BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.03.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.579 of 2020

I.Shahul Hameed ... Petitioner

Vs.

The Chairman,
Tamilnadu Grama Bank (TNGB),
Head Office, 6, Yercaud Road,
Hasthampatti, PO, Salem - 636 007. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the respondent to issue the petitioner payment of pension order and facilitate him to file the same under PGB (Employees) Pension Regulations, 2018 within a stipulated time fixed by this Honourable High Court based on his representation dated 19.08.2019.

For Petitioner : Mr.C.Masilamani

For Respondents : Mr.N.Dilipkumar
Standing Counsel

ORDER

Heard the learned counsel on either side.

2.The petitioner was an employee of the Tamilnadu Grama Bank. He retired from service on 30.06.2018. The question is whether he is eligible to be paid pension under Pandyan Grama Bank(Employees') Pension Regulations, 2018. There is no dispute regarding the petitioner's entitlement. The pension regulations were published on 18.12.2018 and the effective date was 01.04.2018. The petitioner had joined the bank way back in the year 1985 and the regulations clearly apply to the petitioner. The regulations envisaged exercise of option by the employees. Rule 3(1)(c) of the Pandyan Grama Bank(Employees') Pension Regulations, 2018, which governs the case of the petitioner is as follows:

> *3.Application:- (1)These regulations shall apply to any employee who*
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> *(c) was in the service of the Bank between the 1st day of September, 1987 and 31st March 2010 and continued in service on or after effective date but retired before hte notified date, if he exercises an option in writing within one hundred and twenty days from the notified date, to become member of the Fund and refund within sixty days of the expiry of the said period of one hundred and twenty days the entire final amounts received by him (the corpus*

comprising of Bank's contribution to provident fund under the Employees' Pension Scheme, 1995 and interest accrued thereon till the date of receipt by him on the amount) but without requiring to pay interest on such final amounts from the date of receipt of such final amounts to the date of refund:"

3. The petitioner after exercising option on 08.02.2019 submitted a formal application for pension on 08.04.2019. However, he failed to refund the amount received by him under the Employees Pension Scheme,1995. Only in October, 2019, he sent quite a few petitions calling upon the employer to quantify the amount of refund to be made by him. Since the petitioner's request did not elicit any response, he filed W.P.(MD)No.579 of 2020.

4. The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of this writ petition and called upon this Court to grant relief as prayed for. The learned counsel drew my attention to the communication sent by the employer to one Puliyoorudaiyan, advising him to remit the employees' contribution amount of Rs.6,10,007/- so as to enable the employer to disburse the pensionary benefits under the aforesaid regulations. The contention of the learned counsel appearing for the petitioner is that the petitioner did not receive any such communication from the

employer. Had the petitioner received such a communication, he would have promptly remitted the contribution amount. The fact that the petitioner had sent quite a few reminders to the employer and also NABARD indicated his intention to be a member of the fund created under the 2018 regulations.

5. I carefully considered the rival contentions and went through the materials on record. The relevant part of the regulations has already been extracted. The regulations were notified after the petitioner retired from service. However, they were made effective from 01.04.2018. As per Rule 3(1)(c) of the regulations, the petitioner should not only exercise option within 120 days from the notified date to become the member of the Fund but also refund the final amount received by him under the 1995 scheme within 60 days after exercising the option. The fact remains that the petitioner did not refund the amount received by him under the earlier pension scheme. The only question that calls for consideration is whether on this ground the petitioner stood disqualified. The learned counsel for the petitioner repeatedly urged that unless the petitioner had been notified and informed in writing as to the amount refundable by him, the petitioner could not have made any remittance. When some of the erstwhile colleagues of the petitioner were given such information regarding the refund to be made by them, there is no reason to treat the

petitioner otherwise. No doubt the contention of the learned counsel for the petitioner is attractive. But then, Rule 3(2) of the Pandyan Grama Bank(Employees') Pension Regulations, 2018, is as follows:

> *"3(2). An employee or family of the deceased employee not exercising the option under sub-regulation (1) or who, after exercising the option, not refunding the amount shall be deemed not interested in becoming a member of the Fund and shall continue to be governed under the Employees' Pension Scheme, 1995."*

6. The learned counsel for the respondent submitted that the quantum of refund was very much within the knowledge of the petitioner and he did not require to be formally educated in this regard.

7. My attention is drawn by the learned standing counsel to the very communication on which the learned counsel for the petitioner placed considerable reliance. The communication dated 20.05.2019 sent to Puliyoorudaiyan reads as follows: "*You are advised to remit the employer contribution amount of Rs.610007 or balance outstanding in EPF Passbook whichever is higher...*". The learned standing counsel would point out the petitioner was very much having the EPF passbook. Since the petitioner failed to remit within the window period of 60 days after exercise of the option Rule

3(2) will have to be given effect to. Rule 3(2) is not under challenge in this writ petition. When Rule 3(2) is not under challenge, this Court cannot ignore the mandate set out therein. If the petitioner had sent the representation which he eventually sent in October-2019 within the aforesaid window period, I would have definitely approached the issue from a different angle. Such is not the case here. I am therefore not inclined to grant relief.

8. This writ petition is dismissed. It is open to the petitioner move the governing trust Board of the Tamilnadu Grama bank seeking relaxation of the aforesaid rule. The dismissal of this writ petition will not come in the way of the Board exercising its discretion in favour of the petitioner. I however make it clear that any decision taken by the Board will not be subject to further challenge. The petitioner is given liberty to move the said Board. No costs.

13.03.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No

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To:

The Chairman,
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Head Office, 6, Yercaud Road,
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G.R.SWAMINATHAN, J.

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