Bank Of India vs Muthyala Saibaba Suryanarayana Murthy on 18 March, 2025

Author: Dipankar Datta

Bench: Dipankar Datta

2025 INSC 373 REPORTABL

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3829 OF 2025
[Arising out of SLP(C) NO. 24400 OF 2024]

BANK OF INDIA & ORS. …APPELLANTS

VERSUS

MUTHYALA SAIBABA SURYANARAYANA
MURTHY & ANR. …RESPONDENTS

JUDGMENT

DIPANKAR DATTA, J.

1. Leave granted.

2. The appellants call in question the judgment and order dated 7 th March, 2024 passed by a Division Bench of the High Court for the High Court respondent from the judgment and order dated 22nd November, 2023 of dismissal of his writ petition3 by a Single Judge of the same court.

3. The solitary question arising for decision on this appeal is whether the Division Bench was justified in its interference with the order of dismissal of the writ petition.

4. After serving the first appellant4 for about 25 years, the first respondent opted for voluntary retirement and was relieved from the service of BoI on 30th December, 2000.

5. On 24th August, 2010, BoI published Circular No. 104/645 inviting options from retired employees between 1st September, 2010 and 30th October, 2010 to join the Bank of India (Employees') Pension Scheme, 1995. The said circular recorded that the option to join the pension scheme was being extended in terms of an agreement / joint note dated 27th April, 2010 signed between the Indian Banks Association6 and various Officers' Associations/Workmen Unions (United Forum of Bank Unions). The option was available to be exercised inter alia by employees of BoI who were in service prior to 29th September, 1995 and retired prior to the date of settlement, i.e., 27th April, 2010.

6. The first respondent had travelled to the United States of America in March, 2010. He returned to India a week after the said circular was Writ Petition No. 29659 of 2011 BoI said circular IBA issued but much prior to the last date for exercise of option. He claimed that he had to undergo a surgery in the 1st week of October, 2010. He also claimed that not being aware of the opportunity extended by BoI to exercise option within 30th October, 2010 and despite being eligible, he missed such opportunity. It was only on 19th March, 2011, i.e., 4 (four) months beyond the stipulated date, that the first respondent proceeded to express his interest to opt for the pension scheme by submitting a representation on that day itself by filling up the requisite forms claiming that he derived knowledge of the said circular from two erstwhile employees of BoI.

7. Option not having been exercised by the first respondent within the stipulated time, obviously, BoI did not accept such option. This triggered the writ petition, which the Single Judge dismissed. It was held that the period for exercise of option having expired by the time the first respondent exercised his option, the decision not to entertain the option was neither unreasonable nor arbitrary; hence, no interference was called for.

8. Aggrieved thereby, the first respondent appealed. It is such appeal that has succeeded by reason of the impugned judgment and order of the Division Bench.

9. We have heard learned counsel appearing for the parties and perused the impugned judgment and order. The only reason that can be traced in the impugned judgment and order for the writ appeal to be allowed is found in paragraph 6 thereof, reading as follows:

> "6. This Court, having considered the rival submissions made by the learned counsel on either side, is of the view that the respondent-bank has issued Circular dated 24.08.2010 wherein a policy was taken to extend pension to all the retired employees. When such policy is beneficial in nature, the respondent-bank ought to have considered the application submitted by the appellant; though it was submitted belatedly after expiry of the deadline prescribed in the Circular 24.08.2010. As the appellant has undergone surgery during the relevant period of time, the lapse on his part can be condoned. Therefore, the learned Single Judge was not justified in dismissing the writ petition and hence, the same is liable to be set aside."

10. We have no hesitation to hold that the Division Bench was entirely wrong in interfering with the dismissal of the writ petition, as ordered by the Single Judge.

11. It is noted from the judgment and order of the Single Judge that wide publicity had been given by IBA as well as by BoI through local and national newspapers and also through its branches that employees, who are otherwise eligible, may opt for the pension scheme by 30th October, 2010. Such recording was made on perusal of the counter affidavit of BoI to the writ petition of the first appellant. It has not been shown by the first respondent that the contents of the counter affidavit, filed by BoI, either did not contain any such material or that even if it did contain such material, the same did not amount to wide publicity.

