IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7687 of 2014

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Baijnath Singh S/o Late Ramagya Singh, Retired Armed Guard, Punjab National Bank, NEW Market Branch, Patna. Resident of village- Mubarakpur, Post Office- Danapur Cantt, District- Patna

.... Petitioner

Versus

1. Punjab National Bank through its Chairman-cum-Managing Director having its Registered Office at Bhikaji Cama Place, New Delhi
2. The Assistant General Manager, Punjab National Bank, P.F. and Pension Fund Department, Rajendra Place, New Delhi
3. The Zonal Manager, Punjab National Bank, Chanakya Complex, Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ajit Kumar. Adv.

For the Respondent/s : Dr. Pankaj, Adv.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

CAV JUDGMENT

Date: 15-10-2015

Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application reads as follows:

> "1.i. For issuance of an appropriate writ/ writs, direction/ directions in the nature of certiorari or writs, order or orders for quashing order dated 13.9.2013 passed by the Assistant General Manager, Punjab National Bank and communicated vide Letter No. PENSION/ 77796 dated 13.9.2013 whereby and whereunder the claim of the petitioner for inclusion of his name in the pension scheme has been rejected in most arbitrary and mechanical manner and in consequence thereof be further pleased to direct the respondents to treat and include in the list of 'PENSION OPTEES' by according benefits under the pension scheme known as Punjab National Bank (employees) Pension Regulations, 1995 in

view of the fact that the petitioner has earlier opted for the pension and again exercised the option for his admission in the pension scheme prior to 27.1.1996."

3. Learned counsel for the petitioner while assailing the impugned order had submitted that the decision to deny the petitioner of benefit of drawing pension under the policy of the Bank was factually incorrect and legally impermissible. In this regard he has placed reliance on two unreported judgment, namely, the judgment dated 13.3.2003 in C.W.J.C.No. 5629/2011 (Shyam Bihari Rai v. Punjab National Bank & ors.) as well as another unreported judgment dated 5.10.2012 in C.W.J.C.No. 7839/2012 (Veena Devi v. the General Manager. P.F. & Pension Fund Deptt., PNB Head Office, New Delhi & ors.).

4. Learned counsel for the respondents, on the other hand, has placed reliance on the counter affidavit wherein the facts of the petitioner have been explained at length for only demonstrating that the petitioner did not submit his option within the prescribed period of time and also did not deposit the amount as per Bank circular.

5. The facts giving rise to this writ application lie in a narrow compass. The petitioner had joined the services of Punjab National Bank in March, 1989 and claims to have opted for grant of pension in response to the Bank Circular No. 1431 of 1991 but the petitioner was not given the benefit of pension and when he had

retired on 31.1.2010 as Armed Guard from the Punjab National Bank he was paid the amount of C.P.F.

6. The further case of the petitioner is that when he was refused benefit of pension despite his option given earlier in terms of the Bank Circular No. 1431/1991 and the Employees Pension Regulations, 1995 dated 29.9.1995 he alongwith others had moved this Court in C.W.J.C.No. 15541/2006 which was allowed by the learned Single Judge by his judgment dated 5.10.2010 but the said judgment of the learned Single Judge was set aside on 9.11.2011 by the Division Bench in L.P.A.No. 1985/2010 filed by the Bank and the matter was remitted by the Division Bench back to the learned Single Judge for fresh consideration after examining the case of each of the petitioners. The learned Single Judge on remand had by an order dated 2.5.2013 directed the petitioner and others being the petitioners of C.W.J.C.No. 15541/2006 to file their individual representation and a direction to the competent authority of the Bank to decide the matter within a period of six months. The petitioner claims that he also had filed a representation in pursuance of the aforementioned order dated 2.5.2013 of this Court, whereafter the impugned order was passed on 13.9.2013 rejecting the claim of the petitioner.

