

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 144 of 2002

in

SPECIAL CIVIL APPLICATION No 3611 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

and

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

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PUNJAB NATIONAL BANK

Versus

LS THAKKAR

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Appearance:

1. LETTERS PATENT APPEAL No. 144 of 2002  
MR AY KOGJE for Appellant No.  
MR LS THAKKAR, Respondent - party in person.

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CORAM : MR.JUSTICE J.N.BHATT

and

MR.JUSTICE KUNDAN SINGH

C.A.V JUDGEMENT

(Per : MR.JUSTICE KUNDAN SINGH)

1. This Letters Patent Appeal has been brought out by Punjab National Bank and others against the respondent - original petitioner under Clause 15 of the Letters ..

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Patent Appeal against the judgment and order dated 11-10-2001 rendered by the learned Single Judge in Special Civil Application No. 3611 of 1999, whereby the respondent original petitioner's writ petition has been allowed and the appellant Bank has been directed to consider the case of the respondent - original petitioner and grant pension to him on or before 28-2-2002 in accordance with Rules and Regulation of the appellant Bank and the appellant Bank was also directed to pay interest at the rate of 12% p.a. on the said amount of pension from 1994.

2. The brief facts of the case are that the respondent - original petitioner joined services of the appellant Bank on 15-9-1958 as a Clerk-cum-Godown Keeper. Thereafter, he had served at various Branches of the Bank in Gujarat State. Some time, he also worked as Inspector (Audit) out of the State. After putting more than 36 years service, he retired on attaining superannuation from the office of the Bank on 31-5-1994. He also proceeded on leave preparatory to retirement. The pension scheme was also sanctioned as per the draft scheme circulated before his retirement. Hence, he gave his option letter dated 15-3-1994 for opting the pension scheme. His option letter was lying with the Chief Manager, C.M.C and Punjab National Bank, Surat. The Bank also sent a prescribed form vide letter dated 13-3-1997. The respondent original petitioner also furnished all the details in the said prescribed form along with his and his wife's photographs vide letter dated 31-3-1997 to Sr.

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Manager (Staff), Zonal Office, who is the competent authority to deal with the pension cases and he is required to send all the required pension papers along with option letter to the Chief Pension Department Branch. That authority decides the amount of contributory provident fund paid in the past for deduction from the amount payable. As per the procedure for sanctioning pension the Branch Manager is required to send the pension proposal as well as other documents in duplicate to the concerned Regional Manager immediately.

The Regional Manager is required to forward such option letters and other documents of the retired employee in one lot to the Zonal Office. The Sr. Manager (Staff) is required to forward the pension papers to the Chief Head-quarter, P.F. Department, New Delhi in respect of the employee retired upto 31-10-1994. The P.F. Department is required to process on the option letter of the retired employee and to advise the retired employee directly to the address provided by them in respect of the amount bank's contribution and interest thereon to be returned by the retired employee. Thereafter, the retired employee would be required to remit the said amount to the Head Office P.F. within a stipulated time. Subsequent to the realization of the amount, the pension release order would be issued to the concerned zonal office who will issue necessary orders to the designated Branch office for release of the pension. the Regional Manager and the Chief Manager are required to bring the contents of the circular to the notice of the staff members working at the Branch and also display the copy

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of the notice as per Annexure-VII on the notice board of the branch office and suitably informed them accordingly. If the employee is on long leave, the Chief Manager will inform the employee in writing. According to the respondents - appellants, draft proposal of Punjab National Bank Employees (Pension) Regulation Act, 1993 has come in force with effect from 1-11-1993 and it was made applicable to the employee who had retired on or after 1-1-1986 till 31-10-1993 and 15-10-1994 (applicable to those employees who have retired after 1-11-1993 till the date of issuance of the Circular). The Personnel Division has issued a circular dated 27-6-1994 to all the officers. The proposed scheme was also made applicable to the existing employees on or after 1-11-1993 for pension scheme instead of contributory Provident Fund, subject to the condition that the employee surrenders the employer's Provident Fund/Contribution together with 6% simple interest. Circular dated 2-8-1997 provides personal liability of the concerned staff in the case of delay. Circular dated 17-2-1996 is applicable to the retired employees for the pensionary benefits. According to the original petitioner, all the appellants are duty bound to ascertain total number of the employees who were already in service prior to 30-9-1994 and retired on or after 1-11-1993. The last date of submission of the option letter of retired employee was fixed on 30-9-1994. One Jayprakash who was In/charge of Surat Main Branch, neglected his duties to fix the pension of the respondent employee and failed to submit the pension proposal to the Regional Office of the Bank. Hence, the respondent ..

