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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 01.02.2024

\+ W.P.(C) 9457/2018

MS POONAM CHUGH ..... Petitioner

versus

PUNJAB NATIONAL BANK AND ORS. ..... Respondents

Advocates who appeared in this case:

For the Petitioner	:	Mr. Bharat Bhushan and Ms. Sushma Verma, Advocates.
For the Respondents	:	Mr. Rajat Arora, Mr. Niraj Kumar, Mr. Sourabh Mahla and Mr. Ravi Ranjan Mishra, Advocates.

CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. This is a writ petition under Article 226 of the Constitution of India, 1950, *inter alia,* seeking the following prayers:-

> *"1. Direct the Respondent Bank to treat the Petitioner as pension optee, sanction pension and thereafter disburse pension to her w.e.f. October 2015 onwards in terms of the bipartite settlements/ joint notes dated 27.04.2010 and circulars of the respondent Bank supra;*
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> *2. And grant such further relief as may be deemed just and*

appropriate in the facts and circumstances of the case."

4. It is the case of the petitioner that the petitioner had joined the services of the New Bank of India as a Clerk on 14.09.1976. Subsequently, in the year 1993, the New Bank of India was merged with the Punjab National Bank *vide* the notification of the Reserve Bank of India on 04.09.1993. Sometime in the year 1995/1996, an option was offered to the confirmed employees of the Bank for joining the Pension Scheme.

5. At the initial stage, the petitioner had not opted for the said Scheme. However, subsequently, on various dates in 2010, namely, 16.08.2010, 26.08.2010 and 21.09.2010, the options were yet again sought from the employees in respect of the Pension Scheme floated in the year 1995, *vide* Circular bearing No. PF and Pension Department Circular No. (s) 8/2010, 9/2010 and 11/2010, detailing the guidelines for submissions thereof.

6. It is the case of the petitioner that on 10.09.2010, the petitioner had submitted her option for pension in the prescribed option form and at that time, the petitioner was stated to have been posted at the GT Road, Panipat Branch of the respondent Bank.

7. It is also the case of the petitioner that in terms of the settlement/ joint note dated 27.04.2010, the petitioner had given the requisite undertaking to contribute 30% of the initial funding gap, assessed for extending another option for joining the pension scheme together with the Bank's contribution to PF with interest accrued thereon. For that, the petitioner as required, had also authorized the Bank/ trustees of the Contributory PF to transfer the entire contribution of the Bank in PF

along with the entire interest accrued thereon to the credit of Pension Fund and simultaneously, the petitioner states to have also authorized the bank to transfer to the Pension Fund, the amount equal to 2.8 times of her revised pay for the month of November, 2007, representing her share towards 30% contribution.

8. The petitioner is stated to have retired on 30.09.2015, reaching the age of superannuation.

9. The grievance of the petitioner is that, despite having given both the options, according to her, which was sought from her under the aforesaid circular, the Bank had not granted her any Pension as per the Pension Scheme of the year 1995, an option which was offered in the year 2010.

10. Aggrieved by the same, the petitioner had issued a legal notice dated 10.05.2018 and subsequently, the present writ petition was filed.

11. Mr. Bharat Bhushan, learned counsel appearing for the petitioner submits that the petitioner, in accordance with the Circular bearing No. 8/2010 dated 16.08.2010, namely, the PF and Pension Circular No. 8/2010 had given her option in accordance with the Clause A and sub Clause (a) and (b) to the Bank/ respondent.

12. According to her, once the aforesaid option was exercised involving sub-Clause (a) and (b) of Clause A of the aforesaid PF and Pension Circular, her role so far as an employee of the respondent is concerned, was over.

13. According to Mr. Bharat Bhushan, learned counsel, the transfer of the PF and salary from her account to the Pension Fund Account was the responsibility of the Bank. The Bank not having completed their end of

the rule of the Sub-Clause (c) of the Clause A, the petitioner cannot be mulcted with the delay, non-exercise or non-completion of the transfer of funds according to Clause B of the aforesaid circular.

