

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11359 OF 2013

Ramesh Gajanan Nigudkar }
Sr.citizen aged 67 years of Mumbai
Indian Inhabitant and residing at }
Aarey Road, Goregaon (East)
Mumbai-400063. } .. Petitioner

vs

1. The Bank of Baroda }
a nationalized Bank having its
Head Office at HRD Department
Baroda House, Mandvi }
Baroda-390 006 and
Central Office at Bank of Baroda
Mumbai }
2. The Union of India
Ministry of HRD & Pension }
through its Standing Counsel
High Court, Bombay } .. Respondents

Mr.S.A.Vaidya a/w Ms.Sangita Walke for Petitioner
Mr.Lancy D'Souza a/w Ms.Deevika Agarwal
I/b Mr.V.M.Parkar for Respondent no.1
Mr.D.A.Dubey a/w Mr.M.M.Chunawalla for Respondent no.
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CORAM: ANOOP V.MOHTA &
G.S.KULKARNI, JJ

JUDGMENT RESERVED ON: 8 AUGUST, 2016
JUDGMENT PRONOUNCED ON 18 AUGUST, 2016

JUDGMENT (Per G.S.Kulkarni, J)

1. Rule returnable forthwith. Respondents waives service.

By consent of the parties taken up for final hearing.

2. This is an unfortunate case wherein the petitioner who

retired after 39 years of unblemished service with the 1st respondent, has been deprived of the benefits of pension under the Bipartite Settlement/Joint Note dated 27 April 2010, when admittedly he is held eligible for pension, the reason being that the petitioner did not deposit within three days, some amount as stated under the 1st Respondent's acceptance letter. In nutshell the facts are:

3. The petitioner joined service of the 1st respondent as a subordinate staff on 4 March 1967. After thirty nine years of service, the petitioner superannuated on 31 October 2006.

4. It is the petitioner's case that the 1st respondent had earlier entered into a settlement with the Bank employees and accordingly a Circular/Notification was issued under which employees who retired post 1995 (29 September 1995) were entitled to a pension option. However as it was intended that the benefit of a pension option be further extended. The United Forum of Bank Unions comprising of different Unions/Associations of Workmen and Officers of Banks (UFBU) and Indian Bank Association (for short 'IBA') entered into a Memorandum of Understanding dated 25 February 2008 to consider extending another option for pension to those employees who did not opt for pension when the Bank Employees' Pension Regulations 1995 dated 29 September 1995/26

March 1996 were implemented. Accordingly, a Joint Note dated 27 April 2010 was signed between the IBA and Workmens Union to offer pension option to certain category of employees. This was communicated to the member banks of IBA for its implementation by notification dated CIR/HR & IR/G2/665/90/2010-11/999 dated 10 August 2010. Pursuant to the said Joint Note a Circular dated 9 September 2010 was issued by the 1st respondent. The relevant extract of the said Circular needs to be noted and reads thus:

“Re:Pension Option-Bank of Baroda Employees' Pension) Regulation 1995-Implementing Pension Settlement pending amendment to Pension (Regulations) issuance of option letters to existing Employees/Officers.”

In terms of the Agreement/Joint note dated 27.4.2010 entered into/agreed between IBA and the Workmen Unions Officers Organizations it has been advised by Indian Banks Association vide their communication under reference No.CIR/HR &IR/G2/695/00/2010-11/999 dated 10.8.2010 that option to join captioned pension scheme to be extended to these employees/Officers.

A. Who were in service of the bank prior to 29th September 1995 and continue in the service of the bank on the date of Bipartite Settlement/Joint Note i.e. 27th April 2010.

1. Such employees shall exercise an option in writing within 60 days from the date of the offer to become a member of the Pension Fund and

1. Shall authorize the trust of the Provident Fund of the bank to transfer the entire contribution of the bank along with interest accrued thereon to the credit of the Pension Fund along with the pension cost equivalent to 2.8 times of the revised pay for the month of November 2007 recovered from the arrears paid on account of Bipartite Settlement/Joint Note dated 27.4.2010 towards estimated

individual funding gap.

B. Who were in service of the bank prior to 29th September 1995 and retired after that date and prior to the date of this Bipartite Settlement/Joint Note i.e. 27th April 2010.

1. Such employees shall exercise an option in writing within 60 days from the date of offer to become a member of the Pension Fund and

1. Shall refund within 30 days after expiry of the said period of 60 days, the entire amount of the bank's contribution to the Provident Fund and interest accrued thereon received by the employee/officer on retirement together with his/her share in contribution towards meeting 30% of Rs.3115 crores which is estimated and reckoned as the funding gap. On an individual basis, the payment over and above the bank's contribution to Provident Fund and interest thereon has been worked out at 50% of the said amount of bank's contribution to Provident Fund and interest thereon received by the employee/officer on retirement."

5. The petitioner fell in category B above having retired on 31 October 2006. A pension option was not applicable under the said joint note to those employees who would retire on or after 1 April 2010. In pursuance of the above circular/notification, the petitioner submitted an application dated 7 October 2010 to the 1st respondent availing a pension option.

