ssp

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.242 OF 2015

K.K.Balasubramaniam ...Petitioner
vs.
Union Bank of India & Ors. ...Respondents

ALONG WITH
WRIT PETITION NO.329 OF 2015

Dilip Kumar Ghosh ...Petitioner
vs.
Union Bank of India & Ors. ...Respondents

ALONG WITH
WRIT PETITION NO.863 OF 2015

Sudhakar V. Samant ...Petitioner
vs.
Union Bank of India & Ors. ...Respondents

Mr.Arif Doctor a/w Ms Neha Dhuru I/b M/s.Mulla & Mulla & Craigie Blunt & Caroe for the Petitioner in W.P.Nos.242/2015 and 329/2015
Mr.Prashant More a/w Ms Kanchan Chindarkar for the petitioner in WP/863/2015
Mr.Ashok D. Shetty for the respondent Nos.1 and 2.

CORAM : A.S.OKA AND SANDEEP K. SHINDE,JJ.
DATE ON WHICH JUDGMENT IS RESERVED:DECEMBER 18, 2018
DATE ON WHICH JUDGMENT IS PRONOUNCED:MARCH 19, 2019

JUDGMENT: (PER A.S.OKA,J.)

1 These three petitions were taken up for final disposal, as the controversy which arises in the

petitions is the same. The petitioners in these petitions were the employees of the Union Bank of India (for short `the said Bank'). For the sake of convenience, we are referring to the facts of the case in Writ Petition No.242 of 2015. The petitioner was in the employment of the said Bank from February 1983 till the year 2001. The petitioner took benefit of the Voluntary Retirement Scheme (for short `the VRS') offered by the said Bank in the year 2001. The petitioner pointed out that after opting for VRS in the year 2001, he took up other employments. He has stated that during the period between 2005 to 2013, he was employing with Tech Mahindra and by virtue of his employment he was required to travel extensively at various locations in India and also overseas. The petitioner claims that during the period from 1st September 2010 till 30th October 2010, he was out of Mumbai. The petitioner claimed that in the first week of November 2010, he became aware of the staff Circular No.5690 dated 27th August 2010 (herein referred to as the ` the first circular') issued by the said Bank. Clause 5 of the said Circular provides that the employees who ceased to be in service on or after 29th September 1995 on account of VRS under Special Scheme after rendering service for a period of minimum 15 years shall be eligible to exercise an option to join pension scheme subject to the terms and conditions mentioned. Thus, ex-employees of the said Bank of certain category who had opted for VRS under certain schemes were treated on par with retiring employees. Clause 8 of the circular provided that the process of submission of option to join pension scheme will commence from 1st September 2010 and will be closed on 30th October 2010 (both days inclusive). It was provided that the date of acknowledgement by the branch office of the option forms will be reckoned as the date of exercise of the option. Clause 15 is material for deciding the controversy in these petitions which reads thus:

> "Clause 15-….. <u>All the Branch Managers/ Departmental Heads are requested to bring this to the notice of all staff members against their acknowledgement and in order to give wide coverage; the following methods may be adopted</u>.
>
> a) Display the copy of the circular on the Notice Board at the Branch/Office.
> b) Copies of the circular to be sent to the Local Retired Employees' Association.
> c)<u>In case of Retired Employees/Family of the eligible expired employees, a copy of the option form may be sent to last known address</u>.
>
> Co-operation of all staff members is solicited for timely exercising the option and are further requested to publicize/canvass the information to all concerned, so that, all eligible/willing

employees, retired/family members of deceased employees get the benefit of the scheme."

(underline supplied)

2 According to the case of the petitioner, he was eligible to the benefit of pension scheme as after rendering the service for more than 15 years, he had opted for VRS in the year 2000-2001 and obtained VRS from the said Bank on 21st April 2001. A specific case made out by the petitioner is that a copy of the option form was not made available to him. There was no intimation given to the petitioner in any form about the said circular. He has claimed that as he was extensively travelling during the period from 1st March 2010 to October 2010, only in November 2010, he became aware of the option to join the pension scheme under the first circular.

