AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 104 OF 2020

Praveen Kumar Agarwal & Ors. …Petitioners

V/s.

Small Industries Development Bank of India & Ors. …Respondents

Mr. Ramesh Ramamurthy with Mr. Saikumar Ramamurthy for the petitioners.

Mr. R. S. Pai with Mr. Anand Pai & Mr. Rahul Sanghvi i/by M/s. Sanjay Udeshi & Co. for respondent nos. 1 to 3.

Mr. Neel Helekar with Mr. Yashodeep Deshmukh and Ms. Vaidehi Deshmukh for respondent no. 4/Union of India.

CORAM: DIPANKAR DATTA, CJ &
M. S. KARNIK, J.

DATE: JUNE 24, 2022

P.C.:

1. This writ petition is at the instance of eleven (11) employees of the Small Industries Development Bank of India (hereafter "SIDBI", for short). The petitioners while seeking leave to move the writ petition in representative capacity have mainly prayed as follows:

> "(a) ***;
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> (b) that this Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus directing the Respondents and

Respondent Nos. 1 to 3 in particular to immediately give effect to the resolution passed in the 170th Board meeting of the SIDBI and extend one more option to the balance 152 C.P.F. Optees to come over to the Pension Scheme;

(c) that this Hon'ble Court be pleased to hold and declare that all employees in service on 1st November, 1993 and who did not give any option to be not covered by the Pension Regulations on 01/11/1993, are to be treated as deemed Pension optees after the cut-off dated 1st November, 1993 and are entitled to be paid pension and retirement benefits on that basis on a reading of the Clause 3(ii) of the Pension Regulations of 2002;

(c-i) that this Hon'ble Court be pleased to quash and set aside the Resolution dated 8th August, 2020 (Exhibit "O") which was confirmed on 11th November, 2020 by the Board of Directors of SIDBI and direct that the Petitioners and the other persons whom they represent are entitled to come over under the 2002 Pension Regulations;

(c-ii) that this Hon'ble Court be pleased to hold and declare that the 1993 Pension Regulations of SIDBI were never brought into force in the absence of compliance with the mandatory requirement of Section 52(1) and Section 52(3) as it existed on 1st November, 1993 and this Hon'ble Court be further pleased to hold and declare that any action taken under the 1993 Pension Regulations of SIDBI including calling for options or any options given by the employees are all legally not tenable and not valid and not binding on either parties and having no effect in law;

(c-iii) that this Hon'ble Court be pleased to hold and direct that the 2002 Pension Regulations introduced by SIDBI are the only valid Pension Regulations in force in SIDBI at all times and all persons who were in service as on 1st November, 1993 including the Petitioners herein would have to be covered by the said 2002 Pension Regulations;

(c-iv) that this Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction directing the Respondent Nos. 1 to 3 to treat the Petitioners and the persons whom they represent as covered by the 2002 Pension Regulations and entitled to get Pension as an retirement benefits on that basis and necessary entries be made in the service book of those persons so that they can get pension as a retirement benefit from their respective dates of superannuation;

(d) that in pursuance of prayer clause (a) above, this Hon'ble Court be pleased to direct the Respondents and

Respondent Nos. 1, 2 and 3 in particular to make the necessary changes in the service records of all the said employees who opt for the pension scheme and thereafter start making payment of the pension from the succeeding month from the date of their respective superannuation and make payment of the said arrears of the said pension and also thereafter continue to make payment of the said pension every month including pay family pension as applicable to the spouse of the employee concerned;

(e) ***"

2. It has been brought to our notice by Mr. Pai, learned advocate for the SIDBI, that by a communication dated 1st June 2022, the first petitioner has been communicated of the in-principle decision of the SIDBI to extend one last opportunity for the employees to exercise option for pension. Such option could be exercised by both the serving as well as retired employees of the Bank as well as by eligible family members of deceased employees. A request has been made to the first petitioner to have the writ petition withdrawn since the process is required to be completed within two (2) months from 1st June 2022.

3. In response to such communication, the first petitioner enquired of the SIDBI the details of the pension option being offered to enable him take an appropriate decision in the matter. Such response was issued without prejudice to the rights and contentions of the petitioners in the pending writ petition and other employees.

4. We have heard Mr. Ramamurthy, learned advocate for the petitioners as well as Mr. Pai. In our view, the SIDBI having expressed its intention of extending one final opportunity for exercising option for pension to its serving/retired employees as well as to the eligible family members of the employees who have passed away, it would be appropriate in the circumstances to grant liberty to the SIDBI to formulate its scheme so that all employees (serving/retired) as well as eligible family members of the deceased employees may get a chance to opt for pension in terms thereof. In the event, the petitioners and the other employees find that the terms of the pension scheme, now to be offered by the SIDBI, are not to their liking or to their disadvantage, it would always be open to such petitioners and other employees who are not satisfied with the terms of the pension scheme to pursue their remedy in accordance with law, including by approaching this Court. However, if they are satisfied with the pension scheme, that would put an end to their woes.

5. Having regard to the above, we dispose of this writ petition by granting liberty to the SIDBI to formulate its pension scheme by the end of July 2022 and duly publish the same for information of all concerned. Upon such publication the employees (serving/retired) as well as eligible family members of the deceased employees shall be free to make their own choices and opt for pension.

6. No costs.

7. We make it clear that since this writ petition is being disposed of in the circumstances noted above, we have refrained from expressing any opinion on the merits of the petitioners' claim. All contentions are left open for being raised and decided, if the circumstances therefor arise in the future.

8. The documents produced by Mr. Pai, learned advocate for the SIDBI are marked “X” and shall be retained with the records of this writ petition.

(M. S. KARNIK, J.) **(CHIEF JUSTICE)**