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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**Date of Decision: 25<sup>th</sup> April, 2026.**

+ W.P.(C) 213/2020

SITARAM AGGARWAL

.....Petitioner

Through: Mr. R. Vasudevan, Mr. N.C Gupta,  
Advocates with Petitioner in person.

versus

PUNJAB NATIONAL BANK AND ANR.

.....Respondents

Through: Mr. Rajesh Kumar Gautam, Mr.  
Anant Gautam, Mr. Deepanjali  
Choudhary, Ms. Azal Aekram, Mr.  
Aman Gahlot, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE SANJEEV NARULA**

**JUDGMENT**

**SANJEEV NARULA, J. (Oral):**

*[As per to Notification No. 64/G-4/Genl.-I/DHC dated 27<sup>th</sup> February, 2026, matters listed on 3<sup>rd</sup> March, 2026 (on account of "Holi"), are to be taken up on 25<sup>th</sup> April, 2026.]*

1. The Petitioner, a former officer of Punjab National Bank ["PNB"], seeks a direction that he be treated as a pension optee under the Punjab National Bank (Employees') Pension Regulations, 1995 ["1995 Regulations"]. The Petitioner states that he had opted for pension on 30<sup>th</sup> September, 1994 when PNB first invited options under its proposed pension scheme, and that PNB did not act upon that option. PNB disputes the claim and contends that the Petitioner did not exercise a valid option under the



1995 Regulations, that he was compulsorily retired on 31<sup>st</sup> January, 1995 and was not covered under the later second-option dispensation, and that after settlement of provident fund and other terminal dues in January, 1996, the claim cannot be revived after a long lapse of time.

2. The dispute concerns the effect of the option dated 30<sup>th</sup> September, 1994 in the context of the 1995 Regulations and PNB's circular issued thereafter, the applicability of the pension scheme to an employee compulsorily retired prior to 29<sup>th</sup> September, 1995, and the consequences of settlement of terminal dues in 1996.

### ***Factual Background***

3. The Petitioner joined PNB on 12<sup>th</sup> April, 1983 as a Civil Engineer in MMGS-II. At the relevant time, he was working as Manager (Civil), Zonal Office, Bhopal. He was served with a charge-sheet dated 20<sup>th</sup> December, 1993. A departmental enquiry followed, and by order dated 31<sup>st</sup> January, 1995, the Disciplinary Authority imposed upon him the major penalty of compulsory retirement from PNB's service. The communication dated 3<sup>rd</sup> February, 1995 forwarded the order to him. PNB later treated him as retired with effect from 24<sup>th</sup> February, 1995.

4. The pension scheme in the banking industry had its origin in the industry-wide settlement and joint note dated 29<sup>th</sup> October, 1993. In pursuance thereof, PNB issued Personnel Division Circular No. 1431 dated 27<sup>th</sup> June, 1994. The circular enclosed the proposed PNB Employees' Pension Regulations, 1993 ["1993 Proposed Regulations"] and called for options from existing employees as well as from employees who had retired within the period covered by the proposed scheme. The proposed pension was to be in lieu of the employer's contribution to the provident fund.



5. In response, the Petitioner addressed a telegram to the Zonal Office, Bhopal. PNB, by inter-office communication dated 27<sup>th</sup> September, 1994, forwarded to him the requisite information and the option forms, requiring that the forms be returned in duplicate so as to reach PNB latest by 30<sup>th</sup> September, 1994. The Petitioner's option form bears the date 30<sup>th</sup> September, 1994. In that form, he declared that he had read and understood the proposed 1993 Regulations, opted to become a member of PNB's pension scheme, and irrevocably authorised PNB/Trustees of the Contributory Provident Fund to transfer the entire contribution of PNB, together with interest, to the credit of the Pension Fund to be created for that purpose. The form records his PF Account No. 50441, his designation as Senior Manager (Civil), and his posting at the Zonal Office, Bhopal.

6. PNB thereafter framed the 1995 Regulations in exercise of power under Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, in consultation with the Reserve Bank of India and with previous sanction of the Central Government. The Regulations were notified in the Official Gazette on 29<sup>th</sup> September, 1995.