3 It is the case of the petitioner that immediately after acquiring the knowledge about the first circular, he tried to obtain a copy of the form from the said Bank but the same was not provided on the ground that the forms were to be submitted on or before 30th October 2010. However, the petitioner obtained option form from his colleague and tried to submit it to the Bank but it was not accepted. Hence, the petitioner met higher Officials of the said Bank including the General Manager who advised the petitioner to submit a representation. Accordingly, the petitioner submitted representations/reminders dated 16th

November 2010, 29th January 2011 and 16th January 2012. By a letter dated 14th February 2012, the second respondent (General Manager of the said Bank) informed the petitioner that he had not exercised the option within the time provided by the first circular and therefore, his request for allowing him to exercise option cannot be acceded to. The petitioner claims that after the receipt of the said letter, he took up the matter through the Association of Retired Employees of Union Bank of India.

4 The petitioner has pointed out that in the first circular it was mentioned that the employees who had taken VRS under the Regulation 19(1) of the Officers' Service Regulation were not eligible to apply for opting for the pension scheme.

5 Another circular was issued on 16th January 2013 (for short `the second circular') by the said Bank for extending option provided in the first circular to those officers who took VRS under Regulation 19(1) of the Officers' Service Regulation, 1979 (for short `the said Regulation'). Based on the second circular, the petitioner again applied for exercise of option for opting for the pension scheme. As the said application was not acted upon, the petitioner by a letter dated 24th November 2014 called upon the respondents to grant benefit of the said pension scheme to the petitioner.

6 The prayer in these petitions is essentially for issuing a writ of mandamus to the said Bank enjoining the said Bank to allow the petitioner to opt for option under the first circular. A specific contention was raised in the petitions that a copy of the option form was not sent at the last known address of the petitioner and that he was not aware of the first circular till first week of November 2010.

7 There is a reply filed by Shri Gopal Krishna Panda, the Chief Manager of the first respondent-Bank. It is contended in the reply that a copy of the first circular was displayed on the notice board of all the Branches/offices of the Bank. It is further contended that the assistance of the Local Retired Employees' Association of the said Bank was also taken to make retirees acquainted with the procedure under the first circular. Moreover, there was a newspaper notification issued by the said Bank. It is pointed out that more than 3000 retired employees/family members of the deceased employees applied as per the first circular during the stipulated period of 60 days from 1st September 2010 to 30th October 2010. It was stated that the request made by the petitioner was not accepted as he did not submit the option form within 60 days. Moreover, it was submitted that the petitioner is not entitled to benefit of the second circular as the petitioner had not retired under the Regulation 19(1) of the said Regulation. There is a rejoinder filed by the

petitioner reiterating that the option form or a copy of the first circular was never sent to his last known address as provided under sub clause c of clause 15 of the first circular.

8 The prayers made in the other two petitions are of more or less similar and there is a similar reply and rejoinder. Even the factual contentions raised by the parties are similar.

9 The learned counsel for the petitioner has taken us through the averments made in the petition, reply and rejoinder. Our attention was invited to clause 15 of the first circular which mandated that a copy of the option form should be sent to last known address of retired employees. The submission is that there is no material placed on record to show that option form was sent to last known address of the petitioners. Even wide publicity to clause 15 of the said circular was not given.

10 The learned counsel for the said Bank submitted that the requirement set out in clause 15 cannot be said to be mandatory and the fact that wide publicity was given to the said circular is very clear as more than 3000 option forms were received by the Bank within time.

11 Reliance was placed by the parties on the decision of the Apex Court in the case of Union Of

India and others vs. M.K.Sarkar[1] and Union Of India vs.D.R.R.Sastri[2]. An unreported Judgment of this Court dated 12th June 2013 in Writ Petition No.1020 of 2012 in the case of Kayoli Sorabji Mirza vs. Union Bank of India and others was also relied upon.

12 We have considered the submissions. We have perused the petition, reply and rejoinder. Firstly, we refer to the factual aspects in Writ Petition No.242 of 2015. In Writ Petition No.242 of 2015, there are specific assertions made in paragraph 3.5 that the petitioner became aware of the first circular only in the first week of November 2010. In Writ Petition No.863 of 2015, the petitioner has specifically contended that a copy of option form was never sent to the petitioner at his last known address on the record of the said Bank. This averment is in paragraph 4 of the petition. In paragraph 2 of the petition, the petitioner has stated that after his retirement, he partially shifted to his native place at Pawas, Taluka and District Ratnagiri. In paragraph 3, he has stated that in the month of November 2010, when he came to Bombay that he became aware about the first circular. In paragraphs 3.5 and 3.6 of the Writ petition No.329 of 2015, the specific case of petitioner therein is that option form was never sent to him and he became aware about the first circular in the first week of November 2010.

