IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22403 of 2013

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Rameshwar Prasad S/o Late Jeetan Ram East Indira Nagar, Nalanda Colony, Road No. 3 Patna 20.

.... Petitioner/s

Versus

1. The Zonal Manager Bank of India Patna Zone Chanakya Palace, R-Block Patna 800001.
2. The Deputy Zonal Manager, Bank of India, Patna Zone, Chanakya Palace, R- Block Patna 800001.
3. The Branch Manager Bank of India Fatwah Branch Station Raod, P.B. No. 1 Fatwah District Patna – 803201.
4. The General Manager (H.R.D) Bank of India, Head Office, Star Home Bandra Kula Complex, C-5 G Block East, Mumbai 400051.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Raj Ballabh Prasad Yadav, Adv.
For the Respondent/s	:	Mr. Ajay Kumar Sinha, Adv.
For the Bank	:	Mr. Rupak Kumar, Adv.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA

C.A.V. ORDER

6 06-02-2015

In the present writ application the petitioner seeks a writ of certiorari for quashing Annexure 4, a letter dated 23.05.2011 issued by the respondent Deputy Zonal Manager, Bank of India, Patna, whereby and where under the request of the petitioner to join Pension Scheme option has been rejected as he has not exercised the Pension option within the stipulated time of 60 days nor refunded the Pension loan within the 30 days after expiry of the said period of 60 days. The further prayer of the writ petitioner is for issuance of writ of mandamus commanding the respondents to permit him to join the Pension Scheme in terms of the agreement/joint note dated 27.04.2010 entered into and agreed upon between the Indian Banks Association and the United Forum of Bank Unions. As a consequence of the said permission sought to be granted by this Court, the petitioner further prays, that a direction be issued to the respondents to accept the documents as required in terms of the agreement dated 27.04.2010 and also to accept the required amount of provident fund contribution along with the interest accruing thereto before 29.11.2011 as well as interest accrued till the date of payment.

Facts leading rise to the present writ application is that the petitioner was appointed as a Sub-Staff on 10.11.1975 in the Bishunpura Branch of Bank of India, District Ranchi and worked there to the satisfaction of all concerned. The respondents subsequently transferred him to Rajendra Nagar Colony Branch, Patna and on 16.06.1990 he was promoted to the post of Clerk in Rajendra Nagar Colony Branch Patna. The petitioner superannuated from Fatwah Branch of Bank of India on 30.05.2005.

The respondent Bank which is a “State” within the meaning of Article 12 of the Constitution of India entered into an industry level settlement for giving one more option for the Pension and allowing Pension to the optees with effect from 27.11.2009. The said agreement was arrived at on 27.04.2010.

That in terms of the agreement/joint note dated 27.04.2010 entered into and agreed upon by the parties namely, Indian Banks Association and the United Forum of Bank Union, it was advised by the Indian Banks Association vide their communication made under Reference No. CIR/HR and IR/62/665/2010/11/1999 dated 10.08.2010 that option to join the captioned Pension Scheme was available to the employees (Officer award staff) who were in service of the Bank on the date of settlement i.e., 27.04.2010.

The time limit for exercising such an option was given 60 days which was to be done in writing after becoming a member of the Pension fund and authority was issued to the trust of the Provident fund to transfer the entire contribution of the Bank along with interest accrued thereon to the credit of the Pension fund.

That the Board of Directors in its meeting held on 12.08.2010 has further approved to extend another option for Pension to CPF optes in terms of the settlement/joint note to those employees who ceased to be in service on account of retirement or superannuation/death or on account of VRS. Under the said Scheme employees after 29.09.1995 and those employees before

27.04.2010 became eligible to opt for joining the Pension Scheme. The said Scheme is fully contained in Bank of India Circular No. 104/64 dated 24.08.2010 which is marked as Annexure 1.

The case of the petitioner was that as per terms of the settlement of Management of the different Banks who were member of Indian Banks Association, each member of Bank was required to issue notification thereby inviting applications from the existing/retired employees of the Bank for exercising their option for Pension.

The petitioner who was a retired employee, having come to know of the said Scheme, submitted an application for option to his controlling authority namely, the Manager of the Fatwah Branch on 07.10.2010 as per the terms and conditions stipulated in the present Pension Scheme.

That as per the terms and conditions of the Pension Scheme, the retired optees were to be informed regarding the amount to be deposited which was a condition precedent for availing the benefit of the Pension Scheme. However, in the case of the petitioner, the respondent Bank did not inform him about the amount to be deposited. However, it was alleged that the respondent Bank, whereas in the case of other similarly situated employees, had issued letters intimating them about the amount of contribution to be deposited by them but though the petitioner approached the Manager of Fatwah Branch on several occasions, he received no response whatever in the said regard.

