(2011) 05 DEL CK 0401

In the Delhi High Court

Case No : Writ Petition (C) No. 1617 of 2011

Smt. Bhateri APPELLANT

Vs

Punjab National Bank RESPONDENT

Date of Decision : 18-05-2011

Acts Referred:

Citation : (2011) 05 DEL CK 0401

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : K.G. Mishra, for the Appellant; Ankur Mittal, for R-1, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sahai Endlaw, J.—The Petitioner is the wife of late Sh. Sukhbir Singh who died while in service as Daftary in the Ashok Vihar Delhi branch of the Respondent Bank. The Petitioner has been given employment as a peon in the Respondent Bank on compassionate grounds. The Respondent Bank also paid the terminal dues of Sh. Sukhbir Singh to the Petitioner. Sh. Sukbir Singh was not a pension optee under the first Pension Option Scheme introduced by the Respondent Bank in the year 1993-94.

2. The Respondent Bank vide Circular dated 16th August, 2010 introduced the second option to the employees of the Respondent Bank who had not opted for pension in terms of the first option introduced in the year 1993-94. Under the said Circular, the family of those officers/employees who were in service of the Respondent Bank prior to 29th September, 1995 and who had died while in service of the Respondent Bank after that date but prior to 27th April, 2010 were inter alia eligible for family pension subject to:

(i) Exercising the option in writing on or before 25th October, 2010.

(ii) Refunding on or before 24th November, 2010, the entire amount of Bank''s contribution to the provident fund and interest accrued thereon received after death together with deceased''s share in contribution towards meeting 30% of the funding gap

3. The Petitioner as the wife of the Sh. Sukhbir Singh was eligible under the aforesaid Circular and on 8th September, 2010 i.e. within time exercised the option for becoming a member of the Pension Fund.

4. It is the case of the Petitioner that she is illiterate and the Dealing Officer of the Respondent Bank advised the Petitioner that the Petitioner was required to deposit Rs. 44,879.92p with the Respondent Bank for becoming the member of the Pension Fund. The Petitioner again within time i.e. on 18th November, 2010 deposited the sum of Rs. 44,879.92p with the Respondent Bank. The Petitioner claims that she was assured that she had thus become member of the Pension Fund.

5. However, when others started receiving pension and Petitioner did not, she claims to have made enquiries and was then told that she was required to deposit approximately Rs. 70,000/-but had deposited only Rs. 44,879.92 as aforesaid and thus had not become a member of the Pension Fund. Upon representations of the Petitioner not meeting with any success, the present petition was filed on 1st March, 2011 seeking directions to Respondent Bank to accept the correct amount from the Petitioner and to condone the delay in making the deposit of the correct amount by the stipulated date of 24th November, 2010 and to treat the Petitioner as the member of the Pension Fund.

6. Notice of the petition was issued and a counter affidavit has been filed by the counsel for the Petitioner. The counsels have been heard.

7. The counsel for the Respondent Bank has drawn attention to the Circular aforesaid which provided that any option not received or full amount of refund not made within the stipulated date will render the pension option invalid. He has contended that the Petitioner having admittedly not made the deposit of the correct amount within the stipulated date is now not entitled to become a member of the Pension Fund. It is also contended that the Petitioner being herself employed with the Respondent Bank cannot contend that the correct amount was not informed to her. It is further contended that the averments in the petition that she was misinformed are vague and without any particulars of name, place, time etc. Reliance is placed on Food Corporation of India and Another Vs. Ram Kesh Yadav and Another, laying down that an employer cannot be directed to act contrary to the terms of its policy. The policy in that case was of compassionate appointment.

8. Per contra, the counsel for the Petitioner has invited attention to Clause 8 of the Circular which was as under:

8. 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).

He has contended that thereunder the Bank was to advise its branches separately for advising/communicating to the concerned persons about the Scheme. It is contended that no such communication of the correct amount due from the Petitioner was communicated to the Petitioner and in the counter affidavit also it has merely been stated that the amount to be deposited must have been communicated to the Petitioner and no particulars have been given of the person who communicated the correct amount to the Petitioner. The counsel for the Petitioner has also handed over in the Court a copy of the Ledger account/ statement of the Petitioner with the Respondent Bank showing payment of sum of Rs. 44,879.92 on 18th November, 2010 by the Petitioner to the Respondent Bank towards the Pension Fund. Therefrom it is also shown that as on that date, the Petitioner was possessed of a sum of Rs. 1,88,097.00 in that account alone and it is contended that it is not as if the Petitioner was not possessed of the amount required to be deposited of Rs. 70,000/-. From the said ledger statement, it is also shown that the said amount of Rs. 44,879.92 deposited by the Petitioner towards the Pension Fund was returned to the Petitioner only on 18th February, 2011. Reference is also made to the judgment dated 14th March, 2011 of this Court in W.P.(C) No. 8402/2010 titled Raj Bala v. Punjab National Bank where also for the reason of the aforesaid Clause 8 in the Circular, direction was issued for giving an opportunity to the Petitioner in that case to become a member of the Pension Fund. Reference is also made to the order dated 28th February, 2011 in W.P.(C) No. 4278/2008 titled R.K. Jain v. Punjab National Bank where also directions were issued for allowing the Petitioner in that case to become a member of PNB Parivar Bhavishya Arogya Scheme for the reason of the Petitioner therein having been unable to opt therefore within time for bona fide reasons.

9. I have no reason not to follow the dicta of this Court in Raj Bala (supra) and R.K. Jain (supra). Merely because the Petitioner in the present case is also employed with the Respondent Bank would not disentitle the Petitioner from the same treatment as meted out to the Petitioners in the other two cases. Though the Petitioner is working in the Respondent Bank but considering the post at which she is working and her educational and social background, no presumption can be drawn that by her mere employment she would be aware of the exact amount required to be deposited. The very fact that the Petitioner exercised the option for becoming a member of the Pension Fund and also deposited the money within the stipulated time is indicative of the Petitioner having exercised the option and having not been able to deposit correct amount for the reason of having been not informed of the same.

10. The petition is accordingly allowed. The Petitioner is granted time till 25th May, 2011 to deposit a sum of Rs. 70,000/- with the Respondent Bank. The

Respondent Bank to on or before 10th June, 2011 inform to the Petitioner further amounts if any required to be deposited by the Petitioner for becoming a member of the Pension Fund under the Circular aforesaid as well as of other formalities if any required to be completed therefore and to have the said formalities completed on or before 30th June, 2011 and to admit the Petitioner to family pension in terms of the Circular aforesaid.

No order as to costs.