

(2011) 09 AHC CK 0353
In the Allahabad High Court
Case No : Writ Petition No. 1695 (SB) of 2011

Radhey Shyam Kapoor

APPELLANT

Vs

Allahabad Bank and Others

RESPONDENT

Date of Decision : 21-09-2011

Acts Referred:

Allahabad Bank Employees (Pension) Regulations, 1995 — Regulation 3
Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 19(2)

Citation : (2011) 10 ADJ 118

Hon'ble Judges : Surendra Vikram Singh Rathore, J; Pradeep Kant, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard the counsel for the petitioner Sri Rajesh Singh Chauhan and Sri Gopal Krishna Srivastava for the Bank (respondent Nos. 1 to 4).
2. We do not find any reason to issue notice to respondent No. 5.
3. The petitioner, who was initially inducted in the services of Allahabad Bank as a Clerk on 15.5.1991. retired on reaching the age of superannuation on 31.7.2006, from the post of Assistant Branch Manager, Allahabad Bank Branch, Lakhimpur Kheri. At the time of retirement of the petitioner, the pension of the employees of the Bank was governed by the rules known as Allahabad Bank (Employees") Pension Regulations, 1995 but the petitioner was not entitled to pension as he did not opt for the same within the prescribed period of 120 days in terms of Regulation 3(b) of the Regulations.
4. The petitioner claims that he would be allowed to opt for pension and rather, he should be given pensionary benefits as he had opted for the same on 17.12.2010.
5. The brief facts with regard to the claim of pension for the employees working with nationalised Banks including Allahabad Bank would be of some advantage to

understand the claim of the petitioner.

6. A scheme was proposed and formulated for pension in the Banking Industry in the year 1993, on the basis of settlement reached between the Indian Banks' Association representing member Banks and All India Bank Employees Association. Under the said scheme, retired employees and families of deceased employees, retired/expired on or after 1.1.1986 and till 31.10.1993, including the existing employees/officers on the Bank's roll as on 31.10.1993, were required to exercise option for availing the benefit of pension within stipulated time. The Bank brought Instruction Circular No. 3904 dated 6.9.1994 in the matter with option forms in which the existing employees and retired employees were required to exercise their option. Initially, the time limit for exercising the option was till 30.9.1994 but subsequently the said date was extended till 30.11.1994.

7. The said scheme of 1993 got its final shape in the year 1995 and in exercise of the powers conferred by clause (f) of sub-section (2) of Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (Act No. 5 of 1970), the Board of Directors of the Allahabad Bank with concurrence of the Reserve Bank of India and prior sanction of the Central Government approved the Regulations which was notified in the official Gazette of India on 29th September, 1995 and came to be known as Allahabad Bank (Employees') Pension Regulations, 1995.

8. Similar steps were taken by different nationalised Banks which came out with their respective pension Regulations in terms of the aforesaid settlement.

9. As per provision of the Regulations of 1995, all retired employees and families of deceased employees, retired/expired on or after 1.1.1986 and existing employees/officers on the Bank's roll as on 29.9.95 were required to exercise option for availing the benefit of pension within the stipulated time i.e. 27.1.1996. While the existing employees were required to authorise the Bank to permanently transferee employer's share of Provident Fund to Pension Fund, the retired employees/widows of deceased ex-employees were required to refund the employer's share of Provident Fund with interest received by them at the time of their retirement. It is pertinent to mention here that Head Office vide Instruction Circular No. 4318 dated 16.11.1995 advised that in terms of Clause 9 of Chapter II of the Allahabad Bank Employees' Pension Regulations, 1995, earlier options received in reference to the scheme of 1993 were also valid options under the Regulations of 1995.

10. Incidentally, as per the provisions contained therein, pension as per the Regulations of 1995 was in lieu of Bank's contribution to Provident Fund and those employees who did not exercise the option to join the Regulations of 1995 continued to be covered under Contributory Provident Fund Scheme.

11. While a sizeable number of retired employees as well as existing employees opted to receive pension, a good number of employees preferred to continue to

remain covered under the existing Contributory Provident Fund scheme and did not opt for pension within the cut-off date of 27.1.1996.

12. Thereafter, across various nationalised Banks, there was a constant demand by the workman employees' Unions and officer's Associations to introduce another option for pension for those eligible employees who did not opt for pension or failed to do so within the stipulated time but wanted to be a member of Pension Regulation 1995/1996 in respective Banks. The said demand culminated into signing of 9th Bipartite Settlement/Joint Note dated 27.4.2010 between the Indian Banks' Association (IBA) representing Management of various Banks and Workmen Unions/Officers' Association of respective Banks, vide which another option for pension was extended to the employees of the Banks. The said settlement and joint note was signed between IBA and Workmen Unions/Officers' Association after several rounds of discussion and after considering all the modalities.

