

CASE NO.:
Appeal (civil) 3845 of 2005

PETITIONER:
Jai Singh B. Chauhan

RESPONDENT:
Punjab National Bank and Ors.

DATE OF JUDGMENT: 20/07/2005

BENCH:
Arijit Pasayat & H.K. Sema

JUDGMENT:
JUDGMENT

ARIJIT PASAYAT, J.

Leave granted.

Challenge in this appeal is to the judgment of a Division Bench of the Bombay High Court dismissing the writ petition No. 5136 of 2000 filed by the appellant. High Court held that the appellant having not exercised option within the prescribed period was not eligible to be covered by the respondent no. 1-Bank's Pension Scheme.

The factual controversy lies within a very narrow compass and it is essentially follows:

The appellant joined as clerk in the erstwhile New Bank of India Ltd. (in short the 'NBI') on 10th February, 1979. Later on, he joined the Punjab National Bank, the Respondent No. 1 (hereinafter referred to as the 'Employer-Bank'). In exercise of power conferred by clause (f) of sub-section (2) of Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (in short the 'Act'), the Board of Directors of Respondent No. 1-Bank framed Punjab National Bank (Employees) Pension Regulations, 1995 (hereinafter referred to as the 'Regulations'). Originally, option was given to the employees to opt for the Pension Scheme, which was called for vide Circular dated 27.6.1994. As per the said Circular, eligible employees were required to exercise the option on or before 13.9.1994. Subsequently, it was extended up to 30.11.1994. This was at the Draft Scheme stage. After the Pension Scheme was finalized it was published in the Official Gazette dated 29.9.1995. Undisputedly, the appellant had not exercised the option within the time indicated at the Draft Scheme stage. As per the Gazette Notification, the option was to be exercised within 120 days from the date of Gazette Notification. Therefore, the last date was 27.1.1996. The appellant undisputedly had not exercised the option within the time stipulated in the scheme. Appellant made representation on 4.5.1998 with a request to be covered by the scheme. That representation was not in the requisite form. The respondents rejected the claim of appellant that he is to be governed by the Pension Scheme. The said decision dated 22.7.2000 of the respondent No. 1-Bank was challenged by filing the writ petition. The High Court found that not only the option was not exercised within time, but also the appellant was utilizing the amounts deposited in the Provident Fund Account. It was noted that the Provident Fund was substituted by the Pension Scheme for those who exercise the option.

Mr. Mahabir Singh, learned counsel submitted that the appellant was not aware of the Circular issued calling for options or the Gazette Notification. As a matter of fact the respondent No. 1-Bank and its functionaries were exhibiting hostile attitude to the appellant. Though he wanted to join duty after availing leave from 10.2.1994 to 16.8.1995, he

was not permitted to join between 17.8.1995 to 22.10.1996 and he had to ultimately move to Guwahati High Court for relief. Because of that and not on account of any laches he failed to exercise option within the stipulated periods. Reliance was placed to certain portions of Draft Pension Scheme as contained in Circular dated 27.6.1994. According to learned counsel, the circular clearly stated that employees who were not attending office for any reason such as suspension, long leave, unauthorised absence etc. were to be provided with the letter requiring exercise of option, at the last known address for their doing the needful. It was submitted that in the absence of any such intimation to the appellant the respondent no. 1-Bank could not have refused to accept the option exercised. It was further submitted that the Government of India, Ministry of Finance, Department of Economic Affairs, Banking Division by its letter dated 9.2.2002 had permitted the employer Banks to accept options exercised belatedly.

In response, learned counsel for the respondent submitted that the Regulations clearly stipulated the procedure to be adopted for exercise of option. The appellant had not exercised the option within the stipulated time. There was no necessity for giving any individual notice as claimed, as there is no such requirement in the Regulations. Additionally the Scheme was notified in the Official Gazette on 29.9.1995 and it is to be construed as a public notice. Further the letter of the Central Government dated 19th February, 2002 does not in any way assist the appellant and on the contrary goes against him. An option was given to the Banks to take a decision with the approval of their Board in those cases where the officer/employee could not exercise the option because he stood either dismissed or compulsorily retired as on 29.9.1995, but later on got reinstated either due to the decision of any Court or Appellant Authority. Appellant's case does not fall in to either of the two categories indicated above.

For the purpose of adjudicating the dispute few provisions in the Regulations need to be noted.

“Notified Date” is defined in Regulation 2 as follows:

“notified date” means the date on which these regulations are published in the official Gazette;”

In terms of Regulation 1, the Regulations were deemed to have come into force on the date of their publication in the Official Gazette.

Regulation 3, so far as relevant reads as follows:

“3. These regulations shall apply to employees who, -

xxx xxx xxx

(3) (a) are in the service of the Bank before the notified date and continue to be in the service of the Bank of 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) authorize the trust of the Provident Fund of the Bank to transfer the entire contribution of the Bank alongwith the interest accrued thereon to the credit of the Fund constituted for the purpose under regulation 5.”

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.

Regulation 3 (3)(c) is also of considerable importance. It required transfer of the entire contribution of the Bank alongwith interest accrued

thereon to the credit of the fund constituted for the purpose under Regulation 5, and authorized trust of from the amount of the Provident Fund of the Bank to effect the transfer.

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.

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.

In M/s. Pankaj Jain Agencies v. Union of India and Ors., [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 the 13.2.1986. As to the effect of the publication in the official Gazette, this court held (Srinivasan case [1987] 1 SCC 658, 672: AIR (1987) SC 1059, 1067):

"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 recognized 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 know and that, therefore, the notification did not acquire the elements of operativeness and enforceability. This contention of Shri Ganesh is unacceptable."

Further, as rightly submitted by learned counsel for the respondents the letter of the Government of India dated 19" February, 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.

The appeal is devoid of merit, deserves dismissal, which we direct. Costs made easy.