12. Our attention has been invited by learned counsel appearing for the appellants to a decision of this Court in Calcutta Port Trust and Ors. vs. Anadi Kumar Das (Captain) and Ors.7, in particular to paragraph 23 thereof, reading as follows:

> "23. We would like to observe that whenever an employer introduces the pension scheme or makes the same applicable to retired employees and gives them opportunity to exercise option, the circulars/instructions issued for that purpose should either be communicated to the retirees or made known to them by some reasonable mode. Mere display of such notice/instructions on the noticeboard of the head office cannot be treated as an intimation thereof to the retired employees/officers. The employer cannot presume that all the retirees have settled in the city where the head office is located. If the employees belong to the services of the Central Government or its agencies/instrumentalities, they are likely to settle in their native places which may be far away from the seat of the Government or head office of the establishment or organisation. The retirees are not expected to frequently travel from their native places to the seat of the Government or head office to know about additional benefits, if any, extended by the Government or their establishment/organisation and it is the duty of the employer to adopt a suitable mechanism for communicating the decision to the retired employees so as to enable them to exercise option. This could be done either by publishing a notice in the newspaper about which the retirees are told at the time of their retirement or by sending copies of the circulars/instructions to the retirees or by sending a copy thereof to the association of the employees and/or officers with a direction to them to circulate the same among the retirees concerned. By taking advantage of the modern technology, the employer can also display the circulars/instructions on a designated website about which prior information is made available to the employees at the time of their retirement. If one of these modes is not adopted, the retired employees can legitimately complain that they have been denied right to exercise the option and can seek intervention of the court."

13. In the absence of the first respondent proving to the contrary, we are left with no option but to hold that BoI did observe the aforesaid (2014) 3 SCC 617 directions in letter and spirit and spared no effort to make it known to all the retired employees, eligible to opt for the pension scheme, that they would be having the window of opportunity to so opt by submitting the requisite forms by 30th October, 2010.

14. It is the admitted case of the first respondent that he had returned to India from the United States of America on 1st September, 2010. However, he was not diligent enough to make himself aware of the developments touching his interest while he was abroad. The bogey of hospitalisation raised by the first respondent, and that too for a short period of four days between 3rd October and 7th October, 2010, was not such so as to overlook his recalcitrance in not acting with intent and purpose within the period made available by the said circular.

15. The Division Bench referred to the beneficial nature of the policy to grant relief to the first respondent. Whenever a policy is formulated, which is beneficial in nature for the subjects to be governed thereby but, at the same time, prescribes a time limit for the subjects to act, it is not and cannot be the law that the proposed benefits can be availed of by a subject beyond the stipulated period and at any time in future suiting his convenience.

16. Almost half a century back, this Court in Mani Subrat Jain v. State of Haryana8 had sounded a word of caution as follows:

> "9. ... It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be (1977) 1 SCC 486 a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to do something or to abstain from doing something. ..."

17. In the present case, after the first respondent did not avail the opportunity to exercise option by 30th October, 2010, there was no occasion for denial or deprivation of a legal right of the first respondent by the appellants. The harm or loss arising out of failure of the first respondent to opt for the pension scheme was not wrongful in the eye of law since it is he who had to be blamed for the situation where he found himself. The first respondent had neither sustained any injury to any legally protected interest nor had he been subjected to a legal wrong. He did not suffer a legal grievance and had no legal peg for a justiciable claim to hang on. Thus, not having a legally protected right which could have been judicially enforced by seeking a mandamus, the writ petition of the first respondent was plainly not maintainable and, thus, the Single Judge rightly dismissed the same.

18. The Division Bench, in course of its interference with the order dismissing the writ petition, failed to realise that in exercise of writ powers under Article 226 of the Constitution, the high courts of the country do not come to the aid of the tardy, the indolent, and the lethargic. This golden truth has to borne in mind by all courts exercising high prerogative writ jurisdiction. While mandamus will issue to reach injustice, wherever found, it is equally true that exercise of discretion should not unnecessarily be coloured by considerations of sympathy or grace or compassion or charity. These are beyond the scope of the high courts' writ powers. In cases such as these, where acceptable justification for the failure to act with expedition is not proffered, the high courts should stay at a distance.

19. The Division Bench should have also done well to remember that considerations of sympathy, grace, charity, or compassion do not have any place where a subject is called upon to exercise his option upon a settlement executed by and between the parties, one of which represents the subject himself, and such settlement is binding on the parties during its validity. If belated options are to be accepted, it would bring in its train chaos, confusion and public inconvenience without there being any end in sight and unsettle the very settlement reached by and between the parties which is the foundation of the rights of the subjects.

20. Since it had not been shown to the High Court that the said circular was not widely published and, therefore, opening up a window of opportunity for submission of options between 1st September and 30th October, 2010 was nothing more than a mere lip service, no case for interference had been set up by the first respondent either.

21. Also, there being no unreasonableness or arbitrariness in the process of decision making adopted by the appellants, the writ petition rightly came to be dismissed and there was absolutely no occasion for the Division Bench to interfere and allow the writ appeal of the first respondent.

22. For the foregoing reasons, the appeal succeeds. The impugned judgment and order dated 7th March, 2024 is set aside and the judgment and order of the Single Judge dated 22nd November, 2023 affirmed, with the result that the writ petition of the first respondent on the file of the High Court shall stand dismissed.

.....J. (DIPANKAR DATTA) .....J. (MANMOHAN) NEW DELHI.

MARCH 18, 2025.