
(2001) 12 MP CK 0003

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4060 of 2001

Surendra Kumar Mishra

APPELLANT

Vs

Allahabad Bank and Others

RESPONDENT

Date of Decision : 05-12-2001

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 19(2)(f)

Citation : (2002) 2 MPLJ 395

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : Brian D'Silva, for the Appellant; Anoop Nair, for the Respondent

Final Decision : Allowed

Judgement

Arun Mishra, J.

The petitioner seeks the relief for a direction to the respondent-Bank to consider the option exercised by the petitioner under the new Pension Scheme and to pay pension to the petitioner from the date of his voluntary retirement. He claims arrears of pension along with interest at the rate of 18%.

The petitioner submits that in the year 1994 he was working as Marketing Manager in the Regional Office of the respondent-Bank at Satna. The respondent-Bank pursuant to Settlement dated 29-10-1993 between the Bank and the Indian Bank Association, All India Bank Employees Association, N.C.B.E. and B.E.F. introduced a Pension Scheme in the Banking Industry. The proposed scheme was titled as "Allahabad Bank (Employees") Pension Regulations, 1993" and provided for existing employees to opt for pension as a Second Retiral Benefit in view of employees' contribution towards Provident Fund. The Scheme further provided that an employee had to render ten years qualifying service to be counted from the date he took charge of the post. The petitioner submits that he exercised his option within the stipulated period of time. He submitted his

option letter on 8-11-1994. The name of the petitioner finds place at Serial No. 134 in the list of the persons who submitted the option. The option forms were sent by Regional Manager, Satna on 8-12-1994 to the Head Office, Calcutta. Annexure- P-2 is a communication dated 8-12-1994 to this effect. The petitioner submits that the respondents failed to consider the option which is apparent from the Provident Fund Balance. The respondent No. 4-Regional Manager asked the respondent No. 3-Chief Manager on 1-10-1999, 12-2-2000, 28-4-2000, 8-8-2000 and 30-10-2000 that the option of the petitioner was yet to be considered by the respondent-Bank. Even though the petitioner retired w.e.f. 31-5-2001 his option for Voluntary Retirement Scheme has not been considered. However, the respondents have considered the case of other employees, namely, S/Shri Anil Kumar Pandey, H. Tripathi and S. K. Upadhyaya even though they have exercised their option subsequent in point of time and much below than the petitioner in the option list. The respondents have failed to discharge their duty in accordance with the pension regulations hence the petitioner prays for issuing a command directing them to do the needful.

The respondents in their return refuted the claim of the petitioner on the ground that initially by a Memorandum of settlement dated 29th October, 1993, a Pension Scheme was floated by the Bank as per circular dated 6-9-1994. It is now known as old pension scheme. According to the said Scheme options were to be submitted on or before 30th September, 1994. Subsequently the new Pension Scheme was introduced by the Allahabad Bank Employees Pension Regulation, 1995 Annexure-R/2 dated 16-11-1995 option for coming into the said scheme was to be exercised by the employees by 29-9-1995. The respondents submit that no option form of the petitioner is available with the respondent-Bank as per list sent along with Annexure-P-2 on 8-12-1994. A thorough search has been made in the Headquarter and it is a case set-up that no option was submitted by the petitioner as alleged. It is further contended that the petitioner did not submit any option as per the second circular dated 16-11-1995 Annexure-R-2. Petitioner's name was not removed from the Contributory Provident Fund Scheme indicates that he had not submitted his option. Writ petition has been filed after retirement. The petitioner ought to have pointed out earlier that his option was awaiting consideration. Thus the petition is belated and his silence signifies that he had not opted for the Pension Scheme, 1993. The respondents further contend that in case the petitioner opts for new pension scheme, employer's contribution towards pension fund has to be made and not towards provident fund. The employee's provident fund was not transferred to the pension fund in the case of the petitioner. Had the petitioner submitted an option, the same would have been transferred.

