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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 12.09.2023

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Judgment delivered on: 01.11.2023

+ **LPA 676/2019 and CM APPL. 46814/2019 & 46816/2019**

PUNJAB NATIONAL BANK & ORS

..... Appellants

Through: Mr. Rajesh Kumar Gautam,
Mr. Anant Gautam & Mr. Sumit
Sharma, Advocates.

versus

SUDHIR KUMAR MEHROTRA

..... Respondent

Through: Mr. Avinash Sharma & Mr.
Siddhant Chaudhary,
Advocates with respondent in
person.**CORAM:****HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE SANJEEV NARULA****JUDGMENT****SATISH CHANDRA SHARMA, C.J.**

1. The instant LPA has been filed challenging judgment dated 01.08.2019 passed in W.P.(C) No. 366/2019 ("**Impugned Judgment**"), whereby the learned Single Judge allowed the writ petition preferred by the Respondent-herein.



2. The facts in brief are that the Respondent-herein was employed with the Appellant Bank and was retired prematurely by the Competent Authority on 27.09.2004 on the basis of a review done by the Special Review Committee under Regulation 19 of Punjab National Bank (Officers) Service Regulations, 1979 (“**Service Regulations**”). The Appellants state that the Respondent was paid provident fund, including Bank’s contribution to provident fund, and gratuity, however, was not paid pension as he had not opted for the same under the Punjab National Bank (Employees) Pension Regulations, 1995 (“**Pension Regulations**”). It is their case that as per the Pension Regulations, pension is payable only to those employees who opted for payment of pension in lieu of the Bank’s contribution to provident fund within the stipulated period.

3. It is stated that the employees who had failed to opt for pension in lieu of Bank’s contribution to provident fund in 1995, were given one more opportunity to opt for the same on 27.04.2010 *vide* Joint Note/Bipartite Settlement (“**Joint Note**”) signed at the industry level between Indian Banks’ Association (“**IBA**”) representing members banks and various Workmen Unions/Officers Association. As per the Joint Note, certain employees as specified in the Joint Note, were given a 2nd option to join the pension scheme, provided they refund the Bank’s Contribution to provident fund already received by them.

4. The Department of PF & Pension Fund of the Appellant Bank (“**Respondent No. 2**”) issued Circular No. 06/2018 dated 07.06.2018 (“**Subject Circular**”) offering 2nd Option for Pension to Compulsory Retired Officers/Employees. The Respondent applied for pension under the Subject Circular on 08.08.2018. It is stated that on 10.08.2018, the



Respondent received a letter from the Appellant Bank wherein it was stated that the Respondent was retired in public interest under the Service Regulations and therefore is not eligible to exercise 2nd option to join the pension scheme as per the Subject Circular.

5. Subsequent to the letter dated 10.08.2018 received by the Respondent, the Respondent wrote a letter dated 14.08.2018 to the President/General Manager of the All India Punjab National Bank Officers Association and a letter dated 02.09.2018 to the Chairman of the Appellant Bank, regarding non-consideration of his application for pension made under the Subject Circular. Subsequently, on 11.09.2018, the Respondent states in the underlying writ petition that he received a call from the Chief Manager of Respondent No. 2, asking the Respondent to deposit his contribution towards provident fund of amount of Rs. 10 lakhs. The Respondent is stated to have deposited the aforesaid amount through RTGS however received back the amount on the same day. Aggrieved, the Respondent approached this Court by way of the underlying writ petition with the following prayer:

“Issue a writ in the nature of mandamus or any other writ(s), order(s) or direction(s), directing the Respondents to release the pension to the Petitioner and the arrears of pension with effect from 27.11.2009 in terms of Circular No.06/2018 dated 07.06.2018 issued by the Respondent Bank”.

6. The learned Single Judge, after hearing the counsels for the parties and perusing the material on record allowed the writ petition with a direction to the Appellant-herein to release the retiral benefits and arrears of the Respondent-herein within 4 weeks. The relevant paragraphs of the Impugned Judgment are reproduced as under:



“19. Mr. Sharma has strongly argued that those officers who retired in public interest either compulsorily or prematurely, they are getting pension benefits whereas it is denied to the petitioner.

20. Learned counsel for the respondent Bank has disputed this fact and submitted that the officers, those at the time of retirement opted for pension, only they are getting pension, whereas, the petitioner accepted the bipartite settlement and received the gratuity and PF amount, therefore, did not opt for pension. Accordingly, the petitioner is not entitled for the same.

21. The fact remains that as per the bipartite settlement, the petitioner received PF and gratuity amount. Thereafter, he deposited an amount of ₹10,06,000/- (bank contribution plus interest) and the same was returned to the petitioner on the same day.

22. It is not in dispute that the petitioner rendered service of 34 years and attained the age of 55 years on the day of retirement in public interest. As per the circular, the minimum service required is 10 years and 55 years.