7. It is also the case of the petitioner that after his retirement while the issue of grant of pension to him was pending before this

Court in the aforesaid writ petition C.W.J.C. No. 15541 of 2006, a fresh Memorandum of Settlement had been arrived on 27th April, 2010 as with regard to payment of pension to the employees, who has already been paid the amount of C.P.F. and in pursuance of the aforementioned settlement the Management of the Bank had issued Circular No. 8 of 2010 dated 26.8.2010 wherein the pension optees were requited to deposit 100% of the Bank's contribution to the Provident Fund received by them after retirement and the last date for such deposit was 24.11.2010. The petitioner claims that due to want of information of the aforesaid circular he could deposit the amount of Provident Fund to the tune of Rs.3,98,739.92 paise only on 4.12.2010 but he was subsequently informed that his request for option of pension was not allowed because the last date for deposit of the amount was 24.11.2010.

8. The main thrust of the learned counsel for the petitioner was on the aspect that when the Bank's circular had not been properly notified and was not brought to the notice of the petitioner, as a result whereof he could not deposit the provident fund amount within the prescribed period of 24.11.2010, he could not be blamed keeping in view that the same was a beneficiary provision and therefore, the deposit made by him on 4.12.2010 should be treated to be the sufficient compliance of the option for getting pension in terms of the

Bank's circular dated 26.8.2010. It is in this regard that the learned counsel for the petitioner had referred to and relied on the judgment of this Court in the case of Shyam Bihari Rai (supra) as also the case of Veena Devi (supra) which according to the learned counsel for the petitioner had also covered the case of the petitioner.

9. Learned counsel for the Bank, on the other hand, has submitted that there were two issues which were being raised by the petitioner. Firstly, with regard to applicability and option of the petitioner for getting pension in terms of the circular No. 1431/1991 and the Employees Pension Regulations, 1995 quite distinct and separate from the Bank's circular dated 26.8.2010. Learned counsel for the Bank has explained that moment the petitioner had received payment of C.P.F. on his retirement on 31.1.2010 his first part of claim based on Bank's circular No.1431/1991 automatically came to an end. As with regard to applicability of the circular dated 26.8.2010 learned counsel for the Bank was of the view that the petitioner cannot get its benefit because the last date and the deadline for refunding the amount of provident fund was 24.11.2010 and therefore, the deposit made by the petitioner on 4.12.2010 could not have conferred him with the benefit of payment of pension.

10. In the considered opinion of this Court the first part of the grievance of the petitioner arising out of Bank's circular No.

1431/1991 cannot be sustained, especially when the petitioner on the date of his retirement i.e. 31.1.2010 was treated to be an optee of C.P.F. and full payment of C.P.F. was made to him after his retirement on 31.1.2010.

11. As a matter of fact the writ application filed by him and ten others in the year 2006 while he was still continuing in service was in respect of the aforementioned Bank's circular No. 1431/1991 and the Division Bench of this Court while setting aside the order of the learned Single Judge in its judgment dated 9.11.2011 in L.P.A.No. 1985/2010 had held as follows:

> " Heard the parties.
>
> The writ court has allowed the cases of 11 writ petitioners holding them entitled to benefits of pension scheme of 1995. The writ court has not considered the facts of individual writ petitioners and that appears to have created erroneous impression in the mind of writ court that option for the pension scheme was exercised by the petitioner no. 2 to 10 within time and there may have been some delay in case of petitioners no. 1 and 11.
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> Before us the Bank has pleaded that the writ court did not consider the facts in the counter affidavit according to which some of writ petitioners including petitioner no.1 had not exercised their option at all, much less within the prescribed time. It appears that n internal mechanism has been created by the Bank through a decision taken in July, 2006 for considering grievances of employees like the writ

petitioners. That decision has been annexed as Annexure A to the reply to the counter affidavit. According to the learned counsel for the bank the writ petitioners can approach the committee constituted by the Bank with their individual grievances for adjudication as per settled guidelines or else they should be directed to prefer separate writ petitions so that necessary finding of facts may be given in individual cases. He has also placed reliance upon a judgment of the Supreme Court dated 20.11.2009 passed in the case of Punjab National Bank and others vs. Mehar Singh. According to that judgment the Bank cannot be directed to accept belated options and there shall be no estoppel against the Bank even if a person who did not opt for pension scheme within time is wrongly included in the list of pension optees.

We are not persuaded to decide the controversy between the parties on merits because we find that case of each of the appellants require separate consideration and no such consideration was made by the writ court before allowing the writ petition of all the 11 writ petitioners.

