

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

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WP(C)1429/2003

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Date of decision: 27th April, 2010

SUNITA AGARWAL

..... PETITIONER

Through: Mr. Sudhir Chandra, Sr. Advocate with Mr.
R.K. Modi & Mr. Bhagabati Prasad,
Advocates

Versus

ALLAHABAD BANK & ANR.

..... RESPONDENTS

Through: Mr. Yashraj Singh Deora, Advocate

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

RAJIV SAHAI ENDLAW, J.

1. The petitioner seeks a writ of mandamus directing the respondent bank to grant the benefit of pension under the Allahabad Bank (Employees') Pension Regulations, 1995 to the petitioner. It is the case of the petitioner that under the said Regulations, it was obligatory on the part of the respondent bank to intimate its officers, including the petitioner, about the said Regulations; that at the relevant time, the petitioner was on deputation as Manager (Credit) to Rashtriya Mahila Kosh, Department of Women & Child Development, Ministry of Human Resource Development, Government of India and was not informed / intimated about the said Regulations; that she for the first time came to know about the said Regulations at the time of opting for Voluntary Retirement Scheme and

accordingly made a representation to the respondent bank for grant of pension in view of the fact that the petitioner could not adopt the said scheme at the relevant time due to default of the respondent bank. Upon refusal of the respondent bank to accede to the request of the petitioner, the present petition was filed.

2. This Court on 1st February, 2006 directed the counsel for the respondent bank to seek instructions whether the respondent bank could accede to the petitioner's request by recourse to Regulation 55 of the aforesaid Regulations. The counsel for the respondent bank on 14th March, 2006 expressed inability. Again, during the hearing on 4th September, 2009, the senior counsel for the petitioner stated that the petitioner shall make a representation to the Chairman-cum-Managing Director of the respondent bank under Regulation 55 (supra). This Court directed the respondent bank to consider the representation of the petitioner within a period of six weeks with intimation to the petitioner. The respondent bank vide order dated 31st October, 2009 has rejected the said representation of the petitioner. The counsels for the parties have been heard.

3. The counsel for the respondent bank at the outset submitted that owing to the judgment in ***Jai Singh B. Chauhan Vs. Punjab National Bank*** 2005 (6) SCC 262, pronounced since the filing of the present writ petition, the matter is not *res integra*. He has further contended that the Supreme Court vide order dated 20th November, 2009 in Civil Appeal No.7682/2009 titled ***Punjab National Bank Vs. Mehar Singh*** has also pronounced on the same matter as in controversy in the present case. Per contra, the senior counsel for the petitioner has urged that ***Jai***

Singh B. Chauhan (supra) was decided on its own facts and does not consider the entire legal aspects involved in the controversy.

4. The Allahabad Bank (Employees') Pension Regulations, 1995 were approved by the Board of Directors of Allahabad Bank in exercise of powers conferred by Clause (f) of Sub-Section (2) of Section 19 of the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970, after consultation with the Reserve Bank of India and with the previous sanction of the Central Government. The said Regulations were published in the Gazette of India on 29th September, 1995. The said Regulations *inter alia* applied to employees of Allahabad Bank who exercised an option in writing within 120 days from the "notified date" to become the member of the pension fund and authorized the trust of the Provident Fund of the bank to transfer the entire contribution of the bank along with the interest accrued thereon to the credit of the pension fund constituted under the said Regulations. The Regulations define the "notified date" as the date on which the said Regulations are published in the Official Gazette.

5. The Allahabad Bank took out a Circular dated 16th November, 1995 addressed to all its offices and branches intimating the employees of the bank of the aforesaid Regulations. The employees of the bank wanting to exercise the option under the said Regulations were advised to exercise the same by 27th January, 1996. The offices of Allahabad Bank were advised to bring the contents of said Circular to notice of all the employees of the branch / office of the bank. Since the said Regulations were also applicable to retired employees / family members of retired / deceased employees, the Branch Managers of the bank were by the said

Circular also directed to send a copy of the Circular to each of such retired employees / family members of the retired employees / deceased employees, at the last known address, for information and necessary action.

