(2017) 10 DEL CK 0257

In the Delhi High Court

Case No : Civil Writ Petition No. 3943 Of 2016

Jagwati APPELLANT

Vs

Allahabad Bank RESPONDENT

Date of Decision : 24-10-2017

Acts Referred:

Citation : (2017) 10 DEL CK 0257

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : Umesh Singh, Rajesh Kumar Gautam, Aakash Sehrawat

Final Decision : Dismissed

Judgement

Sunil Gaur, J

1. This is second round of litigation. In the first round of litigation, vide order of 6th November, 2015, this Court had directed the respondent-Bank to

decide representation of petitionerâ??s husband. It stands decided vide impugned order of 4th December, 2015. Petitionerâ??s husband was

employed as a Head Cashier with respondent-Bank and was put under suspension in July, 2009 and during the period of his suspension, his entry into

the bank premises was restricted only for the purpose of operating his bank account and collecting his dues. Vide order of 1st September, 2011,

petitionerâ??s suspension was revoked and upon joining his duties, he came to know about second option to switch over to pension scheme by

surrendering provident fund to pension fund.

2. It is the case of respondent that petitioner had not exercised this option despite being on duty from September, 2011 till date of his retirement i.e.

31st December, 2013 whereas it is the case of petitionerâ??s husband that after he had resumed his duty, respondent-bank deducted the amount of

Â Rs. 62,944/- towards pension scheme from the arrears of pay in September, 2011 itself. It is matter of record that petitionerâ??s husband had

expired in January, 2014. The stand of respondent-Bank is that from the year 2011, till the date of his retirement, petitionerâ??s husband was

furnished copy of provident fund statement every six months, wherein it was specifically mentioned in Column of pension option that petitionerâ??s

husband had not exercised the pension option. It is maintained on behalf of respondent-Bank that amount of Â Rs. 62,944/- was inadvertently

deducted from the arrears of pay and the same has been refunded by tendering a cheque. However, petitionerâ??s counsel maintained that the said

refund amount has not been encashed.

3. The precise submission of petitionerâ??s counsel is that petitionerâ??s husband was not aware of the second option to opt for the pension

scheme and he had become aware of it on resuming the duties in September, 2011. So, it is submitted that since the respondent-Bank has already

deducted the requisite amount towards pension scheme, therefore, petitionerâ??s husband is entitled to have the benefit of pension scheme.

4. During the course of hearing, petitionerâ??s counsel had drawn attention of this Court to respondent-Bankâ??s Circular (Annexure P-6) to point

out that it was the duty of respondent-Bank to extend necessary cooperation to the intending optees and photocopies of the forms ought to have been

made available in sufficient number at the respective branches/offices so that desiring optees could apply in prescribed form without waiting for

permission from the head office. So, it is submitted that respondent-Bank ought to have send individual notices to the employees to make them aware

of the pension scheme.

5. On the other hand, learned counsel for respondent-Bank submits that the second option under the pension scheme was brought to the notice of all

employees by displaying it on the notice boards and sufficient number of forms were available and that by way of abundant caution, it was also

published in various newspapers, including â??Indian Expressâ?? and a copy of publication in newspaper Indian Express has been appended along

with the counter affidavit so filed by respondent-Bank. Learned counsel for respondent-Bank relies upon Supreme Courtâ??s decision in Pepsu Road

Transport Corporation, Patiala Vs. Mangal Singh & ors. (2011) 11 SCC 702 wherein it has been held that sending of individual notices is not required

as neither pension scheme nor regulations mandate it.

6. At this stage, it is pointed out by petitionerâ??s counsel that newspaper publication is in respect of retired employees and not working employees

and date of publication is also not clear from the copy of newspaper publication and so, reliance placed upon decision in Pepsu Road Transport

(Supra) is misplaced. Nothing else is urged by either side.

7. Upon considering the submissions advanced by both the sides, on perusal of impugned order and the decision cited, I do find that petitionerâ??s

husband was not in a position to fill up the form to opt for pension scheme because his entry into the bank was restricted and only after revocation of

his suspension, petitionerâ??s husband could do so. In the impugned order, it is noted that petitionerâ??s husband had exercised a time barred

option. In fact, petitionerâ??s husband had not filled up the requisite form to switch over to the pension scheme and the deduction of Â Rs. 62,944/-

from his arrears of pay towards pension was inadvertent, which stood refunded to the petitioner. Respondent-bank along with the counter affidavit has

appended a copy of cheque of refund amount, which petitionerâ??s husband had chosen not to get encashed, so that he could maintain the claim for

pension. Pertinently, copies of provident fund statements (Annexure R-2 colly) appended to the counter affidavit reveals that after every six months, it

was communicated to petitionerâ??s husband that he had not opted for pension scheme. In such a case, petitionerâ??s husband ought to have

pointed out to respondent that his contribution towards pension scheme has been deducted and he should have been allowed to opt for the same. After

revocation of his suspension till date of his retirement, petitionerâ??s husband had kept silent about it, to his detriment. Until and unless option to

switch over from provident fund to pension fund is exercised by filling up a requisite form, pension as such cannot be granted. Now petitionerâ??s

husband is no longer in this world to opt for switch over and it is too late to do so.

8. In these circumstances, denial of pension to petitioner is justified. So far as serving of individual notice is concerned, I find that there is no

requirement in the pension regulation or elsewhere that individual notices are to be sent. Supreme Court in Pepsu Road Transport (Supra) has clarified that until and unless there is a specific requirement of sending individual notices, they are not to be sent. It is not the case of petitioner that requisite

form was not available or the pension scheme was not circulated by displaying it on notice boards.

9. In the considered opinion of this Court, the impugned order cannot be faulted with and thus, finding no substance in this petition, it is dismissed while

leaving the parties to bear their own costs.