6. It is the case of the petitioner that subsequently another Circular was issued by the 1st respondent on 9 December 2010 whereby all retired employees who were eligible for a pension option were stated to be also eligible for a loan under the ***Baroda Loan to Retirees for Pension Option.***" The petitioner states that

being a retired employee the petitioner was covered under the said Circular and was entitled for a loan as per Notification dated 27 April 2010 and further notification dated 9 December 2010. The 1st respondent has disputed issuance of any such Circular dated 9 December 2010. However, the 1st respondent does not dispute that such a loan was made available to the retired employees.

7. The petitioner avers that the 1st respondent accepted the petitioner's application holding him eligible for grant of pension. As also the petitioner was allowed to undergo a medical examination for availing the commuted value of 1/3rd of the basic pension. The 1st respondent issued a communication dated 9 December 2010 addressed to the petitioner accepting the pension option form. To this letter was enclosed a calculation sheet showing the amount of pension/commutation and pension for the period 27 November 2009 to 31 October 2010 as also taking into account certain CPF amount which was initially received at the time of retirement by the petitioner which was required to be refunded to the 1st respondent. Accordingly a summarized amount of Rs.3,17,280/- was arrived at which was required to be refunded by the petitioner to the 1st respondent. What is crucial to be noted in this letter are the following contents :

“ You are therefore advised to deposit an amount of Rs.THREE LACS

SEVENTEEN THOUSAND TWO HUNDRED EIGHTY ONLY in the Account No.0930200030378 in the name of BOB PENSION COST RECOVERED RETIRED EMPLOYEES ACCOUNT opened for the purpose on or before 12.12.2010 failing which option exercised by you shall stand cancelled and no correspondence in this regard will be entertained. Please note that while depositing the above amount, you should ensure that branch invariably mentions your Name, EC Number and Form No in transaction particulars.

Bank has launched "Baroda Loan to Retirees for Pension Option" to pay the amount of difference between the refundable amount of PF payable by the retirees option for pension vide Circular NO.BCC:BR102: 336 dated 4.12.2010. KINDLY CONTACT PENSION PAYING BRANCH FOR THE PURPOSE."

(emphasis supplied)

8. Thus, what can be seen from the above contents of the acceptance letter, is that within three days the petitioner was called upon to deposit Rs.3,17,280/- failing which the consequence would be that the option exercised by the petitioner would stand canceled and no correspondence in this regard would be entertained. At the same time the petitioner was informed that the 1st respondent had launched a "**Baroda Loan to Retirees for Pension Option**" so as to enable the petitioner to avail of a loan and to pay the amount of difference between the refundable amount of Provident fund payable by the retirees, and for that purpose the petitioner was required to contact the pension paying branch. The case of the petitioner is that this letter dated 9 December 2010 was received by the petitioner on 14 December 2010.

9. The petitioner therefore by his letter dated 18 December

2010 addressed to the Assistant General Manager of the 1st respondent requested for extension of the date for deposit of the amount of Rs.3,17,280/- . The petitioner specifically recorded that the said letter of the 1st respondent dated 9 December 2010 accepting the petitioner's pension option was received by the petitioner on 14 December 2010 and thus in any event the difference amount could not have been deposited by 12 December 2010. The petitioner also stated that he was a retired person, not earning anything and it was difficult for him to immediately remit the amount as per the 1st respondent's letter dated 9 December 2010 as he was required to avail loan from Goregaon (West) Branch, Mumbai as permissible for making the said payment. It was therefore, requested that the date of payment of Rs.3,17,280/- be extended as also the concerned branch be advised to sanction and disburse loan to the petitioner and credit the amount of Rs.3,17,280/- in the 1st respondent's recovery account.

10. The above letter of the petitioner dated 18 December 2010 was forwarded by the Deputy General Manager to the General Manager by his letter dated 21 December 2010 recording the fact that the petitioner had received the pension option acceptance letter dated 9 December 2010 after the expiry of the payment date i.e.12 December 2010 and as the date of deposit of the principal amount had lapsed, the General Manager was requested for

instructions/guidance in the matter. An endorsement was made on said letter by the Senior Manager (HRM) Regional Office stating and confirming that the General Manager had advised on telephone that case of the petitioner was referred to the Head Office, Pension Department directly by e-mail seeking guidance. It was recorded that ***“We trust that action must have been taken at your end.”*** Notably the fact that the pension option acceptance letter dated 9 December 2010 was received late by the petitioner on 14 December 2010 was never disputed by the 1st respondent.

11. Thereafter, the General Manager of the 1st respondent by his letter dated 28 March 2011 informed the petitioner that the 1st respondent-bank was agreeable to grant to the petitioner credit facilities as applied by the petitioner by an application dated 10 March 2011. The amount of Rs.3,17,280/- required to be refunded to the 1st respondent under the pension option acceptance letter was also credited to the necessary recovery account of the 1st Respondent on 31 March 2011. However to the petitioner's surprise the 1st Respondent remitted back the said amount to the Petitioner on 4 April 2010.