7. The November 1995 Circular issued by PNB assumes importance. The record describes it at places as Circular No. 1920 dated 15<sup>th</sup> November, 1995, while PNB's rejection refers to "*PD Circular No. 1520 dated 19<sup>th</sup> November, 1995*". Nothing turns on the numbering for the present purpose, and it shall be referred to as the November 1995 Circular. The circular recorded that, under Regulation 3, employees who had retired on or after 1<sup>st</sup> November, 1993 but before 29<sup>th</sup> September, 1995 were among the categories covered by the 1995 Regulations, subject to fulfilment of the prescribed conditions. It further recorded that an option exercised before the notified



date in pursuance of the industry-wide settlement on pension would be deemed to be an option for the purpose of the 1995 Regulations, subject to refund of PNB's provident fund contribution with interest in the manner set out therein. The November 1995 Circular then stated that employees who had already submitted option letters for pension in response to Circular No. 1431 dated 27<sup>th</sup> June, 1994 need not submit such option letters afresh, and that the earlier options would be taken as options under the 1995 Regulations. It also required a separate List III for employees who had opted for pension in response to Circular No. 1431 dated 27<sup>th</sup> June, 1994.

8. On 8<sup>th</sup> January, 1996, PNB issued a letter regarding settlement of the Petitioner's terminal dues. The letter recorded that the Disciplinary Authority's order dated 31<sup>st</sup> January, 1995 had been served upon him and acknowledged by him on 24<sup>th</sup> February, 1995. It then recorded the Petitioner's terminal dues as provident fund of INR 89,710.67, gratuity of INR 50,550, and leave encashment of INR 49,947.50, aggregating to INR 1,90,208.17. The letter further showed several recoveries and adjustments towards loans, salary, etc., and recorded that INR 65,543.15 had been remitted to the 'C' Block, Vasant Vihar branch for credit to the Petitioner's housing loan account. Thereafter, there was no correspondence on record for several years. The Petitioner addressed PNB again in September, 2018.

9. In 2010, another pension option was extended under the Bipartite Settlement/Joint Note dated 27<sup>th</sup> April, 2010 to certain employees and retirees who had not opted earlier. By letter dated 16<sup>th</sup> March, 2018, the Indian Banks' Association ["IBA"] addressed extension of a second pension option to certain categories of employees, including compulsorily retired employees.



10. The Petitioner addressed PNB by email dated 17<sup>th</sup> September, 2018 stating that he had joined PNB on 12<sup>th</sup> April, 1983, had been compulsorily retired on 31<sup>st</sup> January, 1995, and had submitted a pension option prior thereto. He requested that pension under the applicable scheme be allowed. PNB replied on 24<sup>th</sup> September, 2018 stating that pension was allowed to employees compulsorily retired between 29<sup>th</sup> September, 1995 and 27<sup>th</sup> April, 2010.

11. The Petitioner issued a legal notice dated 19<sup>th</sup> February, 2019. PNB responded on 5<sup>th</sup> March, 2019 stating that, as per its records, the Petitioner was a PF optee and was not eligible for pensionary benefits. The Petitioner thereafter filed W.P.(C) 5318/2019. By order dated 15<sup>th</sup> May, 2019, this Court directed PNB to take a decision on the legal notice. Pursuant thereto, PNB issued a letter dated 30<sup>th</sup> May, 2019. The letter recorded the Petitioner's service details, referred to Circular No. 1431 dated 27<sup>th</sup> June, 1994, and stated that, in terms of the November 1995 Circular, compulsorily retired employees were not eligible for pension. It further stated that the Petitioner's option dated 30<sup>th</sup> September, 1994 was not considered and that he was treated as a PF optee. The letter also referred to the 2018 dispensation as being applicable to employees compulsorily retired between 29<sup>th</sup> September, 1995 and 27<sup>th</sup> April, 2010.

