Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :
THE HON'BLE JUSTICE RAJA BASU CHOWDHURY

WPA 2343 of 2012

Md. Abdul Gani
Vs.
The Bank of India & Ors.

For the petitioner	:	Mr. Srikanta Datta Mr. Prodyot Kumar Ray
For the Bank of India	:	Mr. R.N.Majumder Mr. S.M.Obaidullah
Heard on	:	06.12.2023
Judgment on	:	06.12.2023

Raja Basu Chowdhury, J:

1. The instant writ petition has been filed, inter alia, challenging the letter dated 22nd July 2011 issued by the Deputy Zonal Manager of the Bank of India.

2. Shorn of the unnecessary details, the facts are that the petitioner was appointed as a clerk of the Bank of India with effect from 8th January 1980. After satisfactorily serving the bank, he had opted for voluntary retirement under the Voluntary Retirement Scheme on 31st December 2000, while working at the Andul Beria Branch, Murshidabad. It is the petitioner's case that a bipartite settlement dated 27th April 2010 was arrived at by and between various

workers' unions and the bank. The said settlement provides for extending another option to join the pension scheme to those, who had not opted for pension earlier.

3. The petitioner, on the basis of the aforesaid scheme and the subsequent circular notice dated 10th August 2010 had opted for pension on 22nd October 2010. According to the petitioner, although an acknowledgement in this regard was issued by the bank, however, since the petitioner was not informed of the particulars of the amount to be deposited, such deposit could not be made. Still later, by a communication in writing dated 22nd July 2011, the Deputy Zonal Manager of Bank of India had regretted the petitioner's case, inter alia, on the ground that the petitioner had not deposited by way of a local cheque/DD/pay order, 1.56 times of bank's contribution of provident fund with interest, within 30 days from the date of closure of the offer.

4. Mr. Datta, learned advocate appearing for the petitioner by drawing attention of this Court to the circular notice dated 10th August 2010 submits that as per the said circular, the petitioner having continued in service of the bank up to 29th September 1995 was eligible to exercise his option for pension, as a prior non-optee. By referring to Clause 10 of the circular letter, it is submitted that it was the obligation of the bank to inform the persons who had retired from service on or after 29th September 1995, the amount of bank's contribution to provident fund with interest paid to the optee

at the time of his retirement. Since, the aforesaid amount was not disclosed, the petitioner could not, despite duly opting for pension within the cut out date and despite being otherwise eligible could not get the benefits of the aforesaid scheme. The aforesaid, according to the petitioner, is violative of Articles 14, 21 and 300A of the Constitution of India.

5. Mr. Majumder, learned advocate appearing for the respondent/bank, on the other hand by referring to another circular letter dated 24th August 2010 submits that not only the petitioner was required to exercise the option within 60 days from the date of the offer to become a member of the pension fund but was required to refund within 30 days after expiry of the said period of 60 days, the entire amount of bank's contribution of the provident fund and interest accrued thereon, received by the petitioner on his retirement plus 56 per cent of the said received amount, as his share of contributions towards meeting the funding gap as per the said settlement.

6. Although, the petitioner was eligible to exercise the option and despite the petitioner having exercised the option within the time specified, since the petitioner did not comply with his obligation to refund the amount as noted above, within 30 days after the expiry of the said period of 60 days, his case was regretted by the respondent / bank. There is no irregularity on the part of the respondent/bank in regretting the petitioner's claim.

7. By referring to the affidavit-in-opposition filed on behalf of the respondent/bank, he submits that the petitioner was aware that he was required to deposit 1.56 times of his bank's contribution to provident fund. Admittedly, no such deposit was made. He, however, could not identify any statement from the aforesaid affidavit, so as to demonstrate that any communication was made by the bank as regards the particulars of the amount of bank's contribution along with interest to be deposited by the petitioner.

8. Heard the learned advocates appearing for the respective parties and considered the materials on record.

9. Admittedly, it is found that by a circular letter dated 10th August 2010, the factum of opting for pension fund was notified. The petitioner having continued in service of the bank upto 29th September 1995 was otherwise eligible under the said scheme. In this case, it is noted that despite the petitioner opting for pension within the time specified, the amount required to be deposited by the petitioner for the purpose of meeting the funding gap to give effect to his claim for pension, in terms of the said settlement was not deposited.

10. Since, it is contended by the petitioner that by reasons of failure on the part of the bank to comply with its obligation to disclose the particulars of the amount of contribution required to be deposited, the petitioner could not make payment, is necessary to scrutinize the relevant terms of the letter dated 10th August 2010. For

convenience, paragraph 10 of the letter dated 10th August 2010 and paragraph (ii)(a)(b) and (c) from the letter dated 24th August, 2010 are extracted hereinbelow:

"Letter dated 10th August, 2010

10. You are also requested to advise those who retired from service on or after 29th September 1995/26th march 1996 in the last known address, the following information as available in the Bank's records:

(i) The amount of Bank's contribution to Provident Fund with interest paid to him at the time of retirement.
(ii) 56% of the above amount representing his share in the funding gap.
(iii) The lumpsum amount he may get if he exercises his option to join the Pension Scheme and choose to commute the maximum permissible pension (1/3rd of Basic Pension) based on the commutation value on his next date of birth from the date of option."