12. The petitioner therefore by his letter dated 18 April 2011 made a representation recording that the pension option

acceptance letter dated 9 December 2010 by which the petitioner was informed to deposit the refund amount of Rs.3,17,280/- (within period of three days) as a condition for the petitioner to receive, pension payment order, was itself received by the petitioner on 14 December 2010. The petitioner stated that after receiving the said letter, the petitioner had also approached the 1st respondent for loan under the said loan scheme for retirees/pension/op-tees. The petitioner stated that since he was trying to arrange for funds and lastly he was able to get reverse mortgage loan, from the 1st respondent's Goregaon (West) Branch, the said amount of Rs.3,17,280/- was remitted to the 1st respondent on 31 March 2011. It was stated that delay was caused as the petitioner was not able to immediately arrange for funds. It was stated that no financial institution was ready to grant any loan to a person who is 64 years of age with no regular source of income. The petitioner therefore, requested to accept the required amount of his contribution and start pension.

13. By a letter dated 6 May 2011 of the 1st respondent's Chief Manager (HRM) addressed to the petitioner it was informed that the petitioner's request to deposit pension cost of Rs.3,17,280/-, after expiry of the time limit of three days (as set out in the pension acceptance letter dated 9 December 2010) was placed before the

higher authorities (Chief Manager (HRM and Marketing) and the request could not be accepted. No reason was set out as to why it cannot be accepted when the petitioner had stated that the amount was already remitted to the 1st respondent.

14. The petitioner thereafter addressed a detailed representation dated 2 June 2011. We feel it appropriate to take a note in little detail of what was recorded by the Petitioner in this letter. The petitioner inter alia stated that the petitioner had joined service of the 1st respondent on 4 September 1968, and retired on 31 October 2006 after 39 years of unblemished service and was therefore eligible for grant of pension. It was again pointed out that the letter dated 9 December 2010, itself, was received by the petitioner on 14 December 2010 after expiry of the three days period, granted in the said letter dated 9 December 2010 to deposit the differential amount. It was also pointed out that the petitioner had availed a loan to make payment of the said amount to the 1st Respondent, as available to the pension optees under the “**Baroda Loan to retirees for pension option.**” It was also pointed out that many of the retirees had made the deposit of the difference amount well beyond the stipulated date and branches of the 1st Respondent had accepted the same. The petitioner set out the reasons as to how he ran from pillar to post for raising funds as the retirement benefits

received in 2006 were exhausted towards payment of housing loan, which was due on the date of retirement. It was stated that he had incurred expenses towards his daughter's marriage and medical treatment of his mother. The petitioner also stated that he was the eldest in the family having six sisters and six brothers. It was also recorded that all his life he had toiled very hard to look after the development of his family leaving no scope of savings during his 40 years of service and thus post-retirement he was hardly left with any funds. The petitioner also stated that the difference amount of Rs.3,17,280/- was remitted by the petitioner on 31 March 2011. However, this amount was credited back to the petitioner's account on 4 April 2011, without any intimation to the petitioner. It would be relevant to note some of the other contents of the letter which speak of the difficulties faced by him for consideration of the 1st respondent which read thus :

“ Though the Bank had launched the “Baroda Loan to Retirees for Pension Option” vide Circular dated 4 December 2010 it was kept open up to 12th December 2010 i.e. 5 working days. However, I had no means to know about the scheme or the modalities and prepare for availing the same till I learnt about the same in the letter HO:HRD:PEN 102:54499 dated 09.12.2010 received by me on 14.12.2010. I am sure you will agree that though the intention was good and noble on the part of the management, it was practically impossible for the retired staff to take advantage of the same. Though the loan offer is termed as an unsecured advance, providing tangible or mortgage of immovable properties was compulsorily required, it is impossible to complete different formalities like asset verification, lien, registration, obtaining title clearance certificate and valuation report from Banks approved persons/forms in 5 working days and having the loan sanctioned and disbursed.

Sir, I hope you will understand the plight of a 64 years retired person who is not eligible for any credit from any source. However, I have complied with all relevant conditions and obtained the Reverse Mortgage facility for this purpose. This also took some time before it was approved.

Sir, I have gone through a lot of effort and pain for this, I request you to kindly condone the delay. I request that I may be allowed to remit the cost of pension paying the way for me to start getting the pension. I request you to take a human approach keeping aside technicalities. Please note that I have served the organization most sincerely and loyalty for nearly 4 decades.

We all are witness to endless extension given to defaulters for repayment of the loans availed by them. Also various waivers are offered to defaulters including entire interest portion of the outstanding loan amount. One time settlement scheme offers much more. Nursing a sick unit is allowed by restructuring the entire terms and conditions. Please note that I am not being critical of all these. These are standard norms followed before any drastic action is called for. It will not be misplaced to expect some leniency in my case. As such I request you to kindly condone the delay and allow me to refund the cost of pension.

I request you to treat my case most compassionately and allow me to get pension which you will agree that I rightly deserve for my most sincere and loyal service to the bank for almost 40 years.

I and my family will consider it a boon to us from you on behalf of this great institution. Thanking you to anticipation of a favourable response.”

