IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5757 of 2015

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Kanti Prabha Kerketta aged about 44 years, W/o Late John Tuti. Resident of Anandpuri, P.O.- College More, P.S.- Hazaribagh Sadar, District – Hazaribagh State Jharkhand

.... Petitioner

Versus

1. The Punjab National Bank through its Chairman, Punjab National Bank, 7- Bhikaji Cama Place, Delhi - 110066.
2. The General Manager, Punjab National Bank, 7- Bhikaji Cama Place, Delhi - 110066.
3. The Zonal Manager, Punjab National Bank, Chanakya Place, R. Block, Patna, Bihar.
4. The Regional Manager Punjab National Bank, Gaya "B" Gaya (Bihar).
5. The Manager, Punjab National Bank, Branch Mali, District - Aurangabad.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. K.M.Joseph

For the Respondent/s : Mr. Kumar Priya Ranjan

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

CAV JUDGMENT

Date: 01-10-2015

Heard learned counsel for the parties.

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

> "i. That a writ in the nature of Mandamus any other appropriate writ, order or direction be issued to the respondent authorities of the Punjab National Bank directing them the records of the service of the John Turi, husband of the petitioner as employee of Punjab National Bank including copies of the lists drawn up by the Bank authorities under the Pension Regulations 1995 in the course of implementation of the Pension Scheme for the employees of the Bank and after perusing the same the Hon'ble Court may be pleased to pass appropriate orders in the matter of

payment of Family Pension to the petitioner herein who is widow of late John Tuti who died in harness during the course of his employment in the Punjab National Bank."

3. Let it be noted that at the outset learned counsel for the respondent Punjab National Bank (hereinafter referred to as 'the Bank') has raised a preliminary objection as with regard to maintainability of the writ application on the ground that the petitioner had earlier filed a writ application being C.W.J.C.No. 12347/2007 for the same relief, which was dismissed on 27.11.2013 and such order of the learned Single Judge was also affirmed in appeal by the Division Bench by an order dated 8.12.2014 in L.P.A.No. 1584/2014 and as such, this writ application is not maintainable.

4. Having regard to the aforementioned preliminary objection learned counsel for the petitioner has submitted that there was an error in the earlier order of this Court dated 27.11.2013, inasmuch as the case of the petitioner was entirely different as against the case of Mehar Singh which was decided by the Apex Court in the case of Punjab National Bank & ors. v. Mehar Singh in Civil Appeal No. 7682/2009 but somehow was relied by the learned Single Judge in the order dated 27.11.2013 in C.W.J.C.No. 12347/2007. Learned counsel for the petitioner has also submitted that some more documents were found by her from the personal file of her husband

and still some more were obtained by her under the Right to Information Act from the Bank which would give a complete turn to the case of the petitioner. Learned counsel for the petitioner has also submitted that the authorities of the Bank should not be directed to produce the original service book of the husband of the petitioner and the copies of the relevant list with option letter of the persons as envisaged in PNB Pension Regulations as also copy of any order passed by the Punjab National Bank authorities excepting PF Contribution of her husband under Pension Scheme of the Bank. In the same vein learned counsel for the petitioner has submitted that the petitioner has a right to receive family pension from Punjab National Bank on account of death of her husband who had served the Bank and the pension was sole option available to him as he had joined the service of the Bank on 6.5.1994, a date after the appointed day of 1.11.1993 specified in the pension Circular No. 1431 dated 27.6.1994.

5. In the considered opinion of this Court this writ application has to be held to be frivolous and also hit by the principles of resjudicata and constructive resjudicata. Let it be noted that for the same relief the petitioner had filed the aforesaid writ application, C.W.J.C.No. 12347/2007 and this Court had dismissed it by a reasoned order which reads as follows:

> “The issue raised by the petitioner in the present

writ application is neither unique nor first of its kind since the question is of deriving benefit from a pension scheme notified by the respondent Bank across the country in the year 1995.

The issue for consideration is not the scheme but its applicability to the claimant i.e. a widow of the erstwhile employee. In the pension regulation notified by the Bank, there was a specific Regulation 3(3)(a & b) that pension scheme shall apply to those employees who are in the service of the Bank before the notified date and continue to be so after the notified date, coupled with exercise of an option in writing within 120 days to become a member of the fund.

In the present case it is the assertion of the petitioner that her husband did exercise his option. Evidence thereof are circumstantial but since those evidence are documents maintained by the Bank itself there will be some presumption in favour of the erstwhile employee and against the respondent Bank. These are Annexures 3 and 4 series.