Letter dated 24th August, 2010

(ii) (a) were in service of the bank prior to 29th September 1995 and retired after that date and prior to the date of the settlement i.e. 27th April 2010.

(b) exercise an option in writing within 60 days from the date of offer to become a member of the Pension Fund and

(c) refund within 30 days after expiry of the said period of 60 days, the entire amount of the Bank's Contribution to the Provident Fund and interest accrued thereon received by the employees on retirement, plus 56% of the said received amount as his share in contribution towards meeting the funding gap as per the said settlement"

11. From the aforesaid it would transpire that not only the respondents were required to provide requisite information, the petitioner was also required to deposit the amount of bank's

contribution to provident fund with interest paid to him at the time of retirement, plus 56 per cent of the above amount representing his share. The aforesaid particulars of the banks contribution and interest were not disclosed to the petitioner. It is noticed that the concerned bank manager, by communication dated 11th December, 2010 had acknowledged the fact that the petitioner's file could not be traced out by reasons of inadequate staff strength. The factum of issuance of the aforesaid letter has, however, not been denied by the respondent/bank. The aforesaid letter has remain uncontroverted.

12. It is further noted that in terms of the settlement dated 27th April 2010, as reflected from the communication dated 24th August 2010, the petitioner was required to refund the aforesaid amount of bank's contribution to provident fund along with interest accrued thereon, within 30 days after the expiry of the said period. In this case, the respondents did not communicate to the petitioner the amount of bank's contribution or the interest computed thereon, for the petitioner to deposit the same, consequentially, the petitioner also could not deposit 56 per cent of the above amount. The affidavit filed on behalf of the respondent/bank also does not identify the particulars or the amount that was required to be deposited by the petitioner.

13. Although, it has been strenuously argued by Mr. Majumder, learned advocate appearing for the respondent/bank that the petitioner having failed to comply with his obligation to deposit the

bank's contribution in terms of the aforesaid circular letter is not entitled to the benefit thereon, I am afraid and I am unable to accept the same. Although, in terms of paragraph 10 of the letter dated 10th August 2010, it was the obligation of the bank to intimate the petitioner of the bank's contribution to provident fund along with interest, the same had not been done. The bank is now attempting to wriggle out the said obligation to disclose the particulars, by contending that it was the obligation of the petitioner to deposit the amount within the time specified.

14. In my view, unless the petitioner was made aware with regard to the amount that was required to be deposited, the petitioner could not have deposited the amount of the bank's contribution along with interest. The factum of failure on the part of the bank to comply with its obligation in time would corroborate from the aforesaid letter dated 10th December 2010 issued by the bank's manager, which remains uncontroverted.

15. It is not in dispute that the petitioner has exercised his right to receive pension under the aforesaid scheme afforded by the bank within the time specified therein. The petitioner's application was obviously in order for reasons whereof, the acknowledgment had been issued by the bank. It was the duty of the respondent/bank to give effect to the same. In this case, the respondent / bank has failed to disclose the amount that was required to be deposited by the petitioner along with accrued interest thereon and is attempting

to wriggle out of its liability under the said scheme. In my view, the same is not permissible.

16. Having regard to the aforesaid, I am of the view that the letter dated 22nd July 2011 regretting the petitioner's claim for pension for having failed to deposit 1.56 times of the bank's contribution of provident fund with interest, within 30 days from the date of closure of the offer cannot be sustained and the same is accordingly set aside.

17. The respondent no.3 is directed disclose the amount required to be deposited by the petitioner in terms of the letter dated 10th August, 2010 read with letter dated 24th August, 2010 including the up-to-date interest, within a period of four weeks from the date of communication of this judgment and order. In the event, the petitioner complies with the requisition for deposit, to be issued by the respondent no.3 within 30 days from the date of receipt of such communication and makes payment therefor, the petitioner's application opting for pension shall be processed by the respondent/bank and regular pension shall be disbursed in favour of the petitioner along with arrears, from the date when the option for pension was exercised by the petitioner. The entire exercise must be completed within 12 weeks from the date of communication of this order.

18. With the above directions and observations, the writ petition being WPA 2343 of 2012 is **accordingly disposed of**.

19. Urgent photostat certified copy of this judgment, if applied for be given to the parties on priority basis upon completion of requisite formalities.

(Raja Basu Chowdhury, J.)

Saswata
Assistant Registrar (Court)