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15. As there was no response to the above representation , the petitioner made another representation dated 15 November 2011 and requested that the petitioner's case be treated compassionately as the petitioner had sincerely served to the 1st respondent-bank for almost 40 years. The Deputy General Manager (HRM-Administration), however, by his letter dated 24 November 2011 replied that the 1st respondent had already conveyed its decision vide letter dated 6 May 2011 (supra), that the request of the

petitioner for grant of pension cannot be considered as a the petitioner had not submitted the contribution towards the cost of pension fund during the stipulated period. By another letter dated 26 February 2012/1 March 2012 the petitioner was again informed by the 1st Respondent that the request of the petitioner as made to the Chairman and Managing Director cannot be considered as the same is already rejected by letter dated 6 May 2011 and 24 November 2011.

16. The petitioner disheartened as he was, made another detailed representation dated 25 February 2013 setting out the entire background and that the petitioner had a just cause for grant of an extension of the deposit period for the said amount of Rs.3,17,280/- which was actually paid by the petitioner in view of the loan which was sanctioned by the 1st respondent-bank. However, again by a letter dated 9 March 2013 request of the petitioner came to be rejected by the Assistant General (HRM). The petitioner having failed before the 1st respondent has, accordingly approached this Court by the present petition assailing the communication dated 6 March 2011 and the decision of the 1st respondent by which the request of the petitioner for pension is rejected.

17. We may observe that the prayers in the petition are

not happily worded. Though the last representation stands rejected by the communication of the Assistant General Manager (HRM) dated 9 March 2013 which is consequential to the first rejection dated 6 March 2011 the same is not assailed. However it is well-settled that once the substantive prayers and the cause for justice is borne out in the pleadings, then the Court would be fully within its jurisdiction to mould the reliefs and any technicality would not obstruct the course of justice, significantly when it comes to the exercise of jurisdiction under Article 226 of the Constitution, wherein the Court is under a constitutional obligation to safeguard and protect the fundamental rights of the citizens. This case is definitely a case where the guarantee enshrined under Part III of the Constitution namely the fundamental right under Article 14, and 21 are in question.

18. The 1st respondent has appeared and has filed a counter-affidavit of Shri Jagdish G.Ramteke Assistant General Manager. The first assertion in the counter is that the petition is barred by delay and laches as the same is filed after a lapse of two years from the date of the impugned communication dated 6 May 2011, by which the request of the petitioner for extension of time to deposit the said recovery amount was rejected. The second assertion as made on behalf of the 1st respondent is that the petitioner having

failed to make payment of the contribution within the specified time as stipulated in the communication dated 9 December 2010 i.e. having failed to deposit the amount by 12 December 2010, the petitioner would not be eligible for pension option. A stand is also taken in the counter that the petitioner had 30 days from the expiry of the initial 60 days and thus had adequate time to arrange for funds. It is contended that the petitioner having not complied of a mandatory requirement, the petitioner was not entitled for pension. In support of this contention, a web-site notice dated 17 August 2010 and published in the Indian Express is sought to be relied. The relevant portion reads thus:

“Retired employees who wish to opt for Pension Scheme in lieu of contributory Provident Fund (CPF) should exercise such option within 60 days reckoned from the date of offer by the bank and refund the bank's Provident Fund contribution including interest received thereon along with an amount equal to 56% of the Bank's contribution towards Provident Fund with interest received at the time of retirement, being 30% contribution towards the funding gap in terms of joint Note dated 27.4.2010 and the Settlement dated 27.4.2010. The amount due should be refunded to the bank within 30 days from the expiry of 60 days for exercising the option.

The details of the Pension Scheme and the format for option may be obtained from the branch establishment of the banks from which the employee retired. The option letter should be tendered to the bank on or before the date of expiry of the option period. The option once exercised is irrevocable.”

19. The petitioner has denied the assertions as made by the 1st respondent in the counter-affidavit by filing a rejoinder affidavit, reiterating the contentions as made in the petition. The assertion of

the 1st respondent that there is a delay in filing the pension is disputed by the Petitioner contending that last of the petitioner's representation was decided on 9th March 2013 and the petitioner had immediately filed the petition and thus it cannot be said that there was a delay in approaching this Court. It is contended that the petitioner had exercised an option for pension which was accepted by the 1st respondent and only because the petitioner could not submit the differential provident fund amount within the said stipulated three days it cannot result in pensionary benefits being denied to the petitioner. It is contended that the 1st respondent ought to have considered receipt of the letter dated 9 December 2010 by the petitioner on 14 December 2010 and that the petitioner had also opted for a loan as immediate funds were not available with him for depositing the amount of Rs.3,17,280/-. It is submitted that the 1st respondent has arbitrarily disregarded all these facts and has denied pension to the petitioner.

