

ITEM NO.19 Court 13 (Video Conferencing)

SECTION XVI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition for Special Leave to Appeal(C) No. 3916/2021

(Arising out of impugned final judgment and order dated 02-03-2020 in CAN No. 698/2020 passed by the High Court At Calcutta)

THE STATE OF WEST BENGAL & ANR.

Petitioner(s)

VERSUS

JANE ALAM HALDER & ORS.

Respondent(s)

(FOR ADMISSION and I.R.)

Date : 08-03-2021 This petition was called on for hearing today.

CORAM : HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE HRISHIKESH ROY

For Petitioner(s) Ms. Madhumita Bhattacharjee, AOR
Ms. Srija Choudhary, Adv.
Mr. Anant, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

This Special Leave Petition is against the final order dated 02-03-2020 passed by the Division Bench of the Calcutta High Court in C.A.N. No. 698 of 2020 in M.A.T. No. 59 of 2020.

By the order impugned, the Division Bench of the High Court disposed of the appeal being M.A.T. No. 59 of 2020 by permitting the Finance Department to take expeditious steps for making funds available so that the retired employees could be brought under the purview of the General Provident Fund-cum-Pension Scheme and could get the benefit of the said scheme.

This Special Leave Petition has been filed on the contention that the order impugned is patently illegal and misconceived as there is no General Provident Fund-cum-Pension Scheme for the employees of the West Bengal Minorities' Commission like the Respondent No. 1. Ms. Bhattacharjee submits that there are no rules, regulations or scheme for General Provident Fund, or Pension for these employees.

Unfortunately, the petitioner did not argue, either before the Single Bench or before the Division Bench, that there was no provision for General Provident Fund or Pension for these employees. It was never argued that the Respondent No. 1 was not entitled to General Provident Fund or Pension either before the Single Bench or before the Division Bench of the Calcutta High Court.

It appears that before the Single Bench, learned counsel appearing on behalf of the petitioner submitted that the Commission was an autonomous body and the Finance Department of the Government of West Bengal was unable to pay General Provident Fund and Pension to a large number of autonomous institutions in the State for want of funds.

In the aforesaid circumstances, the Single Bench directed as follows :-

"In those circumstances, no further order can be passed in this writ petition except to direct the Finance Department particularly the M.A. and M.E. Department thereunder to allocate funds for payment of G.P.F. and Pension to the employees who have retired from the West Bengal Minorities' Commission as soon as funds are available in this regard.

In the meantime, in terms of Sections 9 and 10 of the West Bengal Minorities' Commission Act and if the funds are available with the said Commission, the same shall be utilised also for the purpose of disbursing pension-cum-gratuity to its retired employees who have chosen to be covered thereunder."

The Respondent No. 1 filed an appeal from the order of the Single Bench before the Division Bench. The Petitioner State appeared in the appeal. Even before the appeal Court, it was not the case of the petitioner that there were no rules for gratuity-cum-pension for employees like the Respondent No. 1, working in the West Bengal Minorities' Commission. The Division Bench recorded :-

"During the course of hearing Mr. Tapan Kr. Mukherjee, learned Additional Government Pleader on behalf of the State, submitted that the Finance Department vide memo dated November 29, 2019 has expressed its inability to consider the proposal for extending the provisions of General Provident Fund cum Pension Scheme due to financial constraint. The learned Single Judge in disposing of the matter has taken into consideration the said memo of November 29, 2019 and, thereafter, disposed of the said writ petition by directing the Finance Department particularly the M.A. and M.E. Department to allocate funds for General Provident Fund cum Pension for the employees who has retired from the West Bengal Minorities' Commission as soon as funds are available in this regard. This order proceeds from the premise that financial constraint was the reason for not extending the benefit of general provident fund and pension and on no other consideration."

The Division Bench of the Calcutta High Court disposed of the appeal by directing the Finance Department to take expeditious steps for making funds available so that the retired employees could be brought in the purview of the General Provident Fund-cum-Pension Scheme. The Division Bench also proceeded on the basis that there was General Provident Fund-cum-Pension Scheme in existence.

In view of the stand taken by the petitioner before the High Court, we do not deem it appropriate to entertain this Special Leave Petition.

The Special Leave Petition is dismissed. It is, however, made clear that the dismissal of this Special Leave Petition will not preclude the petitioner for filing an appropriate application for review before the High Court, in accordance with law, if so, advised.

Pending applications, if any, stand disposed of.

(MANISH ISSRANI)
COURT MASTER(SH)

(MATHEW ABRAHAM)
COURT MASTER (NSH)