(2005) 10 AHC CK 0080

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 50520 of 2003

Krishna Awtar Agarwal APPELLANT

Vs

Allahabad Bank and General Manager (P.A.) Allahabad Bank RESPONDENT

Date of Decision : 05-10-2005

Acts Referred:

Allahabad Bank Employees (Pension) Regulations, 1995 — Regulation 3(9)
Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 — Section 19

Citation : (2005) 6 AWC 6324 : (2006) 1 LLJ 963

Hon'ble Judges : V.M. Sahai, J;Sabhajeet Yadav, J

Bench : Division Bench

Advocate : B.P. Singh, for the Appellant; Himanshu Tiwari and Tarun Varma, for the Respondent

Final Decision : Allowed

Judgement

V.M. Sahai, J.—The petitioner retired voluntarily on 31.5.2001 as Assistant Manager from Chandausi Branch Allahabad Bank, Moradabad. He seeks a direction from this court that his pension under the hew pension scheme known as Allahabad Bank (Employees) Pension Regulations, 1995 be released.

2. In the counter affidavit filed by the Bank it has been stated that the draft pension scheme was received by the bank and circular No. 3904 dated 6.9.1994 was issued and options from employees were invited till 30.9.1994. The time was extended till 30.11.1994. But the petitioner did not submit any option. Latter the scheme was notified on 29.9.1995 as Allahabad Bank (Employees) Pension Regulations, 1995 (in brief the regulations). It provided for obtaining options within 120 days from the date of notification. But the petitioner did not exercise any option under the regulations, therefore, he was not entitled for release of pension under the regulations.

2. We have heard Shri Bharat Pratap Singh, learned counsel for the petitioner and Shri Himanshu Tiwari, learned counsel appearing for respondents. The learned counsel for the petitioner has urged that the petitioner is entitled for Rew

pension scheme as he has exercised his option on 28.12.1994, much before the last date for exercising option for existing employees under the Regulations. On the other hand, the learned counsel for the respondents has urged that the petitioner was not entitled for new pension scheme as even if the option was exercised by him on 28.12.1994 it was submitted after the last date, 30.11.1994. He has further urged that on the basis of second copy of the option the petitioner was not entitled for the benefit of new pension scheme under the Regulations. He further placed reliance on the decision of the apex court in Jai Singh B. Chauhan v. Punjab National Bank and Ors. 2005 AIR SC 3664.

3. The claim of the respondent that the petitioner did not exercise any option is not correct. It is contrary to the material on record. In the scheme circulated on 6.9.1994 it was provided that existing employees while exercising option would submit duplicate copy of option form. This duplicate copy of option form of petitioner was found on record when forms of other employees were being verified.

4. There are two letters, one dated 17.10.1997 sent by RegionalGeneral Manager, Moradabad to the Assistant General Manager, Meerut filed as annexure-2 to the counter affidavit and another dated 18.10.1997 sent by Regional Manager, Moradabad to petitioner, filed as annexure-1 to the writ petition, informing him that his name finds place at serial No. 63 in the list of employees who had opted for pension. He was also informed that the option formfiled by the petitioner had been forwarded to Zonal Office, Meerut.This letter mentions that a list has been received from Zonal Office of 49 persons who had opted for pension scheme 1995. Apart from it there were other employees whose names were being mentioned at serial No. 50 to 65 whose option forms are being sent again. The letter further mentions that if there were other employees whose names were not in the list then second copies of option exercised by them may be submitted by 31.10.1997. From the letter dated 17.10.1997 written in reference to letter dated 15.9.1997, it is clear that while verifying the names of employees who had opted fo pension scheme, it was mentioned that they have found that there were 12 other employees who had opted for the scheme but their names were not mentioned in the list. The letter further mentioned that in their record copy of option exercised by four employees including that of the petitioner was found which too was being sent for verification. It was requested that copies of the letter may be sent to different offices and it may be ascertained that no other names were left out. There is, thus, no doubt that petitioner was one of the employees who had exercised his option for the new pension scheme. Therefore, the claim of responded that the petitioner did not opt for the new pension scheme cannot be accepted.

5. The learned counsel for the respondents has produced before us the Instruction Circular No. 3904 dated 6.9.1994 which is extracted below:

"Instruction Circular No. 3904 Date : 06.09.94 To All Officers and Branches

MEMORANDUM OF SETTLEMENT DATED 29(th) OCTOBER, 1993 BETWEEN IBA AND AIBEA, NCBE AND INBEF ON PENSION SCHEME

A Settlement has been signed between the Indian Banks'' Association and AIBEA, NCBE and INBEF on 29th October, 1993 for introducing the Pension Scheme in the Banking Industry. BEFI has also endorsed the Pension Scheme.

