

Non-Reportable

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

I.A. No. 7 of 2014

IN

CIVIL APPEAL NO.7148 OF 2008

CALCUTTA PORT TRUST & ORS.

.....APPELLANTS

Vs.

ANADI KUMAR DAS (CAPT) & ANR.

.....RESPONDENTS

O R D E R

V.GOPALA GOWDA, J.

This Interlocutory Application is filed by the applicant-respondent for modifying the operative part of the final judgment and order dated 13.11.2013 passed by this Court in Civil Appeal No. 7148 of 2008 directing the appellants Calcutta Port Trust to disburse the arrears of pension to the applicant-respondent stating various facts mainly alleging that despite the judgment and order dated

13.11.2013, though this Court has ordered for disbursement of pension to the claimant-applicant, the Calcutta Port Trust has not cleared the outstanding dues payable to him in so far as he applied for pension to the competent authority to come over to the pension scheme by submitting an application on 23.07.2001 by switching over to the pension scheme from CPF Scheme. Despite legal notice dated 27.05.2014, the Calcutta Port Trust has taken it to mean that the applicable date for the purposes of disbursement of pension to the respondent as he was permitted to exercise his option by condoning the delay in submitting his application is the judgment dated 13.11.2013, wherein this Court while setting aside the impugned judgment and order specifically directed the Calcutta Port Trust to allow respondent to exercise option in terms of Circular dated 19.02.1986 and as the option has been allowed, expressly and impliedly stands condoned.

2. The said application is opposed by the Calcutta Port Trust by filing a detailed statement of counter traversing averments made in the application and prayed for dismissal of the application and mainly placed reliance upon Order XL of the Supreme Court Rules, 1966.

3. We have heard the learned Attorney General Mr. Mukul Rohtagi and Mr. Jayant Bhushan, learned senior counsel appearing for the appellants and Mr. Ajay G. Majithia, learned counsel for the applicant-respondent.

4. It is submitted by the learned Attorney General that similarly placed petitions of 15 other writ petitioners are pending both before this Court as well in the High Court of Calcutta at various stages seeking condonation of the belated option furnished to the appellants to switch over to the pension scheme from the CPF scheme. If the present

application is allowed, all those similarly placed officers/employees may also seek a similar dispensation and if the same is extended to the ex-employees or their dependents, the yearly impact to the Calcutta Port Trust would be in the range of Rs. 576.24 crores p.a. and the arrears payable from 1962 would be to the tune of Rs.10,191.22 crores. They further contended that if the appellants are required to pay the pension benefit as claimed by the respondent by interfering the operative portion of the order, the arrears would have to be paid to him nearly about Rs.25 lakhs. Further, the Calcutta Port Trust is undergoing severe financial stress and further placing strong reliance upon the reasoning portion of the judgment dated 13.11.2013 particularly, the para 24 which reads thus:

“In the result, the appeal is allowed, the impugned judgment and order are set aside and the one passed by the learned

single judge is restored."

5. The relief granted in favour of the applicant-respondent in the civil appeal permitting him to exercise option in terms of the Circular dated 19.02.1986 means that it is a concession given having regard to the facts of the case of the applicant and the benefit was extended by this Court to exercise option in terms of the circular referred to supra and the arrears of pension with effect from 23.07.2001 as claimed by the claimant-respondent. The Calcutta Port Trust is already under financial losses and not in a position to pay arrears in case similarly placed retired officers and employees' claims are allowed by the Courts.

6. Though, we have to accept the legal contentions raised by the learned Attorney General and learned senior counsel appearing on behalf of the appellant Calcutta Port Trust that the application for seeking modification

is not maintainable however, it would be suffice for us to state that in the operative portion of the order of this Court dated 13.11.2013, the respondent is permitted to exercise the option of the pension scheme vide circular dated 19.02.1986 and further direction is given to the appellants that the needful be done within two months from the date of receipt of this order. The above said operative portion of the order makes very clear that the pensionary benefit under the scheme shall be extended to the applicant-respondent as per the circular dated 19.02.1986 and the same shall be continued to be paid to him from 23.7.2001. The said order of the court is clarified to that extent. Further with regard to the submission made by the learned Attorney General and the learned senior counsel on behalf of the Port Trust with regard to its financial position, it would be suffice for this Court to direct the appellant - Calcutta Port Trust to pay 75% of

the arrears of pension under the scheme, from 23.7.2001 till the date of judgment, to the applicant-respondent.

7. With the above said clarification and directions to the appellants, this application is disposed of. This clarification order is confined to the facts of this case.

.....J.
[V. GOPALA GOWDA]

.....J.
[C. NAGAPPAN]

New Delhi,
November 24, 2014

JUDGMENT