(2009) 06 KAR CK 0066

In the Karnataka High Court

Case No : Writ Appeal No. 6 of 2009

The Indian Bank APPELLANT

Vs

Smt. Lakshmamma RESPONDENT

Date of Decision : 01-06-2009

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2009) 06 KAR CK 0066

Hon'ble Judges : N. Kumar, J;B. Sreenivase Gowda, J

Bench : Division Bench

Advocate : A. Keshava Bhat, for the Appellant; M.R. Shailendra, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—The appellant-Indian Bank has challenged in this appeal the order passed by the learned Single Judge directing the Bank to accept the option exercised by the respondents for family pension subject to the condition prescribed under the scheme.

2. The husband of the respondent one Shivanna, was working in Indian Bank. He died on 11.11.1991 white in service. Subsequently, the Bank introduced Pension Scheme known as Indian Bank (Employees) Pension Regulations, 1995. The Scheme was made applicable to all the employees who were in service of the Bank on or after first day of January 1986 but had retired before the first day of November 1993. The said Shivaona having died in November 1991, i.e., subsequent to First of January 1986 was entitled to pension under the said Scheme. After coming into force of the Scheme, employees or their representatives were required to exercise their option for pension within 120 days from the notified date namely 29.09.1995. The said 120 days time expired on 29.01.1596. However, his wife exercised her option on 16.12.1996. She also sought for condonation of delay in exercising the option. The said request was rejected by the Bank as per Annexure-E dated 13.02.2003 on the ground that

they were unable to consider their request for family pension as she has not exercised her option within the stipulated date. Aggrieved by the said order, the respondent preferred writ petition. In the writ petition she contended relying on the judgment of the Division Bench of the Madras High Court as per Annexure-D, that she had no notice of the aforesaid Scheme and therefore the delay in applying for the Pension under the Scheme should be condoned. The said contention has been upheld by the Madras High Court. The learned Single Judge followed the judgment of the Madras High Court, condoned the delay in making the said request and directed the Bank to extend the benefit of the scheme subject to condition that the entire provident fund contribution received by her with interest at 6% to be repaid to the Bank, Aggrieved by the said order, the Bank is before this Court in this appeal.

3. Sri, A. Keshav Bhat, learned Counsel appearing for the Bank, relying on the judgment of the Apex Court in the case of Jai Singh B. Chauhan Vs. Punjab National Bank and Others, contended that once a notification came to be issued in the Official Gazette informing everyone the application of the Scheme, the respondent is deemed to have notice of the Scheme and therefore the delay in opting for the scheme should not have been condoned by the learned Single Judge.

4. Per contra, the learned Counsel appearing for the respondent pointed out that the circular issued by the Beak provided for individual intimation to the family of the deceased employees, which admittedly was not given to her and therefore the aforesaid judgment of the Apex Court has no application. The Madras High Court as well as the learned Single Judge of this Court were justified in passing the impugned order.

5. The Supreme Court in the aforesaid decision was only reiterating the legal position as laid down by the Apex. Court in the case of B.K. Srinivasan v. State of Karnatka AIR 1987 SC 1069 as to the effect of publication of the Official Gazette which reads as under.

Where the parent statute is silent, but the subordinate legislation itself prescribes the manner of publication, such a made of publication may be sufficient, if reasonable. If the subordinate legislation does not prescribe the mode of publication or if the sub-ordinate legislation prescribes a plainly unreasonable mode of publication, it will take effect only when it is published through the customarily recognised official channel namely, the Official Gazette or some other reasonable mode of publication.

Following the aforesaid statement of law, the Apex Court held as under:

We, therefore, see no substance in the contention that notwithstanding the publication in the Official Gazette there was yet a failure to make the law known and that, therefore, the notification did not acquire the elements of operativeness and enforceability. This contention of Shri Ganesh is unacceptable.

6. In the instant case, the Pension Regulation, 1995 was given effect from 29.09.1995 and a Gazette notification came to be issued After the said notification became effective, the management of the Indian Bank on 23.11.1995 issued instructions as under:

Employees who were in the service of the Bank during any time on or after 1.1.1986 and had died before the notified date in which case their family may exercise option for pension in the format which is enclosed in Annexure-D. The Branches/Offices are advised to inform the family of deceased employees accordingly.

Therefore, there was an obligation cast on the Bank to inform the family of the deceased employees to whom the said scheme is applicable. It is only then such family members could exercise their option to opt for the Pension Scheme by returning the Provident Fund contribution with interest at 6% if the same had already been received by them.

7. Applying the aforesaid law laid down by the Apex Court which is from the date of communication of the information in terms of the circular, the limitation of 120 days is to be calculated. In the instant case, admittedly, no such communication has been sent to the member of the family till today. Therefore it cannot be said that the said application opting for Pension is barred by time and on that ground they could have refused to consider the request for opting for the Pension Scheme. In fact, it is in this context, the Division Bench of the Madras High Court in the case of Indian Bank v. J. Thilothama decided on 08.03.3000 held as under:

...A public notice that is produced by the bank herein can never amount to such individual notice and it is also not clear how, and in what capacity, the notice issued by the Indian Bank''s Association wilt amount to intimation by the Indian Bank.

Therefore, they proceeded to hold as under

...deny her the same on the ground that her application has been forwarded beyond the aforesaid period speaks of arbitrariness and it is violative of Article 14 of the Constitution of India It is not seen how the bank is prejudiced by the so called delay in making the application, especially when the bank had failed to intimate the family of deceased employees of the liberalised pension scheme, as instructed by its own management.

8. In that view of the matter, the learned Single Judge was justified in setting aside the order passed by the Indian Bank nearly seven years after the application was made, on the ground that the application is not made within time. We do not see any merit in this appeal. Accordingly it is dismissed. Consequently, Misc. W. No. 274/09 is also dismissed.

