

CASE NO.:
Appeal (civil) 1319 of 2008

PETITIONER:
State Bank of Patiala

RESPONDENT:
Manjeet

DATE OF JUDGMENT: 15/02/2008

BENCH:
Dr. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 1319 OF 2008
(Arising out of SLP (C) No. 775/2006)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.
2. Challenge in this appeal is to the judgment of a Division Bench of the Punjab and Haryana High Court allowing the writ petition filed by the respondent and holding her to be entitled to grant of family pension as per the provisions of State Bank of Patiala (Employees) Pension Regulations, 1995 (in short the 'Regulations').

Background facts in a nutshell are as follows:

Late Jai Singh, father of the respondent joined service in the appellant-Bank on 19.11.1985. Few months after i.e. on 4.6.1986 he was killed while on duty. On 11.9.1986 and 1.10.1986 Jai Singh's widow Smt. Birmati-mother of the respondent was paid gratuity and provident fund of late Jai Singh. On 29.12.1986 the aforesaid Smt. Birmati was given appointment in the appellant-Bank as Record Keeper-cum-Godown Keeper on compassionate grounds. On 23.3.1996 in exercise of power conferred by sub-Section (1) of Clause (0) of sub-Section (2) of Section 63 of the State Bank of India (Subsidiary Banks) Act, 1959 (in short the 'Act') the Regulations were framed. The Regulations provide for establishment and maintenance of pension funds for the benefit of the employees of the State Bank of Patiala. The regulations were published in the Official Gazette on 23.3.1996 and were operative w.e.f. 29.9.1995.

On 12.8.2003 respondent attained majority. On 16.9.2003 she applied for family pension of late Jai Singh. On 1.10.2003 the appellant-Bank rejected the claim for family pension on several grounds; (i) the family pension was payable to the widow till the death or her re-marriage and (ii) the option for pension was required to be made by eligible dependent of the deceased employee within 120 days from the notified date i.e. on or before 20.7.1996. Another representation was made on 28.10.2003. Again on 11.11.2003 the claim was rejected stating that since her mother was alive only she was eligible for grant of family pension provided she had completed the required formalities within the prescribed period.

3. A writ petition was filed for a direction to the appellant-Bank to give family pension to the respondent. The Division

Bench, as noted above, allowed the writ petition holding that family pension was illegally denied to her.

4. In support of the appeal, learned counsel for the appellant-Bank submitted that Regulation 3 of the Regulations deals with cases of employees who had already died. It was also submitted that in terms of Regulation 40 (3) where family pension is granted under the regulation to a minor, it shall be payable to the guardian of the minor. At no point of time, not even in the representation, respondent had indicated about the alleged re-marriage of Birmati. Only for the first time such a stand had been taken in the writ petition. Further more, the respondent admitted that she was living with Smt. Birmati.

5. Learned counsel for the respondent on the other hand supported the judgment of the High Court.

Regulation 3 reads as follows:

"(1) To exercise an option in writing within one hundred and twenty days from the notified date to become member of the Fund; and

(2) To refund within sixty days after the expiry of the said period of one hundred and twenty days specified in Clause (B) the entire amount of the Bank's contribution to the Provident Fund including interest accrued thereon together with a further simple interest at the rate of six per cent, per annum on the said amount from the date of settlement of the Provident Fund account till the date of refund of the aforesaid amount to the Bank."

6. Regulation 40(3) is also relevant and reference has already been made to that provision. In terms of Regulation 3 the option was required to be exercised within a period of 120 days from the notified date and there was a requirement of refunding the contribution within 60 days after the aforesaid 120 days period.

7. Respondent's mother opted for her own pension and not for family pension.

Regulation 40(3) reads as follows:

"Where family pension is granted under this regulation to a minor, it shall be payable to the guardian on behalf of the minor"

8. In *Jai Singh B. Chauhan and Ors. v. Punjab National Bank and Ors.* (2005 (6) SCC 262), it was observed as follows:

"6. For the purpose of adjudicating the dispute few provisions in the Regulations need to be noted.

7. "Notified Date" is defined in Regulation 2 as follows:

"notified date" means the date on which these regulations are published in the official Gazette;"

8. In terms of Regulation 1, the Regulations were deemed to have come into force on the date of their publication in the Official Gazette.

9. Regulation 3, so far as relevant reads as follows:

"3. These regulations shall apply to employees who, -

xxx

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xxx

(3) (a) are in the service of the Bank before the notified date and continue to be in the service of the Bank on or after the notified date; and

(b) exercise an option in writing within one hundred and twenty days from the notified date to become member of the Fund; and

(c) authorize the trust of the Provident Fund of the Bank to transfer the entire contribution of the Bank alongwith the interest accrued thereon to the credit of the Fund constituted for the purpose under regulation 5."

10. As per Regulation 3 (3)(b) option was to be exercised in writing within one hundred and twenty days from the notified date to become member of the fund.

11. Regulation 3 (3)(c) is also of considerable importance. It required transfer of the entire contribution of the Bank alongwith interest accrued thereon to the credit of the fund constituted for the purpose under Regulation 5, and authorized trust of from the amount of the Provident Fund of the Bank to effect the transfer.

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14. In M/s. Pankaj Jain Agencies v. Union of India and others (1994 (5) SCC 198) a three-Judge Bench of this Court held as follows:

"17. In the present case indisputably the mode of publication prescribed by Section 25(1) was complied with. The notification was published in the official Gazette on the 13.2.1986. As to the effect of the publication in the official Gazette, this Court held (Srinivasan case 1987 (1) SCC 658,672: AIR 1987 SC 1059, 1067):

"Where the parent statute is silent, but the subordinate legislation itself prescribes the manner of publication, such a mode of publication may be sufficient, if reasonable. If the subordinate legislation does not prescribe the mode of publication or if the subordinate legislation prescribes a plainly unreasonable mode of publication, it will take effect only when it is published through the

customarily recognized official channel, namely, the Official Gazette or some other reasonable mode of publication.

18. 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."

9. The High Court was not justified in saying that there was no intimation to the respondent about the exercise of option. Factually also it is not correct. Respondent's mother was serving in the bank and in fact had exercised the option for her own pension and not for family pension.

10. Above being the position, the High Court was not justified in directing grant of family pension to the respondent. In view of above, the impugned judgment of the High Court is set aside. The appeal is allowed. There will be no order as to costs.