

10

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA NO. 8/2008 & CM No. 368/2008**

Reserved on: December 10, 2009
Date of Decision: December 23, 2009

PUNJAB NATIONAL BANK Appellant

Through: Mr.Rajat Arora, Advocate
with Mr.Ashwani Kumar
Sharma, Dy. Manager, PNB.

VERSUS

SHRI KRISHAN GOPAL GOSWAMI Respondent
Through: Mr.J.S.Chauhan, Advocate
with Respondent in person.

% **CORAM:**
HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not?
- (3) Whether the judgment should be reported in the Digest ?

J U D G M E N T

ARUNA SURESH, J.

1. This second appeal has been filed by the appellant Bank assailing the judgment and decree of the First Appellate Court dated 22nd October, 2007. While dismissing the appeal of the appellant, the Court upheld the judgment and decree of the Trial Court dated 17th

11

July, 2004.

2. In brief, the facts of this case are that respondent was employed as a Special Assistant with the appellant Bank. He was posted at N-46, Connaught Circus Branch, New Delhi. He was suspended from his duties on 24th May, 1995 and was made to face Departmental Inquiry. In the meantime, a special scheme of employees' pension was brought out by the appellant Bank in the month of January, 1996. The employees were asked to give their option for pension within the prescribed period of 120 days from the notified date i.e. the employee was required to submit the option form by 27th January, 1996 to become member of the pension scheme. Respondent, being under suspension, was not permitted to visit the Bank Branch at Connaught Circus, from where he was suspended. During his suspension period, on coming to know of the scheme, he opted for pension and sent his pension option to Shri D.L. Chopra, Senior Manager vide registered post on 18th January, 1996. He submitted duly filled in pension option form in the Connaught Circus Branch on 25th January,

1996, which was received by Shri D.L.Chopra, the then Senior Manager. Shri D.L.Chopra retired somewhere in the year 1996. Now, he is stated to have died.

3. Respondent attained the age of superannuation on 30th September, 2001 and was accordingly retired from the Bank. Despite his previous correspondence with the appellant Bank, he was not granted pension, as opted by him.

4. Consequently, respondent filed a suit for declaration seeking relief of declaration that letter dated 21st January, 2001, issued by the appellant Bank, declining him the pension benefits was illegal and invalid and also for declaration that he was entitled to pension at the time of his retirement with a relief of mandatory injunction for directing the appellant Bank to grant pension to the respondent from the date of his retirement on 30th September, 2001, as per pension scheme.

5. Beside other objections, the appellant Bank has denied receipt of any pension option from the respondent within the period prescribed under the Pension Rules. It is averred that respondent could have

visited the Bank after seeking necessary permission from the Branch Manager for submitting his pension option form. Appellant Bank also alleged that as per the Bank record, no pension option was received from the respondent.

6. The Trial Court, after assessing oral as well as documentary evidence of the parties on all the issues, decreed the suit of the respondent and granted the following relief vide its judgment and decree dated 17th July, 2007:-

"11. RELIEF:

In view of the findings given above, a decree of declaration is passed against the defendant thereby declaring that the letter dated 31.1.01 i.e. ex.PW2/56 is illegal and invalid.

(b) A further decree of mandatory injunction is also passed in favour of the plaintiff and against the defendant thereby directing the defendant bank and its employees to grant pension to the plaintiff from the date of his retirement i.e. 30.9.01 as per P.N.B. Employees (Pension) regulation/scheme. Costs of the suit are also awarded to the plaintiff.

With the result the suit of the plaintiff is decreed."

7. Following substantial question of law has been formulated by this Court on 9th January, 2008:-

"Whether on the evidence on record and the circumstances brought on record, impugned judgment and decree is in accordance with law or not?"

8. Mr. Rajat Arora, learned counsel for the appellant Bank has argued that respondent never submitted any pension option form to Shri D.L.Chopra, the then Senior Manager, Connaught Circus Branch, where respondent was posted. Shri D.L.Chopra had retired in 1997 and now he is not alive. The appellant approached the appellant Bank for pension option only after the death of Shri D.L.Chopra, somewhere in the year 2000 i.e. much after the pension scheme was floated amongst the officials of the Bank to be opted by 27th January, 1996. It is further submitted that respondent did not opt for pension and it was for the first time that he

wrote a letter to the Bank in 2000, nearing his retirement from the Bank. It is submitted that pension option received from the respondent was beyond the period fixed for submitting the option for pension and, therefore, he could not have been allowed to opt for pension scheme in 2000 or thereafter.