Submissions

20. Learned counsel for the petitioner would argue that under the settlement dated 27 April 2010 and in pursuance of further notification issued by the 1st respondent to implement the same, admittedly the petitioner was entitled to submit his option for pension having rendered 39 years of unblemished service. It is

submitted that pension option was accepted by the 1st respondent by its letter dated 9 December 2010. It is submitted that this letter was received by the petitioner on 14 December 2010 and thus as required under the said letter the amount which was required to be deposited within 3 days, in any case could not have been deposited as the letter itself was received by the Petitioner on 14 December 2011. Learned counsel would submit that in any event the petitioner being a retired employee and considering the hard circumstances under which the petitioner was living a retired life with number of dependents and a sick mother to be looked after, it was impossible for the petitioner to make immediate arrangement to deposit an amount of Rs.3,17,280/-. It is submitted that the 1st respondent could not have overlooked that the petitioner had applied for a loan under the 1st respondent-branch for pension option which was specifically made available for the benefit of such pension optees. That the loan was granted to the petitioner though belatedly and the required amount of Rs.3,17,280/- was credited to the appropriate account of the 1st respondent on 31 March 2011. However, the same was remitted back to the petitioner on 4 April 2011. It is submitted that this delay ought to have been condoned by the 1st respondent and the petitioner should have been granted benefit of pension. It is submitted that the 1st respondent could not have expected a retired person to immediately arrange for funds and a reasonable extension

of time ought to have been granted when the bonafides of the petitioner were crystal clear. It is submitted that by the impugned action the 1st respondent has violated the fundamental rights guaranteed to the petitioner under Articles 14, and 21 of the Constitution by depriving the petitioner of the pensionary benefits, which are otherwise entitled to him.

21. Learned counsel for the 1st respondent reiterated the contentions as urged in the counter affidavit which we have noted above. The principal submission is that, though the petitioner's application for a pension option was accepted by the 1st respondent however on account of delay in depositing the amount of Rs.3,17,280/- as informed to the petitioner by the letter dated 9 December 2010, the petitioner is not entitled to the benefit of pension. In support of his contention, learned counsel for the 1st respondent has placed reliance on the decision of the Supreme Court in the case of **Rajasthan Rajya Vidyut Vitran Nigam Limited vs Dwarka Prasad Koolwal & ors (2015) 12 Supreme Court Cases 51.**

22. We have heard learned counsel for the parties and with their assistance we have perused the documents placed in the paper book.

Reasons and Conclusion

23. There is no dispute that the petitioner was eligible for exercising an option for availing pension under the settlement dated 27 April 2010 as implemented by further Circulars/notification. It is also not in dispute that the petitioner had applied within the prescribed time-limit exercising the option for pension under the settlement in question. The petitioner was held eligible for pension which is also clear from the acceptance letter dated 9 December 2010 issued by the 1st respondent. By this letter dated 9 December 2010 the 1st respondent also calculated the amount after taking into consideration 1/3rd commutation which the petitioner had offered and after computation it was recorded that the petitioner shall refund to the 1st respondent an amount of Rs.3,17,280/-. Thus there was no question of depositing any amount by the petitioner earlier to the letter dated 9 December 2010 as the calculation was informed by the 1st respondent for the first time in this letter dated 9 December 2011. Thus the contention of the 1st respondent that initially sixty days and the further thirty days time was available to the petitioner to deposit the amount is not well founded when the amount to be paid to the 1st respondent itself is crystallized in the letter dated 9 December 2010.

24. Thus the controversy in the petition is only on the requirement as insisted by the 1st respondent in the letter of acceptance dated 9 December 2010 of the 1st respondent, that the differential amount of Rs. 3,17,280/- be deposited by the petitioner on or before 12 December 2010 (ie; within 3 days of the date of the said letter) and having not done so, the petitioner is held to be not eligible for pension. Admittedly, the petitioner in his letters which we have referred above had immediately informed the 1st respondent that the letter of acceptance dated 9 December 2010 was received by the petitioner on 14 December 2012 i.e. after the last date of payment namely 12 December 2010, as stated in the letter had lapsed. Keeping in mind that all the retired employees may not be in a position to immediately arrange for payment of the refund amount the 1st respondent provided for a loan facility as expressly stated in the said acceptance letter dated 9 December 2010 and extracted by us above. We also cannot loose sight of the clause in the acceptance letter which permitted a pension optee/ petitioner, who is a admittedly retired employee to approach the 1st respondent under the scheme namely **“Baroda Loan to Retirees for Pension Option”**. Further there is no dispute that the petitioner approached the 1st respondent under this loan scheme. The petitioner for reasons which are set out in detail in his representation and which we have noted above, could not make immediate arrangements for the said amount

of Rs.3,17,280/- to be refunded to the respondent and had accordingly approached for a loan so that he can make payment of the differential amount of Rs. 3,17,280/-. The application for loan was also considered by the 1st Respondent and loan was sanctioned to the petitioner under the said scheme in March 2011. Not only that but the amount of Rs.3,17,280/- came to be deposited in the relevant recovery account of the 1st respondent immediately after two days of the sanction that is on 31 March 2011. On the said amount being deposited according to the petitioner the 1st respondent ought not to have returned the said amount but, ought to have granted the petitioner pension facility as granted to hundreds of other employees who are similarly situated. The petitioner has also averred that many such employees were permitted to belatedly deposit the amount.

