(2005) 12 AHC CK 0042

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 45630 of 2003

Mahendra Kumar Gupta — APPELLANT

Vs

The Central Manager (Pension Deptt.), Central Bank of India, Central Bank of India, PRS Deptt. and Manager, Central Bank of India, M.M.H. College — RESPONDENT

Date of Decision : 01-12-2005

Acts Referred:

Citation : (2006) 5 AWC 4391

Hon'ble Judges : Vikram Nath, J

Bench : Single Bench

Advocate : Ranjit Saxena and Sanjiv Agarwal, for the Appellant; K.R.S. Jadaun, for the Respondent

Final Decision : Allowed

Judgement

Vikram Nath, J.—This petition has been filed for issuing a writ in the nature of certiorari quashing the order dated 08/09.04.2002 passed by the Chief Manager, P.R.S. Central Bank of India, Zonal Office, Agra, and further for direction to the respondents to pay pension to the petitioner.

2. The petitioner was working on the post of Assistant Accountant in the Central Bank of India and was posted at MMH College Branch, Ghaziabad. Under the provisions of the Central Bank of India (Employees) Pension Rules 1993 (in short referred to as 1993 Rules) an option was given to the employees to convert from Contribution Provident Fund (CPF) Pension. In CPF scheme both the employer and the employee contribute certain amount for the said fund, however, in the pension policy the contribution is only by the employee and not the employer. The bank has given opportunity at different time to its employees for opting for conversion of the CPF to pension. The first chance was from 28.04.1994 till 31.07.1994 which was extended till 30.11.1994. Second option was given from 29.09.1995 to 26.01.1996. The petitioner applied for the conversion from CPF to pension and submitted the option on 30.11.1994, authorizing for transfer of his

contribution. The Branch Manager Navyug Market, Ghaziabad, forwarded papers of four officials of the bank on 02.03.1995 to the Regional Office, Meerut. The name of the petitioner is mentioned is at SI. No. 4 in the said covering letter (which has been filed as Annexure 5 to the writ petition). Thereafter, the Branch Manager vide letter dated 10.03.1995 (Annexure-6 to the 9 petition) informed the Regional Office that he had received all the forms within time but on account of certain defects pointed out by the Regional Office, Agra there was delay in submitting the same. Further again vide letter dated 10.05.1995 (Annexure-7) the Branch Manager reiterated his earlier stand and mentioned that forms had been sent to the Zonal Office. The Bank continued with the correspondence and the name of the petitioner (M. K. Gupta) was not approved for registration under the pension scheme and accordingly he was not given pension.

3. Aggrieved by the said action the petitioner filed writ petition before this Court being Writ Petition No. 82254 of 2001 for a direction to the respondents to release the pensionary benefits. The said petition was disposed of vide order dated 26.11.2001 directing the respondent bank to pass speaking orders calculating the amount, which the petitioner is entitled and also to pay the same within two months. Subsequently the bank filed recall application of the order dated 26.11.2001, however, the same was dismissed vide order dated 08.03.2002. The Court observed that the bank was required to pass speaking order with regard to the amount due to the petitioner and in case no amount was due to the petitioner it was always open to the bank to pass such orders and communicate the same.

4. Pursuant to the said order of this Court dated 26.11.2001 clarified vide, order dated 08.03.2002 the respondents have passed the impugned order dated 8/9.04.2002 holding that the petitioner was not entitled to the pension scheme and was to be treated under the CPF scheme. Aggrieved by the same the petitioner has filed the present writ petition.

5. I have heard Sri Sanjiv Agarwal and Sri Ranjit Saxena, learned counsels for the petitioner and Sri K.R.S. Jadaun, learned counsel for the respondent bank and have also perused the record.

