IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 9855 of 2012

Date of Decision : September 04, 2015

Janak Raj Sharma .... Petitioner

Vs.

Oriental Bank of Commerce and others .... Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. Rajinder Sharma, Advocate
for the petitioner.

Mr. R. N. Lohan, Advocate
for the respondents.

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DEEPAK SIBAL, J. :

Through the present petition, the petitioner seeks quashing of order dated 16.05.2011 (Annexure P-6), through which the petitioner's request to opt for the Pension Scheme has been declined.

The facts of the case lie in a narrow compass. The petitioner, who was working as a Senior Manager with the Oriental Bank of Commerce (hereinafter referred to as – the respondent Bank), on 15.01.2001, sought and got voluntary retirement. Since prior to his retirement, he had not opted for the Pension Scheme and had chosen to continue to be a member of Provident Fund, on his retirement, all dues, as had accumulated in his Provident Fund, were released to him.

On 23.08.2010, a circular was issued by the respondent Bank, which gave opportunity to all its employees, who were in the service of the Bank prior to 29.09.1995 and had retired after that date, but prior to 27.04.2010, to opt for the Pension Scheme. As per the circular, the options had to be exercised with the concerned Regional Office of the respondent Bank by 25.10.2010.

A perusal of the record reveals that prior to the issuance of the circular, on 24.11.2009, the petitioner along with his wife, left the country to spend sometime with his children in United States of America and Canada and returned back to India on 18.11.2010. On his return, as soon as the above referred circular of the respondent Bank came to his notice, the petitioner moved a representation to the respondents requesting them to allow him to switch over to the Pension Scheme. Vide order dated 16.05.2011 (Annexure P-6), his request was turned down on the ground that options, if any, could have been made only till 25.10.2010 and since the petitioner had opted for switching over to Pension Scheme after that date, his request could not be considered. It is this order that the petitioner challenges before this Court.

I have heard learned counsel for the parties and with their able assistance, have also gone through the record of the case.

It is not disputed that had the petitioner applied in time, in terms of the circular of the Bank dated 23.08.2010, he was eligible to be considered for switching over to the Pension Scheme. The unrebutted enteries endorsed by the Department of Customs and Immigration, Govt. of India, on the passport of the petitioner convince me that he was not in India from 24.11.2009 to 18.11.2010. That being so, it can safely be inferred that the petitioner had no notice of the above said circular permitting switching over to the Pension Scheme. After he returned to India, as soon as the issuance of the circular came to his knowledge, he made a representation to the respondent Bank for permitting him to switch over to the Pension Scheme. In the peculiar facts of the case, the petitioner cannot be faulted with for having not opted for the Pension Scheme in time. He cannot be penalised for having not applied in time as he had no knowledge of the circular. In view of what has been observed above, I find the rejection of the request made by the petitioner, by the respondent Bank, to be harsh.

The above view expressed by me finds support from a judgment rendered by a Division Bench of the Bombay High Court in the case of **Kayoji Sorabji Mirza vs. The Union Bank of India and others** – **C. W. P. No. 1020 of 2012**, decided on **12.06.2013**, wherein it has been held as under :-

> ***"9.*** *After having heard both the learned Counsel at length, in our view, Petitioner is entitled to get the benefit of 2010 Pension Scheme, he being a retired bank employee and the Scheme otherwise is specifically applicable to him. It is an*

admitted position that the Petitioner was abroad during the said period of two months and as such, firstly, he was not aware of the said Scheme which was made applicable to the retired employees and, secondly, he was not aware of the said period during which the said application was to be tendered.

10. *Taking into consideration these peculiar facts and circumstances of the case and particularly the fact that the Petitioner was abroad during the said period of two months and was therefore not in a position to make the application for opting for the said Scheme, Respondent No. 1 – Bank is directed to make 2010 Pension Scheme applicable to the Petitioner though he had not filed his application for option during the said period of two months. It is clarified that this direction is given in the peculiar facts and circumstances of this case and without considering the merits of the case as to whether the employees would be entitled to apply after the cut off date.*

11. *In the result, Petition is allowed in terms of prayer clauses (b) and (c). Respondent No. 1 shall intimate to the Petitioner the amount which has to be deposited by the Petitioner within a period of three weeks from today and upon the said amount being intimated to the Petitioner,*

Petitioner shall deposit the said amount with Respondent No. 1 – Bank shall immediately process the said application without waiting for expiry of four weeks and the Scheme would be made applicable in the following month after the said amount is deposited."

The above quoted judgment of the Division Bench of the Bombay High Court squarely covers the case of the petitioner in his favour. In that case, the petitioner therein had also failed to exercise his option for becoming a member of the Pension Scheme within time as he also, like the petitioner, had gone abroad. The Bombay High Court permitted the petitioner therein to be brought under the Pension Scheme. The facts in the case in hand are identical.

While opposing the petition, counsel for the respondent Bank has cited a judgment of the Apex Court in **Dwipendra Nath Mukherji vs. The Board of Trusted for the Port of Kolkata and others** reported as **2013 (14) Scale 538**, wherein it has been held that if an option is exercised belatedly, the delay should not be condoned. The proposition of law, as declared by the Apex Court, cannot be disputed with. However, in that case, the option was exercised by the employee after about 5½ years after the cut-off date. He was also held to be in knowledge of the cut-off date as the same had been published in the newspaper, which had circulation in the area, in which he was residing. In the case in hand, option was exercised by the petitioner soon after he landed in India and the same was just after about

3½ months after the cut-off date. Further, the petitioner was not even aware of the circular issued by the respondent Bank as he was abroad, where admittedly, the circular was not published.

In view of the above, the respondent Bank is directed to permit the petitioner to switch over to the Pension Scheme. It is clarified that these directions are given in the peculiar facts and circumstances of the case and without considering the merits as to whether employees would be entitled to apply after the cut-off date. The respondent Bank shall intimate to the petitioner the amount of the Provident Fund, which he is required to deposit, along with applicable rate of interest, within four weeks from the date of receipt of a certified copy of the order. Upon deposit of the amount, so demanded by the respondent Bank, the petitioner's case, under the Pension Scheme, shall be processed and he shall be paid pension on the same terms, as paid to other similarly situated employees, who had, in time, opted for the Pension Scheme under the circular dated 23.08.2010.

The needful be done within one month from the date of deposit of the demanded Provident Fund, along with interest, by the petitioner.

The writ petition stands allowed in the above terms. It is clarified that this order shall not be treated as precedent.

(DEEPAK SIBAL)
JUDGE

September 04, 2015
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