
(2003) 09 RAJ CK 0058

In the Rajasthan High Court

Case No : Civil Spl. Appeal (W) No. 142 of 2003

General Manager, PNB and Others

APPELLANT

Vs

Jamna Devi (Smt.)

RESPONDENT

Date of Decision : 15-09-2003

Acts Referred:

Citation : (2004) 2 LLJ 545 : (2004) 1 RLW 392 : (2004) 1 WLC 368

Hon'ble Judges : Anil Dev Singh, C.J.; K.K. Acharya, J

Bench : Division Bench

Advocate : Jagdish Vyas, for the Appellant; R.K. Soni, for the Respondent

Final Decision : Dismissed

Judgement

Singh, CJ.

1. This special appeal is directed against the order of the learned single Judge dated 16.12.2002 passed in S.B. civil Writ Petition No. 2380/2002.

2. The brief facts giving rise to this appeal are as follows:

3. In the year 1979, the husband of the petitioner was appointed as a peon in the New Bank of India. Subsequently New Bank of India was amalgamated with the Punjab national Bank. On 16.01.1988, Hiralal - the husband of the petitioner died while in service. On the date of his death, he had completed about 11 years of service in the Bank. It is not in dispute that at the time of his death, Provident Fund Scheme was in vogue.

4. Subsequently, the Punjab National Bank framed the Punjab National Bank (Employees) Pension Regulation, 1995 (for short "the Regulation") which amongst other things made provision for grant of pension to its retired employees and family pension to the families of the deceased employees, provided they opted for the same in the prescribed manner. Regulation 3 (7) of the Regulations, inter alia, provides that the family of a deceased employee who died before 1st October, 1993 shall be entitled to receive family pension if his

family opts in writing within 120 days from the notified date to become member of the Fund and refunds within 60 days of the expiry of the aforesaid period of 120 days the entire amount of Bank's contribution to the Provident Fund and interest accrued thereon together with further simple interest @ 6% per annum from the date of settlement of The Provident Fund account till the date of refund of the amount to the Bank. According to the case of the appellant, since the Regulations were notified on September 29, 1995 the options were required to be exercised by the respondents on or before 27th January, 1996 i.e. 120 days from the date of Notification. However, she exercised the option on 14th July, 1996. The option exercised by her vide letter dated 14th July, 1996 was rejected by the Bank on 12th August, 1996.

5. The respondent not being satisfied with the rejection of her option filed a representation. The representation also did not have the desired effect. Thereafter, the respondent filed a writ petition. The learned Single Judge while allowing the writ petition observed as follows:-

"Respondents are directed to decide the pension case of the petitioner after condoning the delay in filing the option from within period of two months from today."

6. The Punjab National Bank aggrieved by the order of the learned Single Judge has filed the instant special appeal.

7. The learned counsel appearing for the appellant submits that the option exercised by the respondent was beyond the period stipulated in Regulation 7(3) of the Regulations. According to the learned counsel, the delay in exercising the option cannot be condoned in any circumstances as there is no provision for condonation of the delay, which may arise in exercising the option.

8. On the other hand, the learned counsel appearing the respondent submits that in view of the peculiar circumstances of the case, the learned single Judge was right in coming to the conclusion that the delay in exercising the option by the respondent ought to have been condoned by the appellant. In support of his submissions, the learned counsel has invited our attention to Rule 88 of the Central Service Pension Rules, 1972 and Regulation 56 of the Punjab National Bank Employee Pension Rules 1995.

9. We have considered the submissions advanced by the learned counsel for the parties.

10. We do not find any illegality in the order passed by the learned Single Judge. The respondent in the writ petition had rendered explanation for not being able to exercise the option within time. The explanation reads as follows:

"..... the petitioner who is an uneducated widow, was never informed about her pension entitlement and action required to be taken for the same. But on knowing about the pension, from an another similar widow, who is employed in Bank of Baroda, the petitioner submitted the necessary form and documents to

the respondent No. 4 through respondent No. 5 on 11.7.1986 so as to get the amount of her family pension paid to her in her hand, which pension entitlement flows from the regulations.....

.....the case of petitioner was again taken up vide a D.O. Letter dated 6.9.96, a copy where of is produced here with and marked as an-nexure-3, but in vain. Hence, the petitioner submitted a detailed representation to respondent No. 4 through proper channel, the respondent No. 5 on 12.4.1997. The respondent No. 5 was pleased to forward the representation dated 12.4.97 to respondent No. 4, with recommendations for sympathetic consideration, vide letter dated 12.4.97, copy of which the forwarding letter dated 12.4.97 along with the representation is produced here with and marked as annexure-4. However, the above representation is not yet decided and the same even remains unreplied. Thereafter also, she made a representation but the same remains unreplied. However, the petitioner learnt that the matter regarding condonation of delay in submission of option and giving a fresh chance for submitting the option for pension, which was pending consideration at the Head Office has recently been decided in a meeting held in April 2000, against the employees as it has been decided that no fresh option would be given. Though, nothing has come in writing to petitioner, even regarding her representation dated 12.4.1997. The petitioner lastly, served upon the respondents a notice for demand of justice dated 25.5.2000 through her counsel and also enclosed the option form again, but in vain as the respondents have even not replied to the above notice. The copy of the notice for demand of justice (along with the postal receipts) is produced herewith and marked as annexure-5 with this writ petition."