6. The correspondence filed by the petitioner is not disputed by the respondents bank in the counter affidavit. The ground taken in the impugned order is that the respondents have treated the application for pension option of the petitioner to be dated 11.01.1995 and as on the said date the option was not open, the petitioner was not entitled to the pension scheme. The reason given in the impugned order is quoted as under:-

The important fact of the matter was that the over writing and the cuttings of the original dates were not duly authenticated by you by putting full signature on them. Accordingly, the application for pension option was taken as 11.01.1995 by owner Bank authorities. Since the right to give option was not open either t on 11.01.1995 or on 02.03.1995 therefore it was not sent to central office for due registration for conversion of pension from CPF system existing hitherto.

Since, pension was not duly registered at Central Office on the grounds as above therefore, you were found not entitled for pension option.

7. The first reason given is that the overwriting and cuttings of the original dates were not duly authenticated by the petitioner by putting full signatures on them. It is, therefore, clear that the initials were made on the cuttings and over writings. Such a ground cannot be sustained under law. In case the respondent authorities were not satisfied with the initials made by the petitioner and desired the full signature they could have asked for his full signatures. No such intimation was given. It is not the case of the respondent that despite request petitioner did not affix his complete signatures. Further it is also not the case that the initials on the cuttings were not of the petitioner or that there was any doubt or suspicion with regard to the initials made. Such an objection cannot be held to be justified in the absence of it being communicated for being corrected or ratified.

8. Further no communication was given to the petitioner that the option exercised by him for the pension scheme had been rejected on this ground. In case such intimation was given the petitioner could have exercised option in the period 1995-1996 when the option was again opened from 29.09.1995 to 26.01.1996.

9. The second reason given is that the application of the pension option of the petitioner was treated to be on 11.01.1995 and on the said date as option was not open his application was not forwarded for registration. This reason also cannot be sustained for the reason as to how 11.01.1995 is taken to be the date of the application, when it is mentioned in the impugned order itself that it was sent by the branch office on 02.03.1995 and the branch office had been repeatedly writing that the applications were received in time by the Bank. There was no evidence to suggest that the date was 11.01.1995.

10. Having gone through the record I am of the view that the respondents were themselves confused with regard to the option exercised by the petitioner for pension scheme. From perusal of Annexure 11 and 12 which are letters dated 26.02.1999 and 14.12.2000 issued by the Branch Office and the regional office it is clearly mentioned that the contribution under the CPF Scheme had not been deducted since January 1997 which itself means that the petitioner was treated to be in the pension scheme and it was also requested in the said letters that sympathetic view may be taken in favour of Sri M.K. Gupta and the Central Office may be requested to treat him as a pension optee. Further Annexure 13, letter of Chief Manager Pension dated 04.04.2001 called for explanation from the Regional Office as to why the name of the petitioner was not forwarded for registering as pension optee. Annexure 14 is the chart with regard to employees retiring between different periods which includes the name of the petitioner at Sl. No. 2 in the heading of officers due to retire during 01.04.2001 to 31.03.2002

and the last name under the heading "whether opted for pension" it is mentioned "yes". This chart is also not disputed by the respondents in the counter affidavit. Further even assuming that the ground taken by the respondents in the impugned order that the application of the petitioner was submitted after the cut off date to be correct, the petitioner cannot be deprived from being included in the pension scheme. Merely because an employee failed to apply for pensionery option within the time limit a minor delay cannot be a ground to reject his application for the reason that pension option is a beneficiary scheme and endeavour should be to provide pension, and more so when the respondent itself gave second chance to the employees for giving option for pension scheme in the end of 1995, and admittedly before the said date the petitioner''s application was pending on the own showing of the respondents. In my view the application of the petitioner ought to have been entertained and the respondents, should have registered the petitioner under the pension scheme.

11. In the result, the writ petition deserves to be allowed. The impugned order dated 08/09.04.2002 is set aside, and the respondents are directed to register the petitioner in the pension scheme and pay all the pensionery benefits admissible to him after getting necessary deposit of the contribution required to be made by the petitioner.