14. While the petitioner was in service, the Bank had also given an option to the employees to open a current account in the form of an OD account for the purposes of extending loans etc., and other credit facilities in order to enable the employees to get better benefits.

15. The petitioner submits that at the instance of the Bank, the OD account was also opened and according to her, she had also requested the Bank to deposit her salary in the said OD account. Once the petitioner had requested that the OD account be remitted with her salary, the obvious consequence thereof, coupled with the Clauses of the PF and Pension Circular, it was incumbent upon the respondent/ Bank to have automatically transferred/ credit the PF fund with the funds from the OD account maintained in the same bank.

16. The option having been exercised in time and not disputed by the Bank, there is no way that the Bank could have denied her the benefit of Pension, which was floated in the year 1995 and offered *vide* the aforesaid Circular.

17. Learned counsel submits that the petitioner was willing even then, as is willing now to have the entire Provident Fund received by her, as her benefit of the superannuation, be credited to the Pension Fund, so as to enable her to start receiving pension in accordance with the provisions of PF and Pension Circular No. 8/2010.

18. *Per contra*, Mr. Rajat Arora, learned counsel appearing for the respondent/ Bank, submits that the terms of the PF and Pension Circular

No. 8/2010 are very clear, in that, by inviting attention to Clause A of the said circular, learned counsel submits that the first option, i.e., the option in respect of the option of writing, within sixty days from the date of option, to become the member of the pension fund, though was complied with by the petitioner, however, the simultaneous obligation to transfer the funds to the Pension Fund of the Pension Trust, which was to be carried out within a period of thirty days from the exercise of option was not completed by her.

19. Learned counsel further submits that so far as the Bank is concerned, the records are available with it, which would establish that all along since the time she had opted as a Provident Fund optee, certain portion of the salary was being deducted on account of Provident Fund and being credited to such fund all along, till she superannuated on 30.09.2015.

20. According to Mr. Arora, the petitioner had never made any grievance out of it till the time of superannuation, so long as the amounts were being deducted from her salary account towards the Provident Fund. He submits that, that apart, along with the superannuation, she had received the entire benefits of the Provident Fund, which was paid to her by the Bank.

21. So far as the transfer of funds from the OD Account is concerned, Mr. Arora submits that though the option to have an OD Account was given to all the employees, however, the same was given only to facilitate the employees for obtaining loan and other credit facilities and was not an option for transferring the funds from there to the Pension Fund.

22. Learned counsel also submits that no such instruction by the petitioner was ever given to the Bank for transfer of funds from the OD Account to the Pension Fund. In order to further clarify the reason as to why the funds were not transferred from the OD Account, learned counsel refers to the counter affidavit at page No. 114 of the present petition. For clarity learned counsel refers to the portion of para 3 at page No. 114 of the counter affidavit, which is as under :-

> *"3. The contents of the para is half baked truth and does not depict the real facts of the case. Though the petitioner had submitted her pension option in the prescribed format [ANNEXURE R-1 as mentioned in PF & PENSION CIRCULAR NO. 8/10 dated 16.08.2010] on 10.09.2010, in the very pro forma she had submitted as under:-*
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> > *'I hereby declare that I have read and understood the terms of the Settlement/Joint Note dated 27.04.2010 for extending another option to join Pension Scheme. I have understood that the terms of the Settlement/Joint Note have been arrived at on the basis of the Unions/Associations offering to contribute 30% of the initial funding gap assessed for extending another option for joining the pension scheme. 1 am agreeable to the said contribution of 30% towards the initial funding gap and hereby voluntarily opt to become a member of the Bank's Pension Scheme as per the provisions of the said Settlement/Joint Note and cease to be a member of Contributory Provident Fund Scheme and irrevocably authorize the Bank/Trustees of the Contributory Provident Fund to transfer the entire contribution of the Bank along with entire interest accrued thereon to the credit of Pension Fund to be created for this purpose. I also authorize the Bank to transfer to the pension fund an amount an amount equal to 2.8 times of my revised pay for the month of November 2007 representing mv share in the 30% contribution mentioned above from the arrears paid on account of Wage Revision in terms of Bipartite Settlement/Joint Note dated 27.04.2010.'*
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> *The petitioner used to draw salary in her saving account 4061000200057582 at that time and she did not have requisite balance in this account from the time period commencing from 10.09.2010 [date of her authority letter] till 28.10.2010 [the last*

