(2022) 11 TEL CK 0010

In the Telangana High Court

Case No : Writ Petition No. 24467 Of 2011

K. Lakshman Rao, Secbad. APPELLANT

Vs

Canara Bank RESPONDENT

Date of Decision : 03-11-2022

Acts Referred:

Citation : (2022) 11 TEL CK 0010

Hon'ble Judges : E.V.Venugopal, J

Bench : Single Bench

Advocate : C M R Velu

Final Decision : Allowed

Judgement

1 Petitioner filed the present writ petition aggrieved by the inaction of the respondents in granting pension to him.

2 The case of the petitioner, in brief, is that he was a regular employee in the post of Clerk / Typist in the respondent Bank with effect from 01.08.1983 till 20.01.2001. He served the respondent Bank for about 17 ½ years. He opted for VRS-2000 scheme and he was a non-pension option under that scheme. On 23.12.2000 he came to know that the first respondent is extending the benefit of pension to the employees who opted VRS under the scheme of 2000 pursuant to a settlement reached between Indian Banks Association Member Banks and their respective unions. It is his case that there was no intimation to him even though the respondents have his address and though he had been living in the same address right from the date of appointment till date. He was informed that the employees have to send in their option before 15.11.2010 to the branch in which they last served. Immediately he went to the third respondent branch and confirmed about the granting of pension. Then he made a representation dated 24.12.2010 and requested the respondents to extend pension to him along with 3,65,000 employees who have been considered for pension as per the circular of the first respondent dated 16.09.2010. His application was acknowledged by the

respondents. Yet, the respondents have not granted pension to him though the other employees who opted for VRS-2000 scheme have been receiving pension. Hence the present writ petition.

3 The respondents have filed a detailed counter affidavit contending that the Circular dated 16.09.2010 does not provide any individual communication to the retired employees. It is further submitted that exercise of option in writing was within 60 days from 17.09.2010 i.e. on or before 15.11.2010 to become a member of Pension Fund. There is an obligation to refund the amount representing bank's contribution to the provident fund and interest accrued thereon on or before 15.12.2010. The petitioner having failed to exercise the option within the time as provided under the said Circular dated 16.09.2010 and not having refunded the amount cannot claim validly exercise pension option. The petitioner's option form dated 24.12.2010 was received without being attested by Rail Nilayam Branch, Secunderabad on 03.01.2011. As the last date for submission of option letter was 15.11.2010 as per the Circular No.242/2010/ BC dated 16.09.2010, his request for sanction of pension was not considered by the bank. The petitioner was accordingly intimated vide letter dated 14.01.2011. It is further submitted that a copy of the Circular was displayed in the notice board of all the branches for the information of existing / retired employees and wide publicity was also given in local newspapers in all regions and the bank's website. The bank had also made arrangements to intimate retired employees about 2nd pension option at their last known address through the branches they last worked, wherever possible. Non-receipt of individual intimation cannot be cited as the ground for delayed submission of pension option when the scheme was kept open for two months and wide publicity was given regarding the scheme at all possible levels. As every scheme shall have its commencement date and likewise ending date, second option scheme was kept open for two months from 15.09.2010 to 15.11.2010. As the petitioner submitted his pension option letter after expiry of the last date stipulated for such submission, his case was not considered. Hence prayed to dismiss the writ petition.

4 The learned counsel for the petitioner submitted that since the petitioner is not aware of the scheme and as it was not intimated to him he could not given the option in time. He further submitted that it is the admitted case of the respondents that the bank had also made arrangements to intimate retired employees about 2nd pension option at their last known address through the branches they last worked, wherever possible. However, though the petitioner had been living in the same address right from the date of his appointment in the bank till his retirement and still continues to be in the same address, he had not received any communication about the scheme and hence the delay in giving the option is neither willful nor wanton. Hence the action of the respondents is in violation of principles of natural justice. He had drawn the attention of the Court that all the other communications from the bank were addressed to the address mentioned in the account of the writ petitioner about the refusal of the pension, which clearly proves the residential proof of the writ petitioner. Therefore, there

is a justification in the case of the petitioner in not making the option within the time and accordingly prayed to direct the respondents to consider the case of the petitioner as per the norms of the Circular and grant pension to the writ petitioner. In support of his contentions, the learned counsel for the petitioner placed reliance on the decision of the Kerala High Court in Writ Petition (C) No.7321 of 2014 (M) dated 11.10.2017 between K.A.Padmanabhan Vs. Deputy General Manager.