Further a joint note on agreed conclusion reached between the All India Bank Officers'' Confederation, All India Bank Officers'' Associations and Indian Banks'' Association was also signed on 29th October, 1993.

On the basis of the aforesaid settlements, the Industry Level Pension Scheme has been drawn.

The proposed Pension Scheme provides for the existing employees to opt for pension as second retrial. benefit in lieu of employer''s contribution towards Provident Fund. However, employees joining on or after 01.11.1993 will be eligible only for Pension Scheme in lieu of contributory Provident Fund. This Pension Scheme will also be available to ex-employees who have retired on or after 01.01.1986 provided they surrender the employer''s PF contribution together with interest and further 6% Simple Interest on this amount from the date of payment made by Head Office P.F. Department to the - date of refund. Pension Scheme also provides for commutation of l/3rd of the Basic Pension.

Further, since the Bank has already in existence a pension scheme which has been named as Allahabad Bank Employees Pension Scheme (Old), the Government has permitted that employees who retired between. 01.01.1986 and 31.10.1993 and employees who are on Bank''s roll as on 31.10.1993 will also have the option to opt for Pension as per Allahabad Bank Emo|pyees'' Pension Scheme (Old) plus C.P.F. benefits. It is also informed that the matter regarding inclusion of special allowance for calculation of pension in Allahabad Bank Employees'' Pension Scheme (Old) has been referred to Government and will be considered after receipt of their approval.

In pursuance of the aforesaid Settlement, the IBA has prepared a draft Pension Scheme, which has been duly approved by the Board of Directors. The proposed Allahabad Bank Employees (Pension) Regulation 1993 is enclosed for your information. However, the same can be implemented only when concurrence of.RBI/Govt. is received by the Bank in terms of Section 19(i) of the Banking Companies (Acquisition and Transfer of Undertaking) act 1970/1980. We reiterate that the aforesaid Pension Scheme is merely proposed pension scheme and it will have effect only when Govt./RBI''s concurrence to it is received by the Bank and is finally, approved by the Board of Directors. There may be certain additions, alterations to the existing provisions of the scheme which will be informed to the Branches/ Offices from time to time.

Keeping in view the provisions of the scheme, all employees who are required to exercise their options in terms of the scheme, may do so in the following manner:

Existing Employees

The existing employees in the service of the Bank as on 31.10.1993 shall submit their options as per Annexure-I/III in duplicate latest by 30.09.1994 as under

1. Employees posted at Branches : Branch Manager 2. Employees posted at Administrative : Concerned regional Offices Head/Departmental Head. The Branch Managers shall send the option letters duly attested by them to their Regional Heads. The Regional/Departmental Heads shall forward option letters in respect of all the employees including those posted at Regional Office/Zonal Office/Head Office to Chief Manager (PA), Head Office, after due verification/ attestation, ft should, however, be ensured that no employee on the roll as on 31.10.1993, who is required to submit option in terms of the Scheme, is left out.

Those retirees/employees who do not send their opti6n form in the required format within the stipulated time shall be deemed to have opted in favour of CPF as per agreement of 29.10.1993.

Retired Employees

As regards option to be exercised by employees who retired on or after 1st January, 1986, but before 1st November, 1993, the Indian Banks'' Association have already issued a notice through Press as per aryiexure-VI. It may be displayed on the notice board of the Branch/Office. Such employees are to exercise their ?options as per Annexure-II/III latest by 30.09.1994 as under:

1. Retired Officers/Workmen : Branch Manager Employees The Branch Managers shall send a copy of this circular to each of such retired employee in their Branch at his last known address for his information and necessary action. The options of such employees so received by the Branch Manager will be sent to us after due verification/attestation.

Further, it is also brought to the notice of all the employees that provision of set off of commuted amount of pension against the P.F. to be refunded to the Bank has been agreed upon for which all the concerned retired employee may submit a separate application to the Branch/Office concerned (As per Annexure-V).

The contents of this circular may please be brought to the notice of all employees at the Branch/Office including those who have since retired and ensure compliance of the relevant instructions in the matter.

