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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-23868-2011
Date of Decision:16.01.2024

ANITA & ANR. .... Petitioners

Versus

PUNJAB NATIONAL BANK & ORS. ..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Sahil Soi, Advocate and
Mr. S.P. Soi, Advocate for the applicant-petitioners.

Ms. Preeti Grover, Advocate for
Mr. Saurav Verma, Advocate
for the respondents.

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<u>JAGMOHAN BANSAL, J. (Oral)</u>

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 15.11.2011 (Annexure P-11) whereby claim of the petitioner *qua* pensionary benefits/family pension has been declined.

2. The husband of petitioner No.1 joined respondent-Bank as Clerk in February' 1979 and he passed away on 19.02.1994 in harness. The petitioner No.2 is son of deceased employee. The petitioner No.2 passed his 12th standard examination in 2002 and thereafter in 2004 applied for compassionate appointment. The respondent vide order dated 13.08.2004 rejected application of the petitioner seeking compassionate appointment. The petitioners preferred CWP No.17666 of 2006 before this Court seeking setting aside of order dated 13.08.2004 passed by the respondents. A Division Bench of this Court vide order dated 29.08.2008

disposed of said petition with liberty to petitioner to approach respondents for retiral benefits except appointment on compassionate ground. The relevant extracts of the order dated 29.08.2008 reads as:

> *"Learned counsel for the petitioner states that the petitioner be allowed to withdraw this writ petition with liberty to claim family pension and other retiral benefits from the respondents. He further states that the petitioner does not wish to press her claim with regard to the compassionate appointment.*
>
> *In view of the statement made by learned counsel for the petitioner, writ petition is dismissed as withdrawn with liberty to the petitioner to file appropriate representation before the competent authority for the other reliefs except appointment on compassionate ground, and the same be considered."*

3. The petitioner vide application dated 12.09.2008 requested the respondent to grant her family pension and other retiral benefits. The respondent did not adjudicate said application and petitioner preferred CWP No.3345 of 2010 before this Court seeking direction to respondents to decide her representation. The respondent vide order dated 15.11.2011 (Annexure P/11) rejected claim of the petitioner on the ground that petitioner was supposed to exercise option of family pension within 120 days from the notified date whereas petitioner is attempting to exercise option after 12 years.

4. Learned counsel for the petitioner submits that petitioners were pursuing their remedies before respondent-Bank as well as Courts, thus, delay of 12 years took place in exercising option of family pension. The delay was unintentional and beyond the control of the petitioner.

5. Per contra, learned counsel for the respondents submits that

petitioner is claiming family pension in terms of Punjab National Bank (Employees) Pension Regulations' 1995 (hereinafter referred as 1995 Regulations) and Regulation 3(8) of Chapter II of said Regulations categorically provides that option of family pension shall be exercised within 120 days from the notified date. The husband of the petitioner No.1 passed away in 1994 and Regulations of 1995 came to be notified w.e.f 29.09.1995 and petitioners were supposed to exercise option within 120 days from 29.09.1995 whereas they have filed representation in 2008. The Bank has no power to condone delay and if application of the petitioner is accepted, it would open pandora box of similar applications.

In support of her contention, learned counsel for the respondents relies upon judgment of Supreme Court in ***'Jai Singh B. Chauhan Vs. Punjab National Bank and others' 2005 (6) SCC 262.***

6. I have heard the arguments of both sides and with the able assistance of learned counsels have perused the record.

7. A two Judge Bench of Supreme Court in ***Jai Singh B. Chauhan*** (supra) has adverted with similar question and has held that an employee cannot claim ignorance and cannot claim that publication in the Official Gazette cannot be treated as notice to the employees. The relevant extracts of the judgment read as:

> *"8. In terms of Regulation 1, the Regulations were deemed to have come into force on the date of their publication in the Official Gazette.*
>
> *9. Regulation 3, so far as relevant reads as follows:*
>
> *"3. These Regulations shall apply to employees who,—*
>
> ***

> *(3)(a) are in the service of the Bank before the notified date and continue to be in the service of the Bank on or after the notified date; and*
>
> *(b) exercise an option in writing within one hundred and twenty days from the notified date to become member of the fund; and*
>
> *(c) authorise the trust of the provident fund of the Bank to transfer the entire contribution of the Bank along with the interest accrued thereon to the credit of the fund constituted for the purpose under Regulation 5."*

10. As per Regulation 3(3)(b) option was to be exercised in writing within one hundred and twenty days from the notified date to become member of the fund.

11. Regulation 3(3)(c) is also of considerable importance. It required transfer of the entire contribution of the Bank along with interest accrued thereon to the credit of the fund constituted for the purpose under Regulation 5 and authorised the trust of the provident fund of the Bank to effect the transfer.

12. As noted by the High Court, the appellant was participating in the provident fund account and he was being paid provident fund contribution which was being deposited to his provident fund account.

13. So far as argument advanced by learned counsel for the appellant that the publication in the Official Gazette cannot be treated as notice to the appellant is concerned, the same has no substance and deserves to be rejected outright.

*14. In **M/s Pankaj Jain Agencies v. Union of India [(1994) 5 SCC 198]** a three-Judge Bench of this Court held as follows:*

> *"17. In the present case indisputably the mode of publication prescribed by Section 25(1) was complied with. The notification was published in the Official*

> *Gazette on 13-2-1986. As to the effect of the publication in the Official Gazette, this Court held (Srinivasan case [B.K. Srinivasan v. State of Karnataka, (1987) 1 SCC 658 : AIR 1987 SC 1059] , AIR at p. 1067 : SCC pp. 672-73, para 15):*
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> *'Where the parent statute is silent, but the subordinate legislation itself prescribes the manner of publication, such a mode of publication may be sufficient, if reasonable. If the subordinate legislation does not prescribe the mode of publication or if the subordinate legislation prescribes a plainly unreasonable mode of publication, it will take effect only when it is published through the customarily recognised official channel, namely, the Official Gazette or some other reasonable mode of publication.'*
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> *18. We, therefore, see no substance in the contention that notwithstanding the publication in the Official Gazette there was yet a failure to make the law known and that, therefore, the notification did not acquire the elements of operativeness and enforceability. This contention of Shri Ganesh is unacceptable."*

> *15. Further, as rightly submitted by learned counsel for the respondents the letter of the Government of India dated 19-2-2002 does not in any way assist the appellant. It only applies to the two indicated categories of employees and undisputedly the appellant does not belong to any of the said categories.*"

8. The petitioner was concededly directed vide order dated 29.08.2008 passed by this Court to approach authorities to claim family pension, however, in the said order, the question of delay was not adverted with. The husband of petitioner No.1 concededly passed away

on 19.02.1994 and family pension scheme was notified on 29.09.1995 and as per said scheme petitioners were duty bound to exercise option of family pension within 120 days. The petitioners were further required to refund Banks' Contribution Provided Fund alongwith interest within said period. The petitioners have been released provided fund and they have not exercised option within 120 days from 29.09.1995. Admittedly, there is delay of 12 years. This Court could sympathetically consider case of the petitioner had there been a small delay, however, this Court cannot condone delay of 12 years especially when there is no provision in the 1995 Regulations.

9. In the wake of above facts and findings, the present petition deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

16.01.2024
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Whether speaking/reasoned	Yes/No
Whether Reportable	*Yes/No*