How I wish the matter rested at that. The problem is that the Bank in the counter affidavit has taken a categorical stand that there has been no option exercised by the husband of the petitioner in terms of the scheme. Whatever is being produced in support of the claim by the petitioner was no doubt an outcome of a certain omission committed in maintenance of the records at the relevant time since there were large number of employees involved across the country and input and information was trickling in much after the cut off date as well as due to maybe some deliberate omission or mischief at the local level. The documents in question were reflecting the position as if the husband of the petitioner had opted for the scheme. It is their further stand that on a thorough search, no evidence has been thrown up from the service record of the husband of the petitioner or from the centralized pension cell to certify that the husband of the petitioner did opt for the scheme.

It was in this controversial circumstance, counsel for the petitioner was granted several adjournments to produce a chit of paper which could settle the dispute to rest. The petitioner expresses her inability under the circumstance that after the death of her husband she is not in a position to render proof.

Counsel for the Bank has produced an order passed in Civil Appeal No.7682 of 2009 which has been decided by the Hon`ble Supreme Court on 20th November, 2009. Similar plea and claim had been made in that case, which travelled from the judgment of a High Court. The High Court did lean in favour of the employee in question but the Hon`ble Supreme Court in para 8 has held as under:

> "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 no estoppel 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 estoppel. We, therefore, set-aside the impugned order of the High Court and choose to dismiss the Writ Petition filed by the respondent. 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."

Since this Court has benefit of adjudication made on such a matter by the highest Court of the land, this Court will go by the wisdom and the ratio of the said decision noted above and cannot transgress its powers by holding in favour of the petitioner in absence of clear evidence of an option having been exercised by the late husband of the petitioner. The circumstances explained by the Bank in the counter affidavit with regard to Annexure-3 and 4 seem to be cogent.

Writ application has no merit. It is dismissed.

It is clarified that if any entitlement of the petitioner has not yet been resolved or paid to the petitioner, the Bank has an obligation to do so within six weeks from today."

6. The matter did not rest there, inasmuch as the petitioner had also filed an appeal, L.P.A.No. 1584/2014, which again was dismissed affirming the aforesaid order of the learned Single Judge by

a reasoned order dated 8.12.2014:

> "I.A.No. 9052 of 2014 has been filed by the appellant, under section 5 of the Limitation Act, seeking condonation of delay of 292 days in preferring the present letters patent appeal against the order dated 27.11.2013 passed in C.W.J.C.No. 12347 of 2007.
>
> Heard Mr. K.M.Joseph, learned counsel for the appellant, and Mr. Sarva Deo Singh, learned counsel for the respondents.
>
> Having considered the reasons assigned in the present petition seeking condonation of delay, in preferring appeal, and having heard the learned counsel for the parties, this Court is satisfied that the appellant was prevented by sufficient causes from preferring the appeal within time.
>
> In view of the above, the delay of 292 days in preferring the letters patent appeal, is hereby condoned.
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> I.A.No. 9052 of 2014 shall stand disposed of.
>
> Heard learned counsel for the parties.
>
> The appellant herein is a widow of late John Tuti, an employee of the Punjab National Bank (hereinafter referred to as 'respondent Bank'). In the year 1994, the respondent Bank introduced a Pension Scheme for the employees, whereunder the contributory provident fund of an employee could have been utilized, at the employee's option, for enabling the employee to receive pension in the year 1995, the application of pension Scheme was extended to employees other than the ones, who were covered by 1994 policy. The Pension Scheme required, as

mentioned above, exercise of option by an employee for being governed by the Pension Scheme introduced in the year 1994.

The writ petitioner- appellant came to this Court with a writ petition made, under Article 226 of the Constitution of India, which gave rise to CWJC No. 12347 of 2007, wherein she claimed that her husband had exercised the option in terms of the Pension Scheme and that she was entitled to receive pension in terms of the Pension Scheme. The respondent Bank denied, that the appellant's husband had exercised the option required under Pension Scheme.

Since the very question of the husband of the appellant having exercised option under the Pension Scheme fell in dispute, it became abundantly clear that determination of this disputed question of fact required recording of evidence and holding of roving inquiry, which could not have been, in the facts and attending circumstances of the case, appropriate or reasonable. Taking this aspect into account the writ petition was dismissed on 27.11.2013. Aggrieved by the dismissal of a writ petition, the writ petitioner is, in appeal, before this Court.

In the backdrop of the facts, which we have pointed out above, we find no reason to interfere with the order, dated 27.11.2013 passed in C.W.J.C.No. 12347 of 2007. While, therefore, not admitting this appeal, we make it clear that the writ petitioner- appellant shall remain at liberty to make such application(s) as may be permissible in law for remedy of her grievances.

At the time of admission of this appeal, it has, however, been submitted, on behalf of the appellant that if her husband in the light of the stand taken by the respondent Bank, had not exercised option as was required under the Pension Scheme, she would be entitled to refund of provident fund.