23. Thus, the petitioner qualified for both the conditions. Moreover, counsel for the respondent failed to satisfy this court, what was the occasion to retire the petitioner in public interest. If there was no ground in that case, the petitioner is entitled for all retiral benefits.

24. Since the respondent bank returned an amount of ₹10,06,000/- to the petitioner on 12.09.2018, therefore, the petitioner is directed to deposit the said amount with interest @ 7.5% from 12.09.2018 till the date of deposit and thereafter the respondent bank is directed to release his retiral benefits and arrears within four weeks.

25. In view of above discussion, the petition is allowed and disposed of.

26. Pending application also stands disposed of.”

7. Learned Counsel for the Appellant submits that the Respondent is not eligible for exercising the 2nd Pension Option as provided for under the



Subject Circular as he was prematurely retired from service under Regulation 19 of the Service Regulations and the Subject Circular applies only to those employees who had been compulsorily retired. He submits that as the Respondent was prematurely retired, he was not entitled to the benefits of pension as provided for under Regulations 32 and 33 of the Pension Regulations.

8. Learned Counsel for the Appellant further submits that the benefit of pension is only available to those employees who had opted for payment of pension at the time such an option was invited, and were “pension-optee” at the time of retirement. He submits that as the Respondent was not a “pension-optee” at the time of his retirement, he is not entitled to the benefit of pension as provided under the Subject Circular.

9. It is submitted by the learned Counsel for the Appellant that there is a distinction and difference between “premature retirement” and “compulsory retirement” under Regulations 32 and 33 of the Pension Regulations and the learned Single Judge has failed to take that into consideration. It is submitted that the benefit of pension available to an employee who has prematurely retired or one who has been compulsorily retired can only be availed if they have opted for the benefit of pension when such option was available. It is their contention that the Respondent did not exercise their option for availing pension benefits when the option was available, and cannot opt for the same now. He therefore submits that the Respondent is not entitled to the benefits of pension and the Impugned Judgment is erroneous.

10. *Per Contra*, the learned Counsel for the Respondent relies on a Circular No. HR&IR/CIR/G2/BRK/4684 dated 16.03.2018 issued by the IBA to all member banks who were party to the Joint Note (“IBA



Circular”) to submit that he fulfils the criteria provided therein to avail pension benefits, and he accordingly made an application to avail pension benefits and deposited a sum of Rs. 10 lakhs, however the same was returned to him and his application was rejected. He supports the Impugned Judgment and relies upon the same to submit that the learned Single Judge has rightly directed the Appellants to grant him retiral benefits and arrears.

11. Heard learned counsels for the parties and perused the material on record.

12. It is undisputed that the Appellant has been retired in public interest by a Special Committee of the Bank in accordance with Regulation 19 of the Service Regulations. This is evident from the letter dated 27.09.2004 which has been annexed and is reproduced as under:

“Ref: RMSD/

By Hand

27/09/2004

Shri S.K. Mehrotra

Sr. Manager (Under Suspension)

BO: Nauroji Nagar, New Delhi

Shri S K Mehrotra

G-52, Setor-41

NOIDA (UP)

*Reg: Special Review for continuation in Bank service under
PNB Officers Service Regulations 1979*

The Special Review proposal in terms of Regulation 19 of PNB (Officers) Service Regulations 1979 in your case was placed before the Chairman & Managing Director, the Competent Authority, who after considering your performance has opined that your continuance in bank's service would not be in public interest and has therefore decided to retire you from Bank's service with immediate effect.

You are accordingly retired from Bank's services with immediate effect. A cheque No.870477 for Rs.71199.54 being an amount equivalent to three months substantive salary/ pay and allowances in lieu of notice in accordance with the provisions of Regulation 19 of PNB (Officers) Service



Regulations, 1979 is enclosed. You may contact Chief Manager BO Nauroji Nagar for settlement of your terminal dues

Sd/-

DY. GENERAL MANAGER”.

13. Learned Counsel for the Appellant has relied heavily upon regulations 32 and 33 of the Pension Regulations to state that the benefit of pension under the said regulations would only be available to those employees who had opted for pension when the option had been presented to them. It is his submission that the Respondent has been retired in public interest under Regulation 32, which deals with “Premature Retirement Pension”. He has argued that under the Subject Circular, the grant of 2nd Option for joining the pension scheme is available only to those employees who have been compulsorily retired under Regulation 33 of the Pension Regulations.