date of debit permitted to the branch by PF & PENSION FUND DEPARTMENT CIRCULAR NO. 19/2010 dated 23.10.2010.] Meanwhile, the petitioner had opened an OD account 0377009500000469 on 16.10.2010 but did not inform the bank in writing to update her salary account [savings account 4061000200057582 was to be updated to OD a/c 0377009500000469 immediately] and continued to draw her salary in her savings account 4061000200057582 till 2012. Her salary account was modified from savings to OD only w.e.f. 16.10.2012 [ANNEXURE R-2]. That it is the onus of the employee to route her salary through her OD account immediately on opening of the same has been issued by the Bank vide its IRMD LA circular no. 89 dated 04.10.2002 which the employee did not abide by nor she gave any mandate to the bank that the requisite amount for pension option [an amount equal to 2.8 times of the revised pay for the month of November 2007 representing the employee's share in the 30% contribution] be got executed through her OD a/c 0377009500000469. Hence, the petitioner was automatically rendered unsuccessful in rendering her pension option and her claim of complying with requisite formalities within prescribed time frame, is baseless and thus denied."

23. That apart, learned counsel also refers to letter dated 04.10.2002, whereby the option of opening an OD Account by the employees for the purposes of credit facilities and loan etc., was extended. He submits that according to that letter, as also was the obligation of the employee to indicate to the bank that the said Overdraft Account shall also be remitted with her salary was upon the petitioner, and not on the Bank to do so without any instructions in that regard.

24. As such, Mr. Arora submits that no case is made out for any indulgence by this Court.

25. This Court has heard the arguments of the learned counsel for the petitioner as also of the learned counsel for the respondents. This Court has also perused the PF and Pension Circular No. 8/2010 as also the other documents on record, placed by the parties.

26. At the outset, it would be apposite to extract the conditions of

option, as was made available under the PF and Pension Circular No. 8/2010 dated 16.08.2010.

(A) **EMPLOYEES/OFFICERS WHO WERE IN THE SERVICE OF THE BANK PRIOR TO 29TH SEPTEMBER 1995 AND CONTINUED TO BE IN THE SERVICE OF THE BANK ON THE DATE OF SETTLEMENT/ JOINT NOTE DATED 27.04.2010 AND THEREAFTER OR HAVE RETIRED ON OR AFTER 27.04.2010 PROVIDED THAT THEY:**

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

(b) Authorize 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.

(c) Employees/Officers in service including those who retired on or after 27.04.2010 will also have to contribute their share in contribution towards meeting 30% of funding gap from their arrears received on account of Wage Revision. It has been worked out @ 2.8 times of the Revised Pay for the month of November 2007.

(d) However, the employees who had retired on or after 27.04.2010 will in addition to the said 2.8 times of revised pay have to refund Bank's Contribution to the Provident Fund along with up to date interest paid to them on retirement.

(B) **EMPLOYEES/OFFICERS WHO WERE IN THE SERVICE OF THE BANK PRIOR TO 29TH SEPTEMBER 1995 AND RETIRED AFTER THAT DATE BUT PRIOR TO THE DATE OF SETTLEMENT/JOINT NOTE DATED 27.04.2010 PROVIDED THAT THEY:**

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

(b) 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 him on retirement together with his share in contribution towards meeting 30% of the funding gap. 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 officer/employee on retirement.

