

(2012) 01 AHC CK 0229

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 33410 of 2002

Smt. Geeta Varshney

APPELLANT

Vs

Allahabad Bank and Others

RESPONDENT

Date of Decision : 24-01-2012

Acts Referred:

Allahabad Bank Employees (Pension) Regulations, 1995 — Regulation 3, 3(7), 7
Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 19(2)
Constitution of India, 1950 — Article 21

Citation : (2012) 3 ADJ 449 : (2012) 133 FLR 25

Hon'ble Judges : Rakesh Tiwari, J; Dinesh Gupta, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Hon'ble Dinesh Gupta, J.—The instant writ petition has been filed for a writ of certiorari quashing the order dated 12.5.2002 passed by respondent No. 4 as also a writ of mandamus commanding the respondents to decide, fix and pay the monthly family pension and also pay the arrears of pension along with 18% interest from 18.7.1991. The facts in brief are that the husband of the petitioner late Sharad Chandra Varshney was appointed as clerk in the Allahabad Bank (hereinafter referred to as "Bank") on a permanent post on 21.5.1971 and later on he was promoted as Branch Manager and worked on the said post till 19.7.1991 when unfortunately he met with an accident and died; that after the death of the husband of the petitioner the Bank appointed the petitioner on compassionate ground on the post of Clerk-cum-Cashier and she is still in the service of the Bank; that prior to 1993, there was no provision for pension to the employees of the Bank and after great pursuation the Allahabad Bank Pension Scheme was announced under the settlement with the employees union and the Bank to provide benefit of pension to the employees; that the said scheme was named as "Allahabad Bank Employees (Pension) Regulation, 1993" (hereinafter referred to as Tension Regulation") which was circulated amongst the branch

offices by instruction circular No. 3904 dated 6.9.1994 inviting option on the prescribed form; that the husband of the petitioner served continuously for more than 20 years and as such under the provisions of the Pension Regulation, the petitioner being widow of the deceased employee, is entitled for the family pension; that Regulation 3 provided eligibility criteria for the employees willing to exercise the option; that the aforesaid scheme was not applicable to petitioner's husband and the petitioner was not eligible for getting family pension as her husband had admittedly expired before the stipulated date of 1.11.1993; that in the year 1994-95 a new pension scheme was introduced which is applicable to the petitioner. In the new pension scheme known as "Allahabad Bank (Employees) Pension Regulation, 1995 (hereinafter referred to as "1995 Pension Regulations") a comprehensive scheme was formulated widening the scope for exercising option of pension by the employees concerned or by his widow in the event of the death of the employee. The petitioner quoted the provisions of Regulation 7 of 1995 Pension Regulations which are reproduced below:

7. Where in the service of the Bank during any time on or after the 1st day of January 1986 and had died while in service on or before the 31st day of October, 1993 or had retired on or before the 31st day of October 1993 but died before the notified date in which case their family shall be entitled to the pension or the family pension as the case may be under these regulations, if the family of the deceased:

(a) Exercises an option in writing within one hundred twenty days from the notified date to become member of the fund; and

(b) refunds within sixty days of the expiry of the said period of one hundred and twenty days specified in clause "a" above the entire amount of the Bank's contribution to the provident fund and interest accrued thereon together with a further simple interest at the rate of six per cent per annum from the date of settlement of the provident fund account till the date of refund of the aforesaid amount to the Bank.

Chapter V Regulation No. 34

34. Payment of pension or family pension in respect of employees who retired or died between 1.1.1986 to 31.10.1993:

"1" - Employees, who have retired from the service of the Bank between the 1st day of January, 1986 and the 31st day of October, 1993 shall be eligible for pension with effect from the 1st day of November, 1993.

"2" - The family of a deceased employee governed by the provisions contained in sub regulation 7 of Regulation 3 shall be eligible for family pension with effect from the 1st day of November, 1993.