Learned counsel for the petitioner further submitted that despite all efforts made by the petitioner and he having exercised his option for adopting the new Pension fund, the petitioner's application dated 07.10.2010 was rejected by the respondent no. 2 and he was not permitted to join the Pension Scheme. Learned counsel for the petitioner further submitted that the petitioner again requested the respondent no. 1 namely, the Zonal Manager Bank of India, Patna Zone to reconsider his application and withdraw the order of rejection dated 23.05.2011 but when the same was not heeded to, the petitioner also preferred a petition for settlement of his claim before the Assistant Labour Commissioner (Central) Ministry of Labour, Government of India in which a conciliation proceeding was started which ultimately failed. Accordingly, the petitioner having failed in his efforts before all the authorities has preferred this unit application for appropriate reliefs.

Learned counsel for the respondent Bank has seriously contested the matter and submitted that though the petitioner was eligible for participating and adopting the New Pension Scheme which had been left open to all employees retired after 29.09.2005, the petitioner failed to comply with the formalities attached and the stipulated requirements of the Scheme. It was further submitted on behalf of the respondent Bank that Clause 3 of the said Scheme which is annexed to the writ application as Annexure 1, clearly indicates as such :

> "PROCEDURE/INSTRUCTIONS TO BE FOLLOWED FOR REMITTANCE OF FUNDS REFUNDED BY REIRED EMPLOYEES I.E. RETIRED PRIOR TO 27.04.2010.
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> After submission of the Pension option form by retired employee, to refund the required amount on or before 29.11.2010to the Branch/employees retired from head office, the applicant has to refund the required amount on or before 29.11.2010 to Salary Section, Head Office".

A perusal of the said Scheme clearly indicates that after exercising the option, the retired employees who had retired prior to 27. 04. 2010 were required to refund the required amount on or before 29.07.2010 to the Branch from which they have retired/last working Branch.

A perusal of Clause 2 of the said Scheme also clearly indicates that the Zonal Office was required to inform these amounts to the pensioner through respective Branch and the

Branches were required to inform respective Pension optee in writing, the amount to be refunded by the optee. However, if due to any unavoidable circumstance the Branch/Head Office was not in a position to inform the said amount, the Pension optee had to deposit the said amount by way of cheque/DD/pay order etc.1.56 times of his Bank contribution of PF with interest paid to him on or before 29.11.2010 i.e. within 30 days from the date of closure of offer, as the same was a precondition for pensioner optee.

It was strenuously urged by the respondent Bank that the petitioner being fully aware of the said Scheme did not bother to deposit the said amount and having not deposited the same within the stipulated period, the case of the petitioner to opt for the Pension Scheme had been rejected. Learned counsel for the respondent Bank further submitted that merely exercising the option by the petitioner did not entitle him to join the Pension Scheme. Referring to Annexure A which was the Circular issued on 24.08.2010 and the agreement/joint note entered into and agreed between Indian Banks Associations and various Officers Associations and the United Bank Forums, the respondents contended that apart from the application for option of Pension, the petitioner had to submit several other forms which have been indicated in part B of the said Annexure which is the procedure to be adopted for retired employees who were eligible and in service in the Bank prior to 29.09.1995 and retired after that date and prior to the date of settlement i.e. 27.4.2010. Clause C of part B details the list of forms to be filed by the petitioner, which he had not complied with.

It is evident from perusal of the clause of the Scheme (Annexure A) that the Pension amount which was to be deposited on or before 29.11.2010 was a precondition and the petitioner having not deposited the same as per the guidelines, was ineligible to avail the benefits of the said Scheme. Furthermore, the respondents contended that the petitioner had also made a declaration in the application for exercising the said Scheme on 07.10. 2010 stating :

> “I hereby declare that I have read and understood the terms of Settlement/Joint Note dated 27.04.2010 for extending another option to join Pension Scheme. I have understood that the terms of the settlement/Joint Note have been arrived at on the basis of Unions/Associations offering to contribute 30% of the initial funding gap assessed for extending another option for joining the Pension Scheme. I am agreeable to refund the said contribution of 30%

towards the funding gap and hereby voluntarily opt for Bank's pension scheme as per the provisions of the said Settlement/Joint Note. I undertake to refund the Bank's contribution to Provident Fund together with accrued interest thereon paid to me on my retirement received at the time of retirement plus 56% of the said amount being 30% contribution towards the initial funding gap in terms of clause 3 (c). The total amount due from me will be refunded to the Bank on or before 29.11.2010."

Learned counsel for the respondent further submitted that in the wake of such declaration having been made by the petitioner, it was mandatory for him to submit the required account on time and since he has failed to do so, the respondents have rightly rejected his claim for joining the Pension Scheme.

Learned counsel for the Bank submitted that there is nothing on record of the Bank indicating that the petitioner did in fact approach either the Branch or the Zonal office for amount which he was required from the Bank even if the Bank or the Branch had not provided the amount to be refunded to the Bank, it was opened to the petitioner to calculate and pay 1.56 times the Pension along with the interest, as per the stipulations of the agreement, which also he has failed to comply with. Thus, I find that the Bank has rightly and legally rejected his application for opting for the Pension Scheme.

Having heard learned counsel for the petitioner and after perusing the materials on records specially Annexure 1 and Annexure A, I find no reason to interfere in the order of rejection as contained in Annexure 4 and the subsequent prayer of the petitioner. Thus, this writ application is dismissed.

(Anjana Mishra, J)

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