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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 08.04.2024***

+ LPA 280/2024

PUNJAB NATIONAL BANK

..... Appellant

Through: Mr.Rajat Arora, Mr.Niraj Kumar,
Mr.Sourabh Kumar & Ms.Sneh Vardhan, Advs.

versus

POONAM CHUGH

..... Respondent

Through:

CORAM:**HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE MANOJ JAIN****REKHA PALLI, J (ORAL)****CM APPL. 20638/2024 (delay of 21 days)**

1. This is an application filed by the appellant seeking condonation of 21 days' delay in filing the appeal.
2. The application is, for the reasons stated therein, allowed and the delay of 21 days in filing the appeal stands condoned.
3. The application stands disposed of.

LPA 280/2024 & CM APPL. 20639/2024 (stay)

4. The present appeal under Clause X of the Letters Patent seeks to assail the order dated 01.02.2024 passed by the learned Single Judge in W.P.(C) 9457/2018. Vide the impugned order, the learned Single Judge has allowed the writ petition preferred by the respondent wherein she had sought a direction to the appellant to sanction pension to her w.e.f. 30.09.2015 i.e.,



the date of her superannuation in terms of the bipartite settlement/joint note dated 27.04.2010.

5. The brief factual matrix as emerging from the record for adjudication of present appeal may be noted at the outset.

6. The respondent had joined the services of the appellant/bank as a clerk on 14.09.1976 and though in the year 1995-96 when the appellant had sought an option from its employees for being covered by the pension scheme, the respondent did not choose to give any such option. However, in 2010, when such an option was again sought by the appellant in terms of the bipartite settlement/joint note dated 27.04.2010, the respondent on 10.09.2010, submitted her option for the pension scheme. Upon asking by the appellant, the respondent opened an Over Draft (OD) account on 16.10.2010 however, she kept drawing her salary in her savings account till 16.10.2012 whereafter, upon modification of her salary account from savings to OD account, her salary was being credited to such OD account.

7. It is the case of the appellant that since no amount was available in the OD account of the respondent from October 2010 till October 2012, when her salary was being credited to her savings account, no deductions towards the pension funds could be made and, therefore, despite the respondent having opted for the pension scheme on 10.09.2010, she could not be extended the benefits of the said scheme. Consequently, upon her superannuation, she was paid a sum of Rs.7,04,462/- towards her Provident Fund (PF) dues, which she accepted without any demur.

8. After her superannuation, the respondent, upon realising that despite having submitted her option in time, she was not covered by the pension scheme, she submitted representations to the appellant seeking benefit of



pension.

9. Upon her representation being rejected, the respondent approached the learned Single Judge by way of the writ petition, which has been allowed under the impugned order.

10. Before the learned Single Judge, the appellant while not denying that the respondent had submitted an option for being covered by the pension scheme, had opposed her prayer for grant of pension on the ground that since no amount was available in her OD account, from October 2010 to October 2012, the requisite deductions towards her pension fund could not be made. It was, therefore, urged that since the requisite deduction could not be made, the appellant was justified in refusing to extend the benefits of pension scheme to her.

11. In support of the appeal, learned counsel for the appellant has reiterated the submissions made before the learned Single Judge and, has urged that once there was no amount in the OD account of the respondent for contribution towards the pension fund, the respondent was rightly not covered under the pension scheme. He, further submits that the respondent, having accepted her full terminal benefits including provident fund dues, was estopped from now claiming that she should be extended the pension benefits.

12. From the aforesaid submissions of the learned counsel for the appellant what emerges is that while the appellant does not deny that the respondent had opted for being covered by the pension scheme, its only plea is that since no amount was available in the OD account for transferring to the pension fund, the respondent could not be extended the benefit of pension scheme. Since this very plea was also raised before the learned



Single Judge but was found to be unmerited by the learned Single Judge as it was found that once the respondent had submitted her option for pension scheme, it was for the appellant to deduct the amount towards the pension fund from the respondent's account within the prescribed time.

13. It would, therefore, be apposite to refer to the relevant extracts of the impugned order, which read as under:-

“32. The petitioner has made a specific averment that it is at the instance of the respondent Bank that the petitioner had opened the OD Account and is also the specific averment of the petitioner that such exercise of options regarding sub-Clause (c) of Clause A was also tendered to the respondent and respondent not having made the contribution by withdrawing the money from the salary account, which was being remitted to the OD Account to the Pension Fund, is clearly a default on the part of the Bank from complying with the sub-Clause (c) of Clause A of PF and Pension Circular No. 8/2010.