Learned counsel for the writ petitioners/ respondents has submitted that denial by the Bank in respect of all the writ petitioners is erroneous and illegal specially when claims of writ petitioner no.9 and 10 have been allowed by the Bank itself. Even if that be the position, we are strengthened in our view that the writ court should have either directed the writ petitioners to prefer separate writ petitions or else claim of each petitioner ought to have examined separately for coming to the finding that they exercised their option within

> time. Hence, the order under appeal is set aside. The matter is remitted back to the writ court for considering whether it will be convenient for it to consider cases of all the 11 writ petitioners and give findings with regard to date and validity of their option. If the writ court finds it possible, it shall decide the claims of the writ petitioners afresh after considering the case of the appellant Bank with regard to individual writ petitioners in the light of judgment of the Supreme Court mentioned earlier and other relevant facts. In case the writ court feels inconvenience in considering together the cases of 11 writ petitioners for the purpose of recording finding in individual cases, it may pass suitable directions and give liberty to the writ petitioners to prefer separate individual writ petitions.
>
> It is made clear that we have not applied our mind to the merits of the case.
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> Since the matter relates to claim for pension etc. it is expected that the writ court shall decide the matter expeditiously after hearing the parties."

12. Let it be noted that neither the subsequent circular dated 26.8.2010 was the subject matter of the writ application, C.W.J.C.No. 15541/2006 nor the issue that the petitioner had made a belated deposit on 4.12.2010 was ever brought to the notice of either the learned Single Judge or the Division Bench. Thus, if on remand the learned Single Judge had not noticed with regard to the Bank's circular dated 26.8.2010 or the petitioner depositing the amount on 4.12.2010, that could not have been mixed up by the petitioner in his

representation which was to be filed in terms of the observations of the learned Single Judge disposing of C.W.J.C.No. 15541/2006 by an order dated 2.5.2013 wherein it was held as follows:

> " After having heard the parties and on consideration of the materials available on record, this Court is of the opinion that the issues raised in the present proceeding on behalf of the petitioners are required to be examined and decidd by looking into the claims and relevant documents of individual petitioners separately. This Court further finds that the Division Bench of this Court, while disposing of L.P.A.No. 1985 of 2010 preferred by the respondent Punjab National Bank and its functionaries vide judgment and order dated 9.11.2011 had recorded the following conclusions, which is reproduced as under:-
>
> > "Hence, the order under appeal is set aside. The matter is remitted back to the writ court for considering whether it will be convenient for it to consider cases of all the 11 writ petitioners and give findings with regard to date and validity of their option. If the writ court finds it possible, it shall decide the claims of the writ petitioners afresh after considering the case of the appellant Bank with regard to individual writ petitioners in the light of judgment of the Supreme Court mentioned earlier and other relevant facts. In case the writ court feels inconvenience in considering together the cases of 11 writ petitioners for the purpose of recording finding in individual cases, it may pass suitable directions and give liberty to the writ petitioners to prefer separate individual

writ petitions.”

On the basis of submissions made by the learned counsel for the respondents, this Court also finds that the respondent Bank has created an internal mechanism for resolving the dispute regarding pension option by the employees under pension scheme of the bank. Though the petitioners are aggrieved by the action of the respondent bank due to their non-admission in the pension scheme and not treating them as pension optees, but they do not appear to have exhausted alternative remedy available to them in view of creation of internal mechanism by the respondent bank.

Taking into consideration the entire factual background, this Court is of the opinion that for effective and final decision with respect to their individual claims, each of the petitioners must file their separate comprehensive representation with all supporting documents raising all the pleas, which have been raised in the present proceeding before respondent no.2. It is ordered, accordingly.

If such a separate comprehensive representation is filed by each of the petitioners separately with all supporting documents along with a certified copy of the present order within a period of one month from today, then respondent no.2 and/or any other competent authority or the Committee so constituted for said purpose by the respondent Bank shall be obliged to consider and decide their individual claims by looking into the materials produced by them and also the relevant records of the Bank strictly in accordance with law by a reasoned and speaking order. If on consideration of the materials, respondent no.2 and/or any other competent authority of the respondent bank or the Committee so constituted by the Bank come to a conclusion that claims raised on behalf of the petitioners individually are admissible to them, then consequential order shall also be issued without any unnecessary delay."

