* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: October 24, 2017

\+ W.P.(C) 3943/2016

JAGWATI ..... Petitioner

Through: Mr. Umesh Singh, Advocate

Versus

ALLAHABAD BANK ..... Respondent

Through: Mr. Rajesh Kumar Gautam & Mr.Aakash Sehrawat, Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. This is second round of litigation. In the first round of litigation, vide order of 6th November, 2015, this Court had directed the respondent-Bank to decide representation of petitioner's husband. It stands decided vide impugned order of 4th December, 2015. Petitioner's husband was employed as a Head Cashier with respondent-Bank and was put under suspension in July, 2009 and during the period of his suspension, his entry into the bank premises was restricted only for the purpose of operating his bank account and collecting his dues. Vide order of 1st September, 2011, petitioner's suspension was revoked and upon joining his duties, he came to know about second option to switch over to pension scheme by surrendering provident fund to pension fund.

2. It is the case of respondent that petitioner had not exercised this option despite being on duty from September, 2011 till date of his retirement i.e. 31st December, 2013 whereas it is the case of petitioner's husband that after he had resumed his duty, respondent-bank deducted the amount of ₹62,944/- towards pension scheme from the arrears of pay in September, 2011 itself. It is matter of record that petitioner's husband had expired in January, 2014. The stand of respondent-Bank is that from the year 2011, till the date of his retirement, petitioner's husband was furnished copy of provident fund statement every six months, wherein it was specifically mentioned in Column of pension option that petitioner's husband had not exercised the pension option. It is maintained on behalf of respondent-Bank that amount of ₹62,944/- was inadvertently deducted from the arrears of pay and the same has been refunded by tendering a cheque. However, petitioner's counsel maintained that the said refund amount has not been encashed.

3. The precise submission of petitioner's counsel is that petitioner's husband was not aware of the second option to opt for the pension scheme and he had become aware of it on resuming the duties in September, 2011. So, it is submitted that since the respondent-Bank has already deducted the requisite amount towards pension scheme, therefore, petitioner's husband is entitled to have the benefit of pension scheme.

4. During the course of hearing, petitioner's counsel had drawn attention of this Court to respondent-Bank's Circular *(Annexure P-6)* to point out that it was the duty of respondent-Bank to extend necessary cooperation to the intending optees and photocopies of the forms ought to have been made available in sufficient number at the respective branches/

offices so that desiring optees could apply in prescribed form without waiting for permission from the head office. So, it is submitted that respondent-Bank ought to have send individual notices to the employees to make them aware of the pension scheme.

5. On the other hand, learned counsel for respondent-Bank submits that the second option under the pension scheme was brought to the notice of all employees by displaying it on the notice boards and sufficient number of forms were available and that by way of abundant caution, it was also published in various newspapers, including *'Indian Express'* and a copy of publication in newspaper Indian Express has been appended along with the counter affidavit so filed by respondent-Bank. Learned counsel for respondent-Bank relies upon Supreme Court's decision in *Pepsu Road Transport Corporation, Patiala Vs. Mangal Singh & ors.* (2011) 11 SCC 702 wherein it has been held that sending of individual notices is not required as neither pension scheme nor regulations mandate it.

6. At this stage, it is pointed out by petitioner's counsel that newspaper publication is in respect of retired employees and not working employees and date of publication is also not clear from the copy of newspaper publication and so, reliance placed upon decision in *Pepsu Road Transport (Supra)* is misplaced. Nothing else is urged by either side.

7. Upon considering the submissions advanced by both the sides, on perusal of impugned order and the decision cited, I do find that petitioner's husband was not in a position to fill up the form to opt for pension scheme because his entry into the bank was restricted and only

after revocation of his suspension, petitioner's husband could do so. In the impugned order, it is noted that petitioner's husband had exercised a time barred option. In fact, petitioner's husband had not filled up the requisite form to switch over to the pension scheme and the deduction of ₹62,944/- from his arrears of pay towards pension was inadvertent, which stood refunded to the petitioner. Respondent-bank along with the counter affidavit has appended a copy of cheque of refund amount, which petitioner's husband had chosen not to get encashed, so that he could maintain the claim for pension. Pertinently, copies of provident fund statements *(Annexure R-2 colly)* appended to the counter affidavit reveals that after every six months, it was communicated to petitioner's husband that he had not opted for pension scheme. In such a case, petitioner's husband ought to have pointed out to respondent that his contribution towards pension scheme has been deducted and he should have been allowed to opt for the same. After revocation of his suspension till date of his retirement, petitioner's husband had kept silent about it, to his detriment. Until and unless option to switch over from provident fund to pension fund is exercised by filling up a requisite form, pension as such cannot be granted. Now petitioner's husband is no longer in this world to opt for switch over and it is too late to do so.

8. In these circumstances, denial of pension to petitioner is justified. So far as serving of individual notice is concerned, I find that there is no requirement in the pension regulation or elsewhere that individual notices are to be sent. Supreme Court in *Pepsu Road Transport (Supra)* has clarified that until and unless there is a specific requirement of sending individual notices, they are not to be sent. It is not the case of petitioner

that requisite form was not available or the pension scheme was not circulated by displaying it on notice boards.

9. In the considered opinion of this Court, the impugned order cannot be faulted with and thus, finding no substance in this petition, it is dismissed while leaving the parties to bear their own costs.

SUNIL GAUR
(JUDGE)

OCTOBER 24, 2017
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