12. The Petitioner submitted a representation dated 30<sup>th</sup> August, 2019 referring to his earlier option and the relevant circulars. PNB rejected the representation by communication dated 18<sup>th</sup> September, 2019 reiterating that compulsorily retired employees prior to 29<sup>th</sup> September, 1995 were not eligible and the Petitioner's option dated 30<sup>th</sup> September, 1994 was not considered.



### ***Petitioner's Contentions***

13. In support of the petition, Mr. R. Vasudevan, counsel for the Petitioner, makes the following submissions:

13.1. The refusal of PNB rests on a fundamental misreading of its own pension regime. The case is not one of a belated attempt to switch from provident fund to pension. The Petitioner had opted for pension on 30<sup>th</sup> September, 1994 in the very form supplied by PNB, which authorised transfer of PNB's provident fund contribution to the Pension Fund. The option was complete both in substance and in form.

13.2. The November 1995 Circular clinches the issue. It expressly provided that employees who had earlier submitted pension options under Circular No. 1431 dated 27<sup>th</sup> June, 1994 need not submit fresh options, and that such earlier options would be treated as options under the 1995 Regulations. Once this deeming provision operated, PNB could not treat the Petitioner as a non-optee merely because he did not submit a second option after the Regulations were notified.

13.3. The Petitioner fell within the category of employees who had retired on or after 1<sup>st</sup> November, 1993 but before 29<sup>th</sup> September, 1995. His compulsory retirement was ordered on 31<sup>st</sup> January, 1995 and given effect from 24<sup>th</sup> February, 1995. The November 1995 Circular did not exclude employees compulsorily retired during this period. The later stand of PNB that such employees were not eligible has no foundation either in the Regulations or in the Circular, and is contrary to the position consistently adopted by PNB. The Petitioner's case is founded on the option dated 30<sup>th</sup> September, 1994 and the effect of the November 1995 Circular, which preserved such earlier options and rendered a fresh option unnecessary.



13.4. PNB itself did not reject the claim on the ground that no option had been submitted. The communications dated 30<sup>th</sup> May, 2019 and 18<sup>th</sup> September, 2019 proceed on the basis that an option dated 30<sup>th</sup> September, 1994 existed, but state that it was “*not considered*” on the ground that the Petitioner was outside the pension scheme. This constitutes a clear admission of receipt of the option, and the dispute is confined to whether refusal to consider it was justified.

13.5. The argument regarding refund of provident fund contribution is misconceived. The obligation to refund could arise only where PNB’s contribution had already been paid to the employee. When the 1995 Regulations were notified on 29<sup>th</sup> September, 1995, and during the period of compliance under the November 1995 Circular, the provident fund contribution had not been released. It continued to remain with PNB and was dealt with only in January, 1996. PNB ought to have transferred this amount to the Pension Fund instead of relying on a subsequent unilateral settlement to defeat the claim. The settlement dated 8<sup>th</sup> January, 1996 is also stated to be a unilateral computation and adjustment by PNB, and not a conscious acceptance of CPF in lieu of pension.

13.6. There was no conscious acceptance of CPF in full and final settlement. The letter dated 8<sup>th</sup> January, 1996 did not require an informed election between CPF and pension but merely recorded a unilateral computation and adjustments. Various amounts were appropriated towards alleged dues, and part of the balance was remitted to a housing loan account. In such circumstances, waiver, acquiescence or estoppel cannot arise, as these doctrines presuppose knowledge of the right and an intentional abandonment of it.



13.7. PNB's own circular required circulation of the November 1995 Circular to all employees. In the case of a compulsorily retired employee, reasonable steps were required to communicate it at the last known address or by other appropriate means. Reliance is placed on *Calcutta Port Trust & Ors. v. Anadi Kumar Das (Captain) & Ors.*<sup>1</sup>, wherein the Supreme Court held that circulars relating to pension options must be communicated to retirees or made known through reasonable modes.

13.8. The plea of delay is untenable. Knowledge of the relevant facts arose only in 2018, whereupon the Petitioner immediately addressed PNB on 17<sup>th</sup> September, 2018. The delay is attributable to PNB's failure to communicate the November 1995 Circular and its failure to inform the Petitioner that his option dated 30<sup>th</sup> September, 1994 had not been considered. Further, the Petitioner was not informed of the coming into force of the 1995 Regulations or the November 1995 Circular. In any event, denial of pension constitutes a continuing wrong, and relief cannot be denied solely on the ground of delay. Reliance in this regard is placed on *Union of India & Ors. v. Tarsem Singh*<sup>2</sup>.