9. Learned counsel for the appellant Bank has referred to the ledger printout from April, 1996 to September, 1996, to emphasize that respondent did not opt for pension. Similarly, the statement showing names of employees who have not opted for pension within the stipulated period, finds mention, the name of the respondent at serial No.23, indicating that he never opted for pension. It is submitted by counsel for the appellant Bank that after retirement, respondent accepted the Contributory Provident Fund along with other retirement benefits, like gratuity, his own provident fund etc. and, therefore, acceptance of the dues, as per his appointment letter without any objection, clearly proves that respondent had never opted for pension option scheme within the stipulated period, or, otherwise.

He has submitted that the First Appellate Court, while dismissing the appeal, failed to appreciate the evidence of the parties on record and circumstances brought on record by the appellant Bank to indicate that respondent is not entitled to claim any pension as per the said pension scheme of January, 1996. He submitted that even the Trial Court went wrong in decreeing the suit of the respondent, as prayed.

10. Mr. J.S. Chauhan, learned counsel appearing for the respondent while refuting the submissions of learned counsel for the appellant Bank has submitted that respondent had opted for pension within the stipulated period as he had handed over the option letter to Shri D.L.Chopra, the then Senior Manager of the Connaught Circus Branch, New Delhi, who had put his signatures and the stamp of the Bank Manager in token of having received the same.

11. It is further submitted that respondent had also sent his option by post because he was under suspension and was not allowed to visit the Bank premises without prior permission of the Senior Manager.

It is pointed out by learned counsel for the respondent that the list, which indicates names of the officials who had not opted for pension, showing the name of the respondent was not signed by him and, therefore, on the basis of this document or on the basis of the ledger book, it cannot be said that respondent had not opted for pension. It is argued that the Trial Court as well as the First Appellate Court appreciated the evidence of the parties in the right perspective and, therefore, this appeal deserves dismissal.

12. It is an admitted fact that Shri D.L.Chopra was working as a Senior Manager at N-46, Connaught Circus Branch, New Delhi, and the respondent was working under him when he was put under suspension on 24th April, 1995. Shri Chopra was also the Chairperson of the Inquiry Committee appointed by the Bank to inquire into the charges leveled against the respondent. Appellant Bank admitted the signatures of Shri Chopra on the said proceedings placed on the record by the respondent to prove that his option letter dated 18th January, 1996 Ex. PW 2/4 for family pension was sent by him to Shri Chopra

by registered AD cover, which was duly received by the concerned Branch on 25th January, 1996, as is apparent from the AD card Ex. PW 2/7. A personal copy of the option letter dated 25th January, 1996, Ex. PW 2/8, written in English and signed by the respondent having the seal of the Bank and signatures on the same is also placed on record. Another letter dated 25th January, 1996 Ex. PW2/10, is purported to have been addressed to the respondent by Shri Chopra, Senior Manager, informing him that respondent had already taken one set of form for option for pension and he must submit the same by 27th January, 1996, being the last date of submitting the pension option form. This letter is written on the letter head of the Bank bearing the seal of the Bank and seem to have been sent through registered AD cover. Thus, it is clear that respondent had taken steps to opt for pension much before the date fixed for submission of the forms.

13. The Trial Court, in exercise of its powers under Section 73 of the Indian Evidence Act, compared the disputed signatures of Shri D.L.Chopra on Ex.PW 2/8 with

his admitted signatures appearing on suspension letter Ex.PW 2/3 and the inquiry proceedings Exs.PW2/12 and 2/13. The Court recorded the statement of Mr.Jagat Arora, learned counsel appeared for the respondent Bank in the presence of Mr.Jhalla, Officer of the defendant Bank as follows:

"Ld.CI for Deft submits that Deftt. Enquiry Proceedings in respect of Ex.PW2/12 and Ex.PW2/13 have been compared with the original. Ld. CI for Deft submits that the Deft admits the correctness of the Ex.PW2/12 & Ex.PW2/13 and the signatures of Shri D L Chopra, the then Manager of Deft bank has been compared and it appears to be correct."

