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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5039 OF 2014

Ehtesham Husain Khan s/o Mahmood Husain Khan PETITIONER
Age – 61 years, Occ – Retired
R/o 162, Arif Colony,
Near Teen Mandir Ghati,
Aurangabad 431 001

VERSUS

1. The Chairman and Managing Director RESPONDENTS
Allahabad Bank
Head Office, 2 – Netaji Subhash Road
Kolkota (Bangol) – 700 001

2. The General Manager (P/A)
Allahabad Bank
Head Office, 2 – Netaji Subhash Road,
Kolkata (Bangol) – 700 0012134008626

3. Allahabad Bank
Through its Zonal Office
Deccan Gymkhana, Shivaji Nagar
Pune – 411 005

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Mr. S. V. Natu h/f Mr. A. R. Kale, Advocate for the petitioner
Mr. P. K. Nikam, Advocate for respondents No. 1 to 3

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[CORAM : SUNIL P. DESHMUKH AND
R. G. AVACHAT, JJ.]

DATE : 30th APRIL, 2019

ORAL JUDGMENT (PER SUNIL P. DESHMUKH, J.) :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

2. Petitioner, by this petition, seeks directions to the respondents to pay arrears of pensionary benefits from 31st December, 2012 till date along with interest @ 24% per annum and to commence payment of regular monthly pension to him.

3. The petitioner had been appointed as a clerk / typist in respondent – Allahabad Bank on 21st February, 1977. Petitioner retired on superannuation as Special Assistant on 31st December, 2012 from its Aurangabad Branch.

4. Petitioner contends that old pension scheme had been discontinued by the bank, however, the Supreme Court had restored the old pension scheme and him being eligible under the same, he had requested for pension according to old pension scheme and urged for grant of pension with effect from 1st January, 2013.

In June 2014, he once again had written to respondent No. 2 purporting to draw attention to decision of Delhi high court in a writ petition filed by one *A. C. Agrawal (WP C 2261 of 2002)* for payment of pension as third benefit and had also referred to that challenge to said decision before the Apex Court, at the instance of the bank had failed.

5. Petitioner claims eligibility and entitlement to have third

benefit by way of pension and while had demanded pension along with interest it had been purportedly declined. He, therefore, has approached this court under present writ petition seeking direction for payment of pensionary benefits and arrears with interest

6. The petitioner has based his claim on the decision of the Delhi High Court as well as that of the Supreme Court, referred to above, annexing copies thereof and purports to assert entitlement for pensionary benefits.

7. Respondents No. 1 to 3 (Bank), however, have refuted the contentions in their affidavit in reply and have denied that the petitioner being entitled to have pensionary benefits. It has been purportedly pointed out that though the petitioner has received benefits of contributory provident fund in addition to gratuity and leave encashment, the same has not been referred to by him. The contention of the petitioner that since he had not opted for new pension scheme, he has been covered by old pension scheme, is particularly refuted.

It is being pointed out that old pension scheme had been discontinued from 1st October, 2010. It is stated that discontinuation of old pension scheme had been in compliance with orders dated 15th December, 2012 and 29th January, 2010 passed by the Apex Court in the Bank's Civil Appeal No. 1478 of 2004. This position had been communicated to all the employees of the bank under circular dated 30th October, 2010.

It is claimed under the reply that Allahabad Bank (Employees') Pension Regulations, 1995 are in operation and hold the field. Attention is sought to be drawn to that choice had been available to the employees either to opt for contributory provident fund or pensionary benefits and those who would opt for pensionary benefits, they were required to submit their option as per Annexure – I by 27th January, 1996 to the authorities. Such employees were required to authorize trust of the Provident Fund of the bank to transfer entire contribution of the bank along with interest accrued, to the credit of Allahabad Bank (Employees') Pension Fund constituted under the Regulations of 1995.

Petitioner had never opted for pensionary benefits pursuant to the regulations. There was no question of employees having any option to claim any other benefit.

Circular in this respect accordingly had been issued on 30th October, 2010. The petitioner even had an intimation and instructions that the old pension scheme stands discontinued, well before retirement of the petitioner .

