after careful reconsideration of the matter the Governor has been pleased to allow, in relaxation of the provision contained in para 5(a) of the Memo No. 136 Edn. (B) dated 15.05.85 and in partial modification of the Memo No. 148-Edn. (B) dated 31.05.90 the approved teaching and non-teaching employees of aided non-govt. educational institutions who opted for Contributory Provident Fund/cum/Gratuity, to exercise revised option for Pension including Family Pension-cum-Gratuity subject to the condition that employer's share of contribution together with interest and additional interest shall be refunded to the Government forthwith.

2. The revised option as per this memo will have to be exercised within 90 days from the date of issue of this memo. The fresh option so exercised shall be final and no further change of option will be allowed.

3. This order issues with the concurrence of Finance Department vide their U.O. No. Group J. (Pen.) 823 dated 31.10.91.

4. All concerned are being informed accordingly.

Sd/- H. P. Mukhopadhyay

Joint Secretary to the

Government of West Bengal

3. All the writ petitioners, it appears, decided to avail the revised option as per the aforesaid Memorandum. According to the learned advocate for the writ petitioners, all of them, within the 90 days period, as stipulated in the aforesaid Memorandum, duly exercised their revised option by submitting their applications to that effect, to their respective Heads of Institution.

4. The writ petitioners have approached this court by filing these writ application, for the purpose of appropriate order/orders, so as to ensure preservation of their right under law, as it stood crystalised on the date when they submitted their revised options, in terms of the Memorandum dated 16th December 1991, to their respective Heads of Institution.

5. While making submissions on behalf of the writ petitioners, the learned advocate has drawn this court's attention to several orders passed by this High Court in similar matters earlier. He submits that in view of the earlier orders passed by this court, similar order may be passed in respect of these writ applications.

6. The learned advocate appearing on behalf of the writ petitioners, during course of his submission, has also given up insisting on prayer (b) of the writ petition which is as follows :

"Prayer (b) : A writ in the nature of Mandamus declaring that in view of the options exercised by the petitioner under ROPA Rules-1990 and 1988 and in view of revision of pay under the said Rules, the petitioner is entitled to get the pensionary benefits including dearness relief at par with State Government employees;"

7. He submits, the reason for giving up aforementioned prayer is due to the fact that presently the same issue is being considered by the Hon"ble Court of Appeal.

8. Since I propose to decide these writ petitions on an entirely different issue, I do not find it necessary for me to consider the said prayer (b) at all.

9. The learned advocates representing the State, on the other hand, submit that the writ petitioners have approached this court after waiting for several years and as such no relief can be given by this court for such unexplained delay and laches on their part. Moreover, the learned Advocates for the State submit, that if such revised option is allowed, it will have an adverse financial impact on the State inasmuch as the writ petitioners never refunded the employers share of contribution together with interest and additional interest to the Government till date, in terms of the Memorandum dated 16th December, 1991.

10. Having heard the learned advocates appearing on behalf of the parties and upon perusing the writ petitions, I am of the view that the State of West Bengal, having once provided an option to change from Contributory Provident Fund-cum-Gratuity Scheme to Pension, including Family Pension-cum-Gratuity Scheme to the writ petitioners herein, are duty bound under law to honour their commitment, as made in the Memorandum dated 16th December 1991, provided of

course, such revised option has been submitted by the writ petitioners within the stipulated time frame, to their respective Heads of Institution.

11. The submission made by the learned advocates for the state on the point of delay in filing these writ petitions, to my mind, perhaps, may not be significant. If the writ petitioners, have in fact, opted for change of option in terms of the Memorandum dated 16th December 1991, the effect of exercising such option can only be felt by the writ petitioners on the date of superannuation and not before. Admittedly, none of the writ petitioners herein have yet attained the age of superannuation. Moreover, substantive legal right which has already crystallized and effect of which is yet to take place, cannot be scuttled only on the ground of delay. In the facts of the instant case, I, therefore, hold that since the effect of benefit to be availed by the writ petitioners upon exercising their revised option in terms of the Memorandum dated 16th December, 1991, has not yet percolated down to them, the point of delay in filing these writ petitions, cannot be sustained in law.

12. So far as the submission made by the learned advocates appearing on behalf of the State with regard to adverse financial impact on the State is concerned, I am of the opinion that there cannot be any financial implication in addition to whatever has been provided for in the Memorandum dated 16th December, 1991. In the said Memorandum dated 16th December 1991, it has been specifically stated that in order to exercise revised option of Pension, including Family Pension-cum-Gratuity, the employer's share of contribution together with interest and additional interest shall have to be refunded to the Government. I am of the view that the writ petitioners, having once chosen to exercise revised option, are under a legal obligation to honour their part on their commitment and that is, to refund to the Government, the employer's share of contribution together with interest and additional interest. That, in fact, has been provided for in the Memorandum dated 16th December 1991 itself. However, they do so, the State has to first accept their revised option and only then enforce refund, in terms of the Memorandum dated 16th December, 1991.

13. In the circumstances, I direct the Director of School Education, Government of West Bengal, either himself or through any officer appointed by him, to conduct an enquiry and ascertain from the respective Educational Institutions as to whether the writ petitioners herein, have in fact exercised their revised options, in terms of the Memorandum dated 16th December 1991, and submitted their revised options to their concerned Heads of Educational Institution, within the time frame, as stipulated in the said Memorandum.

14. In the event, upon such enquiry, it comes to the notice of the said authority, that such revised option has not been exercised by any of the writ petitioners within the time frame as contained in the Memorandum dated 16th December 1991, the same shall not be accepted by the State Government for the purpose of conversion from

Contributory Provident Fund-cum-Gratuity to Pension, including Family Pension-cum-Gratuity.

15. However, if it is found, upon such enquiry, that revised option in terms of the Memorandum dated 16th December 1991 has been exercised and submitted before the respective Heads of the concerned Educational Institution, within the time frame as stated in the said Memorandum, by the writ petitioners herein, the said authority shall take immediate steps by directing the respective Heads of the concerned Educational Institution to forward such revised option form to the concerned authorities as per usual practice and procedure.

16. This enquiry shall be made and completed by the Director of School Education, or by his appointed officer, within a period of three months from the date of communication of this order and the enure exercise in terms of the directions given herein, shall be completed by all concerned respondents within a period of two months thereafter.

17. The concerned authorities of the State Government shall also be at liberty to take punitive action against the educational institutions involved herein, who have not taken steps in terms of the Memorandum dated 16th December 1991, if it is found upon enquiry, that they did not forward the revised options submitted by the writ petitioners, to the appropriate authority, in spite of receiving the same from them, within the time limit prescribed in the said Memorandum. Urgent xerox certified copy of this order, if applied for, be given to the parties as early as possible.