(2011) 03 DEL CK 0195

In the Delhi High Court

Case No : Writ Petition (C) No. 8402 of 2010

Raj Bala APPELLANT

Vs

Punjab National Bank RESPONDENT

Date of Decision : 14-03-2011

Acts Referred:

Citation : (2011) 03 DEL CK 0195

Hon'ble Judges : Sudershan Kumar Misra, J

Bench : Single Bench

Advocate : K.G. Mishra, for the Appellant; Jagat Arora, for the Respondent

Judgement

Sudershan Kumar Misra, J.—The Petitioner seeks the benefit of a, "PF and Pension Circular No. 8/2010 ", issued by the Respondent Bank on 16.08.2010, in terms whereof, family members of employees who were in the service of the Bank prior to 29.09.1995 but had died while in service after that date but before 27.04.2010, would be eligible for family pension. That circular, inter alia, granted the family members an opportunity to exercise the option of receiving family pension instead of Provident Fund. They were permitted to exercise this option between 27.08.2010 and 25.10.2010. There was also a condition that anyone exercising this option was also required to refund 156% of the Provident Fund that had been disbursed to the deceased employee. This refund was to be made between 26.10.2010 to 24.11.2010.

2. The husband of the Petitioner is stated to have died in December 2008. It is also not in dispute that her husband was in service of the Bank prior to 29.09.1995 and consequently, these two conditions were met.

3. The Petitioner also applied for grant of family pension on 27.09.2010 i.e. within the time prescribed. However, the amount, as envisaged under the scheme, was not deposited by the Petitioner within the time granted. The time for making the deposit expired on 24.11.2010. It is stated that the Petitioner was unwell during this period, and therefore, could not deposit the same. In support,

the Petitioner has produced a medical certificate purportedly issued by one Ashoka Nursing Home, Loni, Ghaziabad, certifying that from 20.11.2010 to 28.11.2010, the Petitioner was suffering from "viral fever and vertigo".

4. Counsel further states that in fact, the Petitioner was not obliged to take any steps towards deposit of the amount till the appropriate advice quantifying the amount payable by his client was given to his client in terms of paragraph 8 of the aforesaid Circular No. 8/2010. Paragraph 8 of the circular states as follows:

The amount to be refunded by the retiring employees/officers or their family members (in case of deceased employees/officers) who opt for Pension Option shall be advised to the Branches separately for advising/communicating the same to them. However, the commuted value of pension will be ascertained only after the pension proposal is received from the Branches/Circle Offices/HO Divisions (as per the existing system for submission of Pension Proposals).

The commuted value will be value based on next date of birth of the employee from the date of commencement of Pension option i.e. 27.08.2010.

He also submits that looking to the said provision, even if the medical certificate is not taken into consideration, the obligation of the Petitioner to deposit the amount never commenced because no communication was received from the Respondent quantifying the amount payable by her.

5. It is the Petitioner''s case that she also approached the Bank on 6th December, 2010 when she was informed for the first time that the last date for refunding the amount was 24th November, 2010 and since the amount has not been refunded, therefore, she is not entitled to the benefit of the Scheme.

6. It is also the Petitioner''s case that she has always been possessed with sufficient funds and can easily pay this amount, which, according to her calculation, comes to about Rs. 3,44,570.68. Counsel states that a larger amount has been continuously lying in the Petitioner''s name in the same bank.

7. To my mind, keeping in view the aforesaid paragraph 8 of the Scheme, the only way in which the Scheme can be construed is that the Bank was also obliged to communicate all the relevant particulars with regard to the amount to be deposited by the Petitioner immediately on the making of the application exercising the option; and it is only thereafter that the period for making the deposit would begin to run. This is because, on the one hand, paragraph 8 of the Scheme obliges the bank to compute the amount refundable, and to inform the applicant accordingly, without setting down any time limit for doing so; on the other hand, not only is the applicant to refund the amount within 30 days, he has to do so before 24.11.2010. If the Bank itself considered it necessary to compute and inform the applicant of the amount to be refunded by him, then, in the absence of that information, any opportunity given to him to pay is meaningless. Furthermore, for this Court to uphold the denial of the benefit of the Scheme on the sole ground of not having deposited the amount before the cut-off date of

24.11.2010 would amount to rendering compliance of paragraph 8 optional on the part of the Bank. Paragraph 8 creates a vested right in the applicant to be informed of the amount to be deposited by him, and the Bank cannot be permitted to ignore it. The only rational way to interpret the Scheme therefore, is that the applicant has to first apply before 25.10.2010. Having done that, he has to deposit the amount within 30 days after he is informed by the Bank under paragraph 8 and not before.

8. Counsel for the Respondent Bank is also unable to meet the contention with regard to the obligation of the Bank to quantify and communicate the amount which is to be deposited by the family members of the deceased employee. It is, therefore, obvious that the obligation of the Petitioner to deposit the amount only arises once the requirements of para 8 have been followed. Any other interpretation would render Clause 8 meaningless.

9. Under the circumstances, the Respondent is directed to properly compute the amount which has to be refunded by the Petitioner to the Respondent bank in terms of its aforesaid circular No. 8/10 dated 16th August, 2010, within four weeks from today. The Petitioner would thereafter be obliged to deposit the necessary amount within 30 days of receipt of this intimation from the Respondent. Once that is done, the Respondent will process the matter further and admit the Petitioner to family pension in terms of the Rules, within two months.

10. The writ petition is disposed of accordingly.