13.9. PNB cannot improve upon the reasons contained in the impugned communications through subsequent pleadings. The rejection letters rest solely on the ground that compulsorily retired employees prior to 29<sup>th</sup> September, 1995 were not covered and that the 1994 option was therefore not considered. Having taken that position, PNB cannot now seek to justify its action on entirely different grounds such as delay, waiver or non-refund. Reliance is placed on *Mohindhr Singh Gill & Anr. v. Chief Election*

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<sup>1</sup> (2014) 3 SCC 617.

<sup>2</sup> (2008) 8 SCC 648.



*Commissioner, New Delhi & Ors.*<sup>3</sup>. Further, PNB cannot approbate and reprobate by taking inconsistent stands at different stages of the proceedings. Reliance is placed on *Union of India & Ors. v. N. Murugesan & Ors.*<sup>4</sup>, and *Bar Council of Delhi & Ors. v. Surjeet Singh & Ors.*<sup>5</sup>.

13.10. The Petitioner is willing to refund or permit adjustment of PNB's provident fund contribution with applicable interest. No double benefit is claimed; the relief sought is limited to treatment as a pension optee with appropriate adjustment of the provident fund component.

#### ***Respondents' Contentions***

14. Mr. Rajesh Kumar Gautam, counsel for the Respondents, opposes the present petition and submits as follows:

14.1. The petition is misconceived and barred by delay, laches, waiver and estoppel. The 1995 Pension Regulations are statutory in character, having been notified in the Official Gazette on 29<sup>th</sup> September, 1995. Regulation 3 required an eligible employee to exercise option in writing within 120 days from the notified date and to authorise transfer of PNB's contribution to provident fund to the Pension Fund. The Petitioner did not exercise such option within the stipulated period nor furnish the requisite authorisation under the Regulations.

14.2. Publication in the Official Gazette constitutes sufficient public notice. Reliance is placed on *Jai Singh B. Chauhan v. Punjab National Bank & Ors.*<sup>6</sup>, where the Supreme Court held that individual notice is not required in the context of the Pension Regulations of PNB.

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<sup>3</sup> (1978) 1 SCC 405.

<sup>4</sup> (2022) 2 SCC 25.

<sup>5</sup> (1980) 4 SCC 211.

<sup>6</sup> (2005) 6 SCC 262.



14.3. The Petitioner was paid his terminal dues on 8<sup>th</sup> January, 1996, including provident fund of INR 89,710.67, gratuity of INR 50,550 and leave encashment of INR 49,947.50. These amounts, including PNB's contribution to the provident fund, were accepted without protest or reservation. Having accepted CPF benefits, the Petitioner consciously elected that route, treating it as full and final settlement of his retiral dues. Such conduct attracts the doctrine of election, and the Petitioner cannot approbate and reprobate. Reliance is placed on *Bank of India & Ors. v. O.P. Swarnakar & Ors.*<sup>7</sup>.

14.4. Reliance is also placed on *Union of India & Ors. v. M.K. Sarkar*<sup>8</sup>, where the Supreme Court held that a person who had enjoyed provident fund benefits for a long period could not subsequently seek a switch-over to pension, as this would result in an impermissible double benefit. The Court further held that such claims do not give rise to a continuing cause of action and are liable to be rejected on the ground of delay and laches. The decision also recognises that where an employee consciously accepts provident fund benefits in preference to pension, a later attempt to resile from that position is impermissible. Reliance is also placed on *C. Jacob v. Director of Geology and Mining & Anr.*<sup>9</sup>, for the principle that a direction to consider a stale representation does not revive a dead claim or create a fresh cause of action.