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employee's case is pending since last more than two years and he has been singled out and treated separately for the reasons best known to Jayprakash, In/charge of Surat Main Branch under whom the respondent employee was working, avoided the option letter dated 15-3-1994 of the respondent employee as it was on simple paper and not in the prescribed form. The prescribed form was not available at that time, the respondent employee could not submit the option letter in prescribed form. When the respondent employee received the letter dated 13-3-1997, he immediately furnished the information and sent back to the respondent no. 4. The appellants are duty bound to accept the option letter. The respondent employee had sent various letters as well as reminders, notices, telegrams and so many letters in exchange of correspondence. The respondent employee is not treated equally among them and in the matter of public employment which is in violation of the provisions of Article 14 and 16 of the Constitution of India. The Supreme Court has held that it is the fundamental right of the employee to earn pension for his long services rendered to the employer. The pension must be paid without any delay. The arrears of pension must be given along with 18% p.a. interest for the delayed payment so that the person responsible for delaying grant of pension can be punished by taking disciplinary action by the Bank authority. The appellant Bank has introduced liberalized pension scheme for the employees who have already been retired since 1986. The appellant Bank can only stop the pension if the bank employee has committed any serious misconduct,

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offences or any thing done for the breach of trust, or indulge in forgery or done anything which is injurious to the reputation of the Bank. The respondent employee has not done anything and hence he is entitled to the pension. Therefore, the respondent employee filed Special Civil Application No. 3611 of 1999 before this Court. The learned Single Judge vide his judgment and order dated 11-10-2001 allowed the petitioner of the respondent employee directing the appellant Bank to consider the case of the respondent employee and grant pension to him on or before 28-2-2002 in accordance with law and the appellant Bank was further directed to pay necessary 12% p.a. interest on the said amount of pension since 1994.

3. Being aggrieved and dissatisfied with the judgment and order of the learned Single Judge dated 11-10-2001 rendered in Special Civil Application No. 3611 of 1999, the appellants have preferred present

appeal on the ground that the impugned judgment and order is illegal and against the Rules and Regulations of the appellant Bank as well as documents and evidence on record. The learned Single Judge has failed to appreciate the fact that the pension scheme was optional scheme. The employee has to opt either to continue under C.P.F. scheme or to opt for pension scheme. In the instant case, the respondent employee has taken benefit of C.P.F. scheme. The right to exercise option is not fundamental right under the Constitution of India. As such, the right under the scheme cannot be enforced in

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the writ jurisdiction under Article 226 of the Constitution of India. The respondent - employee has not exercised option within a stipulated time. The learned Single Judge has erroneously held that since the respondent employee has served the appellant Bank sincerely and diligently, the respondent employee should be given payment of pension as a matter of right. The respondent employee has already taken the benefit under the Contributory Provident Fund Scheme and since he has not exercised that option in the prescribed form within specified time of 120 days, there is no provision to condone delay if any made by the employee in exercising option. The learned Single Judge has misread and misinterpreted the judgments of the Apex Court and Division Bench of this Court, wherein the benefit of exercising the option for pension has been extended after the stipulated date to the other employees. The case of the respondent employee is entire different from the cases cited by the respondent employee before the learned Single Judge.

4. The affidavit in support of the Bank has been filed by Sr. Manager of the appellant Bank stating therein that the respondent employee by way of retirement benefits, was paid the following amounts :

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Head of payment	Amount	Date of payment
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Provident fund	3,19,857/-	15-7-94
Gratuity	78,390/-	21-6-94
Arrears of gratuity	21,610/-	12-1-95

Difference in P.F. 9,510/- 28-7-97

Arrears of wage

revision 18,020/- 8-10-96

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5. The respondent employee cannot claim parity with the other employees as the appellant Bank has not permitted to exercise the option for the pension scheme after expiry of the stipulated period of 120 days. The decision of the respondent employee to opt for pension scheme is an afterthought inasmuch as after having recovered entire money, dues of payment towards retiral benefits, the respondent employee realized that option of pension was more beneficial to him and hence he has claimed pensionary benefits though he has already availed the retiral benefits. In case, the Bank permits the respondent employee to exercise his option after expiry of the stipulated period, then, there are several similarly situated persons whose case will have to be reconsidered and thereby increasing the financial

