

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.NO.28047 OF 2012

PR.Perichiappan

...Petitioner

Vs.

1. The Assistant General Manager (IR)
Andhra Bank - Head Office
Human Resources Department
Dr. Pattabhi Bhavan,
5-9-11, Saifabad, Hyderabad - 500 004.
2. The Chief Manager (IR)
Andhra Bank - Head Office
Pension Cell - Human Resources Department
Dr.Pattabhi Bhavan,
5-9-11, Saifabad, Hyderabad - 500 004.
3. The Assistant General Manager
Andhra Bank
Esplanade Branch
168, Linghi Chetty Street, Chennai - 600 001.
4. The Chief Manager
Andhra Bank
Esplanade Branch
168, Linghi Chetty Street, Chennai - 600 001.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the first respondent pertaining to Letter No.666/3/P/8767/346 dated 14.12.2011 and to quash the same and direct the first respondent to include the petitioner's name under Pension Option Scheme and consequently, permit the petitioner to become a Pension Optee.

For Petitioner : Mr.K.V.Subramanian
Senior Counsel
for M/s.K.V.Subramanian Associates

For Respondents : Ms.Rita Chandrasekar for
M/s. Aiyar and Dolia

O R D E R

The petitioner was appointed in the respondent Bank on 22.07.1980 and retired from service under Voluntary Retirement Scheme-2000, on 27.03.2001. He has put in twenty years of service. Thereafter, he joined a private company and became a Non-Resident Indian based in Singapore. At the time of his retirement, he has opted for Provident Fund Scheme. Later, on negotiations between the Management of the Banks and Indian Banks Associations, a Bipartite Settlement Agreement was reached for revision of pay scales and other connected benefits, which includes pension option also. As per the joint note signed by the Management and the Employees' Association on 27.04.2010, it is recommended to provide one more option for availing Pension Scheme. The respondent Bank, as per its own pension regulations, has provided another option to those who rendered service prior to 29.09.1995 and retired on 27.04.2010, eligible for pension. Last date for exercising option was fixed as 31.10.2010. Since the petitioner was out of India at that time, he could not exercise the option before the last date specified by the respondent Bank viz., 31.10.2010. The fund gap was estimated as Rs.3115 Crores and the Government of India has also paid from the consolidated fund to materialize this scheme. The petitioner came to know of the option only in October 2011 and he wrote a letter to include him in the Pension Scheme. The respondent Bank has rejected the request of the petitioner on the ground that it was submitted after the expiry of the last date fixed by the Bank, by letter dated 14.12.2011. Aggrieved over the same, the petitioner is before this Court.

2. The learned Senior Counsel for the petitioner would contend that the fixation of last date by the respondent Bank is not legal as it was not the criteria in the joint note signed by the Management and Officers' Association dated 27.04.2010. What is not imposed in the Bipartite Settlement cannot be imposed by the Bank while implementing the Scheme. It should be left open, so that the petitioner could exercise the option at a later date also.

3. He would rely on the judgment of the Bombay High Court, in K.K.BALASUBRAMANIAM VS. UNION BANK OF INDIA AND OTHERS AND BATCH [W.P.NO.242 OF 2015 AND ETC., BATCH DECIDED ON 19.03.2019] wherein it has directed the Bank to accept the option exercised by the employee, as it was not within the knowledge of the petitioner therein. In the said judgment, relying on its own judgment in KAYOLI SORABJI MIRZA VS. UNION BANK OF INDIA [W.P.NO.1020 OF 2012 DECIDED ON 12.06.2013] the

Bombay High Court has held as under:

"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 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, 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..." सत्यमेव जयते

(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 30th 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."

4. The learned Senior Counsel for the petitioner would also rely on the following judgments of the Hon'ble Supreme Court, in support of his contention:

(a) AJAY HASIA ETC., VS. KHALID MUJID SEHRAVARDI AND OTHERS [1981 AIR (SC) 487]

(b) KM.NEELIMA MISRA VS. DR.HARINDER KAUR PAINTAL AND OTHERS [1990 AIR (SC) 1402]

(c) DEV DUTT VS. UNION OF INDIA AND OTHERS [2008 AIR SC 2513]

and would contend that Principles of natural justice will come into play, when decision taken by authorities affects the rights of an employee and when it causes civil consequences in his life and career. In the instant case from consolidated fund of India the central Government has funded the Bank for the purpose of implementing the said social security scheme. Once public fund is involved in the scheme, it automatically warrants, fair procedure be adopted. In that view of the matter, before rejection of the request, an opportunity should have been given to the petitioner. In so far as the respondent Bank has not provided the opportunity of hearing to explain as to why the petitioner could not approach the Bank in time, it amounts to violation of the principles of natural justice and therefore, it should be set aside. Further, imposing a condition, which is applicable only to the serving employees, which and not applicable to the retired persons, is illegal and therefore also, the impugned order should be set aside.

