IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE :14.12.2020

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 23811 of 2014

P.Shanmugam .. Petitioner

- Vs -

1.The Chairman -cum- Managing Director,
Indian Overseas Bank, Central Office,
763, Anna Salai, Chennai 600 002.

2.The General manager (PAD)
Personal Administrative Department,
Indian Overseas Bank, Central Office,
763, Anna Salai, Chennai 600 002.

3.The Chief Officer,
Staff Pension Cell,
Indian Overseas Bank,
Central Office, 763, Anna Salai,
Chennai 600 002. ..Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Certiorarified Mandamus, calling for the records in connection with the emails dated 02.04.2014 and 16.06.2014 sent by the 3rd respondent herein and quash the same and consequently direct the respondents to permit the petitioner to opt the pension scheme in terms of 9th Bi-partite settlement (Workmen Employees/Joint Note (Officers) dated 27.04.2010.

For Petitioner : M/S.Dr.R.Sampathkumar

For Respondents: Mr. Anand for M/S. T.S.Gopalan & Co.

ORDER

The writ petition has been filed by the petitioner, to call for the records in connection with the emails dated 02.04.2014 and 16.06.2014 sent by the 3rd respondent herein and quash the same and consequently direct the respondents to permit the petitioner to opt the pension scheme in terms of 9th Bi-partite settlement (Workmen Employees/Joint Note (Officers) dated 27.04.2010.

2.The case of the petitioner is that he had voluntarily retired under the VRS 2000 offered by the respondent Bank and retired from service on 19.05.2001. According to the petitioner, he was appointed as clerk (Roll No.4513) in the respondent bank during the year 1971 and thereafter he got various promotions and his service was governed by the awards and various Bipartite Settlement entered into between the Union and the Management. While in service, the respondent Bank floated the Voluntary Retirement Scheme which was accepted by the petitioner and his application for voluntary retirement based on the said scheme was accepted and he was relieved from services of the first respondent Bank on 19.05.2001. He has put up about 30 years of service at the time of retirement on VRS. At the time of availing the VRS he opted for Provident Fund instead of option for pension. It is the case of the petitioner that the pension scheme was introduced in the year 1998 and most of the employees opted for pension scheme but he had not opted the PF scheme. However in the year of 2010, the Indian Overseas Bank had introduced a new pension Scheme on the basis of the 9th Bi-partite settlement (Workmen Employees /Joint note (Officers) dated 27.04.2010 vide their circular dated 30.08.2010 and the said scheme was applicable for both the existing employees and retirees. The same was circulated to all the branches of the Indian Bank by the Pension Cell, Personnel Administration Department of Indian Overseas Bank, Central Office, Chennai. However, the said circular was not communicated to the retired employees like the petitioner, though it is applicable to the retirees as well and, therefore, he was unaware of the above said circular till February 2014. During 2014, he came know that the said scheme dated 27.04.2010 giving an opportunity to all the retired employees to give their option to opt for pension scheme, within the period of 60 days from the date of receipt of the circular. However, in view of the non-communication of the circular to the retirees like the petitioner, the petitioner could not exercise his option in writing. However, immediately after coming to know of the same, he had represented before the 2nd respondent vide his representation dated 19.02.2014, requesting to extend the benefit of the above said scheme to him, but no action was forthcoming from the 2nd respondent, which resulted in a reminder dated 28.03.2014 being sent to the 2nd respondent, and thereafter, the 3rd respondent has sent an email on 02.04.2014 to the petitioner, stating that he is not eligible exercising his option for pension, as he has not exercised the option for the same in response to their circular in terms of 9th

Bi-partite settlement dated 27.04.2010, by referring to his representation dated 19.02.2014. Aggrieved by above e-mail, he sent another representation dated 04.04.2014 to the 2nd respondent, however no reply has been received and as such he has sent a reminder dated 30.04.2014 to the 2nd respondent, thereafter, he received another email on 16.06.2014, also rejected the claim of the petitioner. Therefore, the petitioner sent a legal notice to the 1st and 2nd respondents and since no reply has been received, the present writ petition has been filed.

3. Learned senior counsel appearing for the petitioner submitted that though the scheme was re-introduced in the year 2010, due to the act of not communicating the same to the petitioner by the respondents, the petitioner was not in a position to exercise his option within the time prescribed therein and the act of the respondents in not communicating the said scheme to the petitioner cannot be put against the petitioner and the petitioner having exercised his option within the time prescribed from knowledge, the benefit of the said scheme should be extended to him and, accordingly, prays for allowing the writ petition.