2. The petitioner further submitted that the husband of the petitioner had died on 19.7.1991 i.e. between 1.1.1986 and 31.10.1993, as such the petitioner is entitled for family pension w.e.f. 1.11.1993 under the provisions of Pension

Regulation, 1995; that the petitioner after the death of her husband submitted an application and the form for pension duly filled on 28.11.1994 and also made several representations but she was not given the family pension; that when the new Pension Regulation, 1995 was enforced the petitioner, apart from her earlier option, again submitted her option being widow of the deceased employee but the Bank did not consider her case; that the Bank on third occasion on 27.11.1997 got filled another form of the family pension with the assurance that she will get the family pension after completion of all the formalities; that the petitioner made several representations and reminders, but the Bank authorities deliberately did not settle the family pension of the petitioner and the petitioner was left with no option but to file Civil Misc. Writ Petition No. 14881 of 2001 before this Court and the said writ petition was finally disposed of vide order dated 20.4.2001 directing the respondents to decide the representation of the petitioner; that when the respondents inspite of the order of the Court, did not decide her representation she moved a Contempt Petition against the respondent and when the notices were issued and served on the respondents in the contempt petition, without applying their mind and without giving an opportunity of hearing, the respondents illegally decided the representation of the petitioner rejecting the same vide order dated 12.5.2002.

3. The respondents filed counter affidavit and stated that the Bank had taken sympathetic view after death of the petitioner's husband and she was appointed as Clerk-cum-Cashier on compassionate ground and further her dues of provident fund and gratuity were also released; that under the settlement between the Employees' Union and the Bank and to provide benefit of pension to the intending employees who were agreeable to exercise their option in place of contributory fund system a new Pension Regulation was formulated and the same was circulated amongst the branch offices of the Bank inviting option on the prescribed format for the different categories of intending employees; that it is vehemently denied that the respondents had not given said circular to the petitioner or other employees.

4. The submission made by the respondents in paragraph 7 of the counter affidavit are quoted below:

7(a) That the said Pension Regulation, 1993 vide its Regulation 3 provided eligibility criteria for the employees concerned willing to exercise the option and stipulated that the Regulation shall apply to-

(I) Employees who joined service of the Bank on or after 1st. November, 1993.;

(II) Employees in service of the bank as on 31st October, 1993 and who exercise an option in writing in response to the bank's notice to this effect to become members of the pension scheme and to cease to be members of the Contributory Provident Fund scheme with effect from 1st November, 1993 and irrevocably authorize the bank or the trustee of the contributory provident fund to transfer the entire contribution of the bank along with entire interest accrued thereon to

the credit of pension fund to be created for this purpose.

(III) By way of special dispensation to the employee who retired on or after 1st January 1986 but before 1st November, 1993 provided that such employees apply for it and on the format prescribed by the bank and refund by the date decided by the bank, the bank's entire contribution to the provident fund including interest received with further simple interest at the rate of 6 per cent per annum from the date of withdrawal of the provident fund amount till the date of refund.

7 (b). That in view of the eligibility criteria stipulated in Regulation 1993 and as stated herein above in paragraph 7 (a), the family pension format on which the petitioner purportedly made a representation to the respondent bank was irrelevant to the context since petitioner was not eligible for getting family pension in terms of the aforesaid eligibility criteria inasmuch as the husband of the petitioner admittedly expired before the stipulated date of 1st November, 1993 as well as he was not retired on or after 1st January, 1986 so in no way he could be considered to be eligible for pension under any of the eligibility criteria of the said scheme, at the same time the scope of the "special dispensation" to the employee is also not applicable to his case as he was not retired on or after 1986, rather he died in the year 1991.

5. It is further contended by the respondents that in the year 1994-95 a comprehensive pension regulation applicable to all the nationalized banks was formulated widening the scope for exercising option for pension by the employees concerned or by his widow in the event of death of the employees; that amongst other Regulation 3(7) of the Pension Regulations is relevant for the purposes of the present controversy and the petitioner's case is covered as it provided that it shall apply to all employees who were in the service of the bank on or before the 31st day of October, 1993. Sub paragraph (a) of Regulation 3(7) provided for exercising an option in writing within one hundred and twenty days from the notified date to become a member of the Fund and sub paragraph (b) thereof provided for refund within sixty days on the expiry of the said period of one hundred and twenty days the entire amount of the Bank's contribution to the Provident Fund and interest accrued thereon together with a further simple interest at the rate of six per cent per annum from the date of settlement of the Provident Fund account till the date of refund of the aforesaid amount to the Bank.

6. The contention of the respondents as made in sub paragraphs 4, 5, 6 and 7 of paragraph 8 of the counter affidavit are quoted below :

4. That thus option has to be exercised within 120 days from the notified date i.e. 29.9.1995 to become a member of the fund viz. 27.1.1996 and further refund of the entire amount of the Bank's contribution to the Provident Fund was to be made within sixty days of the expiry of the said period of one hundred twenty days with interest accrued thereon together with a further simple interest

at the rate of six per cent per annum from the date of settlement of the Provident Fund account till the date of refund of the aforesaid amount to the Bank.