Petitioner had accepted gratuity as well as leave encashment benefits and contributory provident fund without any demur. Attention is particularly sought to be drawn to that petitioner had never been declined payment of pension on the ground that he had been paid gratuity.

8. While petitioner purportedly had been claiming pensionary benefits post his retirement, he had been apprised of by the bank officials that he would not be entitled to pensionary benefits as he has availed benefit of contributory provident fund.

9. It is being referred to that the question involved in *A. C. Agrawal's* case had been with regard to mandatory nature of gratuity. Validity of Regulations of 1995 was not in question. Decisions in *Agrawal's* case by the High Court and the Supreme Court would be of no avail to the petitioner. The claim made under the writ petition, as such, had been resisted and declined.

10. The bank framed a scheme referred to as *"Allahabad Bank Employees Pension Scheme (Old)"* in 1974, with choice to employees either to opt for gratuity or pension. In nineties there had been negotiations for introduction of new pension scheme

for banking industry and upon sanction, the same came to be referred to for respondents as *"Allahabad Bank Employees (Pension) Regulations, 1993"* (New Pension Scheme), under which option had been given to employees either to go with new pension scheme or to continue with provident fund benefit.

11. Mr. Sharad V. Natu, learned advocate appearing on behalf of the petitioner submits that the matter will have to be viewed on the background that the respondent bank had been established in 1865 and pension scheme had been made applicable to its employees since 1890 and in 1912, the bank had resolved making available benefit of contributory provident fund (CPF) to its employees and Payment of Gratuity Act had come into existence in 1972. On this background, according to him, while service conditions of employees were saved under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, benefits which were given, awarded and were being enjoyed would not be curtailed, truncated, withdrawn or taken away by forcing upon employees taking unilateral, compulsive and foisted options.

12. He submits, the ones who did not opt for new pension scheme would stand covered under the old pension scheme. In petitioner's case, he had preferred to go on with the old pension

scheme and had not opted for the new one. In such a case, petitioner would be entitled to benefits under the old pension scheme plus gratuity, a statutory responsibility under the Payment of Gratuity Act and benefits of contributory provident fund. Unilateral offer of options either under 1995 regulations or for that matter under the further communication of 2010 would not be said to and cannot be put to work adversely against benefits which in ordinary course otherwise would have come petitioner's way.

13. He submits, it emerges from decision of the Delhi High Court as confirmed by the Supreme Court in the case of *A. C. Agrawal* (*supra*), that payment of gratuity would not take away pensionary benefits. He submits that said two decisions are a clear pointer to that the petitioner would be entitled to pensionary benefits as per the old pension scheme. He, therefore, placing reliance on said two decisions, urges this court to allow the writ petition granting reliefs as claimed under the prayer clauses.

14. On the other hand, learned advocate Mr. Prashant K. Nikam passionately refers to various aspects involved in the matter submitting that it would emerge on an objective analysis of the situation that the petitioner's demand to have third benefit

upon superannuation cannot be legitimately claimed and the petitioner would not at all be entitled to have the same.

15. Learned advocate purports to point out that it would not be correct to say that the petitioner had opted for payment of pension and also for gratuity and pleadings to those effect specifically stand denied under reply. While the bank had given opportunity to the employees to opt either for CPF or pensionary benefits, employees were required to submit their options, as per Annexure-1 in duplicate by 27th January, 1996, to the authorities. The employees were also required to give authorization to the provident fund trust of the bank to transfer entire contribution of the bank with interest to the pension fund constituted under the Allahabad Bank Employees Pension Regulations 1995 in case option for pension is exercised. Petitioner had not exercised said option and on retirement he had been paid gratuity, leave encashment and contributory provident fund amount. Petitioner had been apprised of by the bank officials about that he would not be entitled to pension having availed of contributory provident fund benefit.

16. He submits that after the petitioner had entered service, he had joined and became member of the employees' union, which had been negotiating and bargaining and settling terms

and conditions of employment for and on behalf of its members. He particularly emphasizes, it is absolutely not the case of the petitioner that he was not member of the union, which had entered into agreement and pact with the bank in respect of service conditions of employees. The matter will have to be viewed from that angle.