6. It is the case of the petitioner that she, at the relevant time, being on deputation to the Rashtriya Mahila Kosh, was not notified of the Regulations or the Circular and learnt of the same much later when exercising the option under a Voluntary Retirement Scheme.

7. It is the admitted position that the Regulations of the Punjab National Bank, which were the subject matter of the judgment in ***Jai Singh B. Chauhan***, in so far as the present controversy is concerned, are identical to that of the respondent ***Allahabad Bank***. Though the senior counsel for the petitioner at one stage had contended that in ***Jai Singh B. Chauhan*** there was no circular of the bank as in the present case but the counsel for the respondent bank has invited attention to para 4 of the judgment wherefrom it appears that a Circular was issued in that case also calling for options. The Supreme Court in the said judgment held that the mode of publication of the Regulations prescribed being by publication in the Official Gazette, ***Jai Singh B. Chauhan***, the bank employee in that case, could not be heard to say that he was not aware of the Regulations. Relying on ***Pankaj Jain Agencies Vs. Union of India*** 1994 (5) SCC 198, it was further held that publication in the Official Gazette is the customarily recognized official channel. The contention raised that there was failure to make the law known and the notification did not acquire elements of operativeness and enforceability was held to be unacceptable.

8. In ***Mehar Singh*** (supra), the High Court had allowed the writ petition of the employee and directed the bank to release the pensionary benefits in terms of the option exercised belatedly. Even though the bank in that case was erroneously showing Mehar Singh as a pension optee for a long period of seven years, the Supreme Court set aside the order of the High Court. It was held that if there was no discretion left in the bank to accept the belated application, then merely because the bank treated Mehar Singh for a long period of seven years as a pension optee would by itself create no rights in favour of Mehar Singh. It was held that there can be no estoppel against the statute. The Regulations described as law in the said judgment were held to be clear, i.e. that the employees of the bank were required to give an option within 120 days of the notified date of the Pension Regulations.

9. It would thus appear that in view of the two judgments (supra) of the Supreme Court, even if the petitioner herein were to establish that the Regulations were not in her knowledge and / or of the Circular aforesaid of the bank requiring all officers / managers of the respondent bank to bring the Regulations to the knowledge of all employees were to be established, the petitioner would still be not entitled to any relief.

10. The senior counsel for the petitioner has however contended:-

- (i) That the judgment in ***Jai Singh B. Chauhan*** is coloured by the finding that not only was the option not exercised within time but Jai Singh B. Chauhan had also been utilizing the amounts deposited in the Provident Fund Account. It is contended that from the said fact,

the Supreme Court inferred that Jai Singh B. Chauhan had decided not to opt for the pension scheme.

- I, however, do not find any merit in the said contention. The plea of Jai Singh B. Chauhan also was that he was not in the know of the Pension Regulations. Thus dealing with the provident fund was immaterial.

(ii) It is contended that notwithstanding the time prescribed to exercise the above option from the date of publication in the Official Gazette, the judgment in ***Jai Singh B. Chauhan*** records that the Government of India, Ministry of Finance, Department of Economic Affairs, Banking Division had vide letter dated 19th February, 2002 permitted the bank to accept options belatedly from two categories of employees and in neither of which categories Jai Singh B. Chauhan was found to fall. It is urged that thus the time prescribed from the date of publication in the Gazette was not sacrosanct.

- However, the said argument also does not convince me so as to hold that I am not bound by the judgments aforesaid of the Supreme Court. The petitioner also does not fall in the two categories of employees with respect whereto the Board of Directors of the Bank were permitted to accept options exercised belatedly. Moreover, the petitioner in this petition has not challenged the said letter as discriminatory. It is significant that the judgment in ***Jai Singh B. Chauhan*** was pronounced though after the institution of this petition

but nearly five years ago. The petitioner had an option to thereafter amend the petition. Nothing of the sort has been done. It was the contention of the bank in ***Jai Singh B. Chauhan*** that there was no necessity for the Bank to give any individual notices. The said contention, though not expressly, was accepted by the Supreme Court.

