(2002) 10 MP CK 0061

In the Madhya Pradesh High Court

Case No : L.P.A. No. 260 of 2002

Allahabad Bank and Others APPELLANT

Vs

Surendra Kumar Mishra RESPONDENT

Date of Decision : 21-10-2002

Acts Referred:

Citation : (2003) 2 LLJ 373 : (2003) 1 MPLJ 574

Hon'ble Judges : Bhawani Singh, C.J;Sugandhi Lal Jain, J

Bench : Division Bench

Advocate : Anoop Nair, for the Appellant; Atul Awasty, for the Respondent

Final Decision : Dismissed

Judgement

S.L. Jain, J.

Being aggrieved by the order dated December 5, 2001 passed by the learned single Judge in Writ Petition No. 4060 of 2001 (since reported in 2002(2) MPLJ 395, appellants have preferred this appeal under Clause 10 of the Letters Patent.

Facts shorn of details and necessary for the disposal of this appeal are as follows:

"In the year 1994 respondent was working as Marketing Manager in the Regional Office of the appellant-Bank (hereinafter referred to as the ''Bank''). Pursuant to settlement dated October 29, 1993 between the appellant-Bank and the Indian Bank Association, All India Bank Employees Association, N.C.B.E. and B.E.F., the appellant-bank introduced a pension scheme in their bank. The proposed scheme was styled as "Allahabad Bank (Employees) Pension Regulations, 1993". It provided that the existing employees could opt for pension in lieu of employer''s contribution towards Provident Fund. According to the respondent he exercised his option within the stipulated time by submitting his option letter to the Regional Manager, Satna, who in turn, vide covering letter dated November 8, 1994 forwarded all option forms for pension to the office of Chief Manager, Calcutta. Inspite of submitting pension option, appellant failed to consider the same. Respondent sent reminders dated February 10, 2000, November 16, 2000 and December 13, 2000. The Regional Manager, Allahabad Bank, vide communication dated October 1, 1999, February 12, 2000, August 24, 2000, August 8, 2000 and October 30, 2000 brought to the notice of Chief Manager that the option of the respondent was yet to be considered and inspite of the reminders, appellant failed to consider the option of the respondent, even though he retired from service w.e.f. May 31, 2001 exercising his option for voluntary retirement scheme.

It is also averred by the respondent that while not considering his case, appellant considered the case of Shri Anik Kumar Pandey, Shri H. Tripathi and Shri S. K. Upadhyaya even though they had exercised their option after the respondent, being below him in the option list.

The appellants in their return before the learned single Judge combated the claim of the respondent on the ground that initially by memorandum of statement dated October 29, 1993, a pension scheme was floated by the bank as per circular dated September 6, 1994 which is now known as old pension scheme. According to this old scheme option was to be submitted on or before September 30, 1994. Subsequently, a new pension scheme was introduced and option for the said scheme was to be exercised by September 29, 1995. The option form of the respondent is not available with the bank. A thorough search was made in the Headquarter but the same could not be traced, which suggests that no option form was submitted by the respondent. It was also the case of the bank that the respondent did not submit any option form in the new scheme. They pleaded that the respondent''s name was not removed from the Contributory Provident Fund Scheme, which indicates that he did not exercise his option for pension scheme. It was further pleaded that the pension option is belated and has been filed after retirement.

The learned single Judge recorded the finding that the respondent submitted his option form, which the appellant failed to consider without any justifiable reason and the option exercised under the old scheme shall be a valid option for the new scheme also, therefore, the learned single Judge has allowed the petition and directed the bank to consider the option and if the same is not traceable the respondent may file another copy of the option form and complete all other necessary formalities. The respondent was also directed to deposit the amount of Employees Provident Fund already received by him along with prevailing rate of interest of the saving bank account. The appellants were directed to finalise the matter within the stipulated time. It is against this order of the learned single Judge, the appellant has filed this Letters Patent Appeal.

We have heard Shri Anoop Nair, learned counsel appearing for the appellants and Shri Atul Awasthy, learned counsel appearing for the respondents at the motion stage and perused the record and also the impugned order passed by the learned single Judge.