13. In the context of the case at hand, it is pertinent to mention that the said settlement/joint note dated 27.4.2010 was applicable to all the nationalised Banks and not just Allahabad Bank.

14. The IBA pursuant to the settlement/joint note dated 27.4.2010 came out with a notice to all concerned, which was published in various newspapers across the country both with regional and national circulation, regarding another opportunity for the eligible employees to opt for pension in terms of Pension Regulations 1995/1996 in their respective Banks which was a long cherished desire of the employees/ex-employees who did not opt for pension on earlier occasions.

15. Sanction of the Government of India was also accorded to implement terms of settlement/joint note dated 27.4.2010 between the Indian Banks Association (IBA) and Unions/Association for the grant of option to the retirees and payment of arrear pension to such retirees with effect from 27.11.2009, who opt for pension and comply with the terms and conditions set out in the said settlement/joint note. The Bank also came out with Instruction Circular No. 11143/PA/2010-11/27 dated 15.9.2010 in this regard which was widely circulated and displayed on the notice boards of the branches/offices of the Bank. The last date for exercise of option in terms of the aforesaid Instruction Circular was set as 18.11.2010, based on settlement/joint note dated 27.4.2010. Again, as was the case before a large number of eligible employees/retired employees/widow of deceased ex-employees exercised option for pension and those who did not, continued to remain members of the Contributory Provident Fund Scheme.

16. Thus, it is evident that employees of the nationalised Banks including that of Allahabad Bank were afforded opportunity thrice, to opt for pension scheme within stipulated time but admittedly, the petitioner did not opt at either stage within the time prescribed.

17. The petitioner retired on 31.7.2006. On first two occasions i.e. in the year

1994 and again in the year 1995-96, he continued to be the member of the Contributory Provident Fund Scheme and as such his terminal benefits comprising Provident Fund of Rs. 12,74,697.65 (including Bank's contribution) and gratuity of Rs. 3,78,000.00 etc. were released to him as per his entitlement. He did not object to the said calculation of the retiral dues nor raised any grievance about he having not opted for pension. Even for the third time, when another option was allowed in the year 2010, as a result of protracted negotiations which continued for years, between the Indian Banks' Association (IBA) representing management of various Banks and workmen Unions/Officers' Association of respective Banks, he did not opt for pension under the Regulations of 1995 and preferred to remain a member of the Contributory Provident Fund Scheme.

18. It is not in dispute as is also evident by the letter dated 5.2.2011 of the Chief Manager, Lakhimpur Branch addressed to the Assistant General Manager, Zonal Office, Lakhimpur that the petitioner regularly visited Lakhimpur Branch during the period from 18.9.2010 to 15.11.2010 (i.e. after circulation of Instruction Circular No. 11143/PA/2010-11127 dated 15.9.2010) in connection with the business of M/s Kapoor Brothers & Co. As per the said letter, the petitioner visited the Lakhimpur Branch on 24 different dates during the period from 18.9.2010 to 15.11.2010 for depositing the cash himself.

19. The notice of Indian Banks' Association was also published in various newspapers and the Bank's circulars were also displayed on the notice board of Lakhimpur Branch, where the petitioner was making frequent visits and a number of retired employees and widows of deceased employees exercised their option within the stipulated date but despite such publication of information, the petitioner did not opt for pension within the time prescribed.

20. On consideration of the prayer of the petitioner in pursuance of the directions issued by this Court in the writ petition filed earlier, the competent authority of the Bank, namely, General Manager (HR) has come to the conclusion that the petitioner did not opt for pension on either of the three occasions and that pension scheme having been approved by the Reserve Bank of India and having been sanctioned by the Central Government u/s 19(2)(f) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Bank has no discretionary authority to provide another opportunity to those who neither gave their option within 30.11.1994 under the Scheme of 1993 nor submitted their option under 1995 Regulations within stipulated time i.e. till 27.1.96 and even further did not submit their option within 18.11.2010 in terms of settlement/joint note dated 27.4.2010.

21. Counsel for the Bank has relied upon the case of Union of India (UOI) and Others Vs. M.K. Sarkar, where the Apex Court has held that when a scheme stipulates that benefits thereunder will be available only to those who exercise the option within a specified time, option should obviously be exercised within such time and that notice of option must be adequate but it is not necessary to

serve notice to all the persons concerned.

22. We do not find any illegality in the decision taken by the Bank, as we are of the considered option that in the absence of option being given by the petitioner within stipulated time, neither Bank had any authority to extend the period for giving option nor option could be accepted after the prescribed period had elapsed.

23. The petitioner was afforded opportunity to give his option thrice and if he has chosen to remain a beneficiary of Contributory Provident Fund Scheme, it cannot be said that any injustice has been done, as it was the choice of the petitioner, who exercised the same diligently and it is an afterthought to approach the Court for having the benefit of pension scheme, which cannot be allowed.

24. The writ petition has no force and is dismissed.