- (iii) The senior counsel contends that the Circular dated 16th November, 1995 of the respondent bank, notwithstanding the Regulations, enjoined intimation of the Regulations to all concerned, to enable them to exercise the option. It is contended that for this reason only a special provision was made with respect to officers of Allahabad Bank deputed to Vijaya Bank and Central Bank of India and intimation at the last known address to the retired employees / family members of retired / deceased employees were sent. It is contended that there is no provision in the said Circular for intimation to the petitioner, the sole employee of the bank deputed to Rashtriya Mahila Kosh and who constituted a class by herself. It is urged that thus there was no communication to the petitioner.

- I am unable to accept the said contention also or to hold that for the reason of the same, the petitioner is entitled to any relief inspite of the binding dicta aforesaid of the Supreme Court. Firstly, as aforesaid, there was a Circular in ***Jai Singh B. Chauhan*** also and notwithstanding the same the time for exercising the option was

computed in terms of the Regulations from the date of publication thereof in the Official Gazette and not from the date of the Circular. Secondly, the Supreme Court in *Mehar Singh* has unequivocally held that under the Regulations no discretion was left in the bank. Lastly, I find that the said Circular is not in accordance with the Regulations. The Regulations did not require issuance of any such Circular and provide for the publication in the Official Gazette as sufficient communication to all employees and made the said publication as the starting point of the time prescribed for exercising the option. The counsel for the respondent bank has in this regard also drawn attention to *State of Maharashtra Vs. Mayer Hans George* 1965 (1) SCR 123 where the Supreme Court held that where there is a statutory requirement as to the mode or form of publication and they are such that, in the circumstances, the Court holds to be mandatory, a failure to comply with those requirements might result in there being no effective order, the contravention of which could be the subject of a prosecution and a failure to comply with those requirements might result in the Court holding that there was no publication. It was further held that where there is no statutory requirement, the rule is of publication in the usual form i.e. in the Official Gazette i.e. the Gazette of India. The argument that notification in the Official Gazette is not effective for being not brought to the actual notice was rejected. Reliance in this regard is also placed on *Union of India Vs. Ganesh Das Bhojraj* 2000 (9)

SCC 461 to contend that the principle aforesaid laid down in *Mayer Hans George* (supra) in relation to a penal provision has been held to be of general application. The counsel for the respondent has also referred to *Ram Singh Vijay Pal Singh Vs. State of U.P.* 2007 (6) SCC 44 where the Director of Agricultural Produce Markets Board had issued a letter on the basis whereof relief was claimed; the Supreme Court held that if the letter was contrary to the powers which could be exercised by the Board of Directors under the statute, the Courts could not issue any mandamus to the Board to do something contrary to the Statute. It is contended that the Regulations aforesaid are a piece of subordinate legislation and the petitioner cannot be granted relief on the basis of the Circular which is not in terms of the Regulations and granting of which relief would be contrary to the Regulations. There is merit in the said contention of the counsel for the respondent.

- (iv) The senior counsel for the petitioner in rejoinder contended that the respondent bank is a “state” within the meaning of Article 12 of the Constitution of India and invoked Article 14 of the Constitution to contend that the action of the bank in the present case is arbitrary. It is contended that the petitioner on deputation at the relevant time was similarly placed as the retired employee / legal heirs of the retired / deceased employee and there is no rationale in the Circular, while providing for issuance of individual notices to such persons who are not expected to be in the know of the Regulations being far away

from the bank, to not provide the same for the petitioner who, also owing to deputation, was working away from the bank. It is contended that there is no rationale in the Regulations for providing for a period of 120 days only for exercising the option. The senior counsel for the petitioner also relies on *D.S. Nakara Vs. Union of India* (1983) 1 SCC 305 to contend that prescribing of a cut off date is discriminatory.

- I am afraid, the said contention cannot be accepted. Neither has the petitioner challenged the Regulations nor are there any pleadings to the said effect. The senior counsel has also contended that the aspect of arbitrariness has not been gone into in *Jai Singh B. Chauhan* or in *Mehar Singh*. However, the Supreme Court having authoritatively pronounced on the subject is deemed to have considered all aspects of the controversy and it is not for this Court to hold the judgments of the Supreme Court to be not binding on such grounds.

