

Item No.17.

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

HEARD ON: 15.06.2022 and 16.06.2022

DELIVERED ON: 16.06.2022

CORAM:

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

WPA 12749 of 2005

**Sri Manoranjan Ari
VERSUS
Allahabad Bank & Ors.**

Appearance:-

**Mr. Amal Baran Chatterjee, Sr. Adv.,
Mr. Biswa Nath Samanta**

.....for the Petitioner

**Mr. Om Narayan Rai,
Mr. Saibal Roy Chowdhury**

.. for the Bank.

JUDGMENT

(Judgment of the Court was delivered by HIRANMAY BHATTACHARYYA, J.)

1. The petitioner was an employee of the erstwhile Allahabad Bank, which has since merged with the Indian Bank. He retired from service with effect from May 31, 2001. The petitioner claim that in spite of the fact that he submitted his option for

pension while he was in service, the respondent / bank did not release the pensionary benefits for which the petitioner was compelled to approach this Court by filing a writ petition being W.P. No.3071(W) of 2003. The said writ petition was disposed of by an order dated January 25, 2005 directing the respondent bank to release necessary payment towards the monthly pension with family pension facilities with effect from June 1, 2001 with commutation facility within February 28, 2005. The pension was released in favour of the petitioner only on March 1, 2005.

2. The grievance of the petitioner is that the petitioner was deprived from enjoying the pensionary benefits for the period from June 1, 2001 till February 28, 2005 and for such belated payment he is entitled to interest on the said amount. The further grievance of the petitioner is that the respondent / bank deducted the entire amount of interest amounting to Rs.1,85,777/- on the balance of contributory provident fund by ignoring the fact that the petitioner is entitled to interest on his own contribution to provident fund, which is 50% of the aforesaid amount. The other grievance of the petitioner is that the commuted value of pension was released only on March 1, 2005, i.e. after about 45 months from the date when the

petitioner retired from service for which he is also entitled to interest on account of such belated payment.

3. Mr. Om Narayan Rai, learned advocate for the bank, seriously disputed the claim of the petitioner on account of interest on the employee's share of the provident fund. He placed reliance upon sub-regulation 9 of regulation 3 of the Allahabad Bank (Employees') Pension Regulations, 1995 ("1995 regulations" for brevity) and submits that in order to come over to the pension scheme from the contributory provident fund scheme, the optee shall have to refund the amount of bank's contribution to the provident fund including interest accrued thereon together with a further simple interest on such amount. He, thus, submits that the bank is entitled to claim simple interest at the rate of 6% on the amount of bank's contribution to the provident fund including interest accrued thereon. He places on record a calculation made by the bank with regard to the petitioner's entitlement on such account. Such calculation, a copy of which has been supplied to the petitioner, is taken on record.

4. Mr. Rai further submits that immediately after the bank was directed by this Hon'ble Court to release the pensionary benefits, the bank complied with such order and made payments in terms of the order passed by this Court on an earlier writ petition and therefore, the petitioner is not entitled to any interest as claimed by him. He further submits that a co-ordinate Bench while disposing of the earlier writ petition did not pass any order directing the bank to pay interest on such amounts.

5. Mr. Chatterjee, learned senior counsel appearing for the petitioner, however, disputes the calculation made by the bank.

6. Heard the learned Advocates for the parties and considered the materials on record.

7. Petitioner exercised option to become a member of the Pension Fund during the tenure of his service. The petitioner was allowed to retire on May 31, 2001 in terms of the scheme of voluntary retirement floated by the bank. Since the bank did not act on the option of the petitioner to come over to the pension scheme, the petitioner approached this court by filing a writ

petition being WP No. 3071 (W) of 2003. A co-ordinate Bench of this court by an order dated January 25, 2005 after holding that the petitioner is a member of the pension fund in terms of the option filed with the bank directed the respondent / bank to release the necessary payment towards the monthly pension with family pension facilities to the petitioner with effect from June 1, 2001 with commutation facility within February 28, 2005.