27. Another document which would be relevant for consideration of this Court would be the letter dated 04.10.2002 making available an option of overdraft facility to the employees for certain specific

purposes. The same is extracted hereunder :-

13/1/24

ANNEXURE R-3

PUNJAB NATIONAL BANK
CREDIT POLICY & RISK MANAGEMENT DIVISION
HO : NEW DELHI
CPY-165

04.10.2002

TO ALL OFFICES

LOANS & ADVANCES CIRCULAR NO.89

SCHEME FOR GRANT OF CLEAN OVERDRAFT FACILITY TO STAFF MEMBERS

Detailed schemes for allowing Consumer Loan, Computer Loan & Vehicle Repair Loan have been advised vide L&A Circulars No. 87 dated 21.07.1997, 45 dated 20.03.95 and 30 dated 21.04.1999. Subsequent modifications in the said schemes have been conveyed vide various L&A Circulars issued from time to time.

2. In order to afford operational freedom to staff members, it has been decided that Clean Overdraft Facility may be granted to staff members for any bonafide purpose in lieu of Consumer Loan, Computer Loan and Vehicle Repair Loan.

3. Accordingly, a scheme for grant of Clean Overdraft Facility to staff members in lieu of Consumer Loan, Computer Loan and Vehicle Repair Loan has been introduced which is given in the Annexure.

4. With the introduction of this scheme, the existing schemes i.e. Consumer Loan (Scheme 'A' & 'B'), Computer Loan and Vehicle Repair Loan are discontinued and henceforth no loan be sanctioned under these schemes. However, an employee will have the option to continue with the existing facilities already availed under the above schemes as heretofore till adjustment. In case the overdraft facility is to be availed, outstanding, if any, in such loan accounts must be squared off to the debit of OD A/C opened under this Scheme.

Incumbents are advised to bring the contents of the enclosed scheme to the notice of all the staff members and comply with its terms and conditions meticulously.

28. The other relevant clause of the said letter dated 04.10.2002, relied upon by the learned counsel for the respondent would be sub-Clause (b) of Clause (ix) which are the other terms and conditions and the same is extracted hereunder :-

> *"b) The overdraft account will be maintained at the salary-paying branch. It will be mandatory for the employees to designate the OD account for credit of their monthly salary and allowances. This will facilitate appropriation of monthly interest chargeable on the*

amount outstanding in the account from the salary credited in it. At the time of transfer of employee the overdraft account also be transferred to the branch from where he will draw the salary"

29. Keeping the aforesaid relevant clauses and documents in mind, this Court now would examine the facts which obtained in the present case.

30. So far as the option in sub-Clause (a) and (b) of Clause A of the PF and Pension Circular No. 8/2010 is concerned, the learned counsel for the respondent does not dispute the exercise of those options. The only controversy which appears to have disentitled the petitioner from getting the option of pension, is the exercise of option under sub-Clause (c) of Clause A of the said Circular. The specific stand of the respondent is that the employees ought to have made the option clear and given an instruction as to from where they would need their share of contribution of 30% of funding gap from their arrears, on account of the wage revision.

31. According to the respondent, since the petitioner failed to make any such instructions or exercise such option, the respondent cannot be faulted for the non grant of the pension.

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.

41. This Court is fortified in its view by placing reliance upon the judgment of the Supreme Court in ***University of Delhi vs. Shashi Kiran and Others*** reported in **2022 SCC OnLine SC 594**, wherein directions of similar nature were passed.

42. In view of the above, this Court is of the considered opinion that the prayers in the present petition, are allowed. The respondent Bank is directed to treat the petitioner as a pension optee, sanction the pension and thereafter, open a pension account in the name of the petitioner, in which the petitioner shall deposit the entire PF amount which was taken by her in the month of October, 2015, after her superannuation.

43. Once the amount is deposited, the consequences of the PF and Pension Circular No. 8/2010 shall follow.

44. The aforesaid exercise shall be carried out in the next eight weeks from the date of receipt of this judgment.

45. In view of the above, the petition along with pending application, if any, is disposed of, with no orders as to costs.

TUSHAR RAO GEDELA, J.

FEBRUARY 1, 2024
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