13. What is still very significant to note here is that even when this Court was never apprised with regard to fresh Bank's circular dated 24.8.2010 or belated deposit of amount of the provident fund by the petitioner on 4.12.2010 he had in the name of complying the order of the learned Single Judge dated 2.5.2013, as quoted above, mixed up this issue as well as would be apparent from his representation dated 20.5.2013, relevant portion whereof reads as follows:

> " I opted pension in response to Bank Circular No. 1431/01 and as per Employees Pensions Regulation, 1995 notified on 29th September, 1995.
>
> Although, the petitioner has earlier opted for pension and his name was mentioned in list of pension optee which would be substantiated from photo copy of may ledger (P.F. system) of year 2005 and 2007 which is being enclosed with this application, but later on as his option was not found place, the C.P.F. amount was paid after his retirement.
>
> It is further submitted that as per Memorandum of settlement dated 27th April, 2010 for one more option for pension settlement, for admission in pension scheme, the employee concern was required to refund the amount of employees and partly employees contribution to the C.P.F.

and some other payment within stipulated time.

In light of Memorandum of Settlement dated 27th April, 2010, the P.N.B. Management issued Circular No. 8/2010 dated 26.8.2010. As per the said Circular, the pension optees were required to deposit 100% amount of Bank contribution to P.F. received by them after their retirement by 24.11.2010 in a designated account.

It is further submitted that after my retirement on 31.1.2010, the memorandum of settlement dated 27.4.2010 signed and came into force and one more option was given. But as per agreement, the letter depositing the contribution of provident fund and other amount was not sent in time by Bank. But when I knew about the same, I contacted in P.N.B. New Market Branch and the official directed him to deposit the amount in Bank's Account No. 015300209943752 and accordingly, I deposited Rupees 3,98,739.92/- in the account on 4.12.2010. Later on, it was said by your office that the amount was wrongly deposited in another account and last date for depositing the amount was 24.11.2010. So, my request for opting in pension scheme was rejected. I filed representation before Chairman cum Managing Director, P.N.B. Head Office, New Delhi on 5th May, 2012 and 15th July, 2012 but nothing happened."

14. It is actually this representation of the petitioner was considered by the competent authority, who in the impugned order has held as follows:

"5. After going through the facts and circumstances of the case and the relevant guidelines of the bank, I have observed as under:-

A. That the Bank is a nationalized Bank and a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 and is a member of Indian Bank's Association (IBA) like many other Banks, including all Nationalized Banks. IBA on behalf of members banks negotiate and settle the terms and conditions of service of the member banks with Workmen Unions and Officers Associations at industry level, which are implemented by the member banks.

B. That pursuant to the settlement signed at the industry level on 20.10.1993, the Bank framed statutory PNB Employees Pension Regulations, 1995 and had offered pension to the eligible employee in lieu of Bank's Contribution to Provident Fund (CPF). The said option was required to be exercised by the eligible employees within 120 days from 29.9.1995 i.e. dated when the said statutory regulations were notified in the Gazette of India as required under section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. That Sh. Baijnath Singh had not submitted any pension option in pursuance to circular as contended by him.

C. That pursuant to the consistent demand of the Workmen Unions/ Officers Associations at the industry level to provide one more option for pension to the employees who failed to exercise their option for pension in the year 1995, the Indian Banks Association agreed to accept the said demand of the Workmen Unions/ Officers Association, inter alia, subject to the following conditions which were agreed and reduced in writing in the Settlement dated 27.4.2010 between Indian Banks Association (representing member banks) on the one hand and representing Unions/ Officers Associations, representing the existing/ retired Employees/ Officers, on the other hand:-

i. That the employees who will join members banks after 1.4.2010 will not be governed by the existing pension scheme.

ii. That the employees who will be allowed to opt and join pension scheme now will have to share 30% of the funding gap in addition to refunding the Bank's contribution to Provident Fund within the time stipulated in the Settlement dated 27.4.2010.

