
(2014) 01 RAJ CK 0012
In the Rajasthan High Court
Case No : Civil Writ Petition No. 11394/2012

Sardar Singh

APPELLANT

Vs

Punjab National Bank and Others

RESPONDENT

Date of Decision : 17-01-2014

Acts Referred:

Citation : (2014) 01 RAJ CK 0012

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Brij Kishor Sharma, Counsel, Advocates for the Appellant; Rajendra Arora, Counsel, Advocates for the Respondent

Judgement

Mohammad Rafiq, J.—This writ petition has been preferred by petitioner Sardar Singh, inter-alia, with prayer that the communication dated 16.05.2012 (Annexure-11) sent to the petitioner by Assistant General Manager, Punjab National Bank in its Provident Fund and Pension Department, Head Office, Rajendra Place, New Delhi, declining to accept his option switching over to the pension scheme in lieu of provident fund scheme, may be set aside and respondents be directed to give him benefit of pension scheme on his depositing back the amount of provident fund with the respondent Bank.

2. Petitioner was appointed on the post of Guard with respondent Bank on 10.09.1986. On attaining the age of superannuation, petitioner retired from the services of the Bank on 31.01.2008. Petitioner was member of the Provident Fund Scheme, number of his provident fund account being PF Account No. 74652. As per the Banking Employees Service Regulation and IX Bipartite Settlement and joint note dated 27.04.2010 the respondent Bank extended benefit of pension to its employees in lieu of the provident fund for which options were invited from eligible persons. The PF and Pension Fund Department of the respondent Bank vide Circular dated 21.09.2010 issued notification for submission and approval of pension option. It also made its branch offices responsible for sending option with complete documents and after checking the

correct information and the amount etc. It was thereafter that vide Circular dated 24.06.2011 another option in terms of IX Bipartite Settlement was asked from the employees within sixty days.

3. Shri Brij Kishor Sharma, learned counsel for petitioner, submitted that petitioner submitted his option to respondent No. 4 - Branch Manager, Punjab national Bank, Rudawal, District Bharatpur, where the petitioner was posted. Copy of the option has been placed on record at Annexure-4. The PF and Pension Fund Department of the respondent Bank issued a Circular dated 16.08.2010 by which the second option was given to the persons who were covered thereby and retired from bank services. Learned counsel for petitioner submitted that petitioner was hopeful that he would get benefit of pension as per the Banking Regulation and 9th Bipartite Settlement. However, he was shocked to learn that the Chief Manager of the PF and Pension Fund Department sent a letter to the Chief Manager HRDD stating that pension option of petitioner is invalid as he deposited lesser amount and the respondent Bank sent this information to petitioner on 23.03.2011. Petitioner submitted representation to the respondents Bank on 25.04.2011 contending that due amount has been deposited by Branch Manager of the respondent Bank from his account. Even if there was any inaccuracy in calculation or otherwise lesser amount has been deducted by the Branch Manager from his account, the petitioner cannot be held responsible as it was the Branch Office which was to check the papers before processing the matter.

4. Learned counsel submitted that when nothing was done, petitioner again submitted representation on 07.05.2012 reiterating his request to the General Manager, HRD of the respondent Bank. Respondents however vide letter dated 16.05.2012 informed that it has rejected the representation of the petitioner and conveyed that his option has been rejected. In doing so, respondents Bank acted in most arbitrary and unreasonable manner. It is argued that petitioner has therefore served a notice for demand of justice and thereafter filed present writ petition.

5. It is argued that petitioner is a semi illiterate person and served the respondent on the post Guard with full dedication for as long as twenty two years. He did not understand the application of law. He offered and the respondent Bank even deducted the amount. The petitioner deposited a sum of Rs. 1,10,356.38 as required by the respondent No. 4. Although he was required to deposit an amount of Rs. 3,07,421.35 and now the respondents Bank insisted that he should have deposited the amount of Rs. 1,97,064.97. Had the petitioner been made known of this amount, he would have definitely deposited it. This fact is mentioned in the representation dated 05.09.2011. He has been informed that aforesaid amount deposited by the petitioner has again been returned and deposited in the account of the petitioner by the respondent Bank. Petitioner has been deprived of his right only because he relied on the respondent No. 4 the Branch Manager. He was made responsible for getting his option papers

prepared, checked and rechecked and thereafter sent to the Head Office of the respondent Bank.

6. Learned counsel for petitioner, in support of his argument, relied on the division bench judgment dated 17.05.2012, of this court delivered in a bunch of Special Appeals (Writ) leading one being D.B. Special Appeal (Writ) No. 2681/2011 - RRVNL and Another Vs. Hari Kishore Sharma and Another, and single bench judgment of this Court in Civil Writ Petition No. 2597/2006 - C.E. Francis Vs. State and Others, decided on 17.07.2012.

7. Shri Rajendra Arora, learned counsel for respondents Bank submitted that it was fault on the part of petitioner for which he has to blame himself. If petitioner did not deposit the requisite amount within stipulated time, it was his fault. He cannot shift his own lapse on to the Branch Manager of the respondent Bank. The Circular dated 24.02.2011 was not applicable to petitioner as he is not a pensioner. That Circular, which had fastened liability on Branch Manager applies to only retired employees. The option submitted by petitioner was rendered invalid on account of non-deposit of amount of provident fund. It was clearly indicated in the Circular dated 16.08.2010 that any option not received or full amount of refund is not paid by stipulated date, it would render the option invalid. Petitioner was rightly advised by the Bank that since he refunded only Rs. 1,10,356.38 as against Rs. 1,97,064.97, he failed to deposit the requisite amount in time, therefore, his option was liable to be rejected. Even that amount paid by the petitioner has been redeposited in his bank account.

8. Shri Rajendra Arora, learned counsel for respondents Bank, argued that there was no sufficient balance in the account of the petitioner. It is contended that the stipulation with regard to the date and deposit are mandatory. Writ petition is therefore liable to be dismissed.

9. What emerges from the facts of the case are that petitioner has served the respondent Bank as Guard for as long as 22 years. As per the IX Bipartite Settlement and Joint Note dated 27.04.2010 the benefit of pension was extended to bank employees in lieu of provident fund amount. Options were invited from eligible persons vide Circulars dated 16.08.2010 and 09.09.2010 and thereafter another Circular dated 21.09.2010. The Circular dated 21.09.2010, which is on record as Annexure-2) contained the procedure for compilation/submission of pension option letters from the existing employees as well as retired employees, who retired before 27.04.2010 or the retired employees, who retired on or after 27.04.2010, to PF and Pension Fund Department after closing date of submission and approval of pension option letter i.e. 25.10.2010. It is then not correct to say that this Circular applies only to existing employees and not all retired employees. Petitioner retired on 31.01.2008 and therefore this Circular would very much apply to him. Clause B(1) of the Circular dated 21.09.2010 provides that before sending the option letters, Branch/Circle Offices etc. should ensure that all option letters attested by competent authority. Under the caption "IMPORTANT POINTS", in its clause (3), it is provided that Bank's contribution to

the provident fund (which includes interest paid thereon) received by the retirees or their family member who retired/expired before 27.04.2010 or on or after 27.04.2010 is to be refunded by the retirees or their family member after closing date of pension option i.e. 25.10.2010 but latest by 24.11.2010. Circular dated 24.02.2011 again enjoined upon the Branch and Circle Offices to ensure that all the information related to the retirees including the salary figures provided while preparing the pension proposals of the retirees has been checked thoroughly at their level and no columns are left blank. Recovery, if any has been fully made and remitted to PF & Pension Fund Department. Circular dated 16.08.2010, in its clause 3(B), deals with cases of employees/officers, who were in the service of the respondent Bank prior to 29.09.1995 and retired after that date but prior to the date of bipartite settlement/joint note dated 27.04.2010 provided that they exercise an option in writing within 60 days from the date of offer, to become a member of the pension fund and, that they refund within 30 days after expiry of the said period of 60 days, the entire amount of the banks contribution to the provident fund and interest accrued thereon received by him on retirement together with his share in contribution towards meeting 30% of the funding gap.

10. It is not disputed that after being required to refund the provident fund amount, the petitioner deposited Rs. 1,10,356.38, what is however stated by respondent is that petitioner should have deposited Rs. 1,97,064.97. It is not disputed that the petitioner exercised his option within the time period allowed. It is also not disputed that the petitioner has conveyed to the respondent Bank in his representation dated 25.04.2010 that petitioner was required to deposit the amount of Rs. 1,10,356.38, which he deposited in the bank on 24.11.2010. The respondent No. 4 Branch Manager informed him by letter dated 23.03.2011 that in fact petitioner should have deposited Rs. 1,97,064.97 and therefore he did not do so and his option has been rejected, the amount so deposited has been refunded to his account. What therefore transpires is that petitioner deposited the amount less than Rs. 86708.59. Petitioner has candidly stated in that representation that he did not know how to operate the computer. Whatever amount was told to him by the then Manager Shri R.R. Meena, he deposited that. If he was informed of the higher amount, he would have deposited the same, and that he should not be penalized for the lapse of the Branch Manager.

11. Contention of respondents Bank that petitioner did not have sufficient fund in his bank account on that date, cannot be acceptable because as per the statement of bank account/photo-stat copy of passbook it appears that on 24.11.2010 after withdrawal of a sum of Rs. 1,10,356.38, there was still balance of Rs. 70,819.20 in his bank account. That means, there was no reason if the petitioner was required to deposit the entire amount of Rs. 1,97,064.97, he would not have deposited the additional amount on that date. There certain remained some confusion and the responsibility of which, in some proportion also lie on the part of the Branch Manager of the respondent Bank and not on the low paid employee like the petitioner entirely, who was only semi literate.

12. In the result, this writ petition succeeds and the same is allowed. The respondents are directed to accept the option of the petitioner for pension within one month on his depositing the amount of Rs. 1,97,064.97 with interest thereon as required under the Rules of the respondents Bank and pay him arrears of pension within two months thereafter and start making payment of regular pension to him.