IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.7636 of 2018

A.Rajendran .... Petitioner

-Vs-

1.Indian Bank
Rep.by its Chairman & Managing Director
Corporate Office / Head Office
254 to 260, Avvai Shanmugam Salai
Royapettah, Chennai 600 014.

2.The Chief Manager
Indian Bank Corporate Office
HRM Department, Pension Cell
254 to 260, Avvai Shanmugam Salai
Royapettah, Chennai 600 014. .... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned letters dated 28.03.2011 and bearing No.CO.HRM:PEN:57070: 2015-16 dated 02.05.2015 issued by the 2nd respondent and to quash the same and consequently direct the respondents to process the pension application of the petitioner dated 30.04.2015 and sanction pension to the petitioner within a time frame.

For Petitioner : Mr.K.M.Ramesh
For Respondents : Mr.Anand Gopalan
M/s.T.S.Gopalan & Co.,

O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus calling for the records relating to the impugned letters dated 28.03.2011 and bearing No.CO.HRM:PEN:57070: 2015-16 dated 02.05.2015 issued by the 2nd respondent and to quash the same and consequently direct the respondents to process the pension application of the petitioner dated 30.04.2015 and sanction pension to the petitioner within a time frame.

2. The petitioner was working as Clerk-cum-Staff at the respondent Bank. While so, the bank had taken some disciplinary action against the petitioner which ultimately ended in removal from service against the petitioner by order dated 30.08.2010. In the meanwhile, in the year 1995, the bank authorities had brought a Scheme for Pension, under which option is to be exercised by the staff to opt for getting Provident Fund (PF) benefits or in lieu of that, to get Pensionary benefits. Though the said option was given by several staff of the Bank in the year 1995 under the Pension Scheme introduced for the first time, the petitioner has not opted for the pension.

3. Like the petitioner, several other staff also have not opted. Therefore, in order to give one more final chance for them to exercise their option, the

Pension Scheme was introduced for the second time or the time was extended for the second time in the year 2010 and time was given only upto 31.10.2010 before which an employee can exercise the option to switch over from Provident Fund to Pension.

4. In this context, the petitioner had exercised his option to switch over from Provident Fund to Pension only on 31.08.2010 on the impression that the petitioner had been continuously working in the Bank. However, on 30.08.2010 itself an order of termination was passed against the petitioner. But, the order since was not communicated before 31.08.2010, the petitioner had exercised the option.

5. Subsequently, on receipt of such option exercised by the petitioner to switch from Provident Fund to Pension on 31.08.2010, having considered the same, the bank authorities refused to accept such option exercised by the petitioner on 31.08.2010 on the sole ground that the petitioner had already been removed from service from 30.08.2010. Therefore, 2.8 times of November 2007 basic pay recovered from the petitioner to the extent of Rs.37,100/- was returned by crediting the same in the bank account of the petitioner on 28.03.2011 and to that effect, on the said date ie., 28.03.2011 a communication had also been issued by the bank to the petitioner, which reads thus.

"With reference to the above, please find enclosed a copy of the above said letter.

We have credited your Branch with an amount of Rs.37,100.00 vide our C2C No.6719 dated 28.03.2011 being the refund of 2.8 times of November 2007 recovered from Mr.A.Rajendran, since he is not eligible to exercise his option for pension in terms of the Settlement dated 27.04.2010."

6. However, the petitioner could not immediately agitate that issue, as the petitioner had to confront still bigger issue at that time because he had already been removed from service with effect from 30.08.2010 and therefore, against such removal order the petitioner raised an industrial dispute in I.D.No.74 of 2013 on the file of the Central Government Industrial Tribunal-cum-Labour Court, Chennai.

7. The said industrial dispute was ultimately decided and award was passed by the Industrial Tribunal-cum-Labour Court by award dated 24.09.2014, whereby the Management was directed to reinstate the petitioner in service within two months with 50% back wages which would carry interest at 9% per annum if not paid within two months.

8. As against the said award, the bank management did not file any further appeal by way of writ petition and having accepted the said award passed by the Industrial Tribunal-cum-Labour Court, the bank has come forward to reinstate the petitioner by order dated 09.02.2015 and from that date the petitioner was reinstated into service. Thereafter, since the petitioner was having very short service ie.. only till 30.04.2015, after rendering such short service he retired from service on 30.04.2015.

9. Before superannuation, ie., just before the superannuation the petitioner had given a request to the bank authorities on 29.04.2015 that the petitioner had already opted for pension from Provident Fund as early as in 2010 itself filed his application dated 31.08.2010 and based on which he wants his pension papers to be processed and accordingly he shall be paid the pension after his superannuation.