D. That the Bank, being signatory to the Settlement dated 27.4.2010 entered into under the provision of Industrial Disputes Act, 1947, offered one more option for pension to the eligible employees/ eligible ex-employees/ family of ex-employees under Statutory Pension Regulations, 1995 and issued Circular No. 8/2010 dated 16.8.2010 inviting options from the eligible employees/ eligible ex-employees/ family of ex-employees. The eligible employees/ eligible ex-employees/ family of ex-employees, as provided in the Settlement dated 27.4.2010, were:-

i. required to exercise an option in writing within

60 days from the date of offer to become a member of the Pension Fund.

ii. So far as the existing employees were concerned they were further required to authorize the Trust of Provident Fund of the bank to transfer the entire contribution of the bank alongwith interest accrued thereon to the credit of the Pension Fund.

iii. So far as the eligible ex-employees/ family of eligible ex-employees were concerned, they were required to refund within 30 days after expiry of the said period of 60 days, the entire amount of banks contribution to the Provident Fund and interest accrued thereon received by the employee on retirement together with his share in contribution towards meeting 30% of Rs.3115 crores which was estimated and reckoned as the funding gap. On individual basis, the payment over and above the bank's contribution to Provident Fund and interest thereon had been worked out at 56% of the said amount of bank's contribution to provident fund and interest thereon received by the employee on retirement.

This scheme was given vide publicity by IBA in various national and regional newspapers. In addition to that, information was also given to various retiree associations and the notices were put up in branch offices also.

E. That clause 3(B) of the above Circular No.8/2010 dated 16.8.2010 was applicable to the case of Shri Baijnath Singh and the said clause reads as under:-

<u>EMPLOYEES/ OFFICER WHO WERE IN THE SERVICE OF BANK PRIOR TO 29TH SPETEMBER 1995 AND RETIRED AFTER THAT DATE BUT PRIOR TO THE DATE OF SETTLEMENT/ JOINT NOTE DATED 27.4.2010 PRIVIDED THAT THEY:-</u>

a) Exercise an option in writing within 60 days from the date of offer, to become a member of the pension fund and

b) Refund within 30 days after expiry of the said period of 60 days, the entire amount of the banks contribution to the Provident Fund and interest accrued thereon received by him on retirement together with his share in contribution towards meeting 30% of the funding gap. On an individual basis, the payment over and above the bank's contribution to Provident Fund and interest thereon has been worked out at 56% of the said amount of Bank's contribution to Provident Fund and interest thereon received by the Officer/ employees on retirement.

F. That in terms of Clause 11 of the Circular No.8/2010 dated 16.8.2010 the option for pension was required to be exercised with 60 days i.e. between 27.8.2010 to 25.10.2010 and the entire amount of bank's contribution to the provident fund and interest accrued thereon received by the officer/ employee after death together with his share of contribution towards meeting 30% of the funding gap was required to refunded between 26.10.2010 to 24.11.2010 (i.e. within 30 days after expiry of the 60 days provided for exercising option) and in the said clause it was specifically stated that any option not received or full amount of refund not made by the stipulated dates will render the pension option invalid.

G. That Shri Baijnath Singh visisted CO Patna on 14.9.2010 and submitted his pension option which was duly entered in the system by the then Senior Manager. Thereafter, the system generated pension option details were provided to Sh. Singh, with explicit instructions to visit branch office Patna. Now Market, St.Road in order to deposit the amount of Rs.3,98,739.92 mentioned on the system generated pension option details before 24.11.2010. However, Sh. Baijnath Singh failed to exercise diligence in this regard and visited the branch belatedly on 4.12.2010 when the scheme had already been closed. Thus, he failed to deposit the required amount within stipulated time and the bank cannot be held responsible for inaction on his part.

H. That the reliance on the judgment in matter of Shri Shyam Bihari Rai and Shri Raghubir Singh is misplaced and mislaid. Each case has to be decided on the basis of its own peculiar facts and circumstances. No two cases can be equated on the same pedestal.

I. That the provisions as laid down in Circular 8/2010 dated 16.8.2010 were strictly and unanimously followed by the bank and the claimant's case cannot be made an exception to this. That he had not been able to deposit the required sum in specified time and therefore, his pension option had been rendered invalid."

