

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.1047 OF 2014

Shyamsundar Baldeoprasad Butolia ..vs.. The Chairman and Managing Director, Allahabad Bank and ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr.R.J.Mirza, Advocate for the petitioner.
Mr.C.S.Kaptan, Sr.Advocate with Mr. Masood Sharif, Adv.
for the respondents.

**CORAM : B.P.DHARMADHIKARI AND
P.N.DESHMUKH, JJ.**

DATE : AUGUST 24, 2015.

1. Heard learned counsel for the parties.
2. Prayer in the petition is to grant the petitioner pensionary benefits for period from 31st of January, 2001 to September, 2010 along with interest @24% per annum from the date on which petitioner retired i.e. from 31st of January, 2001.
3. It is not in dispute that petitioner was then given option to avail of either Gratuity Scheme or Pension Scheme. Petitioner exercised that option and wanted to avail both. His employer pointed out that it was not open to him to opt for both, pension Scheme and Gratuity Scheme, and hence declined him to pay pension and released Gratuity. Petitioner thereafter again exercised the option when it was made available in 2009 - 2010. He opted for Pension Scheme and as per agreement surrendered bank's contribution towards Contributory Provident Fund (CPF). Accepting that option the employer has released Pension in his favour from September, 2010.

4. Now, prayer is to sanction pension retrospectively i.e. after date of retirement till September, 2010.

5. Support is being taken from judgment of Hon'ble Apex Court in the case of Allahabad Bank and anr. ..vs.. All India Allahabad Bank Retired Employees Association reported in (2010)2 SCC 44 and unreported judgment in Civil Appeal No.9024 of 2012 (Allahabad Bank ..vs.. A.C.Agrawal) dated 13th of March, 2013.

6. Learned Senior Counsel Shri C.S.Kaptan with Advocate Shri Masood Sharif appearing for respondents submits that in reported judgment and in other judgment, the question of retrospective release of benefit was not examined. The petitioner before this Court acquiesced in benefits as released in 2001 and only after exercising option in second Scheme i.e. in 2009, he has attempted to seek recovery of arrears.

7. To answer the defence of delay and laches, Advocate Mr.Mirza has relied upon the explanation given in rejoinder and the judgment reported in 1995 (I) CLR 449 (*N.L.Abhyankar ..vs.. Union of India and ors.*).

8. In reported judgment at 1995 (I) CLR 449, a retired Hon'ble Judge of this Court filed a petition in 1993 seeking direction for payment of death-cum-retirement gratuity. The Division Bench of this Court has found that in such situation delay by itself cannot be fatal.

9. Here, we are not required to consider a case where there is denial to pay either gratuity or pension. If there was any injustice, petitioner should have raised it way back in 2001. He was informed that he can either claim gratuity or pension and his employer then refused the pension. He accepted payment of gratuity and

compensation under that scheme till the time came to exercise second option. While exercising second option he sought pension and then the employers contribution was adjusted.

10. It is therefore obvious that the grievance in relation to 2001 injustice is made for the first time before this Court in 2014. The petition does not contain any explanation about the said delay. It is not the case of petitioner that the scheme itself enables him to ask for pension from 2001 itself.

11. Shri Mirza, learned counsel for the petitioner, however, attempted to show that there are instances in which similarly situated employees have been given the benefit of pension scheme retrospectively. Shri Kaptan submits that no such instances are stated in the petition. We grant petitioner liberty to make appropriate representation if there are any such instances.

12. In this situation, as petitioner has been found entitled to benefit of pension scheme in accordance with second option exercised by him, we find no case is made out warranting interference. Writ Petition is, therefore, dismissed.

JUDGE

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