BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 09.08.2019
CORAM:
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.(MD)No.4144 of 2015

Kamala ... Petitioner

-Vs-

1.The General Manager,
Canara Bank, Industrial Relation Section,
Personal Wing 2,
Head Office, J.C.Road, Bangalore.

2.The Assistant General Manager,
Canara Bank,
Human Resources Management Section,
Circle Office, East Veli Street,
Madurai-625 001.

3.The Senior Manager,
Canara Bank, Pension Fund Section,
Head Office, 14, M.G.Road,
Bangalore-560 001.

4.The Branch Manager,
Canara Bank,
Maharajan Nagar, Palayamkottai,
Tirunelveli-627 011. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the first respondent to consider the petition of the petitioner dated 10.05.2014.

For Petitioner : Mr.S.Radha Krishnan
For Respondents : Mr.K.R.Laxman

ORDER

The relief sought for in the present Writ Petition is for a direction to direct the first respondent to consider the petition of the writ petitioner dated 10.05.2014.

2.The learned counsel appearing on behalf of the writ petitioner states that the husband of the writ petitioner, namely, A.G.Ramasamy joined in Canara Bank as Clerk at Udangudi Branch and subsequently, worked at Sankarankovil. The husband of the writ petitioner retired from service on 31.10.2007.

3.Even as per the affidavit filed in support of the Writ Petition, the husband of the writ petitioner did not opt for pension scheme at that time when the pension scheme was introduced by the Banking sector. Contrarily, the husband of the writ petitioner opted for Provident Fund Scheme and accordingly, provident fund scheme benefits were settled in favour of the husband of the writ petitioner and he had received the said benefits in the year 2007 itself.

4.The writ petitioner states that her daughter, namely, Sudha, who studied M.Sc., M.Phil, also expired and she is alone. Therefore, her case is to be considered.

5.The learned counsel appearing on behalf of the writ petitioner states that no prior information was provided to the writ petitioner regarding the availability of the pension scheme.

6.In this regard, the learned counsel appearing on behalf of the respondents states that the scheme was introduced during the year 2010 and the writ petitioner's husband retired in the year 2007. He was very much aware of the implementation of the pension scheme and even after his retirement, he had not exercised his option for pension scheme. Contrarily, he had exercised the benefits granted under the Provident Fund Scheme. Thereafter, till his death, no claim was made by the deceased employee. Under these circumstances, the wife of the deceased employee cannot made a claim, which was already exercised by her deceased employee, after lapse of so many years.

7.The facts regarding the case of the deceased husband are narrated in Paragraph Nos.4 to 6 of the counter affidavit, which are extracted hereunder:-

> *"4.At the outset, it is submitted that though the pension option was available during 1993 & 1995 when the petitioner's husband was in service, he had not opted for pension, which he head decided on his own violation, is not governed by the Canara Bank Employees' Pension Regulations, 1995. Further, even after his retirement on superannuation, during 2010, another option for pension was available, he had not opted for pension on his own violation. As such, now his wife, the petitioner cannot turn around and claim for pension under the Pension Regulations which is untenable. Moreover, the petitioner herein has no locus standi to file the present Writ Petition since it was her husband who has not opted for pension in terms of the scheme.*
>
> *5.It is submitted that the case of the petitioner is that her husband Late Sri A G Ramasamy had failed to opt for pension within the stipulated time as per guidelines which were commonly applicable to all eligible persons as such non acceptance of a request submitted after the prescribed date, there is no violation of any legal right of the petitioner to*

maintain a petition under writ jurisdiction of this Hon'ble Court. A similar issue was examined by the Hon'ble Supreme Court in the matter of 'Canara Bank V. K G Krishnamurthy & Another' (CA No.1724/2005) wherein the Hon'ble Supreme Court while deciding the issue held:

> *It appears that by 'Canara Bank (Employees) Pension Regulations, 1995' (hereinafter for short 'the Pension Regulations') it was provided in Regulation III (3) that retired employees can also apply for pensionary benefits under the Pension Regulations provided they exercise the said option within 120 days from the notified date to become a member of the fund. There is no dispute that the respondent No.1 did not apply within the aforesaid period of 120 days of the date of publication of the Pension Regulations in the Gazette, ie., 29.9.1995. Hence, obviously the respondent No.1 cannot get the benefit of pension scheme. The High Court has, however, held that there was some recommendation by the Bank to the Central Government to consider the cases even of those employees who have not applied within the time for being given the benefit of pension scheme. In our opinion, a mere recommendation is not the law."*

The facts of the present case are fully covered under the above said decision of Hon'ble Supreme Court in the matter of K G Krishnamurthy & Another.

6.It is submitted that, the Writ Petition is filed by the petitioner quoting her letter dated 10.05.2014 after passage of more than 4 years since expiry of eligibility for exercising pension option which was notified vide Head Office Circular 297/2010 dt.21.08.2010 regarding extension of another option to join the existing Pension Scheme and after having fully known the position of the Bank quite clearly at that time itself, that too, after the retirement of the petitioner's husband from the Bank on 31.10.2007 which stands to demonstrate that the Writ Petition is attracted by the principles of delay and latches and it deserves to be dismissed in limine."

8.This Court is of the considered opinion that undoubtedly, the husband of the writ petitioner opted for Provident Fund Scheme, he was allowed to retire from service and all his pensionary and terminal benefits are settled under the Provident Fund Scheme. Subsequently, the husband of the writ petitioner passed away on 20.01.2012. Now, the writ petitioner in the year 2015 after lapse of three years from the date of death of her husband filed this Writ Petition. Under these circumstances, if the benefit of pension scheme is granted contrary to the rules in force, the same will set out wrong precedent and the Court cannot grant such a benefit in the absence of any specific rules in this regard.

9.In view of the fact that the husband of the writ petitioner opted for Provident Fund Scheme and the benefits were settled, at this length of time the relief as such sought for in the present Writ Petition cannot be granted and there is no infirmity in respect of the impugned order. Accordingly, this Writ Petition stands dismissed. No costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

+1 CC to M/s.S.RADHAKRISHNAN, Advocate (SR-81081[F] dated 09/08/2019)

+1 CC to M/s.K.R.LAXMAN, Advocate (SR-81084[F] dated 09/08/2019)

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