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liability of the appellant Bank a very great extent. The Government of India through Ministry of Finance has informed the General Manager (P) Panjab National Bank vide letter dated 21-8-2001, wherein the option forms have not received within the stipulated period, the Bank may not consider such cases for pension/family pension. The appellant in response to the clarification sought by the appellant Bank has never received the letter dated 15-3-1994 of the respondent employee exercising his option for pension scheme nor such letter is on the record of the Bank. The respondent employee was called upon to produce such letter with proof of it being handed over to the Bank but he failed to establish that he has indeed given the written letter dated 15-3-1994 within the stipulated period to the appellant. The appellant Bank sought advice from the Government of India and in response to the said representation, the Government of India issued a letter dated 19-2-2002, directing Bank such requests not to accept under any circumstances, the application for exercising option after expiry of the stipulated period, The matter has now been reexamined and it has been decided that the Banks may take a decision with the approval of their Board only in those cases where the officer/employee could not exercise option because he stood either dismissed or compulsory retired as on 29-9-1995 but later on got reinstated either due to decision of the Court or appellate authority. In case, the incumbent has got full wages for the period of

absence due to dismissal etc. such period will be counted as qualifying service for pension. In case the

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incumbent has not got the benefit of full wages the period of absence will not be considered as qualifying service for pension. All other requests received by the Bank for different reasons should not be accepted under any circumstances.

6. An other affidavit in support of the appeal of the appellant Bank has been filed by the appellant Bank. The respondent employee has sought to make out his case by pleading ignorance of the existence of the circular calling upon for the exercising of option for pension. The petitioner has referred the letter dated 3-2-1998 addressed wherein he has stated that he has retired from the Bank on 31-5-1994. Thereafter appellant Bank has issued circular dated 27-6-1994 for calling upon for exercise of the pension option (Acceptance of pension option). Contents of the above circular were not within the knowledge of the respondent employee within the stipulated time i.e. of 120 and he came to know about the circular on 24-3-1997. Hence, he submitted the proposal for pension as a special case. The plea of ignorance is not available to the respondent - employee as wide publicity was given to this by the Indian Banks Association by publishing the notices in the newspapers at local level and that notice has been annexed as Annexure-A-2. The respondent employee's case for exercising option for pension scheme is an afterthought. This is apparent from the letter addressed by the respondent employee under his own signature dated 16-10-1994 requesting the Bank to pay interest on late

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payment of gratuity and P.F. amounts. As such, the respondent employee has not only enjoyed the provident fund amount but he has also prayed for interest on delayed payment. In all 11 option letters were received from the retired employees for pension and 12 for family pension from all over Gujarat and all of them have been granted the option and permitted to draw pension/family pension as per regulations, however, all these retired employees and the legal heirs of the deceased employees have exercised their options as per the regulations.

7. We have heard the learned counsel for the parties extensively and have gone through the relevant papers on the record.

8. We are constrained to hold that the judgment and order of the learned Single Judge is not sustainable in

the eye of law on the following grounds :

(i) First of all it is pertinent to note that the respondent - employee has sent the letter dated 15-3-1994 before his retirement to the appellant Bank. But there is nothing on record nor he could establish that any such letter has been given to the appellant Bank by him for opting pension scheme. It appears that the learned Single Judge has presumed that the letter dated 15-3-1994 of the respondent employee has been received by the Bank and no action has been taken .. 12 ..

hence the respondent - employee is entitled to get benefits under the pension scheme. In fact, receipt of such letter dated 15-3-1994 has been denied by the appellant Bank and the respondent employee could not establish in any circumstances that he has given this letter dated 15-3-1994 to the appellant Bank for opting pensionary benefits under the pension scheme.

(ii) The respondent employee's conduct is that he never intended to opt pensionary benefits inasmuch as the respondent employee has received Rs.3,19,857/towards payment provident fund on 15-7-1994. he has also received amount of Rs.78,390/- as gratuity on 21-6-94 and thereafter he has also received amount of Rs.26,610/- as arrears of gratuity on 12-1-1995 and Rs.9,510/as different in P.F. on 28-7-97 and lastly he has received amount of Rs.18,020/towards arrears of wage revision on 8-10-1996. Upto receipt of the aforesaid amounts under different head of payment, the respondent employee has never made it clear to the Bank that he has opted his pension scheme and he has not indicated that the amount of provident fund has to be remitted to the Bank. From the conduct of the respondent employee it appears that he had never indicated till receipt of last amount on 28-7-1997 to opt pension scheme. Otherwise, as soon as the respondent - employee received the aforesaid .. .. 13 ..

amounts, he could have made a representation to the appellant Bank that he has already indicated to opt pensions scheme and he does not want to receive that amount as he had to remit that amount if he has to opt pension scheme.



(iii) The respondent employee cannot plead that he had no knowledge about the circular of the circular of pension scheme inasmuch as the wide publicity for opting pension scheme was made in various local papers as such the respondent cannot take plea of ignorance as indicated by his letter dated 3-2-1998.

