BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.04.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.17194 of 2016
and
W.M.P.(MD).Nos.16044 of 2021 and 522 of 2018

T.V.B.Prakash ... Petitioner

Vs.

1.Indian bank,
through its Chairman & Managing Director,
Corporate Office/Head Office,
#254-260, Avvai Shanmugam Salai,
Royapettah,
Chennai-600 014.

2.The General Manager,
Indian Bank,
Corporate Office/Head Office,
#254-260, Avvai Shanmugam Salai,
Royapettah,
Chennai-600 014.

3.The Assistant General Manager,
Indian Bank,
Corporate Office/Head Office,
#254-260, Avvai Shanmugam Salai,
Royapettah,
Chennai-600 014. ... Respondents

<u>Prayer</u> : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, by calling for the records relating to impugned letter bearing No. Pension:12175:2010-11 dated 27.11.2010 issued by the 3rd respondent and impugned letter bearing Ref:Co : HRM : SR No.12175 : 2013-14 dated 27.09.2013 issued by the 2nd respondent and to quash both the impugned letters and consequentially direct the respondents to include the petitioner in the pension scheme after accepting the contribution amount with interest.

For Petitioner : Mr.Chandrasekar

For Respondents : Mr.S.Balasubramanian

ORDER

This Writ Petition has been filed to quash the impugned orders dated 27.11.2010 and 27.09.2013 and consequently direct the respondents to include the petitioner in the pension scheme after accepting the contribution amount with interest.

2. The petitioner was working as Assistant Manager in Kodaikanal Branch of Indian Bank and retired on 31.05.2010. The Indian Bank has issued a circular on 21.08.2010 to join the pension scheme to all eligible employees. The petitioner has submitted a letter to join the pension scheme on 27.09.2010 and the same was recorded by the Bank. The Bank directed the petitioner to pay 2.8 times of the revised salary from November 2007 onwards to meet the funding gap requirements for a sum of Rs.90,804/- was recovered by the respondent bank on 27.09.2010 itself and it was returned to the petitioner on 17.9.2014. Since the petitioner's brother was hospitalized, he was unable to verify the savings banks. As per the scheme, the petitioner ought to deposit the stipulated contribution on or before 20.11.2010. However, the petitioner has deposited the required amount on 24.11.2010 and also addressed a communication to the second respondent on 25.11.2010 requested to condone the delay of four days in depositing the amount. However, the respondents has declined the condone delay and the request of the petitioner to join the pension scheme was rejected. The contention of the petitioner is that he has deposit Rs.8,18,094/- in the fixed deposit account in the very same bank and the Branch Manager ought to have utilized from the said deposit and transferred the amount under the pension scheme. Therefore, the petitioner is aggrieved, because the respondents are declined to condone the delay of four days and also has not taken any amount already been deposited in the fixed deposit scheme. Hence the petitioner filed this Writ Petition to quash the impugned orders and direct the respondents to include the petitioner in the pension schemes.

3. The respondents have filed a counter stating that the petitioner has not paid the amount within the said stipulated time and the last date for the payment is 20.11.2010. Since the petitioner has not remitted on time, the petitioner was not included in the pension scheme. The said order was declined in the year 2013 itself and the petitioner has filed the Writ Petition in the year 2016 after the lapse of three years. If the petitioner wants to

include his name in the pension scheme, then the amount ought to be deposited by the petitioner in time and therefore the petitioner is not entitled to. Moreover, since the amount was not refunded, the petitioner cannot claim any interest for the payment of pension from 2016 onwards. Therefore, the respondents requested to dismiss the Writ Petition.

4. Heard Mr.Chandrasekar, learned counsel for the petitioner and Mr.S.Balasubramanian, learned counsel for the respondents.

5. The learned counsel for the petitioner relied on the judgment rendered by this Court in W.P.No.35055 of 2012 dated 11.03.2016 in the case of G.Samraj Jayakumar Vs. Indian Bank, wherein this Court has held that the petitioner has exercised his option much before the closing of the scheme and hence the employee is entitled to the benefit. The relevant portion of the order is extracted hereunder:

> *"9. Admittedly, the petitioner has exercised his option much before the closing of the Scheme on 21.10.2010 as early as on 27.08.2010. What is relevant is the date of exercising the option. The subsequent failure of the petitioner, if any, in not once again reiterating the authorization and pay the provident fund can at best be termed as a procedural one. It will not take away the entitlement of the petitioner otherwise. The scheme has to be read as a whole. When the facts are not in dispute that the petitioner has exercised his option as early as on 27.08.2010, which was duly received by the Branch, he cannot be non-suited on a technical ground, as rightly held by the decisions referred by the learned counsel for the petitioner. Added to that, the petitioner has not given any undertaking expressing his interest in not joining the pension scheme by way of irrevocable undertaking letter. If one has to see the scheme as a whole, the endeavour is to make an employee to come under the pension scheme. That is the reason why the revised pay of 2.8 times is sought to be included as a matter of course. It is only on an employee exercising the option of going out of the pension scheme by giving irrevocable undertaking letter, the consequences would follow. Thus, this Court is of the considered view that on merits the petitioner is entitled for the benefit. It is not as if the petitioner is otherwise disqualified from being considered under the scheme".*

6. The facts of the present case is similar to that of the judgment. Here also the petitioner has given option prior to the scheme. However, there is a delay in depositing the amount that too by four days. Therefore, this Court is inclined to grant relief to the petitioner. However, the petitioner is not entitled to any interest from the year 2016 because the petitioner has preferred this Writ Petition after lapse of three years and the impugned order is passed in the year 2013. With this observation, the impugned order is set aside. The respondents are directed to include the petitioner's name in the pension scheme by accepting the amount that would be deposited by the petitioner. The petitioner is directed to deposit the amount within a period of two (2) weeks from the date of receipt of a copy of this order. Thereafter, the respondents shall consider this case within a period of six (6) weeks after the amount deposited.

7. With the above direction, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Nsr

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Chairman & Managing Director,
Indian bank,
Corporate Office/Head Office,
#254-260, Avvai Shanmugam Salai,
Royapettah,
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Corporate Office/Head Office,
#254-260, Avvai Shanmugam Salai,
Royapettah,
Chennai-600 014.

+1 CC to M/s.S. BALASUBRMANIAN, Advocate (SR-19947[F] dated 21/04/2022)

+2 CC to M/s.S. ARUN KUMAR, Advocate (SR-20618[F] dated 22/04/2022)

W.P.(MD).No.17194 of 2016
20.04.2022

sg(CO)
TR(25.05.2022) 5P 7C