10. Along with the said request, the application for commutation of pension etc., also has been submitted by the petitioner to the respondent bank. However, considering the same the respondent bank, vide its order dated 02.05.2015, returned the pension application from the petitioner, who retired on 30.04.2015 as if the petitioner has opted for Provident Fund.

11. Therefore, aggrieved over the said order dated 02.05.2015 rejecting the pension proposal submitted by the petitioner as well as the earlier order was passed on 28.03.2011 while the petitioner was not in service as he was dismissed returning the amount of Rs.37,100/- received from the petitioner as the petitioner was not entitled to exercise his option to switch over from Provident Fund to Pension, since the petitioner was removed one day prior to the option exercised by the petitioner on 31.08.2010. Therefore, these two orders are under challenge in this writ petition with the aforesaid prayer.

12. Heard Mr.K.M.Ramesh, learned counsel for the petitioner who would submit that, the second option given for switching over to the Pension Scheme from Provident Fund was lasting upto 21.10.2010 and well before the cut off date, the petitioner has exercised his option on 31.08.2010. However, on that date it was not known to the petitioner that he was terminated already, which is one day prior to that date ie., on 30.08.2010 as such order of termination was only subsequently served on the petitioner. Along with the said option, permission was given to the bank to deduct 2.8 times of the basic pay as one time recovery for the purpose of his contribution towards the pension and gave a mandate that the said amount can be credited in his name in the Pension account.

13. Pursuant to the option given by the petitioner, the respondent Bank acted upon and they recovered the said amount and credited in the pension account. However, subsequently in view of the dismissal order passed against the petitioner with effect from 30.08.2010, they returned the amount and re-credited the amount in the petitioner's account vide their order dated 28.03.2011 which is the first impugned order herein.

14. Thereafter, the petitioner had to agitate the order of dismissal made by the bank and the industrial dispute raised by the petitioner in the year 2013 and it went on for some time. Ultimately, only on 24.09.2014 the industrial dispute was allowed directing the bank to reinstate the petitioner with 50% back wages. Pursuant to the said order, reinstatement was ordered by the bank only on 09.02.2015 and the petitioner, having less than three months service before superannuation, retired from service on 30.04.2015. However, prior to superannuation, on 29.04.2015, the petitioner had requested the bank to process his application for pension and in this regard, application in prescribed format also had been forwarded by the petitioner to the respondent bank for processing the same to get pension.

15. However the bank had treated the petitioner only as an employee who opted for Provident Fund despite the fact that the petitioner had exercised his option on 31.08.2010 itself and that was accepted initially and 2.8 times of basic pay in fact was recovered from the petitioner, which was returned thereafter only on the sole ground that the petitioner was not in service on 31.08.2010. Once the Labour Court passed an award setting aside the dismissal order and reinstatement was ordered, the order of reinstatement was passed on 09.02.2015 it shall date back from the date of termination ie., from 30.08.2010 onwards and status quo ante was restored. Hence, the petitioner has validly exercised the option on 31.08.2010 and it has already been acted upon and his pension papers cannot be returned, learned counsel for the petitioner contended and seeks the indulgence of this Court against the impugned order.

16. Per contra, Mr.Anand Gopalan learned Standing Counsel appearing for the bank would submit that, it is an admitted case on the part of the petitioner that the during the first option, the petitioner did not opt for pension instead of Provident Fund. However, when second option was given in the year 2010, he exercised his option admittedly on 31.08.2010, whereas from 30.08.2010 the petitioner since has been terminated, on 31.08.2010 he was no more an employee of the bank and hence, what has been submitted on 31.08.2010 is

non est and therefore that cannot be acted upon. Though initially 2.8 times of basic pay of the petitioner was recovered and credited in the Pension account, after realizing this, the bank has returned the amount, of course rightly, through the communication dated 28.03.2011, which has never been questioned except before this Court in the present writ petition.

17. Even after reinstatement on 09.02.2015, the petitioner has not chosen to challenge this order dated 28.03.2011 and thereafter when the provident fund contribution amount was deducted that was also not expressly objected by the petitioner till his superannuation except the application submitted one day prior to the superannuation ie., on 29.04.2015 again by the petitioner as if that he has already been in the opted scheme for pension. Therefore, considering these aspects the bank has rejected the application of the petitioner as he being an employee who opted for provident fund already, cannot switch over to the pension scheme. Hence, the rejection orders made by the bank which are impugned herein are sustainable and the learned Standing Counsel for the bank wants this writ petition to be dismissed.

