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W.P.Nos.33669 to 33671 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2023

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.33669 to 33671 of 2014
and M.P.No.1 of 2014
and W.M.P.Nos.16948 and 17008 of 2017

W.P.No.33669 of 2014:-

N.Jayanthi

... Petitioner

-Vs-

1. Indian Bank,
represented by its Chairman and Managing Director,
Corporate Office/Head Office,
254 to 260, Avvai Shanmugam Salai,
Royapettah, Chennai-600 014.

2. The Assistant General Manager,
Indian Bank,
Corporate Office/Head Office,
HRM Department, I.R.C., II Floor,
254 to 260, Avvai Shanmugam Salai,
Royapettah, Chennai-600 004.

... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned letter issued by the second respondent bearing No.Pension:25749:18:2010-11 dated 15/16.12.2010 and to quash the same and consequently direct the respondents to process the pension application of the petitioner dated 04.10.2010 and sanction pension to the Petitioner within a time frame.



W.P.Nos.33669 to 33671 of 2014

W.P.No.33670 of 2014:-

T.Sathya

... Petitioner

-Vs-

1. Indian Bank,
represented by its Chairman and Managing Director,
Corporate Office/Head Office,
254 to 260, Avvai Shanmugam Salai,
Royapettah, Chennai-600 014.

2. The Assistant General Manager,
Indian Bank,
Corporate Office/Head Office,
HRM Department, I.R.C., II Floor,
254 to 260, Avvai Shanmugam Salai,
Royapettah, Chennai-600 004.

... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Mandamus, directing the Respondents to process the pension application of the petitioner dated nil and sanction pension to the Petitioner from the date she became eligible with all arrears of pension with applicable rate of interest within a time frame.

W.P.No.33671 of 2014:-

P.Logambal

... Petitioner

-Vs-

1. Indian Bank,
represented by its Chairman and Managing Director,
Corporate Office/Head Office,
254 to 260, Avvai Shanmugam Salai,
Royapettah, Chennai-600 014.

2. The Assistant General Manager,
Indian Bank,
Corporate Office/Head Office,
HRM Department, I.R.C., II Floor,



W.P.Nos.33669 to 33671 of 2014

254 to 260, Avvai Shanmugam Salai,
Royapettah, Chennai-600 004.

... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Mandamus, directing the Respondents to process the pension application of the petitioner dated 30.08.2010 and sanction pension to the Petitioner from the date she became eligible with all arrears of pension with applicable rate of interest within a time frame.

In all W.Ps

For Petitioners : Mr.K.M.Ramesh

For Respondents

R1 : M/s Rita Chandrasekar
for Aiyar and Dolia

R2 : Notice served
No appearance

COMMON ORDER

W.P.No.33669 of 2014:-

This Writ Petition has been filed as against the order passed by the second respondent, thereby rejected the request made by the petitioner to consider her option for joining in the Pension Scheme.

2. The petitioner's husband died while he was in service as Clerk-cum-Shroff in the respondents' branch on 10.02.2002. There was pension settlement dated 29.10.1993 and the Pension Regulation 1995, where a number of employees opted for pension and they became members of the Pension Scheme



W.P.Nos.33669 to 33671 of 2014

and they have to surrender only the Banks' contribution to the Provident Fund

Account along with interest accrued thereon to the pension fund. However, the petitioner's husband did not opt for pension when the pension scheme was introduced. Considering the fact that those who were not opted for pension earlier, various Unions raised a demand for extending second option to such employees as similar options were extended to the employees of Reserve Bank of India in the year 2000. Thereafter, all the Unions were called for, to enter into a Memorandum of Understanding on 27.11.2009, thereby another option to join the Pension Scheme to the leftover employees was extended.

3. On 27.04.2010, the Indian Bank's Association and different Apex Unions entered into pension settlement under Provisions of the Industrial Disputes (Central) Act 1947 in respect of extending second option of pension to those employees who did not opt for pension in the year 1993/1995. Pursuant to the settlement, the respondents' Bank issued a notification dated 21.08.2010, thereby extended another option to join the Pension Scheme under the Indian Bank (Employees) Pension Regulations, 1995. As per the notification, offers to join the Pension Scheme opens on 23.08.2010 and closes on 21.10.2010 and refund of Bank's contribution to PF along with stipulated contribution for funding the gap should be refunded on or before 20.11.2010.



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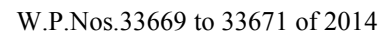
4. According to the petitioner, she had submitted her application dated 04.10.2010 through Sankarapuram Branch. Thereafter, she had received the communication dated 09.11.2010 from the respondents asking her to remit the pension fund gap contribution. Accordingly, she had remitted a sum of Rs.1,47,738.24/- in her Savings Bank Account with Tennur Branch before 20.11.2010. After remittance of the said amount, she had submitted her representation dated 08.12.2010 to consider her application for family pension. However, the request made by the petitioner was rejected by the impugned order of the second respondent, on the ground that the petitioner had not submitted the application for pension and also not remitted the required funds before 20.11.2010.

5. The learned counsel for the petitioner would submit that the petitioner had submitted her application on 04.10.2010 itself which was well within the time. She also remitted the required amount of Rs.1,47,738.24/- before 20.11.2010. Even then, the second respondent failed to consider the request made by the petitioner. She had opted for family pension and as such her right should not be prevented by saying that the application was not made within time.