There can be no dispute that if the appellant's husband had not exercised, during his life time, the option as was required under Pension Scheme aforementioned, the appellant would remain entitled to receive in accordance with law, the refund of contributory provident fund. It will, however, remain open to the appellant to elect as to whether she shall take her claim for payment of pension for determination by way of a suit to the court of competent jurisdiction or demand refund of the contributory provident fund in question.

With the liberty as has been indicated above, this appeal is not admitted and shall accordingly stand dismissed.

The dismissal of the writ petition or the fact that this appeal has not been admitted shall not create any bar to the consideration or adjudication of the claim, which the writ petitioner-appellant may make in accordance with law."

7. Thus, today if this Court makes any fresh adventure as with regard to the same issue with regard to admissibility of family pension to the petitioner it would commit an error, especially when

the issue against the petitioner has been settled upto the Division Bench. This Court sitting singly can infact neither review the order passed by the learned Single Judge nor can make any comment on the order of the appellate Court which for the reasons as noted above had found the petitioner not entitled for payment of family pension.

8. Thus the only recourse for the petitioner was to file a review application if the learned counsel for the petitioner was of the view that for any reason whatsoever the judgment of the Apex Court in the case of Mehar Singh (supra) could not have been made applicable to her case. There can however be no fresh writ petition for the same cause of action as the concluded issue both by the order of the learned Single Judge and affirmed by the Division Bench cannot be reopened on the settled principle of resjudicata and constructive resjudicata.

9. If the petitioner therefore was advised to file this writ application by the learned counsel for the petitioner who had also filed and argued L.P.A.No. 1584/2014 that cannot be appreciated much less approved by the Court. A counsel owes a duty not only to the client but also to the Court and if he is found to be indulging in filing of the frivolous litigation, he cannot take plea of fresh material for overcoming the final concluded judgment on the same issue.

10. This Court in fact would also not approve the conduct of

the Counsel who have filed and pressed the present writ application despite being aware of the disposal of the writ application being CWJC No. 12347/2007 and L.P.A. o. 1584/2014 in which the same issue of benefit of family pension of the petitioner was also under consideration. The facts mentioned above go to show that the same Counsel who has been appearing in all these four cases has taken extra interest for his client i.e. the petitioner and tapped every forum simultaneously and exhausted all the remedies at one stoke. The conduct of the Counsel for the petitioner as well as the petitioner in repeatedly approaching this Court for getting same retirement benefit of the petitioner is highly reprehensible. The Counsel for the petitioner ought not to have been the party for the aforesaid act committed by the petitioner.

11. The Counsel is expected only to give legal advice. He cannot be expected to act in such a way in order to get some order or other in some way or the other by which are very much known to him. This conduct on the part of the petitioner as well as the Counsel would not only injure the other party in litigation but also would cause most mischievous consequence to administration of justice. This would certainly be termed as an absolute abuse of Court's process.

12. It has been held in the case of Wright Vs. Bennet 1948 (1) All E.R. 227 taking all successive actions covering same ground

and litigating over the same question is normally an act of abuse of the process of the Court. Filing of any petition in any Court of law by suppression of facts exposes the intention of the party concerned in perverting the course of justice. Anyone who may be a client or a Counsel, who makes an attempt to impede or undermine or obstruct the free flow of the holly stream of justice by resorting to the filing of these petitions, would cause serious damage to the institution. The Counsel is endowed with noble duties. He has not only got duty towards his client, but also to his colleague. He has not only got duty towards the Court, but also towards society. Therefore, he should see the case of his client conducted fairly and honestly. The Advocates are responsible to the Court for the fair and honest conduct of the case. In matters of this kind, they are bound to exercise an independent judgment and to conduct themselves with a sense of personal responsibility.

13. According to the Supreme Court in the case of Harishankar Rastogi Vs. Girdhari Sharma reported in AIR 1978 SC 1019, the Bar is not different from the Bench. They are two sides of the same coin. Indeed, the Bar is an extension of the system of justice; lawyer is an officer of the Court. He is master of an expertise, but more than that, kindful to the Court and governed by high ethics. The success of the judicial process often depends on the services of legal

profession. Reference in this connection may also be made to the judgment of the Supreme Court in the case of P.D. Khandekar Vs. Bar Council of Maharashtra reported in AIR 1984 (SC) 110 wherein it has been held that the members of the legal profession should stand free from suspicion and that nothing should be done by any member of the legal fraternity which may lessen any degree of confidence of the public in the fidelity, honesty and integrity of the profession.