11. The appellants in their reply have not controverted the averments made in Paras 4 and 5 of the writ petition relating to the reason as to why the respondents could not exercise the option in time. We are not impressed by the submission made by the learned counsel for the appellants that the delay caused in exercising the option cannot be condoned in any circumstances whatsoever. The submission of the learned counsel for Finance, Department of Economic Affairs, Banking Division dated 28.4.1999 addressed to the Chief Executives of all Public Sector Banks. The communication to the extent relevant reads as follows:-

"Government has been getting representations from various quarters making a request for providing an opportunity for exercising option in favour of pension to those who could not do so due to circumstances beyond their control. One such situation referred to is that the employees who were out of service on account of dismissal/removal etc. at the time of notification but were subsequently reinstated in service with continuity of service on disposal of an appeal or by virtue of court order.

The matter has been examined and it has now been decided that banks, in the first instance, may examine such requests at their end and in case they are satisfied that there were circumstances beyond the control of the applicant, due to which he could not exercise his option within the stipulated period, they may

refer such cases to Govt. along with a self-contained note, indicating the circumstances which deprived them to exercise such option. Efforts if any made by the bank to contact such persons during the relevant period to enable them to exercise their option may also be indicated."

12. Thus, it is clear from the aforesaid communication that the Government itself was of the view that in certain circumstances, they delay in exercising the option could be condoned. It allowed the Public Sector Banks to examine requests for providing an opportunity for exercising option in favour of the applicants who could not exercise option in time due to circumstances beyond their control.

13. Since the reason given by the respondent for not being able to exercise the option within time was not controverted by the appellants in their reply to the writ petition, it can not be legitimately contended by the latter that the delay caused by the former in exercising the option cannot be condoned even if the delay was beyond her control.

14. Family pension is meant for the family of the deceased government employee/retiree. Family pension is also admissible to his minor children. This is also evident from Regulation 40(3) of the Regulations which reads as follows:

"Where family pension is granted under this regulation to a minor, it shall be payable to the guardian on behalf of the minor."

15. Thus, it is apparent that family pension is admissible to a minor and the same is payable to the guardian on behalf of the minor. The guardian has to act in the best interest of the minor. It is not a dispute that the respondent had five minor children at the time of the death of her husband. The interest of the minor children cannot be allowed to be adversely affected by the delay committed by the respondents in exercising the option for grant of family pension.

16. As already pointed out, the pension Regulations were notified on 15th November, 1995. Clause 5 of the Notification reads as follows:-

"5. OPTION FOR EXISTING EMPLOYEES.

The eligible employees who have not given option for pension so far can submit their option for pension by 27th January, 1996 (i.e. within 120 days from the notified date 29.9.1995).

The employee should be specifically advised that the last date of submission of option letter and family detail form is 27th January, 1996. Any letter/form received after 27th January, 1996 would be rejected."

17. As is apparent from Clause 5, each employee was required to be specifically advised that the last date for submission of option letter and family detail form was 27th January, 1996, it is not the case of the appellant that each of the employees was specifically advised that the last date of submission of the option letter was 27th January, 1996. It is not claimed by the appellants that they had specifically advised the respondent to submit the requisite form by 27th January,

1996.

18. Learned counsel appearing for the appellants referred to the decision of Calcutta High Court in Ashim Kumar Banerjee v. Union of India Passed in (1), decided on 11.8.2000) and decision of Gujarat High Court in Punjab national Bank and Ors. v. L.S. Thakkar passed in (2), decided on 30.8.2002). Both the decision turned on their own facts and as such the appellants cannot derive any sustenance from them. Even otherwise we specifically disagree with the view that the delay in exercising option under Regulation 7(3) can not be condoned in any circumstances whatsoever. In the peculiar facts and circumstances of the case, the delay in exercising the option was required to be condoned and the learned Single was entirely right in directing the appellant to decide the pension case of the respondent after condoning the delay in the submission of the option from.

19. In the circumstances the appeal fails and is hereby dismissed. The appellants are directed to decide the pension case of the respondents within a period of six weeks.

20. Learned counsel for the respondent does not press the cross-objections. Accordingly, the same are dismissed as not pressed.