5. In support of his contention that imposition of fresh or new conditions in the consequential orders, will amount

to expanding or explaining, what is not contained the original order beyond its scope and as such it is violative of principles of natural justice, the learned Senior Counsel for the petitioner would rely on the judgment of the First Bench of this Court in M/S. CHOKHANI INTERNATIONAL LIMITED. VS. BOARD OF TRUSTEES OF THE PORT OF MADRAS [1987 WRIT L.R. 529] wherein it is observed as under:

"39. The crucial question, therefore, is whether the decision that the present tender be closed can be styled as an arbitrary decision? It is undoubtedly true that as held by the Supreme Court in Mohinder Singh v. Chief Election Commissioner when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. The Supreme Court has pointed out that otherwise an order bad in the beginning may by the time it comes to Court on account of a challenge, get validated by additional grounds, later brought out. It is necessary to remember that the Supreme Court was dealing with an order made in the exercise of a statutory power. In Mohinder Singh's case the Supreme Court followed the earlier decision in Gordhandas Banji case and the following observations were quoted:-

"Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to effect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

This, however, is not the law in so far as an administrative order is concerned, there is no principle of natural justice which requires and administrative order to be a speaking order and unless the statute specifically enjoins that reasons should be given an administrative order need not contain reasons. "

6. Per contra, the learned counsel appearing for the respondents would contend that the Bank by its Board's Resolution dated 31.08.2010 has approved the extension of another option for pension to the retired employees, who were in service between 29.09.1995 and 27.04.2010, subject to certain conditions. The last date was fixed as sixty days from the date

of publication. Accordingly, the option was published in two leading newspapers viz., EENADU (Telugu) and The Hindu (English) on 02.09.2010, giving sixty days time. Since the petitioner did not exercise this option within sixty days and exercised it only on 11.11.2011 i.e., after expiry of one year, which is beyond the cut off date, his request was rejected. Therefore, having opted to Provident Fund Scheme and having failed to opt the Pension Scheme at both occasions, the petitioner cannot now turn around and state that his name should be included in the Pension Scheme.

7. I have considered the submissions made on either side and perused the materials available on record.

8. The admitted fact is that for every bank employee, two retirement options are given. One is Provident Fund Scheme and another is Pension Scheme option once exercised is final. Since the returns of interest were very high due to economic bloom at the relevant point of time, it appears that majority of the Bank Officers and employees have opted for Provident Fund Scheme. Later, due to recession and falling of interest rates, it was perceived that the Pension Scheme is more beneficial. It is also pertinent to note that each and every Bank has its own service and pension regulations. Since the bank employees could not change their option from Provident Fund Scheme to Pension Scheme and there were demands for revision of salary. All India Banks' Employees Unions and All India Bank Officers' Association had negotiations with the Management of All Indian Banks and arrived at a Bipartite Settlement dated 27.04.2010 for salary revision and other issues consisting the service conditions of the Bank Officers and a joint note was signed 27.04.2010 by the parties. By Circular No.064 dated 11.06.2010, the respondent Bank communicated the copy of joint note along with annexures regarding salary revision for Officers governed by Andhra Bank Officers' Service Regulations, 1982.

"In respect of officers retired on attaining the age of superannuation / officers retired voluntarily under Andhra Bank (Officers') Pension Regulations, 1995 and the officers resigned, the eligible arrears may be released along with officers who are presently working."

9. As regards implementation of terms of pension settlement, for serving employees, an amount equal to 2.8 times of the pay for the month of November 2007 was directed to be withheld and kept in a suspense account at the branch for credit to the Pension Fund. Subsequently, in case, the Officers opts to join the Pension Scheme, it has to be credited to the Pension Fund. If not, it need not be withheld. The relevant portion of joint note is extracted as under:

"As regards implementation of the terms of Pension Settlement pending amendments to the Regulations, it is informed by the Indian Banks' Association they have sought approval of the Government and that as soon as the approval is received, they shall be advising the Banks suitably.

In respect of the officers who are in service as on 27.04.2010 and presently covered by the Contributory Provident Fund, you may adopt the following procedure while disbursing the arrears:

a) An amount equal to 2.8 times of the pay for the month of November, 2007 be withheld and kept in a Suspense A/c at the branch for credit to the Pension Fund subsequently, in case the officer opts to join the Pension Scheme complying with the terms of the Settlement dt.27.04.2010.

b) If any officer gives in writing an irrevocable letter stating that he does not intend to join the Pension Scheme in terms of Settlement, 2.8 times of the pay as above need not be withheld (proforma of letter enclosed).