14.5. Reliance on Circular No. 1431 dated 27<sup>th</sup> June, 1994 is misplaced. Even assuming that an option was submitted on 30<sup>th</sup> September, 1994, the 1995 Regulations governed the field thereafter, and the Petitioner was required to exercise option in terms thereof within the prescribed period.

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<sup>7</sup> (2003) 2 SCC 721.

<sup>8</sup> (2010) 2 SCC 59.



The alleged earlier option does not survive independently of the statutory framework. In any event, subsequent conduct is wholly inconsistent with any intention to pursue pension. No objection was raised when the provident fund component was settled in January, 1996, nor was any challenge laid at that stage. The Petitioner ought to have questioned the settlement at the relevant time if he intended to rely on the alleged option. Silence for nearly 24 years is wholly inconsistent with a subsisting pension option.

14.6. The 2010 settlement and the 2018 IBA communication apply only to employees compulsorily retired between 29<sup>th</sup> September, 1995 and 27<sup>th</sup> April, 2010. The Petitioner, having been compulsorily retired on 31<sup>st</sup> January, 1995, falls outside this class and cannot rely on a later relaxation meant for a defined category of employees. The Petitioner cannot derive any benefit from the 2018 dispensation in view of this express limitation.

14.7. The contention that the November 1995 Circular was not brought to the Petitioner's notice is an afterthought. The Petitioner was an officer of PNB, the Regulations were duly notified, and a large number of employees exercised option under the scheme. The plea of ignorance does not explain the prolonged silence.

14.8. Even if the rejection letters refer to ineligibility of compulsorily retired employees, the material facts remain undisputed: the Petitioner did not exercise an option under the 1995 Regulations within the prescribed period, did not furnish the requisite authorisation for transfer, accepted provident fund benefits, and approached the Court after an inordinate delay.

### ***Issues for Consideration***

15. In light of the rival pleadings and submissions, the following issues

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<sup>9</sup> (2008) 10 SCC 115.



arise for consideration:

- (i) Whether the Petitioner's option dated 30<sup>th</sup> September, 1994, submitted in response to PNB Circular No. 1431 dated 27<sup>th</sup> June, 1994, stood preserved and was liable to be treated as an option under the 1995 Regulations, having regard to Regulation 3 and the November 1995 Circular.
- (ii) Whether the Petitioner's compulsory retirement by order dated 31<sup>st</sup> January, 1995, given effect to from 24<sup>th</sup> February, 1995, excluded him from the pension scheme, notwithstanding that he had ceased service after 1<sup>st</sup> November, 1993 but before 29<sup>th</sup> September, 1995, and his case that he had exercised the pension option prior to the notified date.
- (iii) Whether PNB was justified in declining to consider the Petitioner's 1994 option on the ground that compulsorily retired employees who retired before 29<sup>th</sup> September, 1995 were not eligible for pension.
- (iv) Whether PNB can sustain the impugned rejection by relying on delay, waiver, estoppel and non-refund of PNB's provident fund contribution, when the rejection letters themselves proceeded primarily on the ground that the Petitioner was not covered under the pension scheme and that his option dated 30<sup>th</sup> September, 1994 was therefore not considered.
- (v) Whether the settlement of terminal dues on 8<sup>th</sup> January, 1996, including the provident fund component, amounted to a conscious and informed election by the Petitioner to remain under the CPF scheme, or whether it was a unilateral settlement by PNB which, by itself, cannot defeat an earlier pension option.
- (vi) If the Petitioner is found entitled to be treated as a pension optee, what relief, if any, should follow, particularly in relation to refund or adjustment of PNB's provident fund contribution, arrears of pension, interest, and the



effect of the Petitioner's long delay in approaching the Court.

### ***Discussion and Reasons***

#### *Scope of the Dispute: Nature of the Petitioner's Claim*

16. The dispute must be kept within its proper frame. The Petitioner is not seeking permission to exercise an option for pension for the first time after a long lapse of time. His case is that he had already exercised such option on 30<sup>th</sup> September, 1994, when PNB called for options under Circular No. 1431 dated 27<sup>th</sup> June, 1994. PNB's position is that the 1995 Regulations came into force on 29<sup>th</sup> September, 1995 and that the Petitioner did not comply with the requirements thereafter. The controversy, therefore, turns on the treatment, under the 1995 regime, of options already exercised under the 1994 circular.

