IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON	**23.03.2023**
ORDERS PRONOUNCED ON	**01.06.2023**

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P. No. 29968 of 2013

A.Gulnar ....Petitioner

-vs-

1) The Chairman & Managing Director,
Indian Bank,
No.31, Rajaji Salai,
Chennai - 600 001

2) The General Manager & Circle Head,
Indian Bank,
Circle Office, HRM Section,
Chennai - 600 008

3) The Joint Secretary [Banking], Banking Division,
Ministry of Finance, Government of India
Department of Economic Affiars,
Room No.6, 3rd Floor, Jeevan Deep Building,
Parliament Street,
New Delhi - 110 001

4) The Chief Executive,
Indian Bank's Association,
World Trade Centre Complex, Centre-I,
Units - 1,2 & 4, 6th Floor,
Cuffe Parade,
Mumbai- 400 001

5) The Assistant General Manager,
HRM, Pension Cell,
Head Office, Indian Bank,
No.66, Rajaji Salai, Chennai - 600 001. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus directing the 5th Respondent herein to call for the records relating to the Rejection order dated 19.01.2011 and quash the same and direct the 1st Respondent herein to consider the petitioner for pension scheme as per the circular dated 21.08.2010 of the Bank offering "Another Option for joining the existing Pension Scheme".

For Petitioner	:	Mr. R. Subramanian
For Respondents	:	Mr. V. Kalyanaraman.
		For M/s. Aiyar & Dolia

ORDER

This writ petition has been filed challenging the rejection order, passed by the 5th respondent dated 19.01.2011, quash the same and consequently, direct the 1st respondent to consider the petitioner for pension scheme as per the circular dated 21.08.2010 of the Bank offering “Another Option for joining the existing Pension Scheme”.

2.According to the petitioner, she was appointed as Clerk-cum-Cashier on 26.02.1979 in Indian Bank and after various promotions, she worked as Assistant Manager till 07.05.2010. After unblemished service of 31 years and 2 months, due to personal and domestic reasons, she resigned her job from the respondent Bank and in her resignation letter she sought to dispense with the notice period of three months, which she supposed to serve under Regulation 20 (2) of the Indian Bank (Officer's) Service Regulation, 1979, and undertook to remit the salary for the notice period of 3 months.

3.The learned counsel for the petitioner would submit that the petitioner has submitted her resignation vide letter dated 08.02.2010, for which the respondent Bank by its letter dated 23.04.2010 informed that the competent authority has accepted the resignation of the petitioner subject to the complete adjustment of all the liabilities, she will be relieved from the services of the Bank and after serving the notice period or after the payment of salary for the unserved period of notice and after remittance of all the direct and indirect liabilities, over and above the terminal benefits. Accordingly, after payment of salary for the unserved period of notice and after remittance of all her direct and indirect liabilities, over and above her terminal benefits, she was relieved from the service on 07.05.2010.

4.According to the learned counsel for the petitioner, at the time of joining, there was no pension scheme in the bank and only a Provident Fund scheme was available. After various demands made by the employees associations with the Bank, the Bank Employees Pension Regulations, 1995 was issued through notification dated 29.09.1995, which gave options to the Officers of the Bank to subscribe to the newly introduced pension scheme or continue in the existing Provident Fund Scheme respectively. The petitioner opted for Contributory Provident Fund scheme. Further, on 27.04.2010, the 4th respondent and the workman Union entered into a settlement, in respect of extending another option to join pension scheme to those employee's who did not opt for pension earlier and they adopted guidelines, vide letter dated 21.08.2010 by giving offer letter to the Bank's existing employees in service on 27.04.2010 and former employees/their families, as another option to join the pension scheme. Based on the above proposal, petitioner made representation to the 2nd respondent on 12.10.2010, to consider her claim for pension scheme, in lieu of Contributory Provident Fund and the 2nd respondent by its letter dated 19.10.2010 intimated that, in terms of the Settlement dated 27.04.2010, her case does not fall under any of the eligible categories to join in the pension scheme.

5.The learned counsel for the petitioner reiterated the circular dated 21.08.2010 issued by the respondent Bank, which reads as follows:-

"(2)Another option for joining the existing Pension Scheme shall be extended to those employees who,

(i) (a) were in the service of the Bank prior to the 29th September 1995 and continue in the service of the Bank on the date of this Settlement."

6.The learned counsel for the respondents 1, 2 and 5 contended that the petitioner submitted resignation letter on 08.02.2010 and the same was accepted by the respondent Bank on 23.04.2010. Thereby, she was relieved from her service on 07.05.2010. According to the respondents, the Indian Bank's Association entered into an industry wide settlement with Workmen's Union and signed a joint note with the Officer's Organizations on 27.04.2010, in respect of extending another option to join the Pension Scheme, to such of those employees who did not opt for pension earlier. Subsequently, the joint note dated 27.04.2010 was made applicable to the following categories:-

a)All the employees who are in the service of the Bank as on the date of this Settlement.

b)Who were in the service of the Bank prior to 29.09.1995 and continue in the service as on the date of his Settlement.

c)Who were in the service of the Bank prior to 29.09.1995 and retired after that date and prior to the date of this Settlement.

d)Family of those employees who were in the service of the Bank prior to 29.09.1995 and retired after that date and died.

e)Family of those employees who were in the service of the Bank prior to 29.09.1995 but have died while in service after that date.

f)Employees who ceased to be in the service on or after 29.09.1995 on account of Voluntary Retirement under Special Scheme after rendering service for a minimum period of 15 years.

7.The learned counsel for the respondents based on the above stated note would submit that the petitioner submitted her resignation on 08.02.2010, the same was accepted by the respondent Bank on 23.04.2010 and the acceptance was prior to the settlement dated 27.04.2010. Thus, as per the joint note dated 27.04.2010, the petitioner resigned before the Settlement date and therefore, she is not entitled to exercise the option, to join in the Pension Scheme.

8.Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials available on record.

9.Admittedly, the petitioner submitted her resignation on 08.02.2010 and the respondent Bank by its letter dated 23.04.2010 informed that the competent authority has accepted the resignation of the petitioner, subject to the complete adjustment of all the liabilities, she will be relieved from the services of the Bank and after serving the notice period or after the payment of salary for the unserved period of notice and after remittance of all the direct and indirect liabilities, over and above the terminal benefits. The petitioner after remittance of all her direct and indirect liabilities, over and above her terminal benefits, relieved from the service of the respondent Bank on 07.05.2010. Therefore, on the date of Settlement, the petitioner was in service of the respondent Bank and accordingly, she submitted her request vide letter dated 12.10.2010, to consider the claim for pension scheme. In this case, petitioner had responded to the Circular dated 21.08.2010, within the time stipulated and unfortunately, the respondent Bank rejected the claim of the petitioner, vide the order impugned in this Writ Petition.

10.Perusal of records show that the notification dated 21.08.2010 extends the existing Pension Scheme to the employees who were in service of the respondent Bank prior to 29.09.1995 and continue in the service of the Bank on the date of the Settlement. Petitioner's right to exercise her option for Pension Scheme, who had put 31 years and 2 months of unblemished service on the date of her resignation, cannot be denied, as she was in service, on the date of Settlement dated 27.04.2010. It is a right earned by the Government servant in recognition of quality of services rendered by her thus far and hence, it has come to be recognized as a case of deferred payment. Therefore, as on the date of Settlement, petitioner is very well in service of the respondent Bank and thus, the petitioner is entitled to opt for Pension Scheme.

11.Therefore, in my considered opinion, the order dated 19.01.2011 passed by the 5th respondent is liable to be quashed and accordingly quashed. The respondents are directed to consider the petitioner as that of a person, who was in service on the date of Settlement dated 27.04.2010 and consider her for

Pension Scheme, as per the Circular dated 21.08.2010 and grant the consequential benefits to her. The said exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

12.With the above direction, this Writ Petition stands allowed. No costs.

.06.2023

msv/Jer

Index:Yes/No
Internet:Yes/No
Speaking Order: Yes/No
Neutral citation: Yes/No

To
1) The Chairman & Managing Director,
Indian Bank,
No.31, Rajaji Salai,
Chennai - 600 001

2) The General Manager & Circle Head,
Indian Bank,
Circle Office, HRM Section,
Chennai - 600 008

3) The Joint Secretary [Banking], Banking Division,

Ministry of Finance, Government of India
Department of Economic Affiars,
Room No.6, 3rd Floor, Jeevan Deep Building,
Parliament Street,
New Delhi - 110 001

4) The Chief Executive,
Indian Bank's Association,
World Trade Centre Complex, Centre-I,
Units - 1,2 & 4, 6th Floor,
Cuffe Parade,
Mumbai- 400 001

5) The Assistant General Manager,
HRM, Pension Cell,
Head Office, Indian Bank,
No.66, Rajaji Salai, Chennai - 600 001.

J.NISHA BANU, J.,
msv/Jer

Pre-Delivery order in
W.P. No.29968 of 2013

01.06.2023