5. That the said mandatory condition of the Regulation 3(7) was not complied with by the petitioner, inasmuch as neither the option was made before 27.1.1996 nor the entire amount of the Bank's contribution to the Provident Fund was refunded by her.

6. That it is also relevant to mention here that "Allahabad Bank (Employees) Pension Regulations 1995" was framed in the exercise of the power conferred by clause (f) of sub section (2) of Section 19 of the Banking Companies Act No. 5 of 1970. It has thus statutory force and its effects could not be diluted nor amendment could be made to it for bringing those persons who have not complied with the mandatory provisions given therein and not given their option within the time provided in terms of Regulations.

7. That the aforesaid "Allahabad Bank (Employees) Pension Regulations, 1995" was duly circularized by the respondent bank vide its instruction circular No. 4318 dated 16.11.1995 amongst all branches and offices; the petitioner at the relevant point of time was posted at Maharajganj branch, Aligarh of the respondent bank and despite having full knowledge of the said circular the petitioner did not submit her option being the widow of late Sharad Chandra Varshney for the family pension within the time provided in terms of Regulation i.e. 27.1.1996.

7. The respondents further contended that from the aforesaid propositions, it is very much clear that the petitioner is not entitled for family pension under Regulation 1995 because she had not complied with the mandatory provisions of the said Regulations; that she submitted her option in the last week of December, 1995 and that the petitioner has set up a new case by making an allegation that she had submitted her option for family pension in the last week of December, 1995 which is patently false.

8. The petitioner filed rejoinder-affidavit denying the allegations made in the counter affidavit and reiterating her stand taken in the writ petition.

9. We have heard learned counsel for the parties.

10. Learned counsel for the petitioner submits that the respondents while considering the case of the petitioner rejecting her claim on the ground that Regulations, 1993 are not applicable to the petitioner and she is not eligible for the pension. It is not the case of the petitioner that her case is covered under Pension Scheme, 1993 and on the contrary her case is fully covered by 1995 Pension Regulations; that while considering the applicability of Regulations 1995 the respondents recorded a finding that the petitioner did not submit application for family pension by the stipulated cut off date i.e. 27.1.1996 and as such the request for family pension vide application dated 27.11.1997 could not be

considered, which is against the law and the facts; that while deciding the representation the respondents did not consider the earlier application dated 16.11.1995 submitted by the petitioner deliberately ignoring the fact that the said application was submitted within the stipulated time and as such the order passed by the respondents rejecting the representation of the petitioner is illegal and without jurisdiction; that the respondents had not disputed the fact that the petitioner would have been entitled to the benefit for grant of family pension under 1995 Pension Regulations had her application been filed within the stipulated time and the only ground for rejecting her representation is that the application was moved only after expiry of 120 days from the date commencement of the pension scheme; that the respondents have failed to consider that the petitioner is the widow of a deceased employee who expired on duty in an accident and she had also earlier given an application and filled the pro-forma on 16.11.1995; that the circular issued by the Bank on 16.11.1995 wherein it has been provided that the concerned Branch Manager of the Bank would be obliged to send a copy of the Regulations, 1995 to each retired employee or family member of the deceased employee was never sent to the petitioner at her address and the petitioner has been deprived from opting for family pension though she had given undertaking for refund of GPF contribution with interest to the Bank and that in cases of other employees the Bank had informed them the calculated amount of GPF contribution, but the petitioner was not given any such information by the Bank.

11. Learned counsel for the petitioner has relied on Smt. Susheela Rai Vs. Regional Manager, Allahabad Bank, Manager, Allahabad Bank, Mau Branch and General Manager (Personal and Administration), Allahabad Bank, ; S.K. Mastan Bee v. General Manager, South Central Railway and another, 2003(1) ESC 17 (All) and Triloki Nath Yadav v. Allahabad Bank and others, 2003(2) ESC 1609.

12. Learned counsel for the respondents submits that the petitioner had not applied on the prescribed format within the stipulated period of 120 days under the 1995 Pension Regulations and the allegation of filing an application dated 16.11.1995 in December, 1995 is incorrect and as such the Bank has rightly rejected her representation; that the petitioner is in service of the Bank as a Cashier-cum-Clerk and she was fully aware of the new pension scheme and she failed to submit the application in the prescribed format within the stipulated time and as such she is not entitled to family pension and that the petitioner has also failed to undertake to refund the GPF contribution to the Bank.

