

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

Date of decision: 6th May, 2011

+ W.P.(C) 13655/2009

% H.G.S. PAHWA Petitioner
Through: Ms. Shobhna Takiar, Advocate.

Versus

PUNJAB NATIONAL BANK AND ORS Respondents
Through: Mr. Jagat Arora, 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? | NO |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

RAJIV SAHAI ENDLAW, J.

1. The petitioner was compulsorily retired in the year 1991 from New Bank of India. The New Bank of India merged with the respondent no.1 Punjab National Bank in the year 1993. This writ petition was filed in the year 2009 seeking direction to the respondents to release the payment of

pension and other retiral benefits stated to be due to the petitioner and not paid, together with interest.

2. Notice of the petition was issued. Pleadings have been completed.

3. As far as the claim for pension is concerned, the counsel for the petitioner is unable to show any pension scheme of New Bank of India in force at the time of compulsory retirement of the petitioner. The petitioner however relies on the Pension Regulations of the year 1995 of the Punjab National Bank. The counsel for the respondent Bank contends that the said Regulations were not applicable to the New Bank of India at the time of compulsory retirement of the petitioner though in some cases the benefit of the said Regulations was extended to the employees of New Bank India who continued in employment with Punjab National Bank and exercised the option to avail of the pension scheme. It is contended that the petitioner having already ceased to be an employee of New Bank India prior to its merger with the Punjab National Bank is not entitled to the benefit of the said pension scheme.

4. Per contra, the counsel for the petitioner has invited attention to the Clause 3 of the Pension Regulations aforesaid making the same applicable

inter alia to employees who were in the service of the Bank on or after the 1st day of January, 1986 but had retired before the 1st day of November, 1993 and who refund the entire amount of Bank's contribution to their Provident Fund together with interest in the manner provided therein. The counsel for the petitioner on the basis thereof contends that the petitioner having retired after 1st January, 1986 and before 1st November, 1993 would be covered by the Pension Regulations. It is further contended that the occasion for the petitioner to refund the Bank's contribution to the Provident Fund did not arise since the same has not been released to the petitioner till now and for which also the claim has been made in the present petition. It is stated that the petitioner had however within prescribed time exercised the option to be covered by the scheme.

5. It has next been enquired from the counsel whether "retired" would include compulsorily retired.

6. In this regard, it may be noticed that Regulation 2(x) defines "retired" as including deemed to have retired under clause 2(l). clause 2(y) defines "retirement" as cessation from Bank's service on attaining the age of superannuation or on voluntary retirement or on premature retirement

by the Bank before attaining the age of superannuation specified in the Service Regulations.

7. Clause 32 of the Regulations provides that Premature Retirement Pension “may be granted to an employee” who has rendered minimum 10 years of service and who retires from service on account of orders of the Bank to retire prematurely in the public interest or for any other reason specified in service regulations.

8. The counsel for the respondent Bank has also drawn attention to Regulation 33 dealing with “Compulsory Retirement Pension”. It is his contention that the Regulations having dealt with Compulsory Retirement separately from Premature Retirement and the petitioner having compulsorily retired would not fall in the definition of Premature Retirement.

9. However it is deemed appropriate to look into service Regulations of respondent Bank in this regard and which are not available with either of the counsels.

10. As far as the claim of the petitioner for other retiral benefits is concerned, the respondent Bank in its counter affidavit though not controverting the same has pleaded that the sum of ₹1,28,646.61p due

thereagainst was credited to the petitioner's SB Fund A/c No.8266 (old number) and A/c No.3371000200082664 (new number) of the petitioner with the Baijnath District, Kangra, Himachal Pradesh Branch of the respondent Bank.

11. The petitioner on the contrary, in the rejoinder has denied that the amount was so credited or that it has been allowed to be withdrawn by him.

12. The petitioner along with rejoinder has also filed a copy of letter dated 20th September, 2000 of the respondent Bank releasing the said retiral benefits. It is pointed out therefrom that the same was conditional upon payments by the petitioner of the amounts claimed by the respondent Bank from the petitioner but for which the suit filed by the respondent Bank against the petitioner has been dismissed. It is contended that owing to the endorsement "CAUTION" on the letter dated 20th September, 2000, the retiral benefits that were sent under cover of the said letter were not released to the petitioner.

13. All the aforesaid questions entail disputed questions of fact and which cannot be adjudicated in writ jurisdiction. It is felt that the

appropriate remedy therefor is by way of a suit where witnesses can be examined and cross examined.

14. Though the question of pension is a pure question of law and which can be adjudicated but the decision thereof would also be dependent upon whether the retiral benefits were released to the petitioner or not in as much as if the retiral benefits were so released and the petitioner has failed to deposit the same with the respondent Bank, the petitioner, even if entitled to the benefit of pension scheme as contended by him, would in any case be not entitled to the benefit of the pension scheme. It is thus felt that the said question also be left for adjudication in the suit aforesaid.

15. The counsel for the petitioner also at this stage seeks to withdraw the writ petition with liberty to file suit for recovery of amounts claimed to be due including for pension. She however seeks protection qua limitation. The counsel for the respondent Bank has been heard on said aspect.

16. In the entirety of the facts, it is felt that if the suit aforesaid is preferred by the petitioner on or before 3rd June, 2011, the same be considered on merits without any objection as to limitation.

The petition is disposed of with the aforesaid directions. No order as

to costs.

Dasti under signature of court master.

**RAJIV SAHAI ENDLAW
(JUDGE)**

MAY 6th, 2011
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