11. At this stage, the argument of the senior counsel for the petitioner of Regulation 55 empowering the Board of Directors of the bank to allow the option to be exercised belatedly also requires to be considered. The said Regulation is as under:

- “55. Power to issue instructions
The Chairman and Managing Director of the Bank may from time to time issue instructions as may be considered necessary or expedient for the implementation of these regulations.”

It is urged that the aforesaid vests a discretion in the Chairman & Managing Director. It is further contended that the said Regulation has not been considered by the Supreme Court.

12. The power vested in the Chairman & Managing Director to issue instructions for implementation of the Regulations cannot be read as vesting a power in the Chairman & Managing Director to alter the Regulations. The power is to be exercised only in implementation. In the matter of publication of the Regulations, the Regulations are and have been held to be self contained i.e. publication for enabling the concerned person to exercise option is from the date of publication in the Official Gazette. The power under Regulation 55 cannot be read as empowering the Chairman & Managing Director to alter the manner of publication.

13. Be that as it may, this Court had directed the Chairman & Managing Director to consider the representation of the petitioner and decision dated 31st October, 2009 in that regard has been placed on record. In the said decision, it has been informed that as per the MOU dated 29th October, 1993 signed between the Indian Bankers Association on behalf of its member banks on the one hand and the representatives of the recognized trade unions of bank employees and banking industry and of which the petitioner was a member on the other hand, pension as second retirement benefit in lieu of employers contribution to Employees Provident Fund account was introduced and it was agreed that the employees / officers of the bank would be required to exercise the option. The last date prescribed in the

Circular then issued was till 30th November, 1994. However, in implementation of the pension scheme, the Regulations aforesaid were notified and in which the date for exercising the option was prescribed as within 120 days from publication in the Official Gazette. It was for this reason only that in the Circular dated 16th November, 1995 relied by the petitioner, it was provided that employees / officers, who had exercised the option pursuant to the earlier Circular dated 6th September, 1994 need not exercise the option again. The Chairman & Managing Director of the respondent bank in the said decision has also controverted the plea of the petitioner being not in the know of the pension scheme for the reason of being on deputation. It is stated that the petitioner was on deputation from 5th July, 1995 to 31st December, 1997 i.e. from after the Circular dated 6th September, 1994. It is further stated that the petitioner being a senior officer, would have been aware of the pension scheme and chose not to exercise the option and at the time of seeking voluntary retirement in 2001 changed her mind and which cannot be permitted.

14. Though inspite of the legal position aforesaid, the question of whether the petitioner was in the know of the Regulations is not relevant but elaborate submissions were addressed on the said aspect. The senior counsel for the petitioner has contended that the respondent bank imputed knowledge to the petitioner of the Regulations and the Circular only for the reason of the petitioner, while on deputation in Rashtriya Mahila Kosh drawing her salary from one of the branches of the respondent bank. It is contended that merely because the petitioner had an account with the respondent bank cannot be a reason for imputing knowledge to the petitioner of the Regulations and the Circular. The counsel for the respondent bank rebuts by contending that the demand of the employees /

officers of the bank for a pension scheme was pending and brewing for long and it is inconceivable that the petitioner was not in the know of the same.

15. This Court in the exercise of writ jurisdiction cannot go into the disputed question of attributing knowledge to the petitioner. Moreover, the knowledge being attributed by the Regulations from the Official Gazette, the said question does not arise for consideration.

16. Before parting with the case, it may be noted that the counsel for the respondent has fairly brought to the attention of this Court that the Allahabad High Court had passed an order directing the respondent bank to give benefit of the pension scheme to an employee who had not exercised the option within the prescribed time. It is informed that SLP (Civil) No.14355/2007 was preferred by the respondent Allahabad Bank against the said order and which was disposed of vide order dated 7th January, 2008; the Supreme Court though dismissed the SLP, but clarified that the same should not be treated as a precedent. This however further fortifies me to hold that had the Supreme Court considered the judgment of the Allahabad Bank to be a correct exposition of law, the occasion for clarifying that the same should not be treated as a precedent would not have arisen.

There is no merit in the petition; the same is dismissed. No order as to

**RAJIV SAHAI ENDLAW
(JUDGE)**

27th April, 2010
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