8. It is not in dispute that during the pendency of the said writ petition, bank credited an amount of Rs. 5,40,746.45 on account of employer's and employee's contribution to the contributory provident fund account along with interest till July 25, 2001 to the savings bank account of the petitioner on September 14, 2004. A further amount of Rs.1,85,877/- on account of interest on the aforesaid amount for the period from July 25, 2001 till September 8, 2004 was also credited to the savings bank account of the petitioner on September 14, 2004.

9. However, pursuant to the order dated January 25, 2005 passed in W.P. 3071 (W) of 2003, the bank debited a sum of Rs.2,70,373/- being the employer's share on account of the contributory provident fund. A further sum of Rs.1,85,877/-

being the full amount of interest (both employer's and employee's share) was debited from the aforesaid savings bank account of the petitioner. The aforesaid amount was debited from the Savings Bank Account of the petitioner on March 1, 2005.

10. The petitioner claims that the amount of interest on account of employee's share of contributory provident fund could not have been withdrawn by the bank for the purpose of allowing the petitioner to come over to the pension scheme. The petitioner, thus, claims that he is entitled to refund of such amount and since the petitioner is being deprived of enjoying the said amount with effect from March 1, 2005, the petitioner is also entitled to interest on the said amount till such amount is paid to the petitioner.

11. The issue now arises as to whether the petitioner is liable to pay simple interest at the rate of 6% on the amount of bank's contribution to the provident fund including interest accrued thereon in terms of sub-regulation 9 of regulation 3 of 1995 regulations as contended by Mr. Rai.

12. For the purpose of adjudication of the said issue, sub-regulation 9 of regulation 3 of the 1995 regulations is to be taken into consideration and as such is extracted herein below:-

“(9) Notwithstanding anything contained in sub-regulations (1), (2), (3), (5) and (6) an option exercised before the notified date by an employee or the family of a deceased employee in pursuance of the settlement shall be deemed to be an option for the purpose of this Chapter if such an employee or the family of deceased employee refund within sixty days from the notified date, the amount of the Bank’s contribution to the Provident Fund including interest accrued thereon together with a further simple interest in accordance with the provisions of this Chapter and in case employer’s contribution of Provident Fund has not been received from Provident Fund Trust, has authorised or authorises within sixty days from the notified date the trustees of the Provident Fund of the Bank to transfer the entire contributions of the Bank to the Provident Fund including interest accrued thereon in accordance with the provisions of this Chapter to the credit of the Fund constituted for this purpose under regulation 5.”

13. Mr. Rai submitted that the second part of subregulation 9 of regulation 3 cannot be applied in the instant case as the option was exercised by the petitioner prior to the notified date.

14. Chapter (II) deals with application and eligibility to the pension scheme. Regulation 3 classifies the employees to whom the 1995 regulations would apply. Sub regulation 9 of Regulation 3 starts with a nonobstante clause and deals with options exercised before the notified date. It provides that an option exercised before the notified date shall be deemed to be an option for the purpose of chapter (II) of 1995 regulations if the employee or the family of the deceased employee refunds within the stipulated date, the amount of the banks contribution to the provident fund including interest thereon together with a further simple interest and in case the employer's contribution of provident fund has not been received but the trustees of the provident fund of the bank has been authorised to transfer the entire contribution of the bank to the provident fund including interest accrued thereon to the credit of the pension fund.

15. Therefore, authorization to transfer the amount of Bank's contribution to provident fund including accrued interest can be made even in case of options exercised prior to the notified date.

16. In the instant case the amount of the bank's contribution to the provident fund including interest accrued thereon was not paid to the employee before the period stipulated in sub regulation 9 of regulation 3. Therefore, the question of refunding the said amount could not and did not arise in the instant case. However, it is evident from the records that the petitioner while exercising his option has authorised the trustees of the provident fund of the bank to transfer the entire contribution of the bank to the provident fund including interest accrued thereon. Such authorization, though made prior to the period specified in the subregulation, was subsisting during the aforesaid period and was not withdrawn by the petitioner during the tenure of his service. Since the 1995 regulation is beneficial for the employees, the benefit of such regulation cannot be denied merely because of the fact that the authorisation was made prior to the stipulated time period, moreso when the petitioner's entitlement to pension was recognised by this Court by an order passed on an earlier writ petition.

