IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2902 of 2024

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Tara Devi, Wife of Late Jagjivan Ram, Resident of village Runaki, via Kishanganj, P.S.- Routa, District- Purnia.

... ... Petitioner/s

Versus

1. Uttar Bihar Gramin Bank through its Chairman having its Head Office, Kamalbagh Chowk, Muzaffarpur, Bihar- 842001.
2. The Chairman, Uttar Bihar Gramin Bank, Head Office, Kamalbagh Chowk, Muzaffarpur, Bihar- 842001.
3. The Chief Manager, Uttar Bihar Gramin Bank, Head Office, Kamalbagh Chowk, Muzaffarpur, Bihar 842001.
4. The Regional Manager, Uttar Bihar Gramin Bank, Regional Office Purnia, Sri Nagar Hata, Kosi Colony, Purnia.
5. The Branch Manager, Uttar Bihar Gramin Bank, Anagarh Hat Branch, District- Purnia.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Radha Mohan, Advocate
For the Respondent/s	:	Mr. Prabhakar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 09-09-2024

Heard the parties.

2. The petitioner is aggrieved by the order contained in letter no. 454 dated 17.08.2023 (Annexure-P/10) issued under the signature of the Chief Manager, Uttar Bihar Gramin Bank, whereby the claim of the petitioner for her family pension has been rejected on the ground that the petitioner failed to refund the employees contribution to the Provident Fund to the Pension Fund as per the provisions mentioned in Regulation 3 of the

Uttar Bihar Gramin Bank (Employees) Pension Regulation, 2018 (for short ‘the Regulation 2018’).

3. The husband of the petitioner (Late Jagjivan Ram) was appointed on the post of part time Messenger-cum-Sweeper at Uttar Bihar Gramin Bank, Anagarh Hat Branch, District-Punrea, (the then Koshi Kshetriya Gramin Bank) on 01.01.1992. On being found satisfactory service, the service of the husband of the petitioner was regularized vide order no. 8181 dated 28.02.1997 w.e.f. 01.01.1992. The husband of the petitioner was allotted Employee No. 351100884 vide office order no. 20 dated 13.05.2009 and accordingly his seniority stood determined. The husband of the petitioner while serving the Bank died in harness on 20.07.2012, leaving behind his wife and five children.

4. On account of sudden demise as noted hereinabove, the petitioner filed her representation on 27.07.2012 before the Regional Manager, Uttar Bihar Grameen Bank, Regional Officer, Purnea for family pension and other benefits.

5. In response thereto, the petitioner was allowed family pension by the Assistant Commissioner, Employees’ Provident Fund Organization, Bhagalpur under Employees’ Pension Scheme, 1995 with a condition of verification of the family pensioner vide order dated 07.11.2012. The petitioner has also been granted gratuity, leave encashment and GSSI vide

letter no. 1352 dated 30.12.2013 but, surprisingly, despite the order being passed by the Assistant Commissioner, Employees' Provident Fund Organization, Bhagalpur, the family pension of the petitioner could not have been initiated by the respondent/Bank for the reason best known to them.

6. The petitioner being a hapless widow kept on filing representation but remained unheeded. She finally got to know through an information received under the Right to Information Act, 2005 that her family pension has not been initiated because she has failed to deposit the amount of contribution given by the Bank in the Provident Fund Account by the due date as mentioned in rule 3 of the Regulation, 2018.

7. In the light of the aforesaid fact, the petitioner made a request to all the concerned and higher officials of the Bank to consider her claim for family pension but finally it came to be rejected vide letter no. 454 dated 17.08.2023 on the ground afore-noted.

8. In the aforesaid premise, left with no option, the petitioner knocked the door of this Court by invoking the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution.

9. Learned counsel for the petitioner adverting to the aforesaid fact contended that the petitioner apart from a widow

is a Pardanasin lady and not acquainted with the mandatory prescription as mentioned in rule 3 of the Regulation, 2018 to exercise an option in writing within 120 days from the date of death of the employee or the expiry of 120 days from the notified date, whichever is later, to become member of the Fund and refund within 60 days of the expiry of the said period of 120 days, the amount received by the family. The petitioner has always been ready to deposit the required amount but the Bank refused to accept the amount on account of the fact that the petitioner failed to deposit the amount of contribution within the statutory period.