(c) Once the offer is made to join the Pension Scheme, on expiry of the period of option the amount withheld in respect of those who exercised the option to join the Pension Scheme should be transferred to Zonal Office. Zonal Office in turn shall keep the amount in a Non-Operative Account and consolidate the same and transfer to Head Office for crediting to the Pension Fund. Detailed guidelines in this regard will follow. The arrears withheld in respect of those who did not opt for Pension within the stipulated time be refunded to them. "

10. A reading of Clause (a) to (c) clearly shows that 2.8 times of pay for the month of November 2007 is withheld till an employee exercises his option and on exercise of such option after expiry of time for such exercise would be transferred to the Zonal Office and after consolidation, transferred to the Head Office for crediting it to the Pension Fund, which means the contribution of the employee shall be credited into the appropriate account within a specified time and for that purpose exercise of option itself is time bound even for the serving employees and it becomes operative from a particular date as set by the bank. There is no choice to change the option even during service much less at the time of retirement also, since both the schemes operate on different spheres from the date of exercise of option. The respondent Bank also as per the Joint Note dated 27.04.2010 agreed to extend another option to the non-optees or

PF optees who have already retired from service to join the Pension Scheme.

11. The Joint Note specifically states in para 2 under the caption "conclusion of discussions between the IBA and the Officers Associations" as under:

"2. The representatives of the Officers' Associations, a part of United Forum of Bank Unions (UFBU) and IBA entered into a Memorandum of Understanding on 25th February 2008 on various issues. Extending another option for pension to those who did not opt for pension when Bank Employees' Pension Regulations, 1995 dated 29th September 1995/26th March 1996 were implemented was one of the issues to be considered. After several rounds of discussions and valuing the liability through an actuarial calculation, it is agreed to extend another option to join the pension scheme to those who did not opt for pension when Bank Employees' Pension Regulations, 1995 dated 29th September 1995/26th March 1996 were implemented on the terms and conditions agreed and incorporated in the Joint Note dated 27th April 2010 signed between the parties."

12. A reading of the above clause clearly spells out that another option is extended to join the pension scheme to those who did not opt for pension, when 1995 regulations were implemented. It means that right to opt for pension scheme was available to employees, when it was implemented. A group of employees opted for pension scheme while others opted for PF Scheme. Such exercise of option was final. By Bipartite Settlement it was agreed by managements of the banks to extend another option to the serving and retired employees, in 2010. The word "extend" may denote two aspects, i.e., extension of benefit of pension scheme on the one hand and extension of time limit to exercise of option on the other. In so far as extension of benefit of the scheme is concerned it is automatic to all retired employees fall within the ambit of period specified, but extension time will apply only to those who choose to avail the scheme within the time limit specified. Only because an employee retired between 1998-2010 is entitled to the benefit, it can not be said it is always open to him sine die, which means the closed scheme was reopened to extend the benefit of the scheme to non-optees by giving another chance by extending time limit to join the pension scheme. Even to the serving employees, option was given for a limited period. It reads that in respect of Officers who are in service as on 27.04.2010 and presently covered by the Contributory Provident Fund procedure in Clause (a)-(c) was contemplated. After the expiry of that period, the option becomes final and it cannot be changed. If that be so,

for the retired employees, the option, which was closed with implementation of 1995 scheme cannot be kept open sine dine. In other words the offer is reopened for a limited period and those availed the chance will be benefited. Others who had lost the chance shall wait for another chance. It is also pertinent to note that the said option was extended only to those retired between 1998 and 2010 covered by 1995 regulations. If it is construed that it is open for ever, it shall be open for all those non-optees irrespective of the year of their retirement and irrespective of coverage under 1995 regulations. Therefore, fixation of time limit shall be read in conjunction with the scheme concluded and implemented as per 1995 regulations. Doctrine of Harmonious construction requires one to read the terms and conditions for exercise of option in conjunction with 1995 regulations, Bipartite Settlement and the terms and conditions contained in the circular of the year 2010 issued for extension of another option pursuant to Bipartite Settlement to render it meaningful and pragmatic. Hence it is said exercise of option is final even to serving employees within the time granted, the contentions that it imposes new conditions beyond the scope of the joint note signed by parties cannot be accepted.

13. Equally the other contentions that Government of India contributed 1335 Crores from its consolidated funds attaches public element warranting principles of natural justice cannot be accepted for the reason that it was for filling up the funding gap between existing salary structure and revised salary structure. There is no reference of financing to pension scheme. Individual banks have their own pension schemes and regulations and they operate within those spheres. Hence the banks are entitled to fix their own time limit and it cannot be called arbitrary exercise of power warranting interference on the grounds of principles of natural justice.