17. Thus, for the reasons as aforesaid this Court is unable to accept the submission of Mr. Rai that the second part of

subregulation 9 of Regulation 3 cannot be applied in the instant case.

18. The word "refund" used in the first part of the said sub-regulation necessarily means that an amount paid to the optee at an earlier point of time is refunded at a later point of time. Upon reading the said sub-regulation along with other regulations falling within Chapter (II) of 1995 regulations, this court is of the considered view that the bank is entitled to claim simple interest at the rate of 6% on the amount of bank's contribution to provident fund including interest accrued thereon only if such amount on account of contributory provident fund has been paid to the petitioner and the amount of the bank's contribution to the provident fund including interest accrued thereon is refunded by such optee at a subsequent date.

19. It is not in dispute that after the retirement of the petitioner, the bank did not release the contributory provident fund benefits to the petitioner. It is only on September 14, 2004 that the bank credited the said amount to the savings bank account of the petitioner and debited the amount on account of employer's contribution to the contributory provident fund

including interest accrued thereon as well as the total interest for the subsequent period on March 1, 2005. Thus, it can be said that the petitioner was allowed to enjoy the amount on account of provident fund benefits for the period from September 14, 2004 till February 28, 2005 as the said amount was lying in his savings bank account during that period. Therefore, this Court is of the considered view that the petitioner is liable to pay interest @ 6% on the bank's contribution to the provident fund including interest accrued thereon only for the period from September 14, 2004 till February 28, 2005 and not for the period as indicated by the Bank in the calculation submitted by Mr. Rai, in course of hearing of this matter.

20. In view of the reasons aforesaid, this Court holds that the bank was not justified in debiting the amount of interest on the employee's share of contributory provident fund. Accordingly, this Court holds that the bank should be directed to pay interest on the employee's share of the contributory provident fund for the period from July 25, 2001 till September 8, 2004 together with interest accrued thereon at the highest rate of interest on fixed deposit applicable to ex-staff of the bank prevailing at the relevant point of time till such payment is

made to the petitioner in order to compensate the financial loss of the petitioner.

21. It is not in dispute that on account of the inaction on the part of the bank to release pensionary benefits in spite of the fact that the petitioner exercised his option to come over to the pension scheme as far back as in the year 1994, the petitioner had to approach this Hon'ble Court on an earlier occasion and only upon a direction being passed upon the bank to release the pensionary benefits as well as other benefits, the bank released such amount in favour of the petitioner. Since such benefits were released belatedly and the petitioner was deprived from enjoying the benefits, such financial loss is to be compensated by payment of interest. The issue as to whether the petitioner is entitled to interest on account of arrear pension and commuted value of pension does not appear to have been decided by this Hon'ble Court in the earlier writ petition. Thus, the other objection raised by Mr. Rai that the petitioner is not entitled to interest on account of belated payment of pensionary benefits as well as commuted value of the pension is not accepted by this Court.

22. Thus, for all the above reasons, W.P.A. No.12749 of 2005 is allowed with the following directions.

- (i) The respondent / bank shall release the amount on account of interest on the employee's share of provident fund for the period from July 25, 2001 till September 8, 2004 together with interest at the highest rate of interest on fixed deposits applicable to ex-staff of the bank prevailing at the relevant point of time till such payment is made after adjusting an amount on account of interest @ 6% on Rs.2,70,373/- for the period from September 14, 2004 till February 28, 2005.
- (ii) The bank shall pay interest for delayed payment of pension for the months of June, 2001 till the month of February, 2005 at the highest rate of interest on recurring deposits applicable to ex-staff of the Bank prevailing at the relevant point of time.
- (iii) The bank shall pay interest on the commuted value of pension for the period from June, 2001 till February, 2005 at the highest rate of interest on fixed deposits applicable to the ex-staff of the Bank prevailing at the relevant point of time.

- (iv) All payments in terms of this order shall be made within 4 weeks from this date.
- (v) The bank shall forward a statement showing the break up of the calculation of the amounts paid to the petitioner at the time of making such payment.

23. There shall be, however, no order as to costs.

24. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)

NAREN, AR (Ct.)