25. On the backdrop of the above facts and more particularly, when the 1st respondent had accepted the petitioner's option for pension vide letter dated 9 December 2010, coupled with the fact that the petitioner was permitted to avail loan under the **“Baroda Loan to Retirees for pension Loan “** and the same was granted and credited to the recovery account of the petitioner-bank, we are of the clear opinion that the stand which the 1st respondent has adopted that only because the petitioner did not deposit the amount of Rs.3,17,280/- on or before 12 December 2010, pension

would be denied to the petitioner is extremely harsh and a hard stand as also unfair and arbitrary in the present facts. We are of the view that by such approach the whole purpose and object of the pension facility being made available to such retired employees would stand frustrated. The noble object of the 1st respondent of making pension facility available to the employees and more particularly employees like the petitioner who have rendered about 39 years of service, would result in sheer futility, if the position as canvassed by the 1st respondent is sustained.

26. If the acceptance letter dated 9 December 2012 is perused it is clear that the 1st respondent was not only aware but conscious of the fact that a retired employee would not be in a position to instantaneously arrange for funds/finance to be refunded to the 1st respondent by the employees who are making an option for pension and therefore the '**Baroda Loan to Retirees for pension option**' scheme was also made available to them. Therefore, once this facility was made available and employees were permitted to avail the said facility it was expected that the 1st respondent ought to have either processed the loan early or granted time to the petitioner/similar persons to make the deposit of the differential amount on the loan being sanctioned. If this was not to be done then the very purpose of inserting a clause for availment of a loan in the

acceptance letter would stand frustrated. The intention of the 1st respondent in making such finance facility available to the petitioner was to mitigate the hardship which would be caused to a retired employee in refunding the said differential amount. However, by the impugned action the 1st respondent has taken away and or rendered nugatory, the very purpose of such facility being made available.

27. The impugned action is therefore, undoubtedly not consistent with the laudable object which the 1st respondent had intended to achieve. In any event in such a situation, balance of convenience would always in favour of the retired employee inasmuch as on one hand the right to receive pension stands crystallized in view of acceptance of the option as made by the petitioner and on the other hand, by only resorting to such hyper technical approach, of the petitioner not making payment/refunding of the amount of Rs.3,17,280/- as required in a short span of three days is itself in our opinion, is arbitrary and unsustainable.

28. The 1st respondent has completely overlooked the issue was of pension being conferred on its employee who had admittedly rendered 39 years of long service. A retired employee cannot be put into the place of a borrower or such recovery of the CPF amount is not in the nature of a commercial recovery under a

commercial transaction. The 1st respondent in such matters was thus required to have more sensitive and a humane approach. Such approach is in fact reflected by the policy makers of the 1st respondent in loan being made available under the “**Baroda Loan to Retirees for Pension option**” which has remained only on paper and not taken to its logical conclusion by the concerned department of the 1st respondent. In the facts of the case, we are quite clear that the concerned officers were not in a position to rise to the solemn purpose and object of a pension facility being made available to the petitioner. The 1st respondent as an organization and being a ‘State’ within the meaning of article 12 of the Constitution of India, equally had a duty towards its retired employees as a model employer and thus ought to have been alive to these circumstances. However, the Officers manning and governing the scheme in our opinion, have definitely overlooked the laudable object and have definitely not treated the petitioner to what he really deserved when his pension option was accepted. The 1st respondent had the discretion to extend the time, it could have asked the employee to compensate the bank by demanding a reasonable interest once it was clear that the case of the petitioner was bonafide. It is not that, if the 1st respondent really wanted to act fairly it was prevented by anything from so acting. A pension case is required to be handled with utmost sensitivity and without causing any undue botheration much less any harassment to

the retired employee. This is the least which is expected. A pensioner is at that stage of life where he would expect that the approach of the authorities dealing with pensionary issues is of compassion, support, sympathy and of encouragement. Individual problems and difficulties are required to be properly addressed and by having a positive and a pragmatic approach. At the same time, the authorities should not to be unmindful that pension is an entitlement of the employee and it is not some charity. In the present case, all this basic requirements as to how to treat a pensioner are totally forgotten by the 1st Respondent. The concerned officers have acted mechanically. It is surely not their case that the delay could not have been condoned to accept the said payment or there was any legal embargo. If this is the situation, then nothing prevented these officers of the 1st respondent in not accepting the said amount of Rs.3,17,280/- and grant pension to the petitioner. It is a settled principle-of-law that pension is neither a bounty nor a matter of grace but, is payment for past services rendered by an employee. There are no other reasons for which the petitioner is denied the pension except for non-refundable amount within the stipulated time.

29. In our above view, we find ourselves supported by the decision of the Supreme Court in the case of “**Sashikala A.Devi**

vs. Central Bank of India (2014) 16 Supreme Court Cases 260”

wherein in the context of entitlement of pension to a bank employee who had voluntarily retired and was entitled for pension, the Court held that pension not being the bounty is a right acquired by an employee on account of long years of sincere and good work. The Court would be slow in presuming that the employee who had assiduously acquired such a right to pension has really given up the right. The intention can be meticulously gathered from the various letters of the petitioner seeking pension. The significance being beneficial provision of a pension scheme/regulations are required to be interpreted liberally so as to further the object underlying such facility rather than denying the benefits to the beneficiary. In para 17 and 18 the Court thus observes:

“17. When viewed in the backdrop of the above facts, it is difficult to reject the contention urged on behalf of the appellant that what the deceased employee intended to do by his letter dated 8.10.2007 was to seek voluntary retirement and not resignation from his employment. We say so in the light of several attendant circumstances. In the first place the employee at the time of his writing the letter dated 8.10.2007 was left with just about one and a half years of service. It will be too imprudent for anyone to suggest that a bank employee who has worked with such commitment as earned him the appreciation of the management would have so thoughtlessly given up the retiral benefits in the form of pension etc. which he had earned on account of his continued dedication to his job. If pension is not a bounty but a right which the employee acquires on account of long years of sincere and good work done by him the court will be slow in presuming that the employee intended to waive or abandon such a valuable right without any cogent reason. At any rate there ought to be some compelling circumstance to suggest that the employee had consciously given up the right and benefit which he had acquired to assiduously. Far from the material on record suggesting any such conscious surrender, abandonment or waiver of the right to retiral benefit including pension, we find that the

material placed on record clearly suggests that the employee had no source of income or sustenance except the benefit that he had earned for long years of service. This is evident from a reading of the letter dated 8.10.2007 in which the employee seeks release of his retiral benefits at the earliest to enable him to undergo medical treatment that he requires. The letter as seen earlier lays emphasis on the fact that for his sustenance the employee is dependent entirely on such benefits. It is in that view difficult for us to attribute to the employee the intention to give up what was rightfully his in terms of retiral benefits when such benefits were the only source not only for his survival but for his medical treatment that he so urgently required. For a waiver of a legally enforceable right earned by an employee it is necessary that the same is clear and unequivocal, conscious and with full knowledge of the consequences. No such intention can be gathered from the facts and circumstances of the instant case. The employee's subsequent letters and communication which are placed on record cannot be said to be an after thought. Being proximate in point of time the letter dated 8.10.2007 must be treated to be part of the subsequent communication making the employee's intentions clear at least for the purposes of determining the true intention underlying the act of the employee"

18. "It is in our opinion abundantly clear that the beneficial provisions a Pension Scheme or Pension Regulations have been interpreted rather liberally so as to prompt the object underlying the same rather than denying benefits due to beneficiaries under such provisions. In cases where an employee has the requisite years of qualifying service for grant of pension, and where he could under the service conditions applicable seek voluntary retirement the benefit of pension has been allowed by treating the purported resignation to be a request for voluntary retirement. We see no compelling reasons for not doing so even in the present case which in our opinion is in essence a case of the deceased employee seeking voluntary retirement rather than resigning."

(Emphasis supplied)

30. In a recent judgment in the case of *State of Rajasthan vs Mahendra Nath Sharma (2015) 9 Supreme Court Cases 540* referring to the decision of the Supreme Court in *D.S.Nakara Vs Union of India* and more particularly quoting the paragraphs which still holds the field wherein it was laid down, that pension is not a gratuitous payment or a bounty depending on the sweet will or a

grace of a employer but is a right and does not depend upon the discretion of the employer, the Court confirmed the said observations in **D.S.Nakara** (supra), holding that that it is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect, however the right to receive pension flows in favour of the employee under the rules. The Court proceeded to observe that the authority should adopt a correct attitude and approach and that no unwarranted litigation is generated on pension issues. Their Lordships of the Supreme Court made the following observations:

“28. “It is a well known principle that pension is not a bounty. The benefit is conferred upon an employee for his unblemished career. [In D.S. Nakara v. Union of India](#)[2], D.A. Desai, J. speaking for the Bench opined that: (SCC pp 319-20 paras 18-20)

“18. The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service?

19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

20. The antiquated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through court has been swept under the carpet by the decision of the Constitution Bench in [Deokinandan Prasad v. State of Bihar](#)[3] wherein this Court

authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab v. Iqbal Singh[4]."

We may hasten to add that though the said decision has been explained and diluted on certain other aspects, but the paragraphs which we have reproduced as a concept holds the field as it is a fundamental concept in service jurisprudence. It will be appropriate and apposite on the part of the employers to remember the same and ingeminate it time and again so that unnecessary litigation do not travel to the Court and the employers show a definite and correct attitude towards employees. We are compelled to say so as we find that the intention of the State Government from paragraph 5 of the circular/memorandum has been litigated at various stages to deny the benefits to the respondents. It is the duty of the State Government to avoid unwarranted litigations and not to encourage any litigation for the sake of litigation."
(Emphasis supplied)

31. Adverting to the position in law, as emphatically laid down in the above expressive words of their Lordships, we are at pains to note the casual approach adopted by the concerned officers of the 1st respondent in denying the legitimate entitlement of a pension to the petitioner, admittedly when the pension option of the petitioner was accepted. The petitioner having submitted a detailed representation of the various personal difficulties namely the persons who are dependent on him, that an ailing mother, and thus he could not immediately arrange for funds to be refunded to the 1st respondent and thus had resorted to avail of the benefits of the loan

which was specifically made available under the “**Baroda Loans to Retirees for Pension option**” all fell to deaf ears. The concerned Officers of the 1st respondent ought to have been more compassionate, alive and sensitive to such issues and more particularly when they were made aware of the same. The bonafides of the petitioner are not in any manner questioned by the 1st respondent. In fact the petitioner on the loan being sanctioned deposited Rs.3,17,280/- in the recovery account of the 1st respondent and the same was credited to the account of the 1st respondent. This being the situation, then it was not expected of a reasonable body of persons to foist such a denial of pension on a petty ground that as the petitioner did not refund the amount of Rs.3,17,280/- up to 12 December 2010 the petitioner would not be entitled of availing the benefit of pension. It is extremely significant that nowhere in the correspondence the 1st respondent has denied the fact that the petitioner had belatedly received communication dated 9 December 2010, after the time for deposit as mentioned in the letter which had expired on 12 December 2010. This stand is taken for the first time in the counter affidavit and therefore, the same *per se* cannot be accepted.