17. Learned advocate Mr. Nikam earnestly urges us to consider the background under which service conditions, consequently, retiral benefits have emerged from time to time.

18. He submits that as referred to in the affidavit in reply by the bank, conditions of service of employees in relation to pension and gratuity were being governed by "*Sastry* Award" of 1953, which later was followed by the "*Desai* Award" of 1962.

19. He purports to point out that under *Desai* award it had been clearly considered that three retiral benefits would not be justified. Pursuant to *Desai* Award of 1962, employees had choice either to opt for gratuity or a pension scheme. A workman would be entitled to, only gratuity or in the alternative pension / retiring allowance. Employee had an option to pick up either gratuity or pension scheme /retiring allowance, but not both.

20. He submits and contends that in view of *Desai* Award, in

the pension scheme (old) of Allahabad Bank option to have gratuity or pension had been made available.

21. He submits, in the bipartite settlements, the *Desai* Award in relation to two retiral benefits had not been modified and said situation continues to govern and prevails in bipartite settlements all through .

22. He submits, the union had negotiated and bargained with respondent bank and arrived at a settlement and employees were to have two benefits and not three. It was agreed between Indian Banks' Association and Employees Union/Association that pension would be payable in lieu of bank's contribution to provident fund. In view of bipartite settlement/joint note dated 29th October, 1993, a scheme had been proposed and formulated for pension to bank employees retired/expired on or after 1st January, 1986 and till 31st October, 1993, including existing employees/officers on the rolls of the bank as on 31st October, 1993, under which they were required to exercise option for availing benefit of pension within stipulated time. The bank accordingly had issued circular dated 6th September, 1994 with form where the employees were required to give their option. The time limit initially had been up to 30th September, 1994, which had been subsequently extended to 30th November, 1994.

23. The pension scheme negotiated upto 1993 as referred to above, got legal sanctity in 1995 with receipt of approval as required under the regime of rules to be known as "Allahabad Bank (Employees) Pension Regulations, 1995". Pursuant to said regulations, employees who retired/expired on or after 1st January, 1986 and existing employees/officers as on 29th September, 1995 were required to exercise option for availing benefit of pension within stipulated time i.e. by 27th January, 1996. Under the provisions of Regulations, pension was in lieu of bank's contribution to provident fund and those who did not exercise option to join pension regulations of 1995 were to continue to be covered under the contributory provident fund scheme.

24. Mr. Nikam, learned advocate has specifically stated that a sizable number of retired and existing employees exercised their option to receive pension and a good number of employees had preferred to continue to be covered under the contributory provident fund scheme, as they had not given option by cut off date 27th January, 1996. Petitioner had not exercised option to have pension and, thus, has signified to have benefit to CPF.

25. He points out, while the employees across various

nationalized banks persisted with the demand for pension and requested to introduce another option for pension, for those who had not opted for pension or had failed to exercise option within stipulated time, the same culminated into 9th bipartite settlement/joint note dated 27th April, 2010 between Indian Bank's Association and the workmen unions/officers association. Said joint note governs all the member nationalized banks and not just the respondent Allahabad Bank.

26. Pursuant to said settlement, respondent Bank had issued instructions circular No. 11143/PA/2010-11/27 dated 15th September, 2010 inviting options from eligible employees/ex-employees to opt for pension in lieu of contributory provident fund. Last date stipulated had been 18th November, 2010. In view of the same, large number of eligible employees had exercised their option for pension and those did not continue to remain members of the contributory provident fund scheme. The petitioner had faltered in giving option.

27. Learned advocate refers to that while the petitioner retired on 31st December, 2012, he had been covered under the contributory provident fund scheme, having not exercised option to have pension in lieu of provident fund coming his way in 1994, 1996 or in 2010. Accordingly, an amount of Rs.

21,08,249/- towards contributory provident fund including interest up to 1st January, 2013 was released to him and gratuity amount of Rs.9,71,695/- was also released to him and no further dues were payable by the bank to him. On superannuation he derived the benefits of agreement and regulations. It is only after receipt of benefits, the petitioner has approached this court.