Sd/- (V.M. SWAMI) General Manager. (PA)

6. From the circular it is clear that a Memorandum of Settlement was arrived on 29.10.1993, between various organs of the bank. In pursuance of the settlement the IBA prepared a draft Pension Scheme, which was approved by the Board of Directors. But it was made clear that it was only a proposal which was subject to concurrence by Reserve Bank of India. The employees working on 31.10.1993 were described as existing employees and they were required to submit their option forms in duplicate by 30.9.1994. Later on this time was extended till

30.11.1994. Both the circulars were issued when the scheme was in draft stage. The scheme was approved and it was notified in the Official Gazette on 29.9.1995 as Allahabad Bank (Employees) Pension Regulations, 1995. The regulations provided for obtaining options. The Head Office of the Bank for the first time issued an Instruction Circular No. 4318 dated 16.11.1995, in supersession of the Instruction Circular No. 3904 dated 6.9.1994, to all its offices and branches informing them about the scheme. The relevant part of the circular that provides for obtaining option from the employees is extracted below :

"...However, in terms of Clause 9 of Chapter, II, earlier options received in reference to the settlement dated 29.10.93 are also valid options under these regulations.

A copy of the Allahabad Bank (Employees) Pension Regulations, 1995 is enclosed. Keeping in view the. provisions of the schemes, all employees/ex-emplcyees, who have not submitted options as yet, are required to exercise their options in terms of the scheme. Hence fresh option will be required to be obtained within 120 days of notified date i.e., 29th September, 1995...."

7. The last date for submission of option when the pension scheme was in the draft stage was 30.11.1994. But the circular dated 16.11.1995 provided that fresh options may be invited from the employees within 120 days from 29.9.1995, the date on which the regulations were notified. The last date for submission of option was 27; 1.1996. The expression "all employees/ex-employees who have not submitted options as yet, are required to exercise their options in terms of the scheme" in circular dated 16.11.1995 is important. It means that if any employee had submitted his option prior to notification of the regulations, then he was not required to submit any fresh option. Therefore, the option could be exercised by the existing employees on or before 27.1.1996. This circular clearly mentioned that those employees who had earlier submitted their options in reference to the settlement dated 29.10.1993 were also valid options under the regulations. The circular did not provide that earlier option which was received with some delay would not be accepted. In other words, option for new pension scheme could be exercised by an employee on or before 27.1.1996 and it was to be treated as valid option. The reason for accepting earlier options is obvious. When earlier the bank had invited options by circular dated 6.9.1994 from its employees, the new pension scheme was in its draft stage. After the regulations were notified on 29.9.1995, the bank invited fresh options within 120 days from the date of notification, i.e. by 27.1.1996. In the circumstances all earlier options submitted by the employees whether in time or beyond 30.11.1994 were treated to be valid options under Regulation 3(9) of the regulations.

8. It further appears that when the circular was issued on 6.9.1994 it was expected that it shall be notified immediately and that probably was the reason for extension of time till 30.11.1994.But when the regulations could not be notified till 1995 fresh time of. 120 days from the date of notification was

granted. The intention obviously was to extend the benefit of scheme even to those who for some reason had not exercised option earlier. Therefore, a person who had exercised option may be a month after 30.11.1994 could not be placed in a worst position than the one who had not exercised option at all. It should be deemed, therefore, that any option exercised till 27.1.1996 was good and valid.

9. Further, Pension Scheme has been framed for benefit of employees. It is a beneficent piece of legislation.! It has to be construed liberally so as to advance the objective of the scheme. It is clear from the circular dated 16.11.1995 that the intention was to extend the scheme to all employees and precaution was taken that no one who had exercised option was left out.

10. In Jai Singh B. Chauhan (supra) the employee exercised option for new pension scheme on 4.5.1998. Whereas the last date for giving option was as per the regulations was 27.01.1996. The r claim of the employee was not accepted. The aforesaid decision is not applicable to the facts of the instant case. In the case in hand, the option was exercised by the petitioner on 28.12.1994, much before the last date, 27.1.1996. Thus, the petitioner exercised option well within time and he is entitled for the benefits under the new pension scheme.

11. In the result this writ petition succeeds and is allowed. Writ of mandamus is issued to the respondents and they are directed to calculate the amount required to be deposited by the petitioner with the Bank, received by him as Contributory Provident Fund but no interest; shall be charged on this amount from the petitioner by the Bank. The Bank shall also calculate the amount of pension payable to the petitioner under the Allahabad Bank (Employees) Pension Regulations, 1995 to which the petitioner is entitled, but the pension including arrears shall be paid to the petitioner without any interest. The entire exercise shall be completed and pension shall be paid to the petitioner by the Bank within a period of three months from the date a certified copy of this order is produced before respondent No. 2.

12. Parties shall bear their own costs.