15. The aforementioned detailed consideration made by the competent authority will itself clarify that for the first time when the option was directed to be filed within a period of 120 days the petitioner did not submit his option within the prescribed period. Nothing has been brought on record to rebut this finding save and except in some ledger of the Bank, the name of the petitioner was shown as pension optees. This Court has carefully looked into the copy of the so called ledger, as contained in Annexures 2 series and there cannot be a proof of the fact of the petitioner opting for pension in terms of the Bank's circular of the year 1991-93. Such ledger only shows the opening balance of the provident found account and opening and closing balance of the provident fund of the year 2000, for the period April, 2000 to September, 2000, again for the period of April, 2005 to September, 2005 which is neither the beginning point nor ending point in relation to the petitioner, who as noted above had entered in service in the year 1989 and had allegedly given option pursuant to the circular of the Bank of 1991. Thus, these Bank's

ledgers will not demonstrate that the petitioner's option was submitted within time so as to give him benefit of pension under the old circular of the year 1991. As a matter of fact when the petitioner was ultimately paid his C.P.F. on his retirement on 31.1.2010 his entire story of giving option pursuant to the Bank's circular of 1991 had automatically come to an end.

16. As with regard second option extended to the employees of the Bank by its circular dated 26.8.2010 it has to be noted and in fact the competent authority has also clarified that such amount of provident fund was to be deposited within the fixed period i.e. upto 24.11.2010 but the petitioner did not deposit the said amount within the prescribed date and he came out to deposit such amount only on 4.12.2010. It is this aspect of the matter which has been clarified in the case of Jay Singh B. Chauhan vs. Punjab National Bank & ors., reported in (2005)6 SCC 262, wherein it was held that "once the employees were not admitted to the Pension Scheme, the Court should not exercise discretionary jurisdiction in favour of the employees."

17. As a matter of fact this aspect matter was again gone into by the Apex Court in the order dated 20.11.2009 in the case of Punjab National Bank & ors. Mehar Singh, Civil Appeal No. 7682 of 2009, wherein it was held as follows:

"5. There is no dispute before us that the said notified date was 29.9.1995 and option by the respondent was not given within 120 days. The last date for submitting the option was 27.1.1996 whereas the respondent exercised his option only on 30.1.1996.

6. Mr. Mehta, learned counsel appearing for the appellants submits that the High Court has erred in granting mandamus against the statute because there was no discretion left with the Bank to pay any pension on the basis of a belated application.

7. When we see the judgment of the High Court, it has taken into consideration the fact that the Bank kept on showing the respondent as a pension optee for a good long period of seven years and also did not contribute the provident fund which it would be required to do if the respondent was being governed by the provident fund scheme and not by the pension Regulations. The High Court has chosen to issue a mandamus on the ground of estoppal.

8. We are unable to agree with the impugned judgment. If there was no discretion left in the bank to accept the belated application, then merely because the Bank treated the respondent for a good long period of seven years as a pension optee would by itself create no right in the respondent. The law is well settled that there can be estoppal against the statute. In this case, the law is clear that the respondent was required to give an option within 120 days of the notified date of the Pension Regulations. Therefore, a delay on the part of the respondent would not create any right much less any right in the nature of estoppal. We, therefore, set aside the impugned order of the High Court

> and choose to dismiss the writ petition filed by the respondent."

18. Subsequently similar issue was gone into again in the case of Union of India & ors. V. M.K.Sarkar, reported in (2010)2 SCC 59, wherein the Apex Court had held that "individual notice of option was not mandatory, inasmuch as person, who is aware of availability of option, cannot contend that he was not served a written notice of availability of option." Here in the present case it is the finding of fact recorded by the competent authority in the impugned order that pursuant to the Bank's circular dated 16.8.2010 which has required an option in writing within 60 days from the date of offer to become a member of the Pension Fund. After expiry of the period of 60 days the entire amount of Banks contribution to the provident fund with interest accrued thereon was not fulfilled by the petitioner. As a matter of fact the petitioner was found to have visited the office of the Bank on 14.9.2010 and he had submitted his pension option and therefore, he was also aware of the requirement of depositing the amount by 24.11.2010 but he did not do so as has been fully explained by the respondents in reply to the supplementary affidavit which reads as follows:

> "6. That in reply to the averments made in para no.02 to the supplementary affidavit under reply it is submitted that under the HRMS while the eligible employee generate/

submit his pension option on the system, the system generated pension option details were provided to the petitioner with explicit instruction to deposit the required amount as per circular.

