IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6477 OF 2021

Smt. Padmini Baloji Karbhari ....Petitioner
V/S
UCO Bank & Anr. ....Respondents

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Mr. Vijay Vaidya a/w Mr. Mahndra M. Agavekar a/w Ms. Shraddha Chavan for the Petitioner.
Mr. Hafeezur Rehman for Respondent Nos.1 and 2-Bank.

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CORAM: S.V. GANGAPURWALA, ACJ &
SANDEEP V. MARNE, J.
DATE : 7 JANUARY 2023.

P.C.:

1 Rule. Rule returnable forthwith with the consent of the parties.

2 The Petitioner herein was appointed as a Cleaner/Sweeper on compassionate ground under appointment order dated 28 September 1995. On or above 31 May 2018 the Petitioner retired upon attaining the age of superannuation. The Petitioner seeks pensionary benefits. The same is denied.

3 The learned Advocate for the Petitioner submits that the Petitioner had opted for the pension scheme that was introduced by the Respondent-Bank with effect from 29 September 1995. The Petitioner throughout the services tenure was treated as a person optee for the Pension Scheme of

1995 and the Bank's contribution was transferred to the pension fund. The learned Advocate substantiates his contention relying upon the half yearly provident fund statement of accounts. It is further submitted that under Circular dated 28 August 2020 issued by the Bank, an opportunity was given to the employee who had not opted earlier for pension in terms of the Industry level settlement/understanding arrived on 27 April 2010. According to the learned Advocate, as the Petitioner was considered as a person who had opted for the pension, the benefit of the said Circular was not availed of. The learned Advocate further submits that the Petitioner was a Class-IV employee, a lady appointed on compassionate ground upon the death of her husband who was not aware of need to submit option form as she does not know to read and write English. Upon retirement, the Respondents unilaterally deposited the amount of PF contribution made by the employer in the account of the Petitioner. The Petitioner is ready to return the said amount after adjustment of the pension amount payable to the Petitioner.

4 The learned Advocate for the Respondents submits that no point of time, the Petitioner opted for the pension scheme. On or about 29 September 1995 the Bank had floated UCO Bank (Employees') Pension Regulation, 1995. As per clause 3(3) of the said Scheme, the employee already in service was required to exercise an option in writing within 120 days from the notified day to become a member of fund. The Petitioner did

not opt for the same though was appointed prior to the enforcement of the said Scheme. According to the learned Advocate there is an admission on the part of the Petitioner that she had not opted for the pension scheme floated by the Bank in her letter dated 26 June 2019 addressed to the Grievance Redressal Officer. In the same, she had specifically stated that the non-exercise of option to Pension Scheme is solely attributable to the Bank officials for the reason that circular was neither appraised to her nor explained to her. The learned Advocate submits that because of some clerical error on the part of the staff in writing that the fund is transferred to the pension fund would not confer any benefit to the Petitioner as she had not opted for the pension scheme. It is further submitted that the amount of the Bank's contribution towards the provident fund has been deposited in the account of the Petitioner alongwith the interest. The Petitioner has received Rs.5,17,214.41 towards the principal and an amount of Rs.10,778.14 towards the interest and the same has been paid to her on 13 January 2020 and 23 January 2020 respectively. In view of that, now the Petitioner cannot turn around contend otherwise.

5 It is not disputed that the Petitioner is appointed as the Sweeper on compassionate ground under appointment order dated 28 September 1995. The Respondent on the next day i.e. 29 September 1995 floated UCO Bank (Employees') Pension Regulation, 1995. Sub-clause 3 of clause 3 require

an employee to exercise an option in writing within 120 days from the notified day to become member of the Pension Scheme.

6 Under sub-clause 3(c) of clause 3 of the Scheme, the employee could authorized the trust of the Provident Fund of Bank to transfer the entire contribution of the Bank along with the interest accrued thereon to the credit of the Fund constituted for the purpose under regulation 5. Similar provision is made in clause 5 of the pension regulation.

7 The dispute is about the Petitioner opting/not opting to the benefit of the Pension Scheme.

8 We do not have on record a specific application of the Petitioner opting for the pension scheme. It also required to be considered that on 28 August 2010, a circular was issued by the Respondent-Bank wherein one more option for pension was made available to the employees who were in service any time prior to 29 September 1995 and could not opt for pension earlier, to opt for pension now. The said circular was issued in terms of the Industry level settlement/understanding arrived on 27 April 2010 between the Association and the Unions and IBA.

9 It is worth to appreciate that the Petitioner if had not earlier opted for the benefit of the pension scheme could have under Circular dated 20 August 2010 opted for the benefit of the pension scheme. However, it would

appear that the Petitioner throughout her career was treated as a person who has opted for the pension and was considered as a deemed optee. The amount of Bank's contribution has been transferred to the pension fund which is evidenced from the half yearly provident fund statement of account placed on record by the Petitioner. According to the Respondents, the same is a clerical error. We cannot accept the said contention, inasmuch as the statement shows that the Bank's contribution is transferred to the pension fund and the date of joining the fund is shown as 04/96.

10 As the Petitioner was already treated as the one who had opted for the Pension Scheme, she did not again give an option in view of the circular dated 28 August 2010. The Petitioner in a way was deprived of giving option in the year 2010 if not given earlier, because she was treated as the one who had opted for the pension scheme as per the representation of the Respondent-Bank in the shape of the half yearly provident fund statement issued from time to time.

11 It also required to be considered that the Chief Manager of the Respondent-Bank under his communication dated 21 May 2019 to the Senior Manager-HRM, Zonal Office, Mumbai had in clear words accepted that the Form (Annexure No.A) in a service folder, exercising the option for the Bank's draft pension scheme in terms of the Pension Regulation, 1995

could not be located. However, the fact remains that she was pension optee since very beginning which is clearly evident from her all salary slips and PF statements prepared by the Head Office. It was further stated in the said letter that non-availability of copy of pension option must be a case of misfiling of the papers by the Bank staff of the Branch as at number of other matters relating to not only staff department but of many other areas of branch, they had come across the instances of "wrong filing of papers/documents".

12 All the aforesaid facts and circumstances lead us to an irresistible conclusion that the Respondents have treated the Petitioner throughout her service career as the one who had opted for the pension scheme. It would be too late in a day now for the Respondent to resile from the same.

13 It is trite that pension is not a bounty but a property to which an employee is entitled to.

14 In light of the fact that the Respondents have already treated the Petitioner as the one who had opted for the pension scheme and the amount was shown as transferred to the pension fund from time to time, we hold that the Petitioner is entitled for the benefit of the pension scheme of the Respondent namely, UCO Bank (Employees') Pension Regulation, 1995.

15 It also appears from the record that the Respondent has deposited the Bank’s contribution towards provident fund with interest in the account of the Petitioner. The Petitioner has made a statement that she is ready to refund the said amount alongwith interest.

16 The Petitioner would have been entitled for the pension/pensionery benefits from the year 2018. The Respondent may calculate the amount that would be payable to the Petitioner towards pensionery benefits till now and adjust the said amount deposited in the account of the Petitioner. If some excess amount remains with the Petitioner, she shall refund the same within a period of four weeks from the date the Respondents communicate after the adjustment as suggested above.

17 Rule accordingly made absolute in the above terms. The Writ Petition is disposed of. No costs.

(SANDEEP V. MARNE, J.) **(ACTING CHIEF JUSTICE)**

SUDARSHAN RAJALINGAM KATKAM

Digitally signed by SUDARSHAN RAJALINGAM KATKAM
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