18. I have considered the submissions made by the learned counsel on either side and have perused the materials placed on record.

19.The fact remains that, on 31.08.2010 the petitioner made an option for the Pension Scheme. The last date for making such option was 21.10.2010. Therefore, well before the cut off date he has given the option. On 31.08.2010 when the petitioner made that option he was under the impression that he was continuing in the job and therefore he has given that option. But subsequently only the order of dismissal made against the petitioner dated 30.08.2010 was served on the petitioner.

20. This became evident because of the action on the part of the respondent bank, who in fact acted upon the application for pension given by the petitioner on 31.08.2010 and 2.8 times of the basic pay of the petitioner since was recovered and credited towards contribution to the pension fund and only after 5 or 6 months, ie., on 28.03.2011 the bank had come forward to return the money by re-crediting the money into the petitioner's account by sending a communication dated 28.03.2011, which is also impugned herein.

21. On 28.03.2011, when such a communication has been issued to the petitioner, the petitioner had already been dismissed from service and he has been agitating the issue before the Industrial Tribunal-cum-Labour Court. Unless and until the Labour Court decided the fate of the petitioner one way or the

other, the petitioner has no locus to challenge the order dated 28.03.2011. The labour Court passed an award on 24.09.2014 setting aside the order of dismissal made against the petitioner by giving a direction to the respondent to reinstate the petitioner with 50% back wages, pursuant to which the petitioner was reinstated on 09.04.2015.

22. Therefore, only on 09.02.2015 the petitioner would have the locus to challenge the order dated 28.03.2011 and hence the argument of the learned counsel for the respondent bank that the order dated 28.03.2011 never has been challenged by the petitioner before filing this writ petition, has to be rejected.

23. After reinstatement, the petitioner was having only limited service of less than three months. Therefore, before superannuating on 30.04.2015, on 29.04.2015 he has sent the pension application and the same was returned by the proceedings of the petitioner dated 02.05.2015 treating the petitioner as having opted for Provident Fund. That only triggered the petitioner to challenge both the orders ie., dated 28.03.2011 and 02.05.2015 and that is how the writ petition has been filed. Therefore, it cannot be stated that there was a delay on the part of the petitioner.

24. Moreover, the pension scheme introduced by the bank is a welfare scheme for the entire staff of the respondent and that is the reason why, though the scheme was introduced in 1995, for those who have missed, opportunity was again given as a second chance in 2010, which was rightly exercised by the petitioner before the cut off date. Therefore, in that score the petitioner cannot be blamed. As he was terminated or dismissed from service on 30.08.2010, after 30.08.2010 even though the order dated 28.03.2011 returning the contribution made by the petitioner has been issued by the bank, that could not be agitated because on that date or till his reinstatement on 09.02.2015, he was no more an employee of the bank. Therefore as discussed above, he did not have any locus to challenge that order.

25. Hence, the exercise of option by the petitioner on 31.08.2010 has to be accepted by the bank because once the order of termination has been set aside by the labour Court and that was acted upon by the bank, status quo ante as on 30.08.2010 since has been restored, the above exercise of option by the petitioner on 31.08.2010 is a valid option and in fact it has been acted upon earlier. Hence, on the basis of that option exercised by the petitioner is very much entitled to seek the benefit of the Pension Scheme. Hence, treating the petitioner as having opted for Provident Fund as per the order dated 02.05.2015

which is also impugned, cannot be countenanced and because of the factual matrix as well as the legal position, this Court has no hesitation to hold that both the impugned orders do not stand in the legal scrutiny.

26. In the result, the following orders are passed in this writ petition.

- Both the impugned orders dated 28.03.2011 and 02.05.2015 are set aside.

- As a sequel, there shall be a direction to the respondent Bank to treat the pension application of the petitioner made on 31.08.2010 along with the application dated 29/30.04.2015 as a valid pension application and accordingly extend the benefit of pension payable to the petitioner for which he is entitled to.

- In this regard, if any further contribution is required to be made by the petitioner, that can also be recovered from the petitioner.

- After processing the pension application of the petitioner, the pensionary benefits can be extended to the petitioner.

- The needful as indicated above shall be undertaken by the respondents within a period of three months from the date of receipt of a copy of this order.

27. With the above directions, this writ petition is disposed of. No costs.

27.07.2022

Index : Yes/No
Internet : Yes/No
KST

To

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R. SURESH KUMAR, J.

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