
(2014) 02 RAJ CK 0084
In the Rajasthan High Court
Case No : Civil Writ Petition No. 9973 of 2011

Hari Singh Kasinbar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 26-02-2014

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 19

Citation : (2015) 2 RLW 1696

Hon'ble Judges : Mohammad Rafiq, J.

Bench : Single Bench

Advocate : Saransh Saini, for the Appellant; Rupin Kala, for the Respondent

Final Decision : Allowed

Judgement

Mohammad Rafiq, J. This writ petition has been preferred by petitioner Hari Singh Kasinbar with the prayer that by issuing a writ of mandamus, order dated 28/2/2011 (ASnn. 3) passed by the respondents be quashed and set-aside and respondents be directed to accept his option for pension scheme as formulated by its Board of Directors in their meeting held on 21/8/2010 and grant him all consequential benefits. Petitioner was appointed as Clerk in the respondent Bank on 22/3/1982. He was promoted on the post of Computer Operator in the year 2001. While working with the Branch of the Bank at Bharatpur in 2001, he on attaining the age of superannuation retired on 21/1/2001. By a bipartite settlement took place between the workman and the bank authorities in April 2010, a new pension scheme was formulated and the same was duly approved by the Board of Directors of the Bank in its meeting held on 21/8/2010. According to the same scheme, an employee willing to avail the pension was required to opt to become a member of the pension fund and submit his option form within time stipulated before 31/10/2010 as per the stipulation made in the said settlement. A Circular bearing No. 2690 was issued on 27/8/2010 whereby, all the branch managers and head of the departments were required to take action in order to give wide coverage to the new pension scheme by different

given modes and provide the copy of the option form to the retired employees at their last known addresses as per the said Circular dated 27/8/2010 so as to enable them to exercise an option in writing within sixty days from the date of offer to become a member of the pension fund. In terms of clause 4 of the said circular, another option for joining existing pension scheme came to be extended for the categories mentioned under the said clause, which includes the employees/officers, who were in the services of the bank prior to 29/9/1995 and retired after that date but prior to 27/4/2010, the date on which the aforesaid settlement was arrived at. The only condition to become the member of the pension fund as per clause 4(ii)(c) was that the retired employees were supposed to refund the entire amount of the bank's contribution to the Provident Fund and interest accrued thereon received by the employee/officer on retirement together with his share in contribution towards meeting 30% of the funding gap amounting to 56% of the bank's contribution to the Provident Fund and interest accrued as per the terms and conditions set out in the settlement/joint note dated 27/4/2010 within thirty days after expiry of the aforesaid period of sixty days.

2. Shri Saransh Saini, learned counsel for the petitioner has argued that it was enjoined upon all the branch managers and head of the departments to bring the said circular to the notice of all the staff members by giving it wide coverage to avail the pension scheme and in case of retired employees, to send the communication to this effect to their last known address. Learned counsel for the petitioner in this connection has drawn attention of the court towards a note given below clause 15 of the Circular dated 27/8/2010 (Ann. 1), which has given modes for wide coverage of such circular namely; (i) copy of the circular should be displayed on the notice board at the Branch Office, (ii) copies of the circular to be sent to the local retired employees' associations and (iii) in case of retired employees/family of the eligible expired employees, a copy of the option form may be sent to last known address. Learned counsel for the petitioner has argued that no information whatsoever was given to the petitioner at any point of time that he was required to opt for pension scheme nor option form was ever supplied to him. Petitioner came to know about the pension scheme and the option given to the retired employees only when after retirement, he visited the branch office in February 2010. Petitioner immediately submitted an application to the Branch Manager on 21/2/2011 stating that he was not informed about the pension scheme despite the mandatory obligation on the part of the concerned branch office to supply him such option form. Branch Manager forwarded the application of the petitioner with his recommendation to the Regional Office vide Ann.2 on 21/2/2011 itself. Petitioner received a letter from the CIBER Manager, Regional Office on 28/2/2011 informing that his option has not been accepted because it was received after the cut-off date i.e. 30/10/2010. Learned counsel argued that had the respondents informed petitioner about requirement of exercising option, there was no reason for the petitioner not to exercise the option in time. In any case, whatever amount petitioner was required to refund

would be accompanied by the interest and therefore for the corresponding period of delay also, petitioner is ready to pay the interest, which delay in any case is not attributable to the petitioner.