(iv) Learned Single Judge has relied on the decision of the Supreme Court in the case of M.R. Gupta Vs. Union of India & Ors. reported in 1995 SCC (L&S) 1273. But that decision of the Supreme Court is not applicable to the facts and circumstances of the present case inasmuch as that the case is in respect of fixation of pay and he claimed to be paid gratuity, salary computed on the basis of proper pay fixation and that case is not in respect of pensionary benefits.

(v) Learned Single Judge has also relied on other decisions of the Apex Court in the case of Union of India and Others Vs. D.R.R. Sastri reported in 1997 SCC (L&S) 555 and Dr. Uma Agrawal Vs. State of U.P. & Anr, reported AIR 1999 SC 1212 .. 14 ..

as well as the decision of the Division Bench of this Court rendered in Special Civil Application No. 13519 of 2000. In all these cases, the matter is regarding the railway employees and the Railway Board's letter was communicated to all the General Managers with directions that it shall be brought to the notice of the retired railway employees/servants and that letter of railway Board was not brought to the notice of the employees and hence their claims were allowed. In the present case, there is no circular, letter or any order of higher authority directing the appellant Bank to bring it to the notice of the concerned employees for taking any step for opting pension scheme.

(vi) The respondent employees does not come within the exception made available to the employees of the Bank inasmuch as one communication dated 28-4-1999 was cited before us and that communication was issued by the Government of India, Ministry of Finance, Department of Economic Affairs, Banking Division 4/8/697-IR dated 28-4-1999 addressed to the the Chief Executives of all Public Sector Banks in respect of eligibility of pension, which is reproduced

below.

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"Government has been getting representations from various quarters making a request for providing an opportunity for exercising option in favour of pension to those who could not do so due to circumstances beyond their control. One such situation referred to is that the employees who were out of service on account of dismissal/removal etc. at the time of notification but were subsequently reinstated in service with continuity of service on disposal of an appeal or by virtue of court order.

The matter has been examined and it has now been decided that banks, in the first instance, may examine such requests at their end and in case they are satisfied that there were circumstances beyond the control of the applicant, due to which he could not exercise his option within the stipulated period, they may refer such cases to Govt. along with a self-contained note, indicating the circumstances which deprived them to exercise such option. Efforts, if any, made by the bank to contact such persons during the relevant period to enable them to exercise their option may also be indicated."

9. By the aforesaid communication the public sector Banks have been directed to examine such requests for providing an opportunity for exercising option in favour of the pension to those who could not do so due to ..

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circumstances beyond their control. One such situation referred to is that the employees who were out of service on account of dismissal/removal etc. at the time of notification but were subsequently reinstated in service with continuity of service on disposal of an appeal or by virtue of court order. The matter has been examined and it has now been decided that banks, in the first instance, may examine such requests at their end and in case they are satisfied that there were circumstances beyond the control of the applicant, due to which he could not exercise his option within the stipulated period, they may refer such cases to Govt. along with a self-contained note, indicating the circumstances which deprived them to exercise such option. Efforts, if any, made by the bank to contact such persons during the

relevant period to enable them to exercise their option may also be indicated. In exceptional circumstances which were beyond control of the employees, their cases may be examined and considered by the Bank authority. In the present case, we have not been impressed that the respondent employee could not move the concerned authority of the appellant Bank for paying pensionary benefits due to the circumstances beyond his control within stipulated period.

10. In the case of the decision of the Supreme Court as well as the decision of Division Bench, the Railway Employer was required to inform the retired employees about the circulars. Whereas, in the present case the Bank authority is not required to inform individually to

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the retired employee for opting pension scheme pursuant to any circular, order or notification by the higher authority.

11. In the circumstances of the present case, the respondent employee has not applied for opting pensionary benefits under the scheme within the stipulated time. He never showed his intention for this purpose. Moreover, he voluntarily opted other retiral benefits. Even wide publicity in newspapers the respondent employee cannot plead ignorance of the circular regarding pension scheme. The Bank appellant was not under obligation to inform the retired employees for opting pensionary benefits. As such, the respondent employee is not entitled to get benefit of the circular in respect of the pensionary benefits. The learned Single Judge misappreciated the facts on record and misinterpreted the case law cited.

12. For the reasons stated above, we are of the firm opinion that the respondent employee is not entitled to get pensionary benefits under the pension scheme floated by the appellant Bank as the impugned judgment and order of the learned Single Judge is not based on the correct facts and correct interpretation of the case laws cited in his judgment. Therefore, this appeal deserves to be

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allowed. Accordingly, this appeal is allowed and the impugned judgment and order dated 11-10-2001 rendered in Special Civil Application No. 3611 of 1999 is hereby

quashed and set aside. There shall be no order as to costs.

(J.N. Bhatt, J.)

(Kundan Singh, J.)

/JVSatwara/