13. We are unable to accept the contention raised by the learned counsel for the respondents and we find force in the contention raised by learned counsel for the petitioner.

14. It is not disputed that the petitioner's case is fully covered under the new pension scheme which was introduced in the year 1995 (1995 Pension Regulations). The only ground of rejection of claim of the petitioner was delay in filing the application in the prescribed format. The respondents have vehemently

denied the receipt of the application of the petitioner in December, 1995. However, there is no denial that an application was got filled by the Bank on 27.11.1997. The statement made by the petitioner in paragraph 11 of the writ petition was not denied by the Bank and on the contrary it was admitted to the extent that the application was given, however the bank had not given any assurance that she will get the family pension.

15. The decision in the case of Smt. Sushila Rai (*supra*) has considered the effect of delay in moving the application by an employee. The facts of this case are very much similar to the facts of the present case. In that case the husband of the petitioner Smt. Sushila Rai died in harness on 26.1.1994. The Bank came out with a scheme (1995 Pension Regulations) which came into force on 29.9.1995, beside other things, it provided for grant of family pension one of the conditions whereof was that only such employees would be entitled to the benefit of the 1995 Regulations who had been in service of the Bank on or before 1.1.1986 and the last date for opting such scheme was 120 days from the date of enforcement of the 1995 Pension Regulations. The widow of the employee applied under the said Regulations on 16.6.1998 for grant of family pension and the respondent bank refused to grant the said benefit on the ground that the application was not filled within the stipulated period of 120 days. After hearing counsel for both the parties the Court observed as under:

Having heard learned counsel for the parties and on perusal of the record and considering the facts and circumstances of this case, in my view, the petitioner would be entitled to the grant of family pension under the Regulations of 1995 on the basis of her application filed on 16.6.1998. The submission of Sri Tewari that individual intimation was not required to be given, would not be acceptable. There was no direction by the Indian Banks' Association vide its letter dated 21.11.1995 for not intimating the individual retired employees or family members of the deceased employees. In the said letter, it had only been stated that the individual Banks need not notify the same through press. As such the Bank was obliged to carry out the requirement of intimation by the Bank in terms of the circular dated 16.11.1995.

In the case of Jai Singh B. Chauhan (*supra*), the Supreme Court was dealing with the case of a serving employee who did not opt for the pension scheme within the stipulated period of 120 days and had thereafter made representation only on 4.5.1998 with a request to be covered under the pension scheme and that too not on the requisite form. When the same was rejected by the Bank, the employee filed a writ petition, which was dismissed and ultimately the Apex Court also dismissed the claim of the employee on the ground that the publication of the scheme in the official gazette would be construed as sufficient notice to the employee of the Bank. The case of a serving employee opting for pension scheme in the year 1998, when the scheme had been issued in 1995 which provided for giving of option within 120 days, would be distinct from that of a widow of a deceased employee. The circular dated 16.11.1995, as had been

issued by the respondent-Bank, was neither placed before the Apex Court nor was it applicable, as the claimant there was a serving employee. By the circular dated 16.11.1995, the Bank itself required the issuance of notice to each retired employee or family members of the deceased employee, which was admittedly not sent to the petitioner in this particular case. Such requirement must have been found necessary by the respondent-Bank as a retired employee or family members of the deceased employees could not be having information of the scheme promulgated by the Bank. On the contrary, as publicity of the scheme was given in the bank offices, there was no such requirement of individual intimation to the serving employees, as they would have, in any case, come to know of the scheme of the bank in the normal course. In such view of the matter, the ratio of the decision in Jai Singh B. Chauhan's case would not be applicable to the facts of the present case.

In the case of S.K. Mastan Bee (supra), the Apex Court was dealing with the case of grant of family pension to the widow of a retired employee. In the said case also, the claim of the widow was rejected by the employer on the ground of delay. In such facts, the Apex Court directed payment of the entire arrears of pension within three months and allowed the writ petition with costs of Rs. 10,000. While allowing the writ petition, the Apex Court made the following observations:

6. We notice that the appellant's husband was working as a Gangman who died while in service. It is on record that the appellant is an illiterate who at that time did not know of her legal right and had no access to any information as to her right to family pension and to enforce her such right. On the death of the husband of the appellant, it was obligatory for her husband's employee, viz., railways, in this case to have computed the family pension payable to the appellant and offered the same to her without her having to make a claim or without driving her to litigation. The very denial of her right to family pension as held by the learned Single Judge as well as the Division Bench is an erroneous decision on the part of the railways and in fact amounting to a violation of the guarantee assured to the appellant under Article 21 of the Constitution. The factum of the appellant's lack of resource to approach by the legal forum timely is not disputed by the railways. Question then arises on facts and circumstances of this case, the Appellate Bench was justified in restricting the past arrears of pension to a period much subsequent to the death of appellant's husband on which date she had legally become entitled to the grant of pension? In this case as noticed by us herein above, the learned Single Judge had rejected the contention of delay put forth by the railways and taking note of the appellant's right to pension and the denial of the same by the railways illegally considered it appropriate to grant the pension with retrospective effect from the date on which it became due to her. The Division Bench also while agreeing with the learned Single Judge observed that the delay in approaching the railways by the appellant for the grant of family pension was not fatal inspite of the same it restricted the payment of family pension from a date on which the appellant

issued a local notice to the railways i.e. on 1.4.1992. We think on the facts of this case inasmuch as it was an obligation of the railways to have computed the family pension and offered the same to the widow of its employee as soon as it became due to her and also in view of the fact her husband was only a Gangman in the railways who might not have left behind sufficient resources for the appellant to agitate her rights and also in view of the fact that the appellant is an illiterate. The learned Single Judge, in our opinion, was justified in granting the relief to the appellant from the date from which it became due to her, that is the date of the death of her husband.

Consequently, we are of the considered opinion that the Division Bench fell in error in restricting that period to a date subsequent to 1.4.1992.

(emphasis supplied)

In the present case also, the entitlement of the petitioner for grant of family pension is not denied by the respondent-Bank. The sole reason for refusing such benefit to the petitioner is because of delay on behalf of the petitioner in making such application opting for the pension scheme. This Court is of the clear view that in terms of their own circular dated 16.11.1995, it was obligatory on the part of the respondent-Bank to inform the retired employees or family members of the deceased employees, of the pension scheme at their last known permanent address. In the absence of the respondent-Bank having fulfilled such obligation, in my view, the respondent-Bank cannot refuse to grant the benefit of the pension scheme to the petitioner merely on the ground of delay. In equity as well as under law, the petitioner would be entitled to the benefit of the family pension scheme under the Regulations of 1995.

For the foregoing reasons, this writ petition is allowed and it is directed that the respondents shall give the petitioner the benefit of the family pension under the Allahabad Bank (Employees") Pension Regulations, 1995 on the basis of the application filed by the petitioner on 16.6.1998. The arrears of pension shall be computed by the respondent-Bank within three months from the date of filing of a certified copy of this order before the respondent No. 1, the Regional Manager, Allahabad Bank, Regional Office, Mohaddipur, Gorakhpur and the entire arrears shall be paid to the petitioner within one month thereafter. The petitioner shall also be entitled to payment of future family pension regularly month by month. In case of default in making the payments within the aforesaid time schedule, the petitioner would be entitled to 9% interest from the date she is found entitled to such payment, till actual payment. It is made clear that if the payment is made within the stipulated time, the respondent-Bank shall not be liable to pay any interest. No order as to costs.

16. In the present case also the facts are similar to the above case and even on a better footing. If the argument of the Bank is also accepted that no application was moved by the petitioner as alleged in the writ petition on 16.11.1995 or in December, 1995, moving of an application along with form on 27.11.1997 is not

denied. In the case of Smt. Sushila Rai (supra) the application was moved on 16.6.1998 after lapse of almost three years while in the present case it was moved on 27.11.1997 and the only ground taken by the respondents also is of delay in moving the aforesaid application and also of not complying the conditions given therein. The petitioner has also stated that she was not supplied with the copy of the said scheme inspite of the clear instructions of the Bank. It is also not the case of the Bank that the petitioner was supplied with the said scheme or the said scheme was sent at her permanent address. The Bank has also not taken any other ground to reject the claim of the petitioner. Therefore, the case of the petitioner is fully covered by the decision in the case of Smt. Sushila Rai (supra).

17. In view of the above discussions, the writ petition succeeds and is allowed. The order dated 12.5.2002 passed by respondent No. 4 (Annexure-7 to the writ petition) is quashed. It is directed that the respondent shall give benefit of family pension to the petitioner under the Allahabad Bank (Employees) Pension Regulation, 1995 on the basis the application filed by her on 27.11.1997. No order as to costs.