33. The respondent Bank in its counter affidavit, particularly at page No. 114 had given a clear account as to how and for what reason, the salary which was being remitted to the OD Account was not transferred or credited to the Pension Fund

34. This Court is unable to accept the said contentions raised therein, for the reason that once the respondent Bank has accepted that the salary was being remitted to the OD Account, sub-Clause (c) of Clause A of the PF and Pension Circular No. 8/2010 ought to have been complied with by the Bank itself, irrespective of the fact whether the petitioner had given any such instructions or not.

35. This is for the reason that the respondent Bank cannot feign ignorance of the fact that the salary of the petitioner was being in fact remitted to the OD Account.



36. That apart, the reliance on sub-Clause (b) of Clause (ix) of the other terms and conditions in the letter dated 04.10.2002 is concerned, the same does not come in the way to disentitle the petitioner from the relief that she is seeking by way of the present petition

37. A perusal of the said Clause would indicate that no doubt that it was mandatory for the employees to designate the OD Account for the credit of their monthly salary and allowances, however, the same would not be an issue which would disentitle the petitioner from raising the grievance that it was the respondent Bank, which was in the knowledge of the fact that her salary was in fact being remitted to the OD Account.

38. Moreover, the terms and conditions maintained in sub-Clause (b) of Clause (ix) of the letter dated 04.10.2002 is concerned, the same is in respect of the intent and the import for which such Scheme was floated.

39. It cannot be said nor can it be countenanced that the same would come in the way of the petitioner's entitlement under sub-Clauses (a), (b) and (c) of Clause A of the PF and Pension Circular No. 8/2010.

40. Keeping in view the aforesaid, this Court is of the very firm view that having exercised the options which were available to her and which are undoubtedly admitted by the respondent, the mere transfer of the salary in the OD Account to the Pension Fund, cannot be a reason for disentitling the petitioner from claiming her rights under the PF and Pension Circular No. 8/2010."

14. From the aforesaid, it is clear that the appellant was well aware that after the opening of the OD account, the respondent's salary was to be remitted in the said account from which, deductions were to be made towards her pension fund. The appellant, however, continued to remit the



salary of the respondent in her savings account till October 2012. In these circumstances, when despite the respondent's instructions, the appellant did not link her salary account with her OD account till October 2012, it was for the appellant to ensure that deductions towards the pension fund are made from her savings account itself. The appellant having failed to do so, cannot now be permitted to urge that the contribution to the pension fund was not made within time and, therefore, the respondent was not covered by the pension scheme. The pension scheme being a beneficial scheme cannot be interpreted in such a restrictive manner as is prayed by the appellant.

15. We have also considered the appellant's plea that the respondent had already accepted a sum of Rs.7,04,462/- towards her provident fund dues and therefore, she cannot now claim any amount towards pension. In this regard, we may note that as per the own case of the appellant, a sum of about Rs.28,00,000/- is payable to the respondent towards arrears of her pension and therefore, we are of the view that even though the respondent has received the aforesaid amount of Rs 7,04,462/- towards provident fund dues at the time of her retirement along with her other terminal dues, it will be highly unfair to deprive her of pension despite her having submitted a specific option in this regard. Furthermore, we find that it has been the respondent's consistent case that even though the provident fund amount was credited to her account, she had not withdrawn the said amount and had been representing the appellant bank to extend the benefits of pension to her. Even otherwise, the interest of the appellant can be adequately safeguarded by directing that the appellant would be entitled to adjust the sum of Rs. 7,04,462/- along with interest @ 12 percent per annum from the amount payable to her towards arrears of her pension, which amount will also be



quantified with interest at a similar rate of 12 percent per annum.

16. For the aforesaid reasons, we, find no ground to interfere with the impugned order. The appeal being meritless is, along with all pending applications, dismissed.

17. The appellant is granted 8 weeks' time to pay the arrears of pension to the respondent after making adjustments of the amount already paid to the respondent as per the directions issued in para 15 hereinabove.

REKHA PALLI, J

MANOJ JAIN, J

APRIL 8, 2024

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