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1 (2010) 2 SCC 59
2 (1997) 1 SCC 514

13 Perusal of the affidavits in reply of the petitioner in all three petitions will show that it is not the specific case made out that the option forms in terms of the first circular were sent at the last known addresses of the respective petitioners which were known to the said Bank. There is nothing placed on record to show that the petitioners in these petitions were made aware of the first circular. It is not the case made out in the affidavit in reply that any of the petitioners were not entitled to the benefit of the scheme formulated by the first circular. Therefore, the petitioners were prevented from exercising the option under the first circular.

14 Perusal of the first circular shows that the same is applicable to those employees of the said Bank who opted for VRS under the Special Voluntary Schemes, after rendering minimum 15 years of service. The said employees were given option to join pension scheme subject to various terms and conditions incorporated in the first circular. Depending upon the category of employees, they were required to submit option forms either online or in physical form and the last date for submission of the forms was 30th October 2010. Perusal to clause 15 of the first circular shows that the Branch Managers/Departmental Heads were requested to ensure that the said circular should be brought to the notice of all the staff members against their acknowledgements. Moreover, they were advised to

adopt three modes for informing the employees. One of the three specific modes in the case of retired employees/families of the eligible expired employees was that a copy of the option form may be sent to their last known addresses. In the present case, no material is placed on record to show that an attempt was made to send option forms to the petitioners in these petitions at their last known addresses which were available with the Bank. There is nothing brought on record to show that before 30th October 2010, the petitioners were not even made aware about the first circular. These three petitions have been filed in between January 2015 to April 2015 after representations made by the petitioners therein were not considered.

15 Now, we turn to the decisions relied upon by the parties. In the case of Kayoli Sorabji Mirza (supra), the Division Bench of this Court was dealing with the said first circular as is clear from the facts stated in paragraph 4. In paragraphs 9 and 10, the Division Bench held thus:

> "9 <u>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,</u>

> 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 application to the petitioner through he had not filed his application for option during the said period of two months..."

(under supplied)

16 Thus, on facts, the three cases in hand are similar in the sense that there is a material placed on record to show that the option forms were not sent to the petitioners at their last known addresses. There is no material placed on record to show that petitioners were even made aware in some manner about the existence of the first circular prior to 30^{th} October 2010.

17 In the case of Union Of India vs.D.R.R.Sastri (supra), the Apex Court granted benefit of Liberalised Pension Scheme to the employee on the ground that similarly placed were granted pension

long after prescribed time limit. The Bank has pressed into service the decision of the Apex Court in the case of Union of India vs.M.K.Sarkar (supra). This was a case where it was found that retired person was aware of the scheme at the relevant time but there was no written individual communication to the retired employee about the scheme. Secondly, it was held that the person who is aware about the availability of the option form cannot contend that after twenty two years he was not served with the notice of availability of option. Therefore, appeal preferred by the Union of India was allowed.

18 In the facts of the case in hand it is not possible to record a finding that the petitioners were even aware of the first circular before the last date fixed for exercising the option. Secondly, immediately after they became aware, they made correspondence with the said Bank and called upon the said Bank to allow them to exercise the option. Therefore, on facts, aforesaid decision of the Apex Court in the case of Union of India vs. M.K.Sarkar (supra) will have no bearing and applicability in the present case.

19 Accordingly, the petitions must succeed. However, if the petitioners were required under the first circular to deposit requisite amounts, they will have to deposit the same with reasonable interest from 1st November 2010 as may be demanded by the said Bank. Hence, we pass the following order:

(I) The decision of the said Bank of denying the benefits of the first circular to the petitioners in these petitions are hereby quashed and set aside;

(II) It will be open to the petitioners in these petitions to submit option forms in terms of the first circular to the appropriate Authority of the said Bank within two months from today;

(III) If the first circular requires the petitioners to deposit certain amounts with the said Bank, on being called upon by the said Bank, the petitioners shall deposit the requisite amounts within the time fixed by the Bank with a reasonable interest as demanded;

(IV) Needless to add that if the option forms are submitted by the petitioners within the stipulated time, after compliance with necessary requirements, the same shall be dealt with in accordance with the law by the said Bank;

(v) Rule is made absolute on above terms with no order as to costs.

(SANDEEP K. SHINDE,J.) (A.S.OKA,J.)