

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-23861-2023

Date of Decision:07.02.2024

KISHORE KUMAR

..... Petitioner

Versus

PUNJAB NATIONAL BANK CIRCLE OFFICE AND OTHERS

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Yogesh Jain, Advocate
for the petitioner.

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

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking direction to respondent-Bank to sanction and grant pension to the petitioner in terms of Punjab National Bank (Employees) Pension Regulations, 1995 (for short '1995 Regulations').

2. The petitioner on 22.09.1983 joined respondent-Bank. The petitioner came to be implicated in an enquiry and he was awarded punishment of removal from service. The petitioner assailed order of removal before Central Government Industrial Tribunal cum Labour Court which vide order dated 11.04.2011 set aside punishment of removal from service. The respondent unsuccessfully assailed order of

Labour Court before higher courts including Supreme Court. The petitioner came to be reinstated vide order dated 17.12.2012. The petitioner was asked to liquidate all outstanding dues before his retirement which was due on 30.04.2023. On the asking of petitioner, the respondent- Bank informed the petitioner that he would not get pension because he has not opted for the same. The petitioner submitted representation dated 28.04.2023 seeking permission to file option so that he may be granted pension. The petitioner retired on 30.04.2023 on attaining the age of superannuation.

3. Learned counsel for the petitioner submits that petitioner had filed option of pension before his termination, however, at this moment, he is not having copy of the option and he could not get information in this regard from the respondent-Bank.

4. Per contra, learned counsel for the respondents submits that petitioner in terms of 1995 Regulations was duty bound to file option within 120 days from the date of introduction of aforesaid regulations, however, petitioner did not opt for the pension. As per their record, the petitioner has never filed option, thus, at this belated stage, claim of the petitioner cannot be considered.

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.

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

6. A two Judge Bench of Supreme Court in **Jai Singh B. Chauhan** (supra) 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):

‘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.’

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.”

7. The petitioner is claiming that he had filed option prior to introduction of 1995 Regulations, thus, he did not file fresh option after introduction of 1995 Regulations. The petitioner has not placed on record copy of option which he filed prior to introduction of 1995 Regulations. The petitioner could have a case had he placed on record copy of the option indicating that he had opted even prior to 1995 Regulations. The petitioner could not be asked to file fresh option once he had filed option prior to 1995 Regulations, however, there is no documentary evidence disclosing that petitioner had filed option prior to 1995 Regulations. The matter cannot be adjudicated on the mere averments of the petitioner. The petitioner was reinstated on 17.12.2012 and he continued to work till 30.04.2023. The petitioner during this period was very much aware that he is not entitled to pension because Bank was not making contribution towards the pension scheme. The petitioner opted to remain silent from December’ 2012 to 2023 and this Court, at this belated stage, cannot come for rescue of the petitioner. 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 in the absence of any express provision in the 1995 Regulations. In the 1995 Regulations, it was categorically provided that option for pension should be filed within 120 days. The petitioner is not disputing the fact that in the absence of earlier option he was bound to file option within 120 days.

8. In the wake of above discussions and findings, this Court is of the considered opinion that present petition sans merit and deserves to

be dismissed and accordingly dismissed. It is made clear that petitioner is at liberty to move an appropriate application, if at any stage, he gets copy of option which he claims that he had filed prior to introduction of 1995 Regulations.

(JAGMOHAN BANSAL)

JUDGE

07.02.2024

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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>