14. It is undisputed that the Respondent had failed to opt for the pension scheme when the first option was presented to him and that is why he was not granted pension benefits but was given other dues payable to him at the time of retirement on 27.09.2004. Thereafter, by virtue of the Joint Note, it was decided that a 2nd option to join the pension scheme would be available to certain employees, which included those employees who were in service of the Bank prior to 29.09.1995 (Nationalised Banks) or 26.03.1996 (Associate Banks of State Bank of India), as the case may be, and had retired after the said date but prior to the date of the Joint Note, i.e., 27.04.2010. The relevant extract of the Joint Note is reproduced as under:

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



(I)

(II) (a) were in service of the bank prior to 29th September 1995 in case of Nationalized Banks / 26th March 1996 in case of Associate Banks of State Bank of India and retired after that date and prior to the date of this Settlement;

(b) exercise an option in writing within 60 days from the date of offer to become a member of the Pension Fund and

(c) refund within 30 days after expiry of the said period of 60 days, the entire amount of the banks contribution to the Provident Fund and interest accrued thereon received by the employee on retirement together with his share in contribution towards meeting 30% of Rs.3115 crores which is estimated and reckoned as the funding gap for those eligible under Clause 2(II), 2 (III) and 2 (IV) of this agreement. On an individual basis, the payment over and above the bank's contribution to Provident Fund and interest thereon has been worked out at 56% of the said amount of bank's contribution to Provident Fund and interest thereon received by the employee on retirement”.

15. In view of the aforestated Joint Note, the Appellant Bank issued the Subject Circular, which provided those employees who had been compulsorily retired and fulfilled the criteria provided, a 2nd option to join the pension scheme. The relevant extracts of the Subject Circular are reproduced as under:

“Another Pension Option for joining the existing Pension Scheme was extended to the eligible category of officers/employees as per Bipartite Settlement/Joint Note signed on 27.04.2010, detailed guidelines for which were conveyed by IBA vide their Circular No.C1R/HR&IR/G2/665/90/2010-11/999 dated 10.08.2010. However, 2nd option of pension was not made available to the employees/officers who were compulsorily retired by the bank.

2. Recently IBA, vide letter No. HR&IR/CIR/G2/BRK dated 16-03-2018 has advised the Banks that 2nd option of pension may be allowed to

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all ex-officers/ ex-employees who were compulsorily retired from bank's service between 29-09-1995 to 27-04-2010 on same terms and conditions as are mentioned in Bipartite Settlement/ Joint note dated 27.04.2010. As per the agreed terms and conditions of said Bipartite Settlement/Joint Note, Pension/Family pension shall be payable with effect from 27-11-2009 provided that employees/officers who are compulsorily retired after that date shall get pension from the respective dates of such retirement in the IBA letter. It is inter-alia mentioned that Court cases, if any, in the matter may be withdrawn forthwith.

3. *Accordingly, The Board of Directors in its meeting held on 14-05-2018 has approved to extend option for pension to Compulsory Retired officers/employees in terms of Joint Note/Bipartite Settlement 27.04.2010 provided they withdraw the court cases filed by them, if any, against the Bank for not extending pension option to them.*

4. *The pension option to be extended to compulsorily retired employees / officers, shall be to those who:*

(a) were in the service of the bank prior to 29th September 1995 and compulsorily retired from bank's service between 29-09-1995 to 27-04-2010 provided-

- *exercise an option in writing within 60 days from the date of offer, to become a member of the Pension Fund and*
- *refund within 30 days after expiry of the said period of 60 days, the entire amount of the Bank's Contribution to the Provident Fund and Interest accrued thereon received by the employees on compulsory retirement, plus 56% of the said received amount as his/her share in contribution towards meeting the funding gap as per the said settlement.*

(b) the family of those employees who were in the service of the bank prior to 29th September 1995 and compulsorily retired from bank's service between 29-09-1995 to 27- 04-2010 but have expired provided-

- *the family of the deceased employees exercise option in writing within 60 days of the offer to become a member of the Pension Fund and*
- *refund within 30 days after expiry of the said period of 60 days, the entire amount of the Bank's Contribution to the Provident Fund and interest accrued thereon received by the deceased employee on retirement plus 56% of the said received amount as his / her share in contribution towards meeting the funding gap as per settlement”.*



16. The Subject Circular makes reference to the IBA Circular, which has been relied upon by the Respondent in support of his case. The relevant extracts of the IBA Circular read as under:

“2. After holding various rounds of discussions in the matter, consensus was arrived at between the parties and a Bipartite Settlement/ Joint Note was signed on 27.4.2010 to extend another option of pension to those Workmen/Officers who:-

(a) were in the service of the Bank prior to 29th September, 1995 in case of the Nationalised Banks/ 26th March, 1996 in case of Associate Bank of State Bank of India and continue in service of the Bank on the date of signing above mentioned Bipartite Settlement/ Joint Note;

(b) exercise an option in writing within 60 days from the date of offer, to become a member of the Pension Fund and

(c) authorise the Trust of the Provident Fund of the Bank to transfer the entire contribution of the Bank along with interest accrued thereon to the credit of the Pension Fund. In addition, the individual employee/officer has to pay @ 2.8 times of the revised pay for the month of November 2007.