#### *Effect of the November 1995 Circular and Preservation of Earlier Options*

17. On this aspect, the record is clear. The November 1995 Circular expressly dealt with options exercised before the notified date. It recorded that Regulation 3(9) treated an option "*exercised before the notified date*", in pursuance of the industry-wide settlement on pension, as "*an option for the purposes of the 1995 Regulations*", subject to compliance with the condition relating to refund or transfer of PNB's provident fund contribution with interest, as applicable. The Circular further stated that employees who had already submitted pension option letters in response to Circular No. 1431 dated 27<sup>th</sup> June, 1994 were not required to submit fresh options, and that such earlier option letters would be treated as options under the 1995 Regulations. The effect of these provisions is that an earlier option was not to be ignored merely because the 1995 Regulations were notified later.

18. Once the November 1995 Circular preserved options earlier submitted



under Circular No. 1431 dated 27<sup>th</sup> June, 1994, the Petitioner could not be treated as a non-optee merely because he did not submit a fresh option after the 1995 Regulations were notified. The Circular created continuity between the proposed pension scheme circulated in 1994 and the statutory regime brought into force in 1995. It did not require an employee, who had already opted under the 1994 circular, to repeat the same exercise. PNB's plea that the Petitioner failed to exercise an option within 120 days from the notified date must therefore be examined in that context.

19. The Petitioner's option form dated 30<sup>th</sup> September, 1994 is in the prescribed format. It records that the Petitioner had read and understood the proposed 1993 Regulations, he opted to become a member of PNB's Pension Scheme, and he authorised PNB/Trustees of the Contributory Provident Fund to transfer PNB's contribution, together with interest, to the Pension Fund. The document thus reflects an election in favour of pension in lieu of PNB's provident fund contribution. What remained thereafter was the consequential accounting or transfer of funds in terms of the scheme.

*Existence and Treatment of the Petitioner's 1994 Option*

20. PNB's own communications are material. In its letter dated 30<sup>th</sup> May, 2019, PNB did not reject the claim on the footing that the option dated 30<sup>th</sup> September, 1994 was not submitted or was unavailable on record. The reason stated was that, since the Petitioner had been compulsorily retired, he was not covered under the pension scheme and, accordingly, his option dated 30<sup>th</sup> September, 1994 was "*not considered*". The communication dated 18<sup>th</sup> September, 2019 reiterates this position. The issue, therefore, is not the existence of the option, but whether PNB was justified in declining to act upon it.



*Eligibility of Compulsorily Retired Employees under the 1995 Regime*

21. The basis on which PNB declined to consider the option requires examination. The Petitioner was compulsorily retired by order dated 31<sup>st</sup> January, 1995, given effect to from 24<sup>th</sup> February, 1995. The November 1995 Circular included, among the categories covered by the Pension Regulations, employees who had retired on or after 1<sup>st</sup> November, 1993 but before 29<sup>th</sup> September, 1995. The Circular does not indicate any exclusion of employees compulsorily retired during this period. Nor has PNB pointed to any provision in the 1995 Regulations which expressly disqualifies such employees, where an option had already been exercised.

22. PNB's reasoning appears to proceed based on the later second-option dispensation under the Settlement/Joint Note dated 27<sup>th</sup> April, 2010 and the IBA communication dated 16<sup>th</sup> March, 2018. The Petitioner may not fall within the class of employees covered by that dispensation. However, the present claim does not arise under the later scheme. It is founded on the option dated 30<sup>th</sup> September, 1994 and the provisions of the November 1995 Circular preserving earlier options. The applicability of the later scheme does not, by itself, determine the Petitioner's entitlement under the original 1995 regime.

23. The communication dated 30<sup>th</sup> May, 2019 proceeds on the footing that, since the Petitioner was compulsorily retired before 29<sup>th</sup> September, 1995, his option dated 30<sup>th</sup> September, 1994 was "*not considered*". This approach treats the later second-option dispensation as determinative, without addressing whether, under the 1995 Regulations read with the November 1995 Circular, the earlier option was liable to be acted upon.

