

(2025) 04 KL CK 1286
In the High Court Of Kerala
Case No : Writ Appeal No. 1898 Of 2023

The Chief Manager, Syndicate Bank

APPELLANT

Vs

K.Baburajan

RESPONDENT

Date of Decision : 02-04-2025

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala High Court Act, 1958 — Section 5(i)

Citation : (2025) 04 KL CK 1286

Hon'ble Judges : Anil K.Narendran, J;Muralee Krishna S., J

Bench : Division Bench

Advocate : R.S.Kalkura, R.Bindu Sasthamangalam

Final Decision : Allowed

Judgement

Muralee Krishna, J

1. This writ appeal is filed under Section 5(i) of the Kerala High Court Act, 1958, by the respondents in W.P(C)No.14240 of 2019 challenging the judgment dated 24.07.2023 passed by the learned Single Judge whereby Ext.P6 letter dated 12.04.2019 issued by the 3rd appellant rejecting the application filed by the respondent herein to permit him to opt the Pension Scheme as provided in Ext.P3 Circular dated 13.07.2018 was set aside and consequentially directed the appellants to reconsider the respondent's claim as expeditiously as is possible, at any rate, within a period of two months from the date of receipt of a copy of that judgment.

2. The writ petition was one filed under Article 226 of the Constitution of India by the respondent herein seeking a writ of certiorari to quash Ext.P6 letter dated 12.04.2019 issued by the 3rd appellant rejecting the application filed by the respondent opting for Pension Scheme provided under Ext.P3 Circular for compulsorily retired employees, to declare that the respondent is eligible for the benefit of the Pension Scheme envisaged under Ext.P3 Circular and the

appellants are bound to consider Exts.P4 and P5 applications submitted by the respondent; and a writ of mandamus commanding the appellants to consider Ext.P4 application dated 26.10.2018 submitted by the respondent for Pension and to allow the same as envisaged under Ext.P3 Circular.

3. According to the respondent, he joined service in Syndicate Bank as a Sub Staff on 02.05.1983 and was relieved from service under the Compulsory Retirement Scheme on 29.04.2005. As per the Pension Scheme existed at the time of retirement of the respondent, he was not eligible for opting pension benefits as his retirement was under the Compulsory Retirement Scheme. In 2016 a second opportunity was given to the employees who were in the service of the Bank on 29.09.1995 and retired thereafter, to exercise their option to join the Pension Scheme. Consequently, the respondent made Ext.P1 request dated 10.04.2016 to the 3rd appellant to extend the benefit to him. But that request was rejected by the 3rd appellant by Ext.P2 communication dated 24.05.2016. Thereafter Ext.P3 Circular dated 13.07.2018 was issued by the Bank incorporating new guidelines extending another option of Pension for compulsorily retired employees of the Bank. The last date for submission of the request with relevant annexures was on 22.08.2018. Except uploading Ext.P3 Circular in the Bank's Website, no separate notice was published by the Bank either on the notice board or in any other form. The respondent came to know about the Circular only on 11.10.2018 and then he submitted Ext.P4 application dated 26.10.2018. Since the application was delayed for 50 days, he submitted Ext.P5 written request dated 01.11.2018 along with Ext.P4. However, the application of the respondent was rejected by the 3rd appellant vide; Ext.P6 letter dated 12.04.2019. In the said circumstance, the respondent filed the writ petition.

4. The appellants filed a counter affidavit dated 12.08.2019 in the writ petition opposing the averments in the writ petition and producing therewith Annexures R1(a) and R1(b) documents. It was contended by the appellants that the information regarding Ext.P3 Circular was displayed in the notice boards in the Regional Office, Branches and Zonal Offices of the Bank and in the Bank's Website under Retirees Portal. According to the appellants, Ext.P6 order has been passed after considering all the materials placed before the 3rd appellant, after applying his mind. The respondent having submitted the Pension Option form beyond the date stipulated was disentitled for any relief. Though it is contended in the counter affidavit that a personal intimation by Annexure R1(b) letter dated 12.04.2019 was sent to the respondent, at the time of arguments, the learned counsel for the appellants fairly conceded before the learned single judge that the pleading in that regard is a mistake and actually Annexure R1(b) is the copy of Ext.P6.

5. After considering the materials on record and the submission made at the Bar, the learned Single Judge disposed of the writ petition as said above, taking the case as a singular circumstance. Paragraphs 11 and 12 of that judgment read

thus:

"11. Even though the Bank says that they had published the subsequent circular, dated 21.08.2018, on their premises, as also have been uploaded on the internet website, no evidence to substantiate the same has been placed on record. This does not mean that this Court is dissuaded from accepting their statement, but that it is also equally possible that petitioner is right in saying that he was not aware of either the Regulations or the Circular. There can be no two ways about it because, the exercise of option by the petitioner was for his own benefit and it defies logic as to why he should not have done so, had he been aware of Ext.P3 Regulations and the Circular dated 21.08.2018.

12. I am, therefore, of the firm view that though, in normal circumstances, no concession could have been granted, this is a deserving case where the petitioner's claim ought to be reconsidered by the Bank, advertent to the factual factors presented. This is more so because, going by the statement filed by the Bank, they were also aware that individual notices ought to have been issued to persons like the petitioner; and, interestingly, they assert they did so, but which has now been explained to be a mistake.

In the afore circumstances, taking into account the singular circumstances presented in this case and without meaning it to be treated as a precedent in any other matter, I order this writ petition and set aside Ext.P6; with a consequential direction to the competent Authority of the Bank to reconsider the petitioner's claim, after affording him an opportunity of being heard; thus culminating in an appropriate order and necessary action thereon, as expeditiously as is possible, but not later than two months from the date of receipt of a copy of this judgment. Needless to say, if, through the afore exercise, the petitioner is found entitled to exercise his option as per Ext.P3 Regulations, such opportunity shall be made available to him; and all beneficial consequences shall also follow, without any avoidable delay thereafter."

6. Heard learned counsel on both sides.

7. The learned counsel for the appellants would submit that the Bank has published the information regarding Ext.P3 Circular in the notice boards of all its Branch Offices, Zonal Offices and the Regional Office. The information was published in the Bank's Website under the Retirees Portal. It is true that there is a mistake in the counter affidavit regarding the sending of individual notice to the respondent. In fact, Annexure R1(b) is not a notice sent to the respondent and instead, it is a copy of Ext.P6 communication sent to the respondent rejecting his request. However, the non-information of the Pension Scheme to the respondent personally assumes no importance, since it is impossible to send individual information to all the retirees as they will be residing in different locations other than in the addresses provided in the Bank. The publication of Ext.P3 Circular in the notice boards of the Bank as well as in the Retirees Portal is sufficient notice to all the persons concerned.

8. On the other hand the learned counsel for the respondent argued that the respondent retired from service in the year 2005. Whereas Ext.P3 Circular was issued in the year 2018. One cannot expect to go through all the notices published in the Retirees Portal in the Bank's Website. Therefore, the delay caused in submitting an application pursuant to Ext.P3 cannot be taken as a ground to reject the request of the respondent.

9. The respondent retired from the service in the year 2005. At the time of his retirement, he was not eligible to apply for Pensionary Benefits. Subsequently, on 13.07.2018 the Bank issued Ext.P3 Circular incorporating new guidelines extending another option of Pension for compulsorily retired employees of the Bank. This Circular was published in the notice boards of the Bank, viz; its Branches, Regional Office and also Zonal Offices. It was published in the Retirees Portal of the Bank's Website. The respondent made an option to include him in the Pension Scheme after the last date fixed for submitting that application. He ought to have submitted the application on or before 11.09.2018 but submitted Ext.P4 application only on 12.10.2018. For the said reason, his application was rejected by the Bank by Ext.P6 letter dated 12.04.2019.

10. It is after a period of more than 13 years of the retirement of the respondent, Ext.P3 Circular was issued by the Bank. Under that circumstance, we find force in the submissions of the learned counsel for the appellants that it was not possible for the Bank to send individual letters to all the retired employees intimating about Ext.P3 Circular, as the retired employees would have settled in different places, other than the address provided in the Bank. The Bank published Ext.P3 Circular in the notice board of its Branches, Regional Office and also Zonal Offices as well as in the Retirees Online Portal. It is for better administration the cut-off date is usually fixed by the institutions for submitting certain applications. In the case of Special Schemes also such cut-off dates are fixed for the purpose of ascertaining the total number of persons who would opt the Scheme and to facilitate the institution concerned to manage the application in a proper manner and to disburse the benefits, etc. Such a fixation of a cut-off date is highly essential for the management of the Scheme, especially when considering the fact that in the absence of such a cut-off date, applications would come one after another at the whims and fancies of the applicants, which would include afterthought also. In such circumstances, the appellants cannot be found fault in rejecting Ext.P4 application submitted by the respondent after the cut off date.

11. During the course of arguments, the learned counsel appearing for the respondent placed reliance on the judgments of the Apex Court in *Dakshin Haryana Bijli Vitran Nigam v. Bachan Singh* [AIR 2009 SC 2745] and *Calcutta Port Trust v. Anadi Kumar Das (Capt.)* [(2014) 3 SCC 617] to argue that unless the appellants produce any record showing that Ext.P3 Circular was actually intimated to the respondent, they cannot deny the benefit of the Circular to the respondent.

12. In *Bachan Singh* [AIR 2009 SC 2745] the Apex Court by considering the non information of the instructions regarding the pension scheme to the retired employees of the appellants therein held as under:

“In view of the law as has been articulated in a large number of cases where this court has observed that any discriminatory action on the part of the Government would be liable to be struck down. Hence, in this case, it would be totally unreasonable and irrational to deny the respondent the pensionary benefits under the scheme particularly when the appellants have failed to produce any record showing that the instructions dated 6.8.1993 and 9.8.1994 were actually got noted in writing by the respondent. In the absence of any such material it can well be inferred that the respondent had no knowledge about the options called by the appellants”.

13. In *Anadi Kumar Das* [(2014) 3 SCC 617] the Apex Court on considering a similar issue of non-intimation of the pension scheme to the retired employees held thus:

“We would like to observe that whenever an employer introduces the Pension Scheme or makes the same applicable to retired employees and give them opportunity to exercise option, the circulars/instructions issued for that purpose should either be communicated to the retirees or made known to them by some reasonable mode. Mere display of such notice/instructions on the notice board of the Head Office cannot be treated as an intimation thereof to the retired employees/officers. The employer cannot presume that all the retirees have settled in the city where the Head Office is located. If the employees belong to the services of the Central Government or its agencies/instrumentalities, they are likely to settle in their native places which may be far away from the seat of the Government or Head Office of the establishment or organisation. The retirees are not expected to frequently travel from their native places to the seat of the Government or Head Office to know about additional benefits, if any, extended by the Government or their establishment/ rganization and it is the duty of the employer to adopt a suitable mechanism for communicating the decision to the retired employees so as to enable them to exercise option. This could be done either by publishing a notice in the newspaper about which the retirees are told at the time of their retirement or by sending copies of the circulars/instructions to the retirees or by sending a copy thereof to the association of the employees and/or officers with a direction to them to circulate the same among the concerned retirees. By taking advantage of the modern technology, the employer can also display the circulars/instructions on a designated website about which prior information is made available to the employees at the time of their retirement. If one of these modes is not adopted, the retired employees can legitimately complain that they have been denied right to exercise the option and can seek intervention of the Court”. (Emphasis supplied)

14. While going through the facts of the aforesaid judgments, it could be seen that in those cases the appellants have failed to produce any record showing that

the Pension Schemes that were the subject matter in those appeals were actually intimated to the employees in any manner. But in the instant case, by virtue of publication in the Retirees Portal of the Bank's Website, sufficient intimation was given to all the retired employees, which was mentioned as one of the options to give notice by the Apex court in *Anadi Kumar Das* [(2014) 3 SCC 617].

15. It is trite that a constitutional Court exercising writ jurisdiction under Article 226 of the Constitution of India cannot issue a direction contrary to law nor can the Court direct an authority to act in contravention of the statutory provisions. In *Bihar Eastern Gangetic Fishermen Cooperative Society Ltd. v. Sipahi Singh* [(1977) 4 SCC 145], a Three-Judge Bench of the Apex Court held that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction.

16. In *Oriental Bank of Commerce v. Sunder Lal Jain* [(2008) 2 SCC 280] the Apex Court held that in order that a writ of mandamus may be issued, there must be a legal right with the party asking for the writ to compel the performance of some statutory duty cast upon the authorities. In the said decision, the Apex Court noticed that the principles on which a writ of mandamus can be issued have been stated in 'The Law of Extraordinary Legal Remedies' by F. G. Ferris and F. G. Ferris, Jr. that, mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers and others who refuse or neglect to perform such duty, when there is no other adequate and specific legal remedy and without which there would be a failure of justice.

17. In *State of U.P. v. Harish Chandra* [(1996) 9 SCC 309] the Apex Court held that under the Constitution a mandamus can be issued by the Court when the applicant establishes that he has a legal right to performance of legal duty by the party against whom the mandamus is sought and said right was subsisting on the date of the petition. The duty that may be enjoined by mandamus may be one imposed by the Constitution or a Statute or by Rules or orders having the force of law. But no mandamus can be issued to direct the Government to refrain from enforcing the provisions of law or to do something which is contrary to law.

18. In the impugned judgment, the learned Single Judge did not find on merits that the respondent is entitled to claim the benefit of Ext.P3 Circular. However, by taking the case as a singular circumstance, directed the appellants to give the benefit of Ext.P3 to the respondent. Having considered the pleadings and materials on record and the submission made at the Bar, we find no legal backing for issuing such a direction. Therefore, the impugned judgment of the learned Single Judge is liable to be set aside.

In the result, the writ appeal is allowed by setting aside the impugned judgment dated 24.07.2023 passed by the learned Single Judge in WP(C)No.14240 of 2019 and the writ petition stands dismissed.