(d) were in service of the Bank prior to 29th September 1995 in case of Nationalised Banks/ 26th March 1996 in case of Associate Banks of State Bank of India and retired after that date and prior to the date of above mentioned Bipartite Settlement/ Joint Note i.e. 27.04.2010.

(e) exercise an option in writing within 60 days from the date of the offer to become a member on the pension fund and

(f) refund within 30 days after expiry of the said period of 60 days, the entire amount of the Bank's contribution to the Provident Fund and interest accrued thereon received by the employee/officer on retirement together with the payment over and above the said amount at 56% of the amount”.

“8. To work out the methodology in this regard, a meeting of the GMs (HR) was convened on 28.02.2018 at IBA. After detailed discussions, a consensus has been arrived at to extend the option of pension to compulsorily retired employees/officers



on same terms & conditions as are mentioned in Bipartite Settlement/Joint Note dated 27.04.2010. As per the agreed terms & condition of said Bipartite Settlement/Joint Note, Pension/Family Pension shall be payable with effect from 27th November, 2009, provided that employees/officers who are compulsorily retired after that date shall get pension from the respective dates of such retirement. Court cases, if any, in the matter may be withdrawn forthwith”.

17. A reading of the aforementioned documents makes it clear that under the Joint Note, any employee who had been in service of a Nationalised Bank prior to 29.09.1995 or in the service of an Associated Bank of the State Bank of India prior to 26.03.1996, and had retired from the Bank after the date (as applicable to such employee) but prior to the date of the Joint Note, i.e. 27.04.2010, is entitled to exercise a 2nd Option to join the pension scheme. The Joint Note makes or creates no distinction between premature retirement and compulsory retirement when granting such benefits, and extends the benefits to all those employees who meet the criteria prescribed under the Joint Note, regardless of whether they were retired compulsorily under Regulation 33 of the Pension Regulations, or if they were retired prematurely in public interest under Regulation 32 of the Pension Regulations.

18. A reading of the IBA Circular reveals that initially, the benefit of 2nd Option under the Joint Note was not being extended by banks to those employees who had been compulsorily retired, and therefore a multitude of litigation arose in this regard before various fora, which prompted the IBA to advise all member Banks that the benefits under the Joint Note should be extended to compulsorily extended employees as well, and hence the IBA



Circular was issued. The Subject Circular was issued following the advise of the IBA in the IBA Circular.

19. In the considered opinion of this Court, the IBA Circular and Subject Circular cannot be read in a restrictive sense to mean that only those employees who had been compulsorily retired can exercise a 2nd Option to join the pension scheme, as doing so would result in restricting the terms of the Joint Note, which would be absurd and impermissible. The benefits of the Joint Note would extend to all such employees who fulfil the criteria provided therein, regardless of whether the retirement was a premature retirement or a compulsory retirement.

20. The conditions provided under the Joint Note and the Subject Circular clearly specify that the eligible employee should exercise his option within 60 days from the date of the offer made to him. It is not the case of the Appellant Bank that the Respondent had received any previous offer or intimation regarding his eligibility to exercise a 2nd Option to join the pension scheme prior to the issuance of the Subject Circular and he had failed to exercise his right at that time. In the absence of such a contention by the Appellants, it must be presumed that the issuance of the Subject Circular is the first time the Respondent was made an offer or was made aware of his right to exercise a 2nd option to join the pension scheme.

21. The fact remains that the Respondent was an employee of the Appellant Bank for 34 years till 27.09.2004, when he was prematurely retired as per Regulation 19 of the Service Regulations. Therefore, he was an employee with the Bank prior to 29.09.1995/26.03.1996 and had retired prior to 27.04.2010. Consequently, the Respondent was entitled to receive an offer to exercise a 2nd Option to join the pension scheme as per the terms



of the Joint Note. It is not in dispute that the Respondent did not receive an offer as per the Joint Note prior to the issuance of the Subject Circular. Once the Respondent received intimation of his right to exercise a 2nd Option *vide* the Subject Circular, the Respondent had promptly submitted his application to opt in for the Pension Scheme.

22. In the considered opinion of this Court, the Appellant has failed to satisfy this Court how the Respondent does not meet the criteria to exercise a 2nd Option to join the pension scheme in terms of the Joint Note. This Court is of the indubitable view that the learned Single Judge has rightly observed that the Respondent is entitled to the retiral benefits. Accordingly, the challenge made by the Appellant to the Impugned Judgment fails.

23. With these observations, the appeal stands dismissed, along with pending application(s), if any.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SANJEEV NARULA)
JUDGE

NOVEMBER 01, 2023