*Whether the 1994 Option Survived under the 1995 Framework*



24. In the facts of the present case, the Petitioner had ceased to be in service after 1<sup>st</sup> November, 1993 and before 29<sup>th</sup> September, 1995. He had exercised an option in response to Circular No. 1431 dated 27<sup>th</sup> June, 1994 prior to the notified date. The November 1995 Circular provided that such earlier options need not be submitted afresh and would be treated as options under the 1995 Regulations. PNB has not placed on record any contemporaneous material indicating that the Petitioner's option was rejected or treated as invalid at the relevant time. The later statement in 2019 that the option was "*not considered*" does not address this position.

25. An employee who had not opted under Circular No. 1431 was required to submit an option within the prescribed time under the 1995 regime. That requirement would apply to such employees. However, in the case of an employee who had already exercised an option under Circular No. 1431, the November 1995 Circular indicated that a fresh option was unnecessary. The provisions of the Circular must be read as a whole, including both the requirement of timelines and the preservation of earlier options.

*Applicability of Judicial Precedents: Gazette Notice and Delay*

26. The Court has considered PNB's reliance on ***Jai Singh B. Chauhan***. In that decision, the Supreme Court examined the scheme of the 1995 Regulations, and held that Regulation 3 required an employee to exercise option in writing within 120 days from the notified date and to authorise transfer of the Bank's provident fund contribution to the Pension Fund. The Court noted that the scheme had been published in the Official Gazette and held that such publication must be treated as public notice. It further rejected the contention that absence of individual intimation could excuse non-



exercise of option, observing that the plea of lack of awareness of the circular or the gazette notification “*has no substance*”.

27. ***Jai Singh B. Chauhan***, however, does not conclude the present case against the Petitioner. That case concerned an employee who had admittedly not exercised the option within the stipulated period and sought, at a later stage, to be brought within the pension scheme. The present case stands on a different footing. The Petitioner relies upon an option dated 30<sup>th</sup> September, 1994, submitted prior to the notified date, and upon the November 1995 Circular which expressly treated such earlier options as options under the 1995 Regulations. The issue here is not whether publication in the Official Gazette constituted sufficient notice to employees who had not opted. The issue is whether PNB could disregard a prior option which the 1995 regime itself recognised and preserved.

28. A similar distinction must be maintained while considering ***M.K. Sarkar***. In that decision, the Supreme Court held that where a scheme stipulates that the benefit of pension would be available only to those who exercise the option within the specified period, such option must be exercised within that period. It was further observed that an employee who, despite opportunities, did not opt for pension and continued under the provident fund scheme, and who received the provident fund dues on retirement, cannot, after a long lapse of time, seek to switch over to pension. The Court emphasised that such belated claims do not give rise to a recurring or continuing cause of action and ought to be rejected on the ground of delay and laches.

29. That principle is of clear relevance and must be given due weight. However, ***M.K. Sarkar*** does not conclude the issue where the claim is



founded on an option already exercised and alleged to have remained unconsidered. The present case is not one where the employee, having consciously remained under the provident fund scheme, seeks to reopen that choice after finding pension to be more advantageous. The Petitioner's case is that he exercised an option in 1994, that the 1995 regime preserved that option, and that PNB failed to act upon it. In such a situation, the principle in *M.K. Sarkar* operates at the stage of moulding relief, particularly in relation to arrears, interest, and the effect of delay, but does not, by itself, defeat a claim founded on an existing and subsisting option.

30. The Petitioner's reliance on *Calcutta Port Trust* must also be understood in its proper context. The decision observed that where an employer extends the benefit of a pension scheme or grants an opportunity to exercise option to retired employees, it is under an obligation to adopt a reasonable and effective mode of communication so as to bring such opportunity to their knowledge. Mere display of circulars on office notice boards, without more, cannot be treated as sufficient intimation to retirees, and failure to adopt an appropriate mode of communication may justify a grievance that the opportunity to opt was effectively denied. At the same time, *Jai Singh B. Chauhan*, dealing specifically with the 1995 Regulations, holds that once the Regulations are notified in the Official Gazette, such publication constitutes public notice, and an employee cannot avoid the consequence of non-exercise of option on the plea of lack of individual intimation. The present case, however, does not turn solely on the adequacy of notice. The more material aspect is that the Petitioner had already exercised an option in 1994, and the November 1995 Circular itself contemplated that such earlier options would be acted upon.