28. He goes on submit that while petitioner would not be entitled to pensionary benefits and has not suffered any loss or injury, in case the petitioner's request is acceded to, the bank would incur and suffer grave loss, which would not be reparable. He, therefore, urges to dismiss the writ petition.

29. After hearing learned advocates for the parties and on perusal of relevant record, it would appear that respondent Allahabad Bank had been established way back in 1865 and pension scheme had been introduced from 1890. In 1912, board of directors of the bank, under a resolution, extended benefits of contributory provident fund to its employees. The bank had been nationalized under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, under which, service conditions of existing employees were saved.

30. While Allahabad Bank had given benefit of pension to its employees in 1890 and thereafter Contributory Provident Fund, around 1912, pursuant to *Desai* award, an alternative had emerged in the form of gratuity to pension. Under *Desai* award, employee was expected to choose either pension or gratuity and would be entitled to two benefits and not all the three *viz.,* pension, CPF and gratuity. An option to an employee was available either pension or gratuity and not both along with CPF. It would emerge that retired employee would have only two benefits and not three, before enforcement of Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970.

31. Allahabad Bank Employees Pension Scheme (Old) as has been appended refers to under paragraph No.7 that a pension would be payable to employees in lieu of gratuity.

32. Eventually, it appears, it was thought of that employees should be given option, either to go with the contributory provident fund scheme where employer has to contribute or to have pension. Under negotiations option was agreed to be given to employees for his choice either to go with contributory provident fund scheme or to have pension. An employee was required, if he chooses to go for pension, to pay the provident fund amount to the employer, conveying the same to Provident

Fund Trust making him eligible to have pension, not otherwise. Employee who does not give such an option would automatically get aligned to CPF scheme, whereunder employer would keep on contributing its share. New pension regulations of 1995 evolved upon negotiations referred to above between bank and union.

33. It appears, decision based on which petition has been purportedly moved, i.e. the one by Delhi High Court, *A. C. Agrawal's case (supra)* was the case wherein the court had been concerned with an employee who had joined service as a clerk in 1961 and while he had joined service, employees were enjoying benefit of pension and contributory provident fund. Petitioner therein, who had retired on 30th April, 2001, had been paid gratuity and proceeds of contributory provident fund were also released to him. However, he had not been given pension and the petitioner claimed to be entitled to pension. While the bank had directed the employee to refund gratuity amount paid to him as pre-condition for releasing pension, matter was viewed in that context. Petitioner therein had cited decision of the Apex Court in the case of *"Allahabad Bank V/s All India Allahabad Bank Retired Employees Association" (2010) 2 SCC 44*. In said decision, the Supreme Court had observed that payment of gratuity would be a statutory liability and cannot be avoided unless exemption relieving the

employer from statutory obligation of payment of gratuity is granted and that there would not be any *estoppel* to claim gratuity. It is in that context the Delhi High court had allowed the petition by setting aside communication by the bank asking the petitioner to refund amount of gratuity as a pre-condition for release of pensionary benefits.

34. While the decision has been so rendered, in paragraph No. 7 of the decision, as annexed to the writ petition, the Delhi High Court has observed, thus -

> “ *7. The counsel for the petitioner further contends and it is confirmed by the counsel for the respondent Bank also that the gratuity of Rs. 3.5 lacs paid to the petitioner was under the Gratuity Act and not under the scheme of the respondent Bank. The counsel for the* ***petitioner further informs that the petitioner*** *has w.e.f. 2009 availed of the option then given by the respondent Bank and* ***has w.e.f. 2010 availed of pension by refunding*** *to the respondent Bank the* ***respondent Bank's share of CPF.*** *He thus states that the dispute which survives is only of arrears of pension between the years 2001 and 2009 and which is squarely covered by the judgment aforesaid of the Supreme Court.*”

35. It may be worthwhile to refer to that even the Supreme Court in *A. C. Agrawal (supra)* had considered the matter in the context of Payment of Gratuity Act, 1972 and had observed that even if the claimant employee had opted for pension, he would

have legitimate claim to gratuity without being required to refund amount of pension already received by him.

