IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10297 OF 2022

Shankar Nivrutti Salunkhe .....Petitioner

V/s.

The Union of India, through the
Minister of Labour and Employment .....Respondent

Mr. S.R. Moray i/by. Mr. Vishwanath S. Talkute, Advocate for the petitioner.
Mr. Ashutosh Mishra, Advocate for respondent no.1-UOI.
Mr. Suresh Kumar a/w. Ms. Smita Thakur, Advocate for respondent no.2.
Mr. Lancy D'souza a/w. Ms. Deepika Agarwal a/w. Mr. V.M. Parkar, Advocate for respondent no.3.

CORAM : S.V. GANGAPURWALA, ACJ &
SANDEEP V. MARNE, J.

DATE : 23rd MARCH, 2023.

23.3.2023

P.C. :

1. The petitioner is challenging the communication of the respondent no.2 thereby not according the benefit of the deferred pension.

2. The learned Advocate for the petitioner submits that, the petitioner had given the option one month before he attained the age of 58 years with the respondent no.3-employer. However, the employer did not submit the same within time to the respondent no.2 For the latches on the part of respondent no.3, the petitioner ought not to be penalised. The learned Advocate submits that the petitioner be given the benefit of Employees Pension (Second Amendment), Scheme, 2016. The petitioner would attain the age of superannuation on completion of 60 years of age.

3. The learned Counsel for respondent no.3 submits that the Scheme, 2016 does not contemplate limitation of submission of option one month prior to attaining the age of 58 years. It is not necessary for the person seeking the benefit of the Scheme, 2016 to communicate about his acceptance one month prior to attaining age of 58 years. The respondent no.2, under the Circular/communication dated 14th June, 2016 could not have imposed condition that before one month of attaining the age of 58 years, the member should submit the option to the employer. In view thereof, the said condition imposed by respondent no.2 is beyond the scheme and as such is negated.

4. Mr. Suresh Kumar alongwith Ms. Thakur, for respondent no.2 submits that the Scheme is such that even though a person

would retire at the age of 58 years, he can seek deferment of pension till he attains the age of 60 years and additional benefit is given to him. In view thereof, it was necessary for the petitioner to exercise the option of the Scheme before he attained the age of 58 years. Bare reading of the Scheme would manifest the same. No other interpretation is possible.

5. We have considered the submissions. Clause-2 of the Scheme, 2016 reads thus :-

> "2. In the Employees' Pension Scheme, 1995 in paragraph-12, after sub-paragraph (7A), the following sub-paragraph shall be inserted, namely :-
>
> "(7B)(a) A member who has attained the age of fifty-eight years and is otherwise eligible for pension under clause (a) of sub-paragraph (1) of this paragraph, if he so desires, may be allowed to defer the age of drawing pension later than fifty-eight years but not beyond sixty years of age.
>
> (b) In such cases as is referred to in clause (a):-
>
> (i)the amount of pension shall be increased at the rate of four per cent for every completed year after the age of fight-eight years which shall be restricted to the wage ceiling given under the proviso to sub-paragraph (2) of paragraph-3.

(ii) the member, at his or her option, may also be allowed to continue contributions under paragraph 3 to the Employees' Pension Fund for the period for which the drawal of pension has been deferred, if the member is continuing in employment after the age of fifty-eight years, and the pensionable service and pensionable salary for the purpose of determination of pension under sub-paragraph (2) will be reckoned taking into account the period for which contributions were made after the age of fifty-eight years but not beyond the age of sixty years.

(iii) in the event of death of the member, who has opted for deferring the age of drawing pension under this sub-paragraph, after attaining the age of fight-eight years and before the commencement of the pension so deferred, the family of the member will be entitled to pension under clause (c) of sub-paragraph (I) of paragraph 16 from the date following the date of death of the member as if the member monthly pension had commenced on the date of death of the member."

6. The amendment, as introduced in the Scheme, 2016 provides that a Member who has attained the age of 58 years and is otherwise eligible for pension under clause (a) of sub-paragraph (1) of this paragraph, if he so desires, may be allowed to defer the age of drawing pension later than fifty-eight years but not beyond sixty years of age.

7. Upon reading the aforesaid clauses in the first blush, what is contended by the learned Advocate for respondent no.2 appears to be plausible. However, on further reading of sub-clause (ii), it would appear that the Member, at his or her option, may also be allowed to continue contributions under paragraph-3 to the Employees' Pension Fund for the period for which the drawal of the pension has been deferred, if the member is continuing in employment after the age of fifty-eight years, and the pensionable service and pensionable salary for the purpose of determination of pension under sub-paragraph (2), will be reckoned taking into account the period for which contributions were made after the age of fifty-eight years but not beyond the age of sixty-years. This would certify that even a person who is retiring at the age of 60 years, would be entitled for the benefit of Scheme, 2016 provided, he exercises the option, one month prior to completing 58 years of age.

8. In the present case, the petitioner admittedly has exercised the said option in time, i.e. before completing 58 years of age. However, the laxity appears to be on the part of the employer. The employer did not forward the same to the respondent no.2. It is also contended by the petitioner and respondent no.3, that

contributions till the age of 60 years, are paid by them. The only question is, whether the petitioner should be penalised for no fault of his. The Scheme, 2016 is beneficial scheme. Liberal interpretation would have to be given to the said Scheme. It would have been another aspect, if the petitioner had not exercised the option before attaining the age of 58 years. Then in that case, we would have not entertained the present petition. However, the petitioner has diligently exercised the option before completing 58 years of age. It was the obligation casted upon respondent no.3 to forward the same to the respondent no.2. Denying the benefit of the Scheme, 2016 to the petitioner for the lapses on the part of respondent no.3 in complying with the obligation, should not penalise the petitioner. If the employer has failed to perform his obligation, the petitioner may not suffer. We are also inclined to consider the case of the petitioner, as it has been submitted that the contributions have been made till the petitioner attained the age of sixty-years and the same has been deposited with the respondent no.2. In that view and also that the petitioner has not availed the benefit of pension till attaining the age of 60 years and also considering the fact that, benefical scheme will have to be interpreted in favour of the beneficiary and that the petitioner had acted well within the time prescribed under the Scheme, so also the contributions have been paid, we pass the following order :

O R D E R

(i) The impugned communication is set aside.

(ii)The respondents shall grant benefit to the petitioner of the Employees' Pension (Second Amendment) Scheme,

2016. The said exercise shall be completed within two months.

9. Rule. Rule is made absolute accordingly. No costs.

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

NEETA SHAILESH SAWANT

Digitally signed by NEETA SHAILESH SAWANT
Date: 2023.03.27 11:53:41 +0530