4. Per contra, learned counsel appearing for the respondent Bank vehemently opposed the stand of the petitioner, by submitting that the issue raised in this writ petition is no longer res integra, in view of the decision of the the Hon'ble Apex Court in (2011) 131 FLR 1032 [Radhey Shyam Kappor Vs. Allahabad Bank] and, accordingly, prays for dismissal of the present petition.

5. This Court paid its best attention to the submissions advanced by the learned counsel on either side and perused the materials available on record and also the decision relied on by the respondents.

6. In Radhey Shaym's case (supra), the Hon'ble Apex Court, has discussed the bipartite settlement and the option for exercising the option for pension and in that context, held as under :-

> "12. Thereafter, across various nationalised Banks, there was a constant demand by the workman employees' Unions and Officer's Associations to introduce another option for pension for those eligible employees Who did not opt for pension or failed to do so within the stipulated time but wanted to be a member of Pension Regulation 1995/1996 in respective Banks. The Said demand culminated into signing of 9th Banks' Bipartite Settlement/Joint Note

dated 27.4.2010 between the Indian representing Management of various Banks and Workmen Association (IBA) ; Unions/Officers' Association of respective Banks, vide which another option for pension was extended to the employees of the Banks. The said settlement and joint note was signed between IBA and Workmen Unions/Officers' Association after several rounds of the Modalities.

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20. On consideration of the prayer of the petitioner in pursuance of the directions issued by this Court in the Writ Petition filed earlier, the competent authority of the Bank, namely, General Manager (HR) has come to the conclusion that the petitioner did not opt for pension on either of the three occasions and that pension scheme having been approved by the Reserve Bank of India and having been sanctioned by the Central Government under Section 19(2)(f) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Bank has no discretionary authority to provide another opportunity to those who neither gave their option within 30.11.94 under the Scheme of 1993 nor submitted their option under 1995 Regulations within stipulated time i.e. till 27.1.96 and even further did not submit their option within 18.11.2010 in terms of settlement/joint note dated 27.4.2010.

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22. We do not find any illegality in the decision taken by the Bank, as we are of the considered option that in the absence of option being given by the petitioner within stipulated time, neither Bank had any authority to extend the period for giving option nor option could be accepted after the prescribed period had elapsed.

23. The petitioner was afforded opportunity to give his option thrice and if he has chosen to remain a beneficiary of Contributory Provident Fund Scheme, it cannot be said that any injustice has been done, as it was the choice of the petitioner, who exercised the same diligently and it is an afterthought to approach the Court for having the benefit of pension scheme, which cannot be allowed.

24. The writ petition has no force and is dismissed.”

7. It is not in dispute that pursuant to the bipartite settlement, option for pension was called for from the employees on the rolls as well as from the retirees to be submitted within a particular time frame. The petitioner has not exercised his option within the prescribed period. A perusal of the materials available on record reveal that though the option for the second time was given in the year 2010, and the period within which the option to be submitted was between 01.09.2010 and 30.10.2010, however, the petitioner had submitted his representation for pension only on 19.02.2014, after a lapse of more than 4 years. Though the petitioner merely pleads that he was not been made aware of the settlement and exercising of option within the prescribed time by the respondents, however, in view of the fact that the time period between the bipartite settlement and his representation is four years and, the stand of the petitioner that he was not aware of the same does not sound reasonable to the mind of this Court. The respondent rejected his claim on the ground that he has not submitted his option within the stipulated time. The pleadment of ignorance by the petitioner and his stand that the respondents have not communicated the bipartite settlement to him cannot be accepted by this Court for the reason that not only a period of four years have passed by since the cut-off date, but curiously the affidavit is devoid of any details as to how he came to know about the same after a period of four years. In the absence of any explanation on the side of the petitioner as to his knowledge, mere claiming of ignorance to the bipartite settlement cannot be accepted.

8. Further, the decision of the Hon'ble Apex Court in Radhey Shyam's case (supra), as quoted above, stares writ large on the petitioner and a careful perusal of the above decision reveals that the facts in issue therein are identical to the facts in the present case and in such a backdrop this Court is of the considered view that the relief sought for by the petitioner cannot be acceded to. Accordingly, this petition is liable to be dismissed.

9. For the reasons aforesaid, this writ petition is dismissed in terms with the order passed in Radhey Shyam's case (supra). In the circumstances, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

jrs

To

1.The Chairman -cum- Managing Director,
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+1cc to Mr.T.S. GOPALAN AND CO., Advocate, S.R.No.40890

PVS(CO)
SM/24/02/2021

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