14. The Apex Court in this regard had also pointed out, giving a wrong legal advice cannot be said to be unethical but giving an improper legal advice cannot be said to be ethical. When a client consults with a lawyer for his advice, the client relies upon his requisites experience, skill and knowledge as a Counsel. In such a situation, the counsel is expected to give proper and dispassionate legal advice to the clients for the protection of his interest. This Court therefore would not like to say anything more, but would only remind the counsel for the petitioner what was observed by Justice Krishna Ayer in the case of Bar Council Vrs. M.V. Dabholkar reported in AIR 1975 SC 2092 by way of a word of caution for the legal profession in the following words :-

> "...........The Bar is not a private guild, like that of "barbers, butchers and candlestick-makers" but, by bold contrast, a public institution committed to public justice and pro bono public service. The grant of a monopoly

> licence to practice law is based on three assumptions : (1) There is a socially useful function for the lawyer to perform, (2) The lawyer is a professional person who will perform that function, and (3) His performance as a professional person is regulated by himself and more formally, by the profession as a whole. The central function that the legal profession must perform is nothing less than the administration of justice..........."

15. In the considered opinion of this court the learned counsel for the petitioner had earlier correctly sought to withdraw this writ petition probably keeping in view the observations made by the Division Bench in the order dated 8.12.2014 in L.P.A.No. 1584/2014, relevant portion whereof for the purposes of emphasis is reproduced hereinbelow:

> "The dismissal of the writ petition or the fact that this appeal has not been admitted shall not create any bar to the consideration or adjudication of the claim, which the writ petitioner appellant may make in accordance with law."

(underlining for emphasis)

16. Such parting observations of the division bench in its order dated 8.12.2014 did not and cannot mean that the petitioner was given liberty to file a fresh writ application for the same prayer and the same cause of action i.e. grant of family pension to the petitioner which was not only rejected by learned Single Judge but also affirmed

in Appeal. Such observation had at best opened a door for the petitioner to approach the authorities of bank for reconsideration of her case for grant of family pension on any compassion.

17. As a matter of fact it was on this basis that this Court had earlier passed an order dated 26.6.2015 according leave to the petitioner to withdraw her writ petition by recording the following submissions of learned counsel for the petitioner.

> “ Heard learned counsel for the parties.
>
> After some arguments, learned counsel for the petitioner seeks permission to withdraw this application in order to enable the petitioner to move before the competent authority for redressal of his grievance.
>
> While this Court would accord leave to the petitioner, it would also make it clear, that if the petitioner now again moves this Court, for the same cause of action and/or prayer made in this writ application, he shall be subjected to very heavy cost as the issue between him and the Bank, has been thrashed out before the learned Single Judge and the Division Bench and the petitioner has failed before both the Courts.”

18. It has to be kept in mind that after the aforesaid order was passed, Mr. Joseph learned Counsel for the petitioner had made a prayer to recall the aforesaid order dated 26.06.2015 on the ground that he had no instructions from the petitioner to withdraw this writ application and this Court on 09.07.2015 simply for saving his

embarrassment in the hands of the petitioner, had heard him again on merits as would be evident from the following order passed by this Court on 9.7.2015 :-

> "This case was brought under the heading 'to be mentioned' at the instance of the learned counsel for the petitioner who wanted the order dated 26.06.2015 to be recalled on the ground that he had no instructions to withdraw the application and as such, the writ application may be disposed of on merits.
>
> Having regard to the aforesaid submissions, this Court has again heard the learned counsel for the parties on merits.
>
> Order reserved."

19. Thus now when the learned counsel for the petitioner had again sought to press this writ application on merit after making a prayer for recall of the aforementioned order it becomes very clear that both the petitioner and the learned counsel for the petitioner are well aware of the consequences which was already indicated in the order dated 26.6.2015 as with regard to dismissal of the writ petition as well as imposition of heavy cost in the event the petitioner would again agitate the same issue before this Court, which as noted above stands already settled and concluded in view of the aforementioned earlier order of the learned Single Judge and the Division Bench rejecting the claim of family pension of the petitioner on merits.

20. Thus for the reasons indicated above, this writ application being wholly without any merit and infact also out and out frivolous one, is dismissed. As a matter of fact this Court was inclined to impose heavy cost against the petitioner not only for filing this writ petition but also getting it pressed through her counsel but then keeping in view that the petitioner is a widow and her ambitions and aspirations of getting family pension has made her to file this writ petition, it would condone her such uncalled for over enthusiasm only by taking a compassionate view and absolve her from being imposed an exemplary heavy cost with a stern warning that if the petitioner moves again this Court for the same cause of action and same prayer as made in this writ application, she will have no similar reprieve and infact would be subjected to payment of exemplary cost of not less than Rs. 25,000/-.

21. With the aforesaid observations this application stands dismissed.

(Mihir Kumar Jha, J)

Patna High Court
Dated the 1st October 2015
A.F.R./surendra/-

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