IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO.2211 OF 2018

Vivek Digambar Saraf … Petitioner

Vs

UCO Bank & Ors. … Respondents

Mr.Vishal Talsania with Ms.Lopa Munim i/b M/s.Rajesh Kothari & Co. for the Petitioner

Mr.A.D. Shetty with Mr.S.P. Kamble and Dr.S.N. Jadhav for Respondent Nos.1 to 4

Mr.Vivek Saraf, petitioner – present

CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.

DATED: JULY 3, 2019

P.C.:

1. Heard the learned Counsel for the parties for final disposal of the petition. The petitioner is an ex-employee of Respondent No.1 – UCO Bank. The petitioner has prayed for a direction to the respondents for payment of post-retirement benefits. This petition arises in the following factual background.

2. The petitioner, at the relevant time, was working as a Manager when under the order dated 20.3.2007, he was placed

under suspension. A departmental enquiry was instituted against him for alleged misconduct. When this enquiry was going on and when the petitioner was still under suspension, the bank granted one more pension option to all the employees. This pension option was circulated under a Circular No.CHO/PMG/18/2010-2011 dated 20.8.2010. One of the conditions of the pension option was that the optee would surrender the employer's contribution to the Provident Fund account. The second condition was that the optee would deposit with the bank towards pension fund a contribution equivalent to 2.8 times the revised pay for the month of November, 2007. Since this formula would create a complication in the case of employees under suspension, the circular made the following provision for such persons:

> 2. Those who are under suspension can opt to become the member of pension fund by contributing 2.8 times of pay or part thereof from their own sources to become eligible to opt for pension. However, they shall be governed by various provisions of Pension Regulation and any consequential disciplinary action in the form of punishment shall obviously have the bearing accordingly, as provided in pension Regulations, besides the fact that their Bank's Contribution to Provident Fund shall be liable to be transferred to Pension Fund forthwith.

3. The case of the petitioner is that since he was under suspension, he was not aware about this pension option made available by the Bank. Only on the last date for exercising the said option, he came to know about it and, therefore, filled up his pension option in the nick of the time. It is not in dispute that his pension option which was exercised on 18.10.2010 was within the time prescribed. In this pension option which he filled up in a printed proforma, his undertaking to deposit 2.8 times of the revised pay for the month of November, 2007 was recorded.

4. It appears that the bank did not act on this pension option, presumably on the ground that being an employee under suspension, he had to deposit the said sum of 2.8 times of the revised pay from his outside sources. This decision was however not communicated by the bank to the petitioner.

5. Parallel to these events, the departmental enquiry continued and ultimately, culminated into a punishment order dated 30.1.2012 by which the petitioner was compulsorily retired. This order has become final. With effect from 30.1.2012, therefore, the petitioner stood compulsorily retired from the bank service.

6. It is the case of the petitioner with which there is no serious dispute raised by the bank that post such retirement, the petitioner was not paid initially his gratuity, leave encashment or the employer's contribution to the Provident Fund. The gratuity was paid after some delay but the other two amounts were not released.

7. Since the petitioner did not also receive his pension, he first tried to raise an industrial dispute. When he was told that such dispute was not maintainable, he filed the present petition. In this petition, two main prayers of the petitioner are that he be covered by the pension scheme and be paid the pension with arrears from the date of retirement. His second prayer is for releasing the leave encashment amount. The first prayer, the bank opposes on the ground that he has not fulfilled the conditions of the pension option and therefore, he cannot be governed by the pension scheme. The Counsel for the bank however, agreed that even in case of compulsory retirement by way of punishment, the bank employee, if otherwise covered by the pension scheme, would receive a part of the normal pension, as per the pension regulations governing the bank. With regard to the second prayer for releasing of the

leave encashment, the respondents have filed a reply stating that by virtue of the guidelines governing the nationalised banks, the petitioner would be entitled to receive the same.

8. The only question, therefore, that is required to be decided by us is in the facts of the case, whether the petitioner has a legal right to be governed by the pension scheme. The relevant facts may be summarised thus. The bank granted an additional option to the employees to switch over to the pension scheme. Two main conditions to be fulfilled for such purpose were that the employer's contribution to the Provident Fund account would be transferred to the pension fund and the optee would deposit 2.8 times the revised pay for the month of November, 2007. The petitioner opted for pension and agreed that such deductions be made.

9. It is true that for those optees, who were placed under suspension, the bank's circular envisaged deposit of the said sum of 2.8 times the revised pay through own sources. However, when the petitioner agreed to surrender the same from his monthly entitlement, this would include his subsistence allowance also. It is not the case of the bank that at the relevant time, he was not receiving subsistence allowance. This subsistence allowance

could have been adjusted for such recovery. In any case, if the bank was of the opinion that the same was not feasible or permissible, it ought to have conveyed the same to the petitioner. Further, the petitioner had in the declaration for pension option, also offered that the same may be recovered from his arrears of wage revision in terms of bipartite settlement of 27.4.2010. Further, once the petitioner was made to retire compulsorily, if the petitioner was not covered by the pension scheme, the bank at least could have released his Provident Fund in entirety.

10. These facts suggest that the bank had not rejected the petitioner's pension option. The petitioner had substantially complied with both the requirements of surrendering the employer's contribution to the Provident Fund and offering to deposit 2.8. times the revised pay for the month of November, 2007. The petitioner, therefore, was governed by the pension scheme.

11. This declaration would require certain consequential directions in order to make it effective in view of the passage of time and certain other incidental facts. We may note that the petitioner has so far not received the employer's contribution to the

PF. This amount has, therefore, remained within the custody of the PF Trust and consequently, would be earning interest. When the petitioner would receive pension, this amount with accumulated interest would be at the disposal of the employer bank. The bank should, therefore, release the arrears of pension with reasonable interest. Second element to be taken into consideration is that the sum of 2.8. times the revised pay of the month of November, 2007 for the reasons noted above, has not been deposited with the bank. The petitioner must suffer the deduction of such amount with matching interest.

12. Under the circumstances, in the facts of the case, the petition is disposed of with the following directions:

i) It is declared that the petitioner would be governed by the bank's pension scheme.

ii) From the date of retirement, he would receive whatever pension as per the bank's rules and regulations as an employee, who is placed under compulsory retirement by way of punishment, is entitled to receive.

iii) The petitioner would receive arrears of pension with simple interest @ 7.5% per annum from the date it fell due till actual payment.

iv) Before releasing the pension arrears, the bank would deduct from such arrears 2.8 times the revised pay for the month of November, 2007 which would carry simple interest @ 7.5% p.a. from the date it was required to be deposited with the bank till actual adjustment.

v) The respondents shall release the petitioner’s leave encashment.

vi) These directions shall be carried out latest by 31st August, 2019.

13. The Writ Petition is disposed of accordingly.

(S.J. KATHAWALLA, J.) **(AKIL KURESHI, J.)**