The learned counsel for the petitioner submits that the stand taken by the respondent-Bank that the option was not submitted as per circular dated 6-9-1994 is incorrect in view of the letter of the Regional Manager sending option forms for pension to the Chief Manager, Head Office, Calcutta wherein in the list appended of sending option forms name of the petitioner finds place at Serial No.

134. The Regional Manager wrote a letter on 28-4-2000 to the Chief Manager that the option submitted by the petitioner is yet to be considered. Reminder was sent on 12-2-2000 as mentioned in communication dated 28-4-2000 Annexure-P-Communication dated 12-2-2000 is also collectively filed as Annexure -P-2. The Regional Manager mentions that option was sent on 8-12-1994. Thus, the stand taken by the respondent Bank that option form has been searched in the Head Office but it is not traceable hence option was not submitted by the petitioner, is unacceptable. It is not the case of the respondent-Bank that letter Annexure-P-2 and the list are not genuine. It clearly mentions that the petitioner has submitted the option. His name finds place at Serial No. 134. Options of others have been accepted but not that of the petitioner. The action is impermissible and the respondents cannot be heard to say that option was not submitted by the petitioner in view of the documents which support the plea of the petitioner that he had submitted the option.

The next objection raised is that the petitioner did not submit the option in the Scheme of 1995. It is mentioned in Annexure-R-2 circular dated 16-11-1995 that the earlier options received in reference to the settlement dated 29-10-1993 are also valid options under these regulations. Since options submitted under the settlement dated 29-10-1993 are valid options, the petitioner's option has to be considered as valid for the purpose of Allahabad Bank (Employees'') Pension Regulations, 1995, relevant portion whereof is reproduced below:-

In supersession of the Instruction Circular No. 3904 dated 6-9-1994 regarding proposed Pension Regulations named as Allahabad Bank (Employees'') Pension Regulations, 1993 a new Pension Regulations, which has been formulated in terms of IBA and Government guidelines, has been adopted for implementation in our Bank.

In exercise of the powers conferred by clause (f) of sub-section (2) of section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), the Board of Directors of Allahabad Bank after consultation with the Reserve Bank of India and with the previous sanction of the Central Government have approved the Regulations and named it as "Allahabad Bank (Employees'') Pension Regulations, 1995.

The new pension Scheme provides for the existing as well as retired employees (on or after 01-01-1986) and family members of deceased employees who retired on or after 1-1-1986 to opt for pension as per provisions of Pension Regulations.

However, in terms of clause 9 of Chapter II, earlier options received in reference to the settlement dated 29-10-1993 are also valid options under these regulations.

A copy of the Allahabad Bank (Employees'') Pension Regulations, 1995 is enclosed. Keeping in view the provisions of the scheme, all employees/ex-employees, who have not submitted options as yet, are required to exercise their

options in terms of the scheme. Hence, fresh option will be required to be obtained within 120 days of notified date i.e. 29th September, 1995. All concerned persons i.e. existing employees, retired employees with effect from 1-1-1986, family member of retired/deceased employee after 1-1-1986 should send their options as mentioned below.

In view of the clear mention in the circular dated 16-11-1995, quoted above, the option has to be held valid for the Allahabad Bank (Employees") Pension Regulations, 1995.

Next submission of the respondents is that the petitioner has withdrawn his provident fund on 31-5-2001 after his voluntary retirement. That is required to be deposited by the petitioner in the Pension Fund. The learned counsel for the petitioner has fairly agreed to deposit it back with the respondent-Bank to be deposited in the Pension Fund along with interest at the prevailing rate of the Bank in the savings account.

It is thus held that the respondents have failed to accept the option submitted by the petitioner without any justifiable reason. They are directed to consider the option. In case it is not traceable now the petitioner may file another copy of the option form and do necessary formalities. The petitioner is directed to deposit the amount of employees" provident fund along with prevailing rate of interest of the Savings Account within a period of fifteen days from today. The respondents are directed to finalise the matter of pension under the Pension Regulations within six weeks thereafter.

The writ petition is allowed to the extent mentioned above. Costs on parties.