36. Present case is distinguishable from the one referred to and relied on by the petitioner, to be precise the case of *A. C. Agrawal* (*supra)* wherein issue with regard to simultaneous benefits of gratuity and pension were concerned and the Allahabad Bank Employees Pension Regulations, 1995 were not in issue.

37. Pursuant to the settlement/joint note dated 29th October, 1993, a scheme was proposed and formulated for pension in banking industry. While the demand had been for three benefits, pension, CPF and gratuity, parties had settled the matter with alternative of pension in lieu of CPF with effect from 1st November, 1993, eventually, entitling employees to two retiral benefits. Thus, in bipartite settlements two retiral benefits aspect remained unchanged.

38. Under the scheme, the employees/officers on the rolls of the bank as on 31st October, 1993 were required to exercise option for benefit of pension within stipulated time and instruction circular No. 3904 dated 6th September, 1994 with option form was issued requiring the employees to exercise

option within the time limit.

39. The pension scheme introduced in 1993 got final shape in 1995 with concurrence of Reserve Bank of India and prior sanction of Central Government and accordingly, after approval, Regulations got notified in official gazette in 1995 and is referred to as “Allahabad Bank Employees Pension Regulations, 1995”.

40. Pursuant to regulations, existing employees were to submit option by 27th January, 1996. Even pursuant to 9th bipartite settlement employees were to give option by 18th November, 2010.

41. The petitioner had not opted for pensionary benefits availing of any of the opportunities. Thus, pursuant regulations/terms got aligned to get benefit of contributory provident fund.

42. It would be relevant to be considered is that petitioner had joined service in 1976. According to then prevailing service conditions, petitioner had been entitled to either gratuity or pension and not to the both having regard to *Desai* award and also under old pension scheme of the bank. High court and the Supreme Court had ruled that gratuity is not an optional benefit and is mandatorily to be given by the employer in the absence of

special exemption from the operation of Payment of Gratuity Act, 1972.

43. It would, thus, emerge from the facts and circumstances that while petitioner had entered service, bank employees were entitled to two benefits CPF and either pension or gratuity. The Courts had ruled that gratuity is statutory mandate. Employees were then getting CPF and gratuity or pension. Under the old pension scheme, an option to go with gratuity was available. Such an option being not available after decision by the Supreme Court, gratuity as an option got seized as compulsory option denuding pension of its character as option or an alternative to gratuity and ceased to be option to gratuity, bringing old pension scheme to a grinding halt. Upon retirement, petitioner had been paid gratuity as well as contributory provident fund amount.

44. One more aspect that will have to be considered is while the petitioner entered bank's service, the employees like the petitioner were eligible to only two benefits, provident fund and pension or gratuity and not all the three. In such situation, section 12 (2) of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970, would hardly have operation letting any benefit to him. Section 12 (2) saves officer or other employee of the then existing bank making him officer or other

employee of the new bank and lets him hold office of service in the new bank, on the same terms and conditions and with the same rights to pension, gratuity and other matters as would be admissible to them, if the undertaking of the exiting bank had not been transferred and vested in new bank and were to continue until his employment in the new bank is terminated or until his termination or terms and conditions are dealt with or altered by the corresponding new bank. Admittedly, petitioner had entered service, subsequent to transfer of existing bank. He had been an employee of new bank all along. He had never been employee of old existing bank. As such, he would have to hold office and serve in the bank on the same terms and conditions with the same rights to pension, gratuity and other matters as were applicable, while he had entered service. No benefit can be derived in the circumstances by him from section 12 (2) of the enactment.

45. The decisions of the High Court and the Apex Court in *A. C. Agrawal's case (supra)* would be of little avail to the petitioner to support his claim of pensionary benefit.

46. In the light of the above, petitioner would not be legitimately entitled to seek simultaneously CPF benefit as well as benefit of pension as is sought under the writ petition.

47. In view of aforesaid, writ petition is dismissed. Rule stands discharged.

48. At this stage, learned advocate Mr. Natu appearing for the petitioner makes a request that, it may be left open for the petitioner to make proper representation to the respondents. It is for the petitioner to decide about the same. Writ petition stands disposed of.

[R. G. AVACHAT]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

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