6. The learned counsel for the petitioner had relied upon the Judgment of this Court in ***W.P.No.35055 of 2012*** in the case of ***G.Samraj Jayakumar Vs Indian Bank and Ors***, wherein this Court held that what is relevant is the date of exercising the option. The subsequent failure of the petitioner, if any, in not once again reiterating the authorization to pay the provident fund can at best be termed as a procedural one. It will not take away the entitlement of the petitioner otherwise. The scheme has to be read as a whole. When the facts are not in dispute that the petitioner has exercised his option as early as on 27.8.2010, which was duly received by the Branch, he cannot be non-suited on a technical ground. It was further held that the petitioner has not given any undertaking expressing his interest in not joining the pension scheme by way of irrevocable undertaking letter. If one has to see the scheme as a whole, the endeavour is to make an employee to come under the pension scheme. That is the reason why the revised pay of 2.8 times is sought to be included as a matter of course. It is only on an employee exercising the option of going out of the pension scheme by giving irrevocable undertaking letter, the consequences would follow.

7. In the above case, the facts are completely different. The brief fact in the said case is that the applicant has made his application on 27.08.2010 to



Though the said amount was very much available in the bank as on 31.08.2010, he has not given any authorization to debit the said amount.

9. A perusal of the application which is annexed in the typed set of papers revealed that it contains only the seal of the Bank and no signature is found. The date is also not mentioned in the application. That apart, the petitioner submitted another representation dated 08.12.2010, in which she stated that after receipt of her application dated 04.10.2010, the second respondent by its response dated 09.11.2010 asked the petitioner to remit the pension fund gap contribution. Accordingly, she had remitted a sum of Rs.1,47,738.24/- before 20.11.2010 in her Savings Bank account.

10. A perusal of the counter filed by the respondents revealed that the petitioner submitted her application only on 14.12.2010, i.e., after the cut-off



W.P.Nos.33669 to 33671 of 2014

date. The records also revealed that only after receiving the communication from the respondents, the petitioner submitted the application on 14.12.2010.

The scheme cannot be extended to those who had not submitted the option form in time. The option was open for 60 days despite which the petitioner failed to exercise the same. Having failed to submit the option form within the due date, the pension scheme could not be extended to the petitioner. Further she also failed to remit any amount within the time i.e., on or before 20.11.2010.

W.P.No.33670 of 2014:-

11. This writ petition has been filed for direction directing the Respondents to process the pension application of the petitioner dated nil and sanction pension to the Petitioner from the date she became eligible with all arrears of pension with applicable rate of interest within a time frame.

12. According to the petitioner, she submitted her application during the first week of October, 2010 through Keelapuliyur Branch. Therefore, she was served with a copy of the letter dated 06.10.2010 addressed to her husband to remit the pension fund gap contribution. Accordingly, she remitted a sum of Rs.1,03,061.40/- on 11.10.2010. The petitioner submitted her option form on 19.10.2010 and the same was received by the Corporate Office on 27.10.2019.



W.P.Nos.33669 to 33671 of 2014

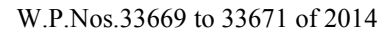
However, she had not remitted the requisite amount in her Bank account on or before 20.11.2010. The petitioner is required to remit the amount of a sum of Rs.1,03,061.40/- on or before 20.11.2010. However, a sum of Rs.73,000/- was only available in her account on the cut of date viz., 20.11.2010. Therefore, the option form submitted by the petitioner cannot be considered.

13. Further, a perusal of the communication dated 06.10.2010 addressed to her deceased husband informing about the option to join the Pension Scheme, revealed that it also not mentioned about her application details.

W.P.No.33671 of 2014:-

14. This writ petition has been filed for direction directing the Respondents to process the pension application of the petitioner dated 30.08.2010 and sanction pension to the Petitioner from the date she became eligible with all arrears of pension with applicable rate of interest within a time frame.

15. According to the petitioner, the petitioner submitted her option form on 30.08.2010 through Srirangam Branch. On receipt of the same, the respondents had given a copy of a letter dated 06.10.2010 asking the petitioner



Even then, the respondents did not consider her application dated 30.08.2010 and it is pending.

17. A perusal of the account statement produced by the petitioner revealed that she had only a sum of Rs.60,616/- in her Bank account on the cut off date. That apart, a perusal of the copy of application annexed in the typed set of papers revealed that it does not contain any acknowledgment or proof of her submission of option form. Further, the letter dated 06.10.2010 also revealed that it is nothing but intimation to the petitioner's husband with regard to apply for pension scheme. It is clearly mentioned that the last date for remitting the contribution is fixed on 20.11.2010 and the option has to be



W.P.Nos.33669 to 33671 of 2014

submitted on or before 21.10.2010. Therefore, the said communication sent to the petitioner's husband does not contain any request to make the payment and it was not at all relied upon in the application submitted for option to Pension Scheme. Therefore, the petitioner did not submit any option form on or before 21.10.2010 and also failed to deposit the amount to the tune of Rs.2,32,693/- on or before 20.11.2010. Therefore, no direction can be issued to the respondents to consider the request made by the petitioner to include her in the Family Pension, since no application has been filed by the petitioner so far.

18. In view of the above, all the writ petitions are devoid of merits and are liable to be dismissed. Accordingly, all the writ petitions are dismissed. Consequently, connected Miscellaneous petitions are closed. There shall be no order as to costs.

03.08.2023

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
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W.P.Nos.33669 to 33671 of 2014

G.K.ILANTHIRAIYAN, J.

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To

1. The Chairman and Managing Director,
Indian Bank,
Corporate Office/Head Office,
254 to 260, Avvai Shanmugam Salai,
Royapettah, Chennai-600 014.
2. The Assistant General Manager,
Indian Bank,
Corporate Office/Head Office,
HRM Department, I.R.C., II Floor,
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