The following points have been urged by Shri Anoop Nair, learned counsel appearing for the appellants:

i) That, the learned single Judge while allowing the petition failed to consider the fact that the respondent employee was a senior officer of the bank and was very much conversant with the procedure and working of the bank, but he after submitting the option form kept quiet for more than five years during which his name was reflected in the statement of public fund department showing employer''s Contribution to his Provident Fund Account. This silence on the part of the respondent suggests that option form was not submitted by him within the stipulated time;

ii) If the respondent had submitted his letter of option he would have produced his personal copy as a proof of his having exercised the purported option.

iii) After passing the impugned order, the appellant-bank had caused in-depth inquiry and found that the list which was sent by the Regional Office, Satna to the Chief Manager was not prepared on the basis of date of receipt of the option form but at random. The time of receipt of the option form, had no bearing on the placement of a name in the list.

As against this, learned counsel appearing for respondent supported the impugned order.

With regard to the first contention raised by Shri Nair we find that when the option of the respondent was not accepted he made several representations. Copies of such representations were annexed with the writ petition. The Regional Manager, Allahabad Bank, also, vide different communications, brought to the notice of Chief Manager that the option of the respondent was yet to be considered by the bank. In spite of reminders. the appellant failed to consider the option of the respondent. It is not the case of the appellant that the alleged letter of the Regional Manager sending option form for pension to the Chief Manager, Head Office, Calcutta, wherein list of the persons submitting option form was appended showing the name of the respondent at serial No. 134, was not a genuine document. Had the option form not been actually submitted there would have been no occasion for the Regional Manager to include the name of the respondent in the list of the employees who had submitted the option forms. Simply because a thorough search in the Head Office could not yield option form does not mean the option form was not submitted.

It is true that after submission of option form respondent might have received the statement of his balance in the Public Provident Fund Account more than once wherein credit of the employee''s contribution might have been shown but it was not the obligation of the respondent to draw attention of the authority concerned towards the error. Even if there was some obligation, the failure to discharge the same would not deprive the respondent of his just claim of pensionary benefits. When the respondent submitted the reminders to accept his option it cannot be said that the principle of promissory estoppel is applicable against him.

Simply because the respondent failed to carefully see the statement of Public Provident Fund or did not represent regarding the error in the statement under the belief that his option form will be accepted in due course of time, it cannot be said that his silence is proof of the fact that he never submitted his option form and his claim that he submitted the option form is afterthought. The contention that it is a well planned and motivated effort of the respondent to get undue benefit is sans substance.

Second contention of the learned counsel for the appellant has also to be rejected. There is no material to suggest that respondent was ever asked to produce his personal copy of the option form. Even otherwise, if the respondent did not care to preserve the copy or despite proper care copy is lost or is not traceable, it cannot be said that the respondent did not submit any option form.

We do not find any force in the third contention of the learned counsel for the appellant. There is no material to suggest that the list was not prepared on the basis of date of receipt of the option form from the employees posted at different places and was prepared at random. Even if such list was prepared at random, it cannot be said that the respondent did not submit his option form at all or submitted after the stipulated date. The fact that the name of the respondent is mentioned in the list appended with the letter by which option forms were sent by the Regional Office to the Chief Manager, leaves no scope for doubt regarding the fact that the respondent has submitted the option form.

Shri Nair, lastly submitted that if the option form was submitted it should have been traceable. Simply because option form has been lost at the level of appellants either in the Regional Office or in the Head Office, the respondent cannot be blamed for the same. If the option form was lost it was the duty of the appellants to ask the respondent to submit the copy of the option form available with him or to give a fresh option. The learned single Judge has already directed the respondent to submit another option form if the appellants so require. He was also directed by the learned single Judge to deposit the amount of Employees'' Provident Fund along with the prevailing rate of interest of the savings bank account, therefore, it cannot be said that the respondent is getting additional benefit.

Thus, we do not find any merit in this appeal, consequently, the same is dismissed at the admission stage.