*Waiver, Acquiescence and Effect of CPF Settlement (1996)*

31. PNB has contended that the Petitioner accepted terminal dues in January, 1996 and thereby elected to remain under the provident fund scheme. This submission is substantial and requires careful consideration. A person who knowingly accepts benefits under one retiral regime and remains silent for a long period cannot ordinarily seek to claim benefits under another regime at a much later stage. The principles of waiver, acquiescence and laches serve to protect finality and administrative certainty.

32. The plea of waiver must, however, be assessed on the basis of the contemporaneous record. The letter dated 8<sup>th</sup> January, 1996 records PNB's computation of terminal dues, including provident fund, gratuity and leave encashment, along with various deductions and adjustments. The Petitioner's case is that this settlement did not involve an informed choice between pension and provident fund, but was a unilateral computation and adjustment. There is no material to indicate that, at the time of such settlement, the Petitioner was informed that his option dated 30<sup>th</sup> September, 1994 had been considered and rejected, or that he was called upon to make an election in that regard.

33. The inclusion of provident fund in the settlement of January, 1996 is a relevant circumstance and bears upon the grant of monetary relief. However, it is not, by itself, sufficient to establish a conscious and informed abandonment of the pension option. Waiver requires knowledge of the right and a voluntary decision to relinquish it. In the absence of material demonstrating such knowledge and decision, the settlement dated 8<sup>th</sup> January, 1996 cannot be treated as conclusive proof of waiver. It remains relevant for the purpose of delay and moulding of relief.



*Refund of Provident Fund Contribution and Financial Adjustment*

34. The question of refund of provident fund contribution must be examined in the same context. Under the November 1995 Circular, an employee opting for pension was required to refund, or permit transfer of, PNB's contribution to the provident fund with applicable interest. Where such contribution had already been received, refund with further interest was contemplated. In the present case, when the 1995 Regulations came into force, PNB's contribution had not yet been settled. It was dealt with only by the letter dated 8<sup>th</sup> January, 1996. If the Petitioner's earlier option was to be acted upon, as contemplated by the November 1995 Circular, PNB could have adjusted or transferred its contribution accordingly. The subsequent settlement on a provident fund basis cannot, in itself, negate the earlier option.

35. At the same time, the Petitioner cannot retain the provident fund component and also claim pension. Pension under the scheme operates in lieu of PNB's contribution to the provident fund. The Petitioner must therefore refund, or permit adjustment of, PNB's contribution with the applicable interest. The relief must ensure that no double benefit is granted.

*Delay and Moulding of Relief*

36. The delay in asserting the claim is substantial. The terminal dues were settled in January, 1996, whereas the claim was first asserted in writing on 17<sup>th</sup> September, 2018. The Court cannot ignore this lapse of time. Grant of arrears for the entire intervening period would not be justified.

37. At the same time, delay or laches does not by itself legitimise an action which is otherwise contrary to the governing scheme. In ***Tarsem Singh***, the Supreme Court explained that while belated service-related



claims are ordinarily liable to be rejected on the ground of delay, an exception is made in cases involving a continuing or recurring wrong, particularly in matters relating to pay or pension, where relief may still be granted notwithstanding delay. However, in such cases, the consequential relief of arrears is ordinarily restricted, and the High Courts generally confine arrears to a reasonable period, typically three years prior to the institution of proceedings. The principle, thus, permits a distinction between the existence of an enforceable entitlement and the extent of monetary relief that may be granted.

38. Applying that principle, while the Petitioner's entitlement to be treated as a pension optee may be recognised, arrears cannot be granted for the entire past period. The first assertion of the claim after 1996 was made on 17<sