(2013) 03 PAT CK 0018

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5629 of 2011 and 2289 of 2012

Shyam Bihari Rai — APPELLANT

Vs

Punjab National Bank and Others — RESPONDENT

Date of Decision : 13-03-2013

Acts Referred:

Citation : (2013) LabIC 3982

Hon'ble Judges : Navaniti Prasad Singh, J

Bench : Single Bench

Advocate : Ajit Kr. and Radha Krishna Singh, for the Appellant; Raj Nandan Prasad for State, for the Respondent

Judgement

Navaniti Prasad Singh, J.—These two writ petitions have been taken up for final disposal at this stage itself with the consent of parties. Heard learned counsel for the petitioners and the learned counsel for the Punjab National Bank (Bank).

2. The dispute, in the present case, is whether the petitioners have validly deposited pension option forms and consequently whether they are entitled to receive pension upon their superannuation from the respondent-Bank. It appears that earlier Bank, which is a nationalized Bank, did not have a Pension Scheme for its employees. Pursuant to a settlement arrived in furtherance of an industrial dispute, Bank set out modalities under which an employee who was to retire, an employee who had retired, could give an option indicating his intention to receive pension consequent to his superannuation. He was, accordingly, required to file an option form within the time stipulated and in the manner stipulated. He was, thereafter, required to refund the amount of employer''s and partly employee''s contribution to the CPF and some other payment within stipulated time. Upon completion of these two basic formalities, the option of pension would be fructified. Essentially, the dispute in the two writ petitions is whether petitioners had complied with their part of the responsibility.

3. In relation to Shyam Bihari Rai, the only petitioner in the first writ petition

being CWJC No. 5629 of 2011 it is not in dispute that as per the relevant Circular, the petitioner, who had retired on 31.05.2010 that is after the date of Bipartite Settlement/Joint Note dated 27-04-2010, he was required to file his option form in Annexure "1A". It is not in dispute that he submitted the said form at the Boring Road Branch of Bank, Patna from where he had superannuated. This form was undisputedly submitted on 30.08.2010. These facts are not disputed in the counter affidavit. What is disputed in the counter affidavit is that as per the notified scheme, he had to submit it in between 27.08.2010 to 25.10.2010 through HRMS (Human Resource Management System). The stand in the counter affidavit is that he had not so done and, accordingly, nothing further was required to be done by the Bank and he cannot claim pensionary benefits under the Pension Scheme. Learned counsel for the petitioner first points out to Clause 4(i) of the Circular No. 8 of 2010 dated 16th August, 2010 issued by the Bank which is Annexure A to the Bank''s counter affidavit. That clearly stipulates that so far as petitioner is concerned having retired after 27.04.2010, he was required to submit his option in terms of Annexure "1A". He draws attention of this Court to Annexure 4 to the writ petition being option form submitted by the petitioner which is in the prescribed form Annexure "1A". He then draws attention of this Court to Clause 4(iii) of the said Circular which, in clear and unambiguous terms, states that persons who have retired can approach any nearest Branch of Bank for submitting the option form. One copy the Branch would retain, one copy the Branch would endorse receipt and return to the depositor and the rest three copies the Branch would forward as stipulated in that paragraph. Petitioner states that it is undisputed that the petitioner was retired employee who retired from Boring Road Branch of the Bank. He, accordingly, submitted the form at Boring Road Branch which is not in dispute and it was submitted within time. Petitioner, thus, takes a stand that he had completed the formalities at his end.

4. On the other hand, the counsel for the Bank points out to instructions, as contained in Clause 4(i) which says that the option forms are to be submitted within 30 days from the date of offer through HRMS. It, further, states that the detailed guidelines and navigation for submission of option forms in HRMS are being issued separately. Learned counsel for the Bank, thus, submits that in view of this stipulation, petitioner, not having submitted the form through HRMS, he had not complied with the stipulations.

5. In my view, the submission is noticed only to be rejected. If one refers to Clause 4(i) itself, it says that detailed guidelines and navigation for submission of pension forms are being issued separately but in this very clause that is Clause 4, there is Clause 3 which is specific for retired employees. Thus, we have a vague and uncertain general clause, requiring filing of forms through HRMS and then a specific clause dealing with the like of the petitioner giving detailed procedure for submission of forms. The question is which of the clauses would apply. The obvious answer would be the latter because it specifically and especially deals with the contingency of petitioner. The principle to be applied is "generalia specialibus non derogant" that is when special provision follows a

general provision, the special provision shall override the general provision. There being a special provision for the petitioner, as noted above, and the petitioner undoubtedly having complied with that, Bank cannot be permitted to say that petitioner had failed to comply with his part within the stipulated time.

6. Here, I may point out another issue. If for some reason, the petitioner had wrongly complied, there was enough time available for the Bank to notify the petitioner the correct procedure. Boring Road Branch of the Bank, if it was not so authorized to accept the form, should have intimated the petitioner while there was still time to resubmit the form in the proper manner. No such action was taken. In so many words, the counter affidavit does not say that Boring Road Branch, Patna was incompetent to receive the option form.

7. Once it is so held that petitioner had complied his part then it was upon the Bank to respond by giving the calculation and the money which petitioner was required to deposit. The Bank, admittedly, has failed to respond.

8. Here, I am reminded what Chief Justice Chagla had to say in the case of All India Groundnut Syndicate Ltd. Vs. Commissioner of Income Tax, Bombay City,

But the most surprising contention is put forward by the Department that because their own officer failed to discharge his statutory duty, the assessee is deprived of his right which the law has given to him under sub-section (2) of S. 24. In other words, the Department wants to benefit from and wants to take advantage of its own default. It is an elementary principle of law that no person -- we take it that the income tax Department is included in that definition -- can put forward his own default in defence to a right asserted by the other party. A person cannot say that the party claiming the right is deprived of that right because "I have committed a default and the right is lost because of that default."

9. Thus, so far as the first writ petition is concerned, it has got to be allowed. The Bank would have to notify to the petitioner the amount that was required to be paid by him by way of refund to the Bank as per the Circular and upon payment thereof by the petitioner, petitioner would be entitled to receive pension and any other pensionary benefit that goes with it as also all other formalities which the petitioner has to comply with keeping in mind that petitioner is merely a retired Armed Guard not literate enough to understand the procedural wrangles of the Bank. Once the formalities are complete, petitioner''s pension would be restored forthwith.

10. Now coming to the second writ petition. In the second writ petition, there is no dispute that the petitioner, in time, deposited his option form. For some reason, at the level of the Bank, it was not duly processed. It did not get the necessary attention of the Bank staff and, accordingly, failed to respond to the petitioner with figures with regard to payment in the shape of refund of money to start pension. As the failure was clearly on part of the Bank to respond, the petitioner cannot be deprived of his right to receive pension.

11. Accordingly, this writ petition also has to be allowed with direction to the Bank to complete formalities immediately, as indicated earlier and restore pension to the petitioner immediately. Both the writ petitions are, thus, allowed.