10. Learned counsel for the Bank in support of the impugned order contended that rule 3 of the Regulation, 2018, clearly prescribes the statutory period to exercise an option in writing. Once, the petitioner failed to exercise the option, there is no provision for condonation of delay and, as such, the claim of the petitioner has rightly been rejected.

11. This Court has heard learned counsels for the parties and also perused the materials on record.

12. Undoubtedly, rule 3 of the Regulation, 2018 prescribes the procedures for exercise of option for family pension, which reads as under:

> "**3. Application.–** (1) These regulations shall

apply to any employee who -

(a) was in the service of the Bank on or after the 1st day of September, 1987 but had retired on or before 31 March, 2010 who exercise an option in writing within one hundred and twenty days from the notified date, to become a member of the Fund and refund within sixty days after 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 of 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; or

(b) was in the service of the Bank on or after the 1st day of September, 1987 who continue to be in the service of the Bank on or after the notified date and exercise an option in writing within one hundred and twenty days from the notified date, to become member of the Fund and cause to transfer the entire contribution of the Bank along with the interest accrued thereon, to the credit of the Fund constituted under regulation 4; or

(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 the 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 of 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: Provided that the family of the employee who –

(i) was in the service of the Bank on or after the 1st day of September, 1987 but died on or before 31st March, 2010; or

(ii) joined the service between 1st September, 1987 and 31 March, 2010 and died before the effective date; or

(iii) joined the service of the Bank between 1st September 1987 and 31 March 2010 and continued in service on or after the effective date but had died before one hundred twenty days after the notified date without the employee exercising an option in writing to become member of the Fund,

shall be entitled to family pension under these regulations, if the family of such deceased employee exercises an option in writing within one hundred and twenty days from the date of the death of the employee or the expiry of one hundred and twenty days from the notified date, whichever is later, 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 the family (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 of the amount by the family) but without requiring to pay interest on such final amounts from the date of receipt of such final amounts to the date of refund.

(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.

(3) Notwithstanding anything contained in this regulation, any employee who joined the service of the Bank on or after the 1st April, 2010 shall have an option either to be covered by the National Pension System or to continue to be governed under the Employees' Pension Scheme, 1995.

(4) Notwithstanding anything contained in this regulation, any employee who join the service of the Bank on or after the 1st April, 2018 shall be covered by the National Pension System."

13. Bare reading of the afore-noted Regulation, it appears that the option must be exercised in writing within 120

days from the date of the death of the employee or the expiry of 120 days from the notified date, whichever is later, to become member of the Fund. It is not in dispute that the petitioner failed to exercise the option and deposited the amount within the period prescribed and thus the Bank has had no option but to reject the claim for pension.

14. The grant of pension to the dependent of the employees, who died in harness has been introduced through the statutory provisions, is a beneficial provision to provide succor to the bereaved family who left in penury because of sudden demise of bread-earner. Prescribing the period to exercise the option and deposit the amount within the stipulated period mandatory is one thing, but in any circumstances, not condoning the delay to exercise the option even in exceptional circumstances would amount to defeating the very beneficial purpose.

15. Irrespective of the fact that the provisions prescribed under the Regulation, 2018 do not allow to entertain a delayed petition but the technicalities alone must not defeat the substantial justice. Trite it is that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so [vide **State of Karnataka v. Kuppuswamy**

Gownder and Others ((1987) 2 SCC 74)].

16. In the aforesaid facts and circumstances and taking note of the averments made in the writ petition that the petitioner, a widow of the erstwhile employee, has always been ready to refund the amount of contribution given by the Bank to the pension fund as per the provisions prescribed under Regulation 3 of the Regulation, 2018, this Court exercising the jurisdiction under Article 226 of the Constitution, for the ends of justice, set aside the impugned order as contained in letter no. 454 dated 17.08.2023 (Annexure-P/10) and relegates the matter to respondent no.2, the Chairman, Uttar Bihar Gramin Bank to consider the claim of the petitioner for family pension afresh, preferably within a period of eight weeks from the date of receipt or production of a copy of this order.

17. The writ petition stands allowed to the extent indicated above.

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19-09-2024
Transmission Date	