14. This fact was taken care of and noted by the Trial Court while coming to the conclusion that plaintiff/appellant had succeeded in establishing that he had submitted his pension option letter with the Bank prior to 27th January, 1996. The Trial Court rightly noted the fact that respondent was under suspension at the relevant time and was not allowed entry in the Connaught Circus Branch. Perusal of suspension letter Ex. PW2/3 clearly indicate that respondent was debarred

from entering Bank premises of his office without the prior permission of the Senior Manager. This fact is not disputed by the counsel for the appellant. Therefore, respondent not only sent the option application by post but was also successful in handing over one application in English to Senior Manager, Shri D.L. Chopra.

15. Under these circumstances, Bank could not be allowed to take advantage of the fact that Shri D.L.Chopra retired in 1997 and thereafter he expired. When asked, no assistance could be received at the Bar as to when Shri D.L. Chopra expired; was it before or after 2000, when respondent started correspondence with the Bank to know the fate of his pension option application. Respondent repeatedly impressed upon the Bank to accept his application and grant him pension as opted. It seems that since Shri D.L.Chopra was also the member of the Inquiry Committee, pension application form submitted by the respondent was deliberately ignored by him or he was negligent in handling the said form. This does not, in any manner, mean that respondent had never opted for the pension scheme. If

the Bank had misplaced the application submitted by the respondent, it could not shift its burden on the respondent to say that he had never submitted any option for pension.

16. The First Appellate Court in the impugned judgment confirmed the findings of the Trial Court when it held that the Trial Court was within its jurisdiction to compare the disputed signatures appearing on document Ex. PW 2/8 and the admitted signatures appearing on Exs. PW2/12 and PW 2/13 under Section 73 of the Indian Evidence Act. Since the Trial Court exercised its powers under Section 73 of the Indian Evidence Act in a just and proper manner and also recorded the statement of the counsel appearing for the Bank, I do not find any reason to interfere in the fact finding of the Trial Court, as upheld by the First Appellate Court, that letter Ex. PW 2/8 was duly received by Shri D.L.Chopra, the then Senior Manager of the appellant Bank. It is relevant to point out here that even the Appellate Court, in exercise of its jurisdiction under Section 73 of the Indian Evidence Act, compared the admitted signatures of Shri D.L.Chopra

with the disputed signatures appearing on Ex.PW2/8. Some adverse observations have also been noted by the Appellate Court when it said that Bank could have hired a Forensic Expert for comparison of the admitted signatures of Shri D.L.Chopra appearing on Exs.PW 2/12 and 2/13 with the disputed signatures appearing on Ex.PW2/8, but the Bank chose not to do so. Thus, it is concluded that not only the respondent applied for option for pension scheme but he applied for the said pension scheme within the limitation of 120 days, which was to expire on 27th January, 1996.

17. The other contention of the learned counsel for the appellant Bank is that Bank had issued the list of persons who had not furnished the pension option form within the stipulated period. As per the said list Ex.DW1/5, name of the respondent appearing at serial No. 23 indicate that he had not furnished the pension option form. The Trial Court noted that the original document was neither produced nor placed on the record and the document produced in evidence was only the true photocopy of the original.

18. Be that as it may, it is relevant to note that this list contained 26 names of the Bank officials who had not furnished the pension option form within the stipulated period. All the entries, except three entries at serial Nos. 1, 13 and 23, bear the signatures of the concerned persons. However, none signed against aforementioned three entries. Name of the respondent appeared at serial No. 23. Undisputedly, he had not signed against his name. Therefore, it is obvious that respondent was never called upon by the Bank to sign the list of persons who had not opted for pension in time. Hence, this annexure, in no manner, can be read against the respondent to conclude that he had never applied for pension, though he claimed that he had applied for the same. An unsigned entry made in a document by the Bank would have no bearing on the respondent especially when Bank has failed to produce any independent evidence to indicate that this list was duly delivered to the respondent informing him that he had never opted for pension. The covering letter of this document indicate that it was addressed to the Regional Manager (South) Region, Delhi. There is nothing in the letter to

suggest that, a copy of the annexure was also sent to the employees named therein. Therefore, appellant Bank has not been successful in proving that this list was conveyed to the respondent.