32. Even otherwise, we are of the clear opinion that the period of 3 days which was given by the 1st respondent in the letter

dated 9 December 2010 for the petitioner to make payment of Rs.3,17,280/- was totally unrealistic, too short and arbitrary. We have not been pointed out any material in the settlement that such a period cannot be extended at the hands of the 1st respondent. The 1st respondent was at a complete discretion to extend the said period considering the facts and circumstances of a given case. The 1st respondent could have also put the petitioner to certain terms of a reasonable interest instead of taking such a hard stand the petitioner could not have been deprived of the benefit and entitlement to pension. Moreover as asserted by the petitioner that the 1st respondent has considered many cases where a belated payment of such differential amount is also not denied by the 1st respondent either in the correspondence or in the pleadings. We are also of the opinion that the petitioner having pointed out in the representation that how endless extensions are being granted to defaulter customers of the bank in respect of the loan availed by them also ought to have been pondered by the 1st respondent. In fact to this extent what the petitioner has said cannot be denied by the 1st respondent and it has not. On one hand if this is the approach in respect of the defaulters then surely the retired employees ought to have been treated in a more respectful manner and a little extension of sometime in such genuine situation could not have caused any prejudice to the 1st respondent more particularly the amount not being so large. We had

in fact adjourned the hearing of the petition on three occasions as we were informed that in the peculiar facts of the case the 1st respondent would reconsider the issue and take an appropriate decision, and more so as cogent reasons were given by the 1st respondent to resort to such hard action of denying pension to the petitioner when the petitioner's option was admittedly accepted. However, learned counsel for the 1st respondent bank states before us that the 1st respondent is not inclined to reconsider the decision. In our opinion, this approach fails the test of reasonableness, fairness and non-arbitrariness expected from the 1st respondent.

33. Now coming to the next contention as urged on behalf of the 1st respondent that the petition is barred by delay or laches, we are not persuaded to accept the same. Admittedly this is a case where after initial rejection the petitioner had made representations. In the facts and circumstances of the case the petitioner expected that the 1st respondent would consider the detailed representations as made by the petitioner. There was a ray of hope in the heart of the petitioner that fairness would prevail with the 1st respondent and representations would bear fruits. It cannot be expected that in each and every case a citizen and more particularly a senior citizen and a pensioner should resort to a legal action. The petitioner has approached this Court after exhausting all remedies of

representations and after all his hopes stood frustrated on account of his representations being mechanically turned down by the 1st respondent and finally in March 2013. The petition was immediately filed thereafter. It is settled principle of law that the issue of delay and laches is required to be considered in the facts and circumstances of each case. Considering the facts of the present case the 1st respondent is not correct in asserting that the petition is delayed or barred by laches.

34. Now coming to the decision as relied on behalf of the 1st respondent in the case of **Rajasthan Rajya Vidyut Vitaran Nigam Limited vs Dwarka Prasad Koolwal & ors** (supra) in our opinion the same would not assist the 1st respondent. The case in hand is not such where the petitioner had sought any extension of time to exercise the option but, this is a case where the petitioner exercised the option well-in-time and that the same came to be accepted by the 1st respondent by letter dated 9 December 2010. There is no question of any statutory time-limit being requested to be extended. In any event, the petitioner had exercised an option under a settlement and the same was accepted, it was completely in the hands of the 1st respondent to take it to the logical conclusion.

35. Our deliberate conclusion therefore, is that the petition

needs to succeed. The impugned letters dated 6 May 2011, 24 November 2011, 25 February 2012 and 9 March 2013 rejecting the petitioner's entitlement to pension, are quashed and set aside. We hold that the petitioner is entitled for pension under the acceptance letter dated 9 December 2010 issued by the 1st respondent, subject to the condition that the petitioner deposits an amount of Rs.3,17,280/- with the 1st respondent within a period of four weeks from today. The 1st Respondent is directed to grant pension to the petitioner with retrospective effect from 31 March 2011 (on the day on which the petitioner had deposited an amount of Rs.3,17,280/-) with appropriate increases, which shall be paid along with simple interest at 9 % per annum.

36. We accordingly, allow the writ petition in the above terms with costs quantified at Rs.50,000/- to be paid by the 1st respondent to the petitioner within four weeks from today.

37. At this stage, learned counsel for the 1st respondent seeks stay of our directions for a period of four weeks. The prayer is opposed on behalf of the petitioner. Considering the facts of the present case, the prayer for stay is rejected.

(G.S.KULKARNI, J)

(ANOOP V.MOHTA,J)



