

rejected by the respondent-Department. In view of the facts explained above, the said finding of the Tribunal cannot be allowed to prevail.

(9) Consequently, this writ petition is allowed and the impugned order dated 6th December, 2000 (Annexure P-2) passed by the Tribunal is set aside. The respondent-Department is directed to appoint the petitioner on the post of Labourer with immediate effect. It is made clear that at the time when medical examination of the petitioner was done,—*vide* Annexure A-1 to Annexure P-1, he was twenty seven years of age and now his age will not be considered as a bar for his appointment. The petitioner will be given seniority and other benefits as Labourer from the date the persons after his selection as such were appointed. However, he will not be entitled to arrears of pay and allowances. There shall be no order as to costs.

(10) The Registry is directed to return the original record to Mr. Gurpreet Singh, Advocate, appearing for respondent Nos. 1 to 4.

---

**R.N.R.**

***Before. Hemant Gupta and Mohinder Pal, JJ.***

**MEHAR SINGH,—Petitioner**

*versus*

**PUNJAB NATIONAL BANK AND OTHERS,—Respondents**

C.W.P. No. 1444 of 2005

24th January, 2008

***Constitution of India, 1950—Art. 226—Punjab National Bank (Employees') Pension Regulations, 1995—Petitioner retired from bank after attaining age of superannuation—Pension Scheme—Options invited—Bank declining pension to petitioner on the ground that option was not submitted within stipulated time—Bank accepting option of petitioner and transferring his provident fund amount to pension fund—Having acted upon option of petitioner respondent—Bank cannot be permitted to approbate and reprobate to deny benefit of pension—Petition allowed while directing Bank to release pensionary benefits to petitioner in terms of his option.***

*Held*, that the respondent-Bank has accepted the option given by the petitioner and, in fact, transferred his provident fund amount to the Pension Fund Trust Account from the year 1996 till the date of his retirement. The petitioner was reflected as the one who has opted for pension. Therefore, having acted upon the option of the petitioner, the respondent Bank cannot be permitted to approbate and reprobate to deny the benefit of pension on the ground that option was not received on or before 27th January, 1996. The respondent-Bank by its own act and conduct has condoned the delay, if any, in submission of the option. It is not open to the respondent-Bank to assert that the option was not submitted within time after the petitioner attained the age of superannuation. Throughout for a period of more than six years, the petitioner was reflected as an optee for pension. There was no contribution of the respondent Bank towards the Contributory Fund of the petitioner. In view of the said fact, we are of the opinion that the action of the respondent Bank in declining pension on the ground that the option was not received on or before 27th January, 1996 after attaining the age of superannuation is wholly unsustainable and consequently the same is set aside.

(Para 9)

Naveen Daryal, Advocate, *for the petitioner.*

Ashok Sharma, Advocate, *for the respondents.*

**HEMANT GUPTA, J.**

(1) The petitioner has claimed a writ of certiorari for quashing Annexure P-17 dated 17th May, 2004 whereby the claim of the petitioner for pension in terms of Punjab National Bank (Employees') Pension Regulations, 1995, was declined.

(2) The petitioner joined respondent Bank on 6th December, 1979 as a Clerk in the branch office of the respondent Bank at Panipat. The petitioner was promoted from time to time and attained the age of superannuation while working as Special Assistant.

(3) The respondent Bank introduced a pension scheme in the year 1994. After some modification and amendment, the scheme was reintroduced in the year 1995. The said scheme is called PNB (Employees') Pension

Regulations, 1995 (hereinafter to be referred as "Pension Regulations"). The scheme was circulated,—*vide* circular dated 15th November, 1995 to all the branches of the respondent Bank. The petitioner opted for the said scheme,—*vide* option letter 30th January, 1996 though the last date for the option in the scheme was 27th January, 1996. It is the case of the petitioner that he has opted for pension in response for first circular dated 27th June, 1994 but it appears that the said application was not forwarded to the Regional Office of the respondent Bank.

(4) The claim of the petitioner has been declined on the ground that his option to be governed by Pension Regulations has been received after the last date for receiving option i.e., on or before 27th January, 1996. Therefore, the option submitted by the petitioner cannot be treated to be valid option for pension and consequently declined his claim for pension. It was also found that records of the respondent Bank do not show that the petitioner exercised his option in response to the earlier circular dated 27th June, 1994.

(5) Learned counsel for the petitioner has vehemently argued that option was exercised within 120 days from the date of circular dated 15th November, 1995. In any case, the respondents have accepted the said option to be within time which is reflected in the statement of account of the petitioner's Provident Fund Account No. 036392 pertaining to the year 1996 to 2002 i.e., for six years, appended as Annexures P-1 to P-6, as having submitted pension option. It is also pointed out that the respondent Bank's contribution of pension optees have been transferred to the Pension Fund Trust Account, which is evident from the ledger account dated 25th November, 1997. Thus, it is alleged that the respondent Bank has considered the petitioner as having duly opted for pension under the Pension Regulations.

(6) It is the case of the petitioner that after his attaining the age of superannuation on 28th February, 2003, he has not received either pension or commuted value of the pension which was declined,—*vide* the order impugned after directions were issued to decide the representation of the petitioner.

(7) Controverting the said stand, it was pointed out that the last date stipulated for exercise of option in the circular was 27th January, 1996. The petitioner has not exercised option within the time granted. Therefore, by transfer of bank's contribution towards his pension trust account or he

has been reflected as pension optee, the petitioner cannot claim pension. It is admitted in the written statement that the provident fund of the petitioner was remitted to Pension Fund but it was asserted that it was without verifying the date of his pension option. It is asserted that the notified date is the date when the Pension Regulations were notified in the official gazette i.e. 29th September, 1995. Therefore, the period of 120 days to submit the option has to be taken from the date of publication of notification and not from the date of issuance of the circular.

(8) We need not examine the question whether 120 days given for exercising option is to commence from the date of publication in the official gazette i.e. 29th September, 1995 or the date when the circular was first issued by the respondent Bank. In the present case, the respondent Bank has accepted the option given by the petitioner and, in fact, transferred his provident fund amount to the Pension Fund Trust Account from the year 1996 till the date of his retirement. The petitioner was reflected as the one who has opted for pension. Therefore, having acted upon the option of the petitioner, the respondent Bank cannot be permitted to approbate and reprobate to deny the benefit of pension on the ground that option was not received on or before 27th January, 1996. The respondent Bank by its own act and conduct has condoned the delay, if any, in submission of the option. It is not open to the respondent Bank to assert that the option was not submitted within time after the petitioner attained the age of superannuation. Throughout for a period of more than six years, the petitioner was reflected as an optee for pension. There was no contribution of the respondent Bank toward the Contributory Provident Fund of the petitioner. In view of the said fact, we are of the opinion that the action of the respondent Bank in declining pension on the ground that the option was not received on or before 27th January, 1996 after attaining the age of superannuation is wholly unsustainable and consequently the same is set aside.

(9) In view of the above, we allow the present writ petition and direct the respondent Bank to release the pensionary benefits to the petitioner in terms of his option within three months from today. However, if the pensionary benefits are not released to the petitioner within the said period, the petitioner shall be entitled to interest at the rate of 9% per annum from the date the pensionary benefits became due to him till its disbursement.

---

**R. N. R.**