3. Per contra, Shri Rupin Kala, learned counsel for the respondents has opposed the writ petition and argued that pension scheme of the respondent bank was available as a retirement benefit and governed by the Union Bank of India (Employees) Pension Regulations, 1995 (for short, the "Regulations of 1995"), which came into force w.e.f. 29/9/1995. Petitioner was required to opt for the pension scheme but he did not opt the same within the prescribed period of 120 days in terms of Regulation 3(b) of the Regulations of 1995 when it was circulated by the bank. Petitioner opted for Contributory Provident Fund instead of the pension at the relevant time. He took voluntary retirement under bank's special Voluntary Retirement Scheme 2001. Otherwise also, a definite benefit Scheme was proposed and formulated for pension in the banking industry in the year 1993 on the basis of settlement arrived at between the Indian Banks' Association, representing members Banks and All India Bank Employees Association. Under the said scheme, retired employees and families of deceased employees, retired/expired on or after 1/1/1986 till 31/10/1993, including the existing employees/officers on the bank's roll as on 31/10/1993, were given an option to opt for pension instead of Contributory Provident Fund by exercising option for availing the benefit of pension within the stipulated time. The bank brought the Instruction dated 28/5/1994 in the matter with option forms in which the existing employees and retired employees were required to exercise their option. Initially, the time limit for exercising such option was till 30/9/1994 but it was subsequently extended till 30/11/1994. The said pension scheme of 1993 got its final shape in the year 1995 as the statutory Regulation governing pension to the employees of the respondent bank when in exercise of powers conferred by clause (f) of sub-section (2) of Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Board of Directors of the Union Bank of India with the concurrence of the Reserve Bank of India and prior sanction of the Central Government, approved the Regulations, which was notified in the official Gazette of India on 29/9/1995. The Indian Banks' Association pursuant to the settlement/joint note dated 27/4/2010 came out with a notice to all concerned, which was published in various newspapers across the country both with the regional and national circulation. Respondent bank came out with Circular No. 5690 dated 27/8/2010 in this regard, which was widely circulated and displayed on the notice boards of the branches/offices of the bank. The last date for exercise of the option in terms of the aforesaid instruction Circular was 30/10/2010. Larger number of eligible employees/retired employees/widow of deceased ex-employees exercised option for pension and those who did not, continued to remain members of the Contributory Provident Fund Scheme.

4. Learned counsel in support of his arguments has relied on the judgment of Supreme Court in Union of India (UOI) and Others Vs. M.K. Sarkar, and argued

that the Supreme Court held therein that when a scheme stipulates that benefits thereunder will be available only to those who exercise the option within a specified time, option should obviously be exercised within such time. Learned counsel for the respondents has also placed reliance upon another judgments of the Supreme Court in PEPSU Road Transport Corporation, Patiala Vs. Mangal Singh and Others, , Sunil Poddar and Others Vs. Union Bank of India, and Government of Andhra Pradesh and Others Vs. Smt. P. Laxmi Devi, . In so far as judgment of the Supreme Court in P. Laxmi Devi (Smt) supra is concerned, it is argued that in view of use of the word "has to be construed as mandatory in nature", in the present case, option was required to be exercised mandatorily within time stipulated. Reliance has also been placed on yet another judgment of the Supreme Court in Som Mittal Vs. Govt. of Karnataka, to the same effect.

5. I have given my anxious consideration to the rival submissions and perused the material available on record.

6. As per Circular No. 5690 dated 27/8/2010, which is heavily relied upon by both the parties, since petitioner had taken voluntary retirement w.e.f. on 21/1/2001, his case would be covered by clause (c) of para 9 of the aforesaid circular dated 27/8/2010, which deals with the employees/officers, who were in the service of the bank prior to 29/9/1995 and retired after that date and prior to 27/4/2010. Sixty days was the stipulated period for exercise of option from 1/9/2010 to 30/10/2010 within which such employees were required to exercise their option. There is no denial to the fact that petitioner exercised such option on 21/2/2011 i.e. with the delay of 3 months and 21 days. What has to be therefore seen whether this delay was entirely attributable to the petitioner or it has to be shared with the respondents in the same proportion too. It would be apposite to reproduce the note given below clause 15 of the said Circular dated 27/8/2010:--

"All the Branch Managers/Departmental Heads are requested to bring this to the notice of all staff members against their acknowledgement and in order to give wide coverage; the following methods may be adopted:--

- a) Display the copy of the circular on the Notice Board at the Branch/Office.
- b) Copies of the circular to be sent to the Local Retired Employees" Association.
- c) In case of Retired Employees/Family of the eligible expired employees, a copy of the option form may be sent to last known address.

Co-operation of all staff members is solicited for timely exercising the option and are further requested to publicize/canvass the information to all concerned, so that, all eligible/willing employees, retired/family members of deceased employees get the benefit of the scheme."

7. The petitioner has throughout in the memo of writ petition stated on oath that respondents failed to widely circulate the aforesaid new pension scheme and were required to send such information along with copy of the option form to his

last known address but no such information was ever sent to the petitioner at his last known address. In reply, respondents have asserted that pension scheme was widely circulated in the regional as well as national newspapers and they also produced on record copies of such newspapers but they could not refute the assertion of the petitioner that option form was not sent to his last known address. The assertion of the respondents that part of the circular provides that it should be sent to the retired employees to their last known address, is only an advisory for the branch offices and not mandatory because the language used in clause (c) of para 15 of the note given below para 15 of the said circular is that copy of the option form may be sent to the last known address to the retired employees and it has not used the word "shall". It has merely used the word "may", which is only advisory and not mandatory or for that matter, directory. This argument has to be rejected because when the aforesaid circular has to be read in its entirety. The note given below para 15 of the circular requires that apart from giving wide coverage through its publication in the newspapers, (a) it should be displayed on the notice of the branch office, (b) copies of such circular should be sent to the local retired employees' associations and (c) in case of retired employees/family of the eligible expired employees, copy of the option form may be sent to their last known address. The purpose for making a provision of sending copy of the option form to the retired employees/family of the eligible expired employees was to ensure that no retired employee/family of the eligible expired employee, who is otherwise entitled to exercise the option, is deprived of the opportunity to do so and it was specifically provided therein because employee after retirement or having expired, may not remain in consistent touch with the branch/office of the employees' association unlike in the case of serving employees.

8. There can be no quarrel with proposition of law laid down by the Supreme Court in *M.K. Sarkar supra* that when a scheme stipulates that benefits thereunder will be available only to those who exercise the option within a specified time. Option should obviously be exercised within the stipulated time but that judgment perhaps cannot apply to the facts of the present case because therein the option was exercised with the delay of 22 years after the scheme was closed and the argument that such right was still available to the employees was repealed holding that there was no recurring or continuing cause of action thereabout. Besides, the employee did not plead before the Central Administrative Tribunal that he was not aware of the requirement of exercising of option. What he pleaded was that he was not aware about the last order, which extended the period of exercising option. Time limit for exercising option in that case was extended by the Indian Railway on as many as eight occasions. Yet, concerned employee did not do so. Facts of that case are entirely different and, therefore, ratio thereof cannot be applied to the present case.

9. In *Pepsu Road Transport Corporation, Patiala supra*, the respondents did not give his option within time stipulated in the Corporation and such of those, who exercised option, did not comply with the condition of refund of loan taken from

the GPF account. It was held that statutory regulations framed by the appellant Corporation were required to be interpreted in the same manner as adopted while interpreting any other statutory provision. Plea of the concerned employees was repelled as they may claim for pensionary benefits under the pension scheme only after retirement with unreasonable delay of more than eight years. That was a case in which the respondent-employees applied for option of pension scheme but did not fulfill condition envisaged by 1992 regulations as they failed to opt for pension for more than eight years and refund advance taken from employer's contribution to CPF. In those facts, the Supreme Court held that notice or knowledge of pension scheme can be reasonably inferred or gathered from conduct of respondents in their ordinary course of business and from surrounding circumstances.

10. In the facts of the present case, the delay being hardly of 3 months and 21 days, when petitioner has explained by stating that he came to learn about the requirement of exercising option for pension only when he happened to visit the branch in which he was lastly serving and on the same day i.e. on 21/2/2011, he submitted the application to the Branch Manager, which he immediately forwarded to the Regional Office vide Ann. 2 on 21/2/2011 itself, which fact is not disputed by the respondents. The respondents also did not dispute the fact that in terms of the Note given below clause 15 of the Circular dated 27/8/2010 (Ann. 1), the respondents failed to send the option form to the petitioner after his retirement.

11. Contention that requirement of sending option form to the retired employees/family of the eligible expired employees on the last known address is only directory and not mandatory, is noted to be rejected because the said circular indeed required wide publicity to be given to the pension scheme and also required display the same on the notice board and forwarding same to the employees' association, therewith they also required the option form to be sent to the retired employees/family of the eligible expired employees on their last known address. Mere use of the word "may" therein would not therefore required this only advisory and not mandatory. All the cited judgments are distinguishable on facts as interpretation given therein is based on the language of the provision of statutes/rules concerned, wherein the word "shall" was employed by the legislature in altogether different context in the relevant provisions/statutes are in question.

12. In view of above, therefore, the writ petition deserves to succeed. In the result, the writ petition is allowed. The impugned-order/letter dated 28/2/2011 (Ann.3) is quashed and set-aside. The respondents are directed to accept the option form of the petitioner for pension and grant him all the arrears from the date pension is found due with interest @ 9% p.a. after deducting the amount of the contribution of the Provident Fund and other benefits received by the petitioner with due rate of interest. Arrears of pension shall be paid to the petitioner within two months from the date copy of this order is produced before

the respondents.