**<u>IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH</u>**
<u>Sr. No.</u>: 283

**<u>Civil Writ Petition No.14753 of 2015 (O & M)</u>**
**<u>Date of Decision</u>:** *November 02, 2017*

<u>Satpal</u>

..... PETITIONER

*VERSUS*

<u>UCO Bank & Another</u>

..... RESPONDENTS

. . .

**<u>CORAM</u>: HON'BLE MR. JUSTICE JASPAL SINGH**

. . .

**<u>PRESENT</u>**: - Mr. Praveen Gupta, Advocate, for the petitioner.

Mr. Vipin Mahajan, Advocate, for the respondents.

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**<u>Jaspal Singh, J</u>**

The instant writ petition has been preferred under Article 226/227 of the Constitution of India, for issuance of a writ in the nature of Mandamus, directing the respondents to release the pension/ pensionary benefits of petitioner in lieu of Contributory Provident Fund as per the option exercised by him and in view of judgments Annexures P-6 to P-10.

Learned counsel for the petitioner has contended that petitioner joined his service in the bank as Clerk April 22, 1981 and lateron promoted in the cadre Scale-II. He was ordered to be compulsorily retired alongwith some other punishments vide order dated July 25, 2005 on account of alleged acts of omissions and commissions, as a measure of penalty. Appeal filed by the petitioner against the aforesaid order of compulsory retirement was rejected by the Appellate Authority vide order dated November 09, 2005. Even, he failed to get any relief before this Court as well as Hon'ble Surpreme Court. Though, he has been paid partial retiral dues like Gratuity Contributory Provident Fund etc.

Petitioner exercised 2nd option dated September 15, 2010 (Annexure P-3) for opting pension scheme of the bank, as per provisions of settlement/joint note dated April 27, 2010 (Annexure P-2) signed by the Indian Banks Association with the Officers' Organization and Memorandum of Settlement, followed by representations dated October 25, 2014 and January 02, 2015 (Annexures P-4 and P-5, respectively). Learned counsel for the petitioner further submits that petitioner even undertook to refund bank's contribution towards provident fund, together with interest thereon paid to him by the bank at the time of his retirement, in accordance with the terms & conditions of aforesaid joint note. But, no action has been taken by the Bank on his option letter as well as representations under an erroneous presumption that he is not entitled for exercising second option for grant of pension because he has been compulsorily retired from bank service. Thus, apparently, the only objection which the Bank seems to be having is that though there is a provision for employees retiring (on superannuation) from service of bank to give second pension option but that provision is not available to those employees who have been compulsorily retired.

Learned counsel for the petitioner further submitted that restriction of exercising second pension option only to employees, retiring on superannuation and not extending it to the employees, who have been compulsorily retired, has been censured by judicial precedence and the issue is now no more *res-integra*.

On the other hand, learned counsel for the respondents has contended that petitioner was ordered to be compulsorily retired vide order dated July 25, 2005, as a measure of major penalty on account of his commission for serious lapses while performing his duties which constitute misconduct in terms of Punjab & Sind Bank (Conduct) Regulations, 1981. Learned counsel further contended that petitioner has not been allowed second option of pension under the presumption that it is available only in the case of an employee who is ceased to be in service on account of retirement on superannuation or on account of VRS.

This Court has given an anxious thought to the rival submissions made by learned counsel for the parties and gone through the record available on file but does not find any legal substance in the submissions made by learned counsel for the respondents.

Undisputably, petitioner was compulsorily retired from bank service vide order dated July 25, 2005 and was paid retiral dues like Gratuity Contributory Provident Fund etc. Subsequently, he exercised second option for grant of pension in terms of Clause 3(A) of Joint Note dated April 27, 2010 as according to this clause, he was entitled for giving second option for grant of pension and pensionary benefits in lieu of provident fund. He also gave an undertaking that he shall refund the bank's contribution to the provident fund together with interest thereon paid to the petitioner by the bank, at the time he was retired compulsorily. But, no action has been taken by the Bank on his representation(s) seemingly he is not entitled for exercising second option for grant of pension because he has been compulsorily retired from bank service.

Now, sole point for consideration in this writ petition is that whether petitioner, who has been compulsorily retired from service, is entitled for exercising second option for grant of pension?

Similar question came up for hearing before High Court of Judicature of Andhra Pradesh at Hyderabad in Writ Petition No.9069 of 2011 titled 'Sreeram Ramamurthy vs. Andhra Bank, rep. by its Chairman & Managing Director, Pattabhi Bhavan, Saifabad, Hyderabad and three others', decided on March 22, 2012, wherein it has been held as under:-

> "16. Dr. Lakshmi Narasimha, learned counsel for the respondent – bank, however, defended the action of the bank on the ground that such retirees, who have retired compulsorily, were not included in the scheme, as there is no reference to such retirees. I am, however, unable to appreciate the said contention in view of the fact that, firstly, the Joint Note as well as the circular refers to the retirees from the bank and the word retiree in generic term includes all categories of retirees. Restricting the meaning of the said word only to those who retired voluntarily or on superannuation, is not only against the object and purpose of the agreement under the Joint Note and the circular but would also amount to reading something else therein. Secondly, the definition of retirement, as extracted above, covers all cases of cessation of service. Hence, the word 'retired' used in the Joint Note and circular has to be understood broadly, as per definition. I am, therefore, of the view that the Joint

> Note and the circular apply to all the retirees and if the contention of the learned standing counsel for the respondent – bank is accepted, it would amount to creating and classifying the retirees into two different classes viz. those, who retired on superannuation or voluntarily and the other category of those, who retired compulsorily, which would be violative of Article 14 of the Constitution of India."

A glance of the above referred judgment makes it crystal clear that bank cannot discriminate one such set of retirees on penalty of compulsory retirement from the other set of retirees on superannuation. Restricting the meaning of the said word only to those who retire voluntary or on superannuation, is not only against the object and purpose of agreement under the Joint Note and circular but would also amount to creating and classifying the retirees into two different classes viz. those, who retired on superannuation or voluntarily and the other category of those, who retired compulsorily, which would be violative of Article 14 of the Constitution of India. The said finding of the High Court of Judicature of Andhra Pradesh in Sreeram Ramamurthy's case (supra) has been upheld upto the Hon'ble Supreme Court and has attained finality.

In the light of what has been discussed above, instant writ petition is allowed. The respondents are directed to reconsider the option dated September 15, 2010 exercised by the petitioner as per the provisions of Joint Note dated April 27, 2010 and pass appropriate orders in accordance with law, within a period of two months from the date of receipt of a certified copy of this judgment.

No order as to costs.

**(Jaspal Singh)**
**Judge**

**November 02, 2017**
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Whether Speaking/ Reasoned: Yes/ No
Whether Reportable: Yes/ No