(2013) 11 PAT CK 0056

In the Patna High Court

Case No : C.W.J.C. No. 12347 of 2007

Kanti Prabha Karketta APPELLANT

Vs

The Punjab National Bank RESPONDENT

Date of Decision : 27-11-2013

Acts Referred:

Citation : (2014) 2 PLJR 373

Hon'ble Judges : Ajay Kumar Tripathi, J

Bench : Single Bench

Judgement

Ajay Kumar Tripathi, J.—The issue raised by the petitioner in the present writ application is neither unique nor first of its kind since the question is of deriving benefit from a pension scheme notified by the respondent Bank across the country in the year 1995. The issue for consideration is not the scheme but its applicability to the claimant i.e. a widow of the erstwhile employee. In the pension regulation notified by the Bank, there was a specific Regulation 3(3)(a & b) that pension scheme shall apply to those employees who are in the service of the Bank before the notified date and continue to be so after the notified date, coupled with exercise of an option in writing within 120 days to become a member of the fund.

2. In the present case it is the assertion of the petitioner that her husband did exercise his option. Evidence thereof are circumstantial but since those evidence are documents maintained by the Bank itself there will be some presumption in favour of the erstwhile employee and against the respondent Bank. These are Annexures-3 and 4 series.

3. How I wish the matter rested at that. The problem is that the Bank in the counter affidavit has taken a categorical stand that there has been no option exercised by the husband of the petitioner in terms of the scheme. Whatever is being produced in support of the claim by the petitioner was no doubt an outcome of a certain omission committed in maintenance of the records at the relevant time since there were large number of employees involved across the

country and input and information was trickling in much after the cut-off date as well as due to may be some deliberate omission or mischief at the local level. The documents in question were reflecting the position as if the husband of the petitioner had opted for the scheme. It is their further stand that on a thorough search, no evidence has been thrown up from the service record of the husband of the petitioner or from the centralized pension cell to certify that the husband of the petitioner did opt for the scheme.

4. It was in this controversial circumstance, counsel for the petitioner was granted several adjournments to produce a chit of paper which could settle the dispute to rest. The petitioner expresses her inability under the circumstance that after the death of her husband she is not in a position to render proof.

5. Counsel for the Bank has produced an order passed in Civil Appeal No. 7682 of 2009 which has been decided by the Hon''ble Supreme Court on 20th November, 2009. Similar plea and claim had been made in that case, which travelled from the judgment of a High Court. The High Court did lean in favour of the employee in question but the Hon''ble Supreme Court in para 8 has held as under:--

We are unable to agree with the impugned judgment. If there was no discretion left in the Bank to accept the belated application, then merely because the Bank treated the respondent for a good long period of seven years as a pension optee would by itself create no right in the respondent The law is well-settled that there can be no estoppel against the statute. In this case, the law is clear that the respondent was required to give an option within 120 days of the notified date of the Pension Regulations. Therefore, a delay on the part of the respondent would not create any right much less any right in the nature of estoppel. We, therefore, set aside the impugned order of the High Court and choose to dismiss the Writ Petition filed by the respondent. The result of this would be that the Bank would be bound to compensate the respondent by way of payment of the contributory provident fund alongwith interest @ 12% per annum till the realization of the payment, if not already paid, alongwith all other incidental monetary benefits to which the respondent was entitled to and was not paid.

6. Since this Court has benefit of adjudication made on such a matter by the highest Court of the land, this Court will go-by the wisdom and the ratio of the said decision noted above and cannot transgress its powers by holding in favour of the petitioner in absence of clear evidence of an option having been exercised by the late husband of the petitioner. The circumstances explained by the Bank in the counter affidavit with regard to Annexures-3 and 4 seem to be cogent.

7. Writ application has no merit. It is dismissed. It is clarified that if any entitlement of the petitioner has not yet been resolved or paid to the petitioner, the Bank has an obligation to do so within six weeks from today.