19. Under these circumstances, the Trial Court rightly observed that annexure to the letter Ex. DW1/5 is of no help to the appellant Bank. The Appellate Court also rightly upheld the observations of, and analysis of the evidence by the Trial Court to come to the conclusion that Bank had not been able to satisfy the Court, if at all, the said list was ever handed over to the respondent. I agree with the findings of the Trial Court as well as of the Appellate Court qua this document. Unless proved otherwise, the Court cannot raise a presumption that the Bank had followed the normal course of business and had handed over copy of this letter to the respondent, which, to my mind, the Bank has failed. The Trial Court as well as the Appellate Court were required to decide the matter on the basis of the evidence placed before it. It is pertinent that Bank even failed to produce any evidence to prove that salary slips were supplied to the respondent

indicating that he was a non-pension optee.

20. The ledger printout Ex.DW1/6 has been referred to by learned counsel for the appellant Bank to say that the respondent had not opted for pension. However, again for similar reasons, I find that Bank has failed to prove that the said ledger printouts were handed over to the respondent or delivered to him to bring to his notice that as per the records of the Bank, he was treated as 'non-pension optee'. Had it been so, respondent would have immediately actuated himself and taken appropriate steps to ensure that his option application for pension scheme was traced out or located and processed in accordance with the Pension Scheme Rules.

21. In my view, the Bank completely failed to prove its defence before the Trial Court and even could not demolish the case of the respondent that he had applied for pension within the stipulated period of 120 days, but the Bank did not process it. It is noted that Bank never conveyed to the respondent the fate of his option application for pension scheme.

22. It is submitted that since respondent has

accepted the amount paid by the Bank on his retirement, which included the Contributory Provident Fund of the Bank, he is not entitled to the relief as claimed. This argument is without any basis.

23. Suffice it to say that the amount of Rs.3,42,998.52 was deposited in the account of the respondent without his consent and on coming to know of this deposit, respondent had protested vide notice dated 10th December, 2001, Ex.PW2/67. The appellant Bank, under these circumstances, could not be allowed to take advantage of its own wrong in misplacing the pension option letter and not processing the same and then depositing its Contributory Provident Fund in the account of the respondent without his permission, or consent, to which he had also lodged his protest. Respondent could not have objected to the deduction of provident fund from his salary and its credit in his provident fund with requisite contribution made by the Bank for the period from 1996 to 2001, for the reason that he was not aware of the fate of his pension option letter. In the absence of any authentic decision or order of the Bank, there was no

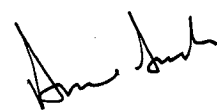
reason for the respondent to assume or presume that his option for pension would not be accepted and granted to him in due course of business of the Bank,

24. Hence, I conclude that the Trial Court as well as the Appellate Court analyzed and appreciated oral as well as documentary evidence and circumstances placed on record in the right perspective rationally and judiciously. The impugned judgment and decree is based on correct analysis of facts and law, therefore, I find no infirmity or illegality in the said judgment and decree of the Trial Court dated 17th July, 2004 and confirmed by the First Appellate Court vide its impugned judgment and decree dated 22nd October, 2007.

25. Learned counsel for the appellant has submitted that Bank had contributed 50% of the provident fund paid to the respondent, amounting to Rs.3,42,998.52, on his attaining the age of superannuation i.e. on 30th September, 2001. As per the Pension Rules, respondent has to return back the 50% contribution of the Bank in the provident fund with interest as on 30th September, 2009, which comes to

Rs.6,12,230/- and Bank will have to pay the respondent Rs.8,93,337/- as arrears of pension. Therefore, if the accounts are adjusted, as per Pension Rules, Bank becomes liable to pay only a sum of Rs.2,81,107/- to the respondent towards arrears of pension. It is noted that respondent has no objection to the same. Bank is permitted to reconcile the accounts and as informed to the Court, Bank would pay a sum of Rs.2,81,107/-, as arrears of pension till 30th September, 2009 and another sum of Rs.18,986/- as arrears of pension for the month of October and November, 2009, to the respondent within one month as according to the Bank, family pension of the respondent would be fixed at Rs.9,493/- per month as per the Rules.

26. Hence, appeal, being without merits, is hereby dismissed.


ARUNA SURESH
(JUDGE)

DECEMBER 23, 2009

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