In the case of the petitioner, the same process was adopted. The petitioner visited Circle Office, Patna on 14.9.2010 and submitted his pension option which was duly entered in the system by the then Senior Manager. Thereafter system generated option details were provided to the petitioner with explicit instruction to visit branch office, Patna, New Market, Station Road in order to deposit the amount of Rs.3,98,939.92/- only mentioned on the system generated pension option details before 24.11.2010. However, the petitioner failed to exercise diligence in this regard and visited the branch belatedly on 4.12.2010 when the scheme was closed. Thus, he failed to deposit the required amount within the stipulated time. As such the pension option of the petitioner was not accepted and intimated to the petitioner vide letter dated 16.7.2011.

There need not have any separate communication regarding this issue as the petitioner was already knowing vide PF & Pension Fund department circular no. 08/2010 dated 16.8.2010 that he has to deposit the refund amount within 30 days after expiry of 60 days for exercising an option in writing within 60 days from the date of offer to become a member of the Pension fund.

The petitioner can not deny the aforesaid fact because after knowing this circular, he visited the Circle Officer, Patna and exercised his pension option and while exercising his pension option in HRMS, system automatically generated a report mentioning the refund amount."

19. As a matter of fact the respondents have also enclosed the document by way of status report to show that the petitioner was intimated to deposit the amount of Rs.3,98,739.92 paise which reads as follows:

PF A/C No. 77796 Name BAIJNATH SINGH
DETAILS BRANCH/ OFFICE FROM WHERE EMPLOYEE HAD RETIRED:-
D.No. 2913 BRANCH/OFFICE PATNA NEW MKT ST RD (SIGN BR)
CO/OFFICE NAME PATNA

Pension option submitted on behalf
Of Retiree
Eligible Family Member

Amount payable by employee	
Bank's Contribution already paid	255602.51
Funding gap (56% of Bank's contrn.)	143137.41
Total amount payable	398739.92
. Payable amount may vary due to PF deducted from the arrears but not received/ paid on account of wage revision for employees who retired on or after 1.11.2007.	

I am submitting the Pension Option on behalf of the captioned retiree/ his or her family member who are eligible to receive pension/ family pension and will forward two copies of original Pension Option letter to concerned Circle/Administrative Office and one copy to branch from where the employee had retired/ retired and died thereafter/ died while in service, out of five copies duly signed by retiree/ his or her eligible family member and counter signed by me. One copy will be kept at ours and another copy will be handed over to the retiree/ his or her eligible family member as token of having received the same.
(Before clicking the SUBMIT button, please ensure corretness of the particulars of the retiree as mentioned above)"

20. In that view of the matter, the petitioner's grievance of no notice to him for depositing the amount of provident fund contribution on or before 24.10.2010 will be of no avail.

21. It has to be kept in mind that the Constitution Bench of the Apex Court in the case of Krishena Kumar v. Union of India, reported in (1990)4 SCC 207, while considering the options given to the Railway employees to shift to pension scheme has held that "prescription of cut-off dates while giving each option was not arbitrary or lacking in nexus". The Apex Court also in that case has held that "provident fund retirees who failed to exercise option within the time were not entitled to be included in the pension scheme on any ground of parity."

22. As with regard to unreported judgments, firstly this Court would find that in the case of Shyam Bihari Rai (supra) the issue was with regard to submission of form for exercising of pension and not of the amount. As a matter of fact in the case of Shyam Bihari Rai (supra) it was also found that he had submitted his option form on 30.8.2010 i.e. prescribed period of 27.8.2010 to 25.10.2010 but not through HRMS (Human Resource Management System) as prescribed by the Bank. It was in this background that his application filed in time was directed to be treated to have been filed in time. No issue like the present one in the case of the petitioner on depositing amount

of provident fund after the last date was involved and as such, that judgment of the case of Shyam Bihari Rai (supra) will be of no help and assistance to the petitioner.