14. It is clearly noted that Annexure - II, format of option by retired employees was pursuant to the terms of Joint Note dated 27.04.2010 and Bipartite Settlement dated 27.04.2010. Once the actuarial calculation is worked out for issuance of pension, it should have been worked out on the basis of the prevailing financial conditions and interest rates and other aspects of the scheme. The Unions / Associations offered to contribute 30% of funding gap. Therefore, for working out such financial schemes, it is reasonable to fix a time limit, more so when a scheme is framed by individual bank, using the contributions made by the employees of the bank. Hence, I do not find any illegality in fixing the last date for exercising the option and operating the Pension Scheme after the expiry of the last date.

15. In the instant case, paper publication was issued in two leading newspapers viz., EENADU (Telugu) and THE HINDU (English). Admittedly, the petitioner was residing in Singapore and the last known address in India is of no use for service of any information. A resident of Singapore, cannot expect individual communication from the Bank to Singapore. In fact, the paper publication is intended to make it known to all the people, who have changed their addresses. The petitioner, either should have been vigilant or should have collected information through his colleagues, if he was interested to opt for pension scheme. But admittedly, after the expiry of the last date viz., 31.10.2010, he has exercised his option only on 11.11.2011. That is to say, after a period of one year. Thus the petitioner is to blame himself in this regard for being lethargic and not responding to the opportunity at the relevant point in time and cannot take shelter under decision of Bombay High Court. The judgment relied on by him is of little avail. Hence, the rejection of the request of the petitioner, by the respondent, cannot be said illegal. In that view of the matter, the writ petitioner is not entitled to any relief, that too, at this distance point of time.

16. In fine, the writ petition is dismissed with the above observations. No costs.

s/d-

Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

To

1. The Assistant General Manager (IR)

Andhra Bank - Head Office

Human Resources Department

Dr. Pattabhi Bhavan,

5-9-11, Saifabad,

Hyderabad - 500 004.

2. The Chief Manager (IR)

Andhra Bank - Head Office

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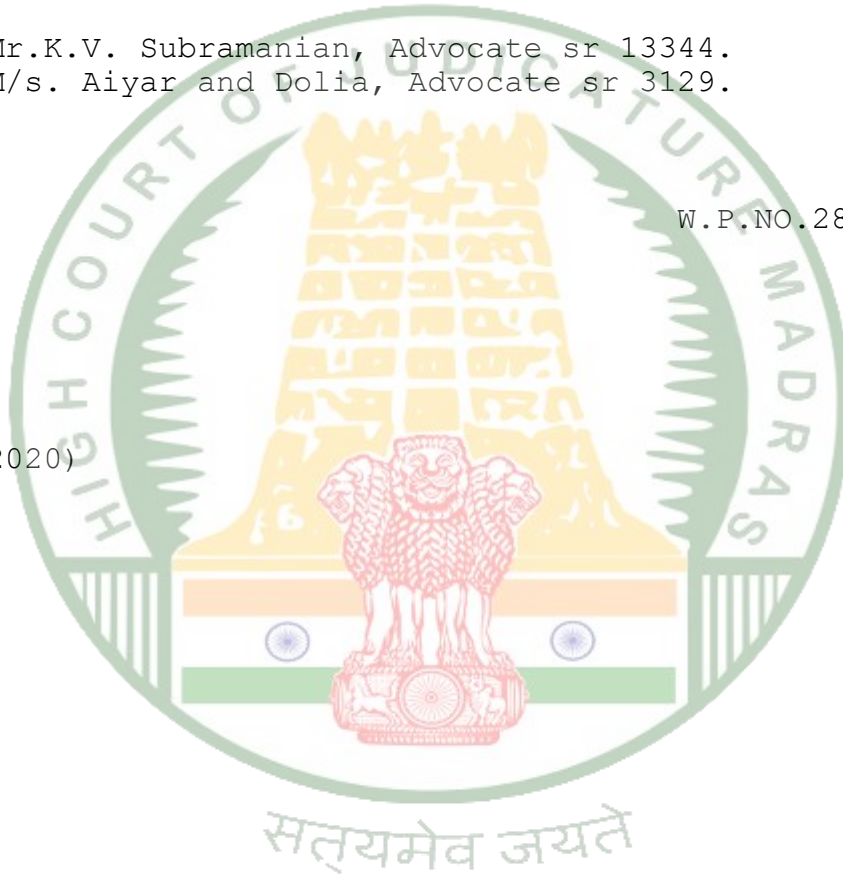
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+1 CC to Mr.K.V. Subramanian, Advocate sr 13344.

+1 CC to M/s. Aiyar and Dolia, Advocate sr 3129.

W.P.NO.28047 OF 2012

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SP(11/03/2020)



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