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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 24.11.2022

+ W.P.(C) 7710/2020
SMT ADITI GAUR

..... Petitioner

Through: Mr.A.K.Srivastava, Adv.

versus

GENERAL MANAGER UCO BANK & ANR. Respondent

Through: Mr.Sarfaraz Khan, Adv for R-1.

Ms. Anju Gupta with Mr.Roshan Lal Goel, Adv for R-2.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The petitioner, a 70 years old woman, who was working as a Grade II officer in the respondent no.1/bank, and had taken voluntary retirement from the same on 30.10.1998, has approached this Court being aggrieved by the Bank's refusal to extend pensionary benefits to her.
2. The petitioner joined the respondent/bank as a probationary officer in 1977 and left the services on 30.10.1998 after taking voluntary retirement, which was duly accepted on 26.10.1998. While she was in service, the respondent, on 29.09.1995, issued a circular which gave an option to the employees to opt for pension scheme as promulgated by the bank. This option was accepted by about 48% of bank's employees but the petitioner, like many others, did not opt for pension and consequently, upon her voluntary retirement, she was not entitled to any pension under this scheme.

3. On 20.08.2010, many years after the petitioner had retired, based on an industry settlement arrived at between the employees' unions and the Indian Banks Association, the respondents issued another circular giving another opportunity to the employees and their families, who were in service at any time before 29.09.1995, to opt for pension. This offer was also open to employees who had retired under the Voluntary Retirement Scheme, 2000.

4. The petitioner, who had taken voluntary retirement in 1998, by considering herself as eligible under the circular dated 20.08.2010, submitted a representation to the respondents on 13.10.2010, exercising her option for being governed by the pension scheme. Since she received no response thereto, a further representation was submitted by her on 02.09.2011, which also remained unresponded to.

5. On 01.01.2013, the respondents came up with yet another circular giving an option to employees, who were in service prior to 29.09.1995, and had sought voluntary retirement from service before 27.04.2010, to opt for pension. It is the petitioner's case that since her representation dated 13.10.2010 was still pending consideration, she was not informed of this circular and therefore, she did not apply under the said circular. The petitioner's representation, however, came to be rejected on 24.05.2014, whereby she was informed that since she had resigned from service, she was not eligible to opt for pension under the circular dated 20.08.2010. Upon receipt of this reply, the petitioner once again approached the respondents with a grievance that she never resigned from service but had taken voluntary retirement, and it is then that she was, for the first time, informed that only vide circular dated 01.01.2013, options for pension were sought

from voluntary retired officers and the circular dated 20.08.2010, under which she had applied, was not applicable to her. The petitioner made further representations including raising a grievance with the PMO but received no response thereto. It is in these circumstances that the present petition came to be filed.

6. Learned counsel for the petitioner submits that even if the petitioner was treated to be ineligible for applying for pension as per the circular dated 20.08.2010, the respondents ought to have considered her option to shift to the pension scheme as per the circular dated 01.01.2013, which as per its own stand, was specifically extended to employees like the petitioner, who had taken voluntary retirement before 27.04.2010. He contends that when the petitioner's application seeking release of pension submitted on 13.10.2010, was already pending consideration with the respondents, which came to be rejected only on 24.05.2014, it was incumbent upon them to either inform the petitioner in time that her application submitted on 13.10.2010 was not maintainable, so that she could apply under the circular dated 01.01.2013, or ought to have considered her application dated 13.10.2010 in terms of the circular dated 01.01.2013. He, therefore, prays that the respondents be directed to forthwith accept the petitioner's option for pension and release her up-to-date arrears of pension, after making adjustments of the amount already released to her towards provident fund at the time of her retirement

7. On the other hand, learned counsel for the respondents, while not denying that the petitioner's case for being governed under the pension scheme was fully covered under the circular dated 01.01.2013, submits that the petitioner, having not applied under the said circular, cannot now claim

that she should be permitted to exercise the option offered vide this circular dated 01.01.2013. He submits that the respondents could not be expected to inform every voluntary retired employee about every circular, which was always in public domain. He, however, has no explanation as to why the petitioner's application submitted on 13.10.2010, which was followed by a reminder dated 02.09.2011, was not decided till 24.05.2014, by which time, the last date for applying under the circular dated 01.01.2013 had expired.

8. Having considered the submissions of learned counsel for the parties and perused the record, I find that it is an admitted position that employees who took voluntary retirement, like the petitioner, were declared to be eligible to apply for pension vide circular dated 01.01.2013. The respondents do not deny that the petitioner's option dated 13.10.2010 made under circular dated 20.08.2010, was not decided till 24.05.2014. It is thus an undisputed position that the petitioner's application submitted much prior thereto was still pending consideration with the respondents on the date when the circular dated 01.01.2013, under which she was fully eligible to opt for pension was issued. In my view, once the petitioner's application for being governed by the pension scheme was pending on 01.01.2013, it would be a travesty of justice to deny her the benefits thereof, when it is clear that she was entitled to opt for pension in terms of the said circular.

9. Even though I am inclined to accept the respondents' plea that they cannot be expected to inform every voluntarily retired or retired employees about circulars being issued from time to time, which are in public domain, in the peculiar facts of this case when the petitioner's application opting for pension was pending consideration with the respondents, she cannot be denied benefits of the circular dated 01.01.2013, when it undisputed that her

application for pension dated 13.10.2010, was rejected much after the cut-off date for applying under the circular dated 01.01.2013.

10. For the aforesaid reasons, the writ petition deserves to be allowed and is, accordingly, allowed by directing the respondents to extend to the petitioner, the benefits of the pension Scheme in terms of the circular dated 01.01.2013.

11. The respondents are, accordingly, directed to calculate the pension payable to the petitioner from the date of her voluntary retirement i.e., 30.10.1998. In case, it is found that the amount already paid to her towards provident fund exceeds the amount payable to her towards arrears of pension, the petitioner will be informed about the differential amount to be refunded by her, which differential amount will, within two weeks, be refunded by her with interest @ 6% per annum. However, in case, it is found that the amount which the respondents are liable to pay towards arrears of pension is more than the amount already paid to the petitioner, the same will be paid by the respondents on or before 31.12.2022, whereafter the petitioner will be paid regular pension w.e.f. 01.01.2023

(REKHA PALLI)
JUDGE

NOVEMBER 24, 2022
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