23. Similarly, in the case of Veena Devi (supra) it was her husband who was employee of the Bank and who had died on 6.3.1996. The widow petitioner in fact after enforcement of the circular dated 24.8.2010 had filed her option on 28.9.2010 but she was not intimated of the amount to be deposited by her and thus, she had deposited the amount of Rs.46,500/- on 24.12.2010. This Court in fact had held that when the petitioner Veena Devi had deposited the option form on 28.9.2010 the amount to be deposited could not be made known to her or even to the Branch Manager of the Bank since the amount was to be calculated after receipt of the pension proposal from the Branch concerned and communicated to the Branch of the Head Office. Thus, it was the case of a widow and non-communication of the amount which had become the reason for this Court to direct for inclusion and payment of her pension. That, however, cannot be the case of the petitioner because as noted above, not only this aspect of the matter has been explained in the supplementary affidavit, as quoted above, but the document has been enclosed to show that the petitioner was made aware of the amount to be deposited by him way back on 14.9.2010. Thus, if the petitioner did not deposit the amount

by 24.11.2010 he cannot equate his case with the case of Veena Devi (supra).

24. This Court is also mindful that there may also be some stray cases from here and there where someone has been given the benefit contrary to the provisions of its circular dated 26.8.2010 but that cannot be said to be a precedent. This aspect of the matter in fact also had been decided by the Apex Court in the case of M.K.Sarkar (supra), wherein it was held as follows:

> "25. There is another angle to the issue. If someone has been wrongly extended a benefit, that cannot be cited as a precedent for claiming similar benefit by others. This Court in a series of decisions has held that guarantee of equality before law under Article 14 is a positive concept and cannot be enforced in a negative manner, and that if any illegality or irregularity is committed in favour of any individual or group of individuals, others cannot invoke the jurisdiction of courts for perpetuating the same irregularity or illegality in their favour also on the reasoning that they have been denied the benefits which have been illegality extended to others. (see Chandigarh Admn. V. Jagjit Singh, (1995)1 SCC 745, Gursharan Singh v. NDMC, (1996)2 SCC 459, Faridabad CT Scan Centre v. D.G.Health Services, (1997)7 SCC 752, State of Haryana v. Ram Kumar Mann, (1997)3 SCC 321, State of Bihar v. Kameshwar Prasad Singh, (2000)9 SCC 94, and Union of India v. International Trading Co., (2003)5 SCC 437.
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> 26. A claim on the basis of guarantee of equality, by

reference to someone similarly placed, is permissible only when the person similarly placed has been lawfully grnated a relief and the person claiming relief is also lawfully entitled for the same. On the other hand, where a benefit was illegally or irregularly extended to someone else, a person who is not extended a similar illegal benefit cannot approach a court for extension of a similar illegal benefit. If such a request is accepted, it would amount to perpetuating the irregularity. When a person is refused a benefit to which he is not entitled, he cannot approach the court and claim that benefit on the ground that someone else has been illegally granted to others. The fact that someone who may not be entitled to the relief has been given relief illegally, is not a ground to grant relief to a person who is not entitled to the relief."

25. That would leave this Court now to only decide one more aspect. Admittedly the petitioner had deposited the amount of Rs.3,98,739.92 paise in Punjab National Bank, New Market Branch, Patna on 4.12.2010 and therefore, if that amount has been still withheld by the authorities of the Bank the same would be liable to be refunded with interest at the rate of 12% per annum as per the judgment of the Apex Court in the case of Mehar Singh (supra), wherein this aspect of the matter was dealt after rejecting the claim of pension and dismissing the writ application by holding as follows:

"The result of this would be that the Bank would be bound to compensate the respondent by way of payment of the contributory provident fund along with interest @ 12% per annum till the realization of the payment, if not already paid, along with all other incidental monetary benefits to which the respondent was entitled to and was not paid."

26. Thus, while dismissing this writ application this Court would direct the competent authority of the Bank to ensure that if the amount of Rs.3,98,739.92 paise deposited by the petitioner on 4.12.2010 has not been refunded as yet, the same must be returned to the petitioner alongwith interest @ 12% per annum from 4.12.2010 to the date of its return which must be done within a period of three months from the date of receipt of this order.

27. Subject to the aforesaid direction, this application fails and is, accordingly, dismissed.

(Mihir Kumar Jha, J)

Patna High Court
Dated the 15th October 2015
A.F.R./surendra/-

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