12.
28.3.2023
S.D.

W.P.A. 4882 of 2023

Somangshu Bhusan Sarkar
Vs.
Punjab National Bank & Ors.

Mr. Sandipan Banerjee
Mr. Pinaki Ranjan Chakraborti
… For the Petitioner

Mr. Mohit Gupta
Mr. Koushik Modak
Ms. Mousumi Pal
Ms. Sunita Kabi
..For the Respondents

By the order dated October 20, 1998, the petitioner who was working as an Assistant Manager with the Punjab National Bank (in short, PNB) was **removed** from service by the disciplinary authority. By an order dated October 17, 2007, the appellate authority modified the said penalty to **compulsory** retirement from services. Therefore, the petitioner is deemed to have compulsorily retired from service with effect from October 17, 2007.

The grievance of the petitioner is that despite opting for payment of the pension, such option of the petitioner has not been considered by the respondent bank.

Mr. Chakraborty, learned counsel appearing on behalf of the petitioner submits that by an order dated October 13, 2010, the Senior Manager, Human Resources Development, PNB gave an option to the petitioner to submit an online option within October 25, 2010 in the event the petitioner was interested in receiving pension. Such an option was exercised by the petitioner within October 25, 2010. While exercising option, the petitioner had deposited the money that was required by him.

It is submitted that the said application has been kept pending till date.

By an order dated February 23, 2022 passed by a Coordinate Bench of this Hon'ble Court, the petitioner's representation dated February 25, 2022 was directed to be considered by affording the petitioner a reasonable opportunity of hearing. Such a representation of the petitioner was considered and disposed of by the General Manager, P.F. and Pension Fund Department by a reasoned order dated June 16, 2022. Such order is impugned in the present writ petition.

It is the contention of the petitioner that after giving the option to make an application within October 25, 2010, the petitioner's prayer could not be rejected without consideration of application. During the pendency of such application, the second option was given by the bank vide Office Order dated March 16, 2018. Therefore, the Office Order dated March 16, 2018 is not applicable to the petitioner. The application dated October 25, 2010 has to be considered on its own merit. The petitioner was not required to exercise a further option pursuant to 2018 Notification.

Mr. Gupta, learned counsel appearing on behalf of the bank submits that the application dated October 25, 2010 was considered and the money was refunded back to the petitioner. Therefore, it is clear that the pension option of the petitioner was rejected in October 2010 itself. No protest was lodged by the petitioner against such refund.

He draws the attention of the Court to a Circular dated June 7, 2018 whereby the employees were given a second option to opt for pension between June 15, 2018 and August 13, 2018. However, the petitioner did not opt for pension during the aforesaid period. The amount of the contributory provident fund was also required to be refunded by the pension optee between August 14, 2018 till September 12, 2018. The said amount was also not refunded by the petitioner.

The Circular dated June 7, 2018 was brought to the notice of the public. It was also on the bank's *website*.

Since the petitioner did not opt for the second pension option even during the second time within the stipulated time, the prayer for grant of pension to the petitioner could not be considered by the bank.

Considering the rival submissions of the parties and the materials placed on record, this Court is of the view that the bank did not bring the factum of refund of the amount to the petitioner in 2010 itself, before the Hon'ble Coordinate Bench. Had such fact been brought to the notice of the Court, the Hon'ble Coordinate Bench would have considered the same. The Hon'ble Coordinate Bench only recorded that while opting for pension, the petitioner had deposited the money as specified in the letter inviting option. Therefore, it is deemed that the fact of refund of the money was brought to the notice of the Hon'ble Court. Whether or not the said fact was stated in the writ petition, the learned counsel appearing on behalf of the petitioner was under an obligation to draw the attention of the Court to such fact. Even today during the submissions the attention of this Court was not drawn by the learned counsel appearing on behalf of the petitioner to the factum of refund in 2010.

This Court finds from the documents annexed at page 77 onwards of the writ petition that no contemporaneous protest was made against such refund. The petitioner sought to make a purported protest more than a decade after the said refund.

Furthermore, by the Circular dated June 7, 2018, the retired employees of the bank were given a second option. The petitioner chose not to avail of the same.

In such view of the matter, this Court finds no infirmity in the Impugned order dated June 16, 2022. Therefore, this Court finds no merit in the present writ petition because an employee cannot be allowed to opt for pension at his own sweet will and time. The impugned order is a well reasoned one. There is no perversity or arbitrariness in the decision making process of the General Manager (P.F. & Pension Fund Department).

Accordingly, **W.P.A. 4882 of 2023** is **dismissed**.

Since no affidavits have been directed to be exchanged in the present writ petition, all the allegations contained in the petition are deemed not to have been admitted by the parties.

All parties shall act on the server copy of this order duly downloaded from the **website** of this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all the formalities.

(**Lapita Banerji, J.**)