5 On the other hand, the learned counsel for the respondent vehemently opposed the contention of the petitioner stating that having not availed the opportunity given to him, the writ petitioner cannot claim any locus or eligibility to extend the benefit of the scheme formulated under the circular and also states that ignorance cannot be an excuse. He further submitted that the bank had displayed the circular in the notice board of each and every bank besides giving wide publicity in all leading newspapers apart from putting in bank’s website. Therefore, the petitioner having not exercised his option within time, cannot contend that the bank has violated the principles of natural justice. He relied on the decision reported in Rajasthan Rajya Vidyut Vitran Nigam Limited Vs. Dwarka Prasad Koolwal (2015) 2 SCC 51, Union of India Vs. M.K.Sarkar (2010) 2 SCC 59.

6 On examination of the facts and contentions advanced on both sides, the point that arises for determination is ‘whether the conditions stipulated in the Circular No.242/2010/BC dated 16.09.2010, are followed in letter and spirit? If, so to what extent?”

7 Condition Nos.13 and 14 of the Circular No.242/2010/BC dated 16.09.2010, read as under:

13… The existing Pension Scheme will not be applicable to those who joined the Bank on or after 01.04.2010, as they are covered under Defined Contributory Pension Scheme on the lines of new Pension Scheme introduced for employees of Central Govt……

“14. Steps are taken separately to advise those who retired from the service from 29.09.1995 in the last known address……”

8 So from a reading of the condition No.13, it is clearly manifest that the petitioner having joined the respondent bank on 01.08.1983 and worked till 20.01.2001 is certainly entitled to the above scheme. But the case on hand demonstrates that as per condition No.14, no steps have been taken separately to advise the petitioner in the last known address except by advertising in the newspapers, displaying on the notice boards and on the website of the Bank which establishes the violation of its own stipulations mentioned in the Circular. Admittedly, the petitioner retired on 20.01.2001. So, invariably the respondents have to intimate the petitioner about the scheme for exercising the option. The contention of the petitioner right from the beginning is that he has been residing in the same address from the date of his appointment till date of retirement. It is a notable point that all the subsequent correspondence between the petitioner

and the respondent bank was communicated to the petitioner in the address shown by him. In that view of the matter, the grievance of the petitioner that he had no knowledge about the pension scheme is believable.

9 In accordance with condition No.14 of the Circular, the bank had also made arrangements to intimate retired employees about 2nd pension option at their last known address through the branches they last worked, wherever possible. But the petitioner had not received any communication about the scheme. In such circumstances the contention of the petitioner that he made the application belatedly on coming to know about the same from his colleagues is justified.

10 In identical circumstances, the Kerala High Court in K.A.Padmanabhan Vs. Deputy General Manager had passed orders directing the authorities to consider the case of the petitioner therein for prospective enrollment in the fund on refund of the employer's contribution with interest and to consider and pass orders on the same, taking a sympathetic view in the matter. In the case on hand, the petitioner also stands on the same footing. Hence this Court is of the considered view that the case of the petitioner deserves to be considered.

11 Having regard to the facts and circumstances of the case, this writ petition is allowed. The petitioner shall make a request before the concerned Bank authorities with copies of all documents which he seeks to rely on, within one month from the date of receipt of a copy of this order. On receipt of such request, the respondent Bank is directed to take up any request made by the petitioner in this regard for enrollment in the pension scheme on refund of the employers contribution with interest and to consider and pass orders on the same taking a sympathetic view in the matter within two months thereafter. The respondents are hereby directed to consider the case of the petitioner for granting pension with prospective effect. No order as to costs.

12 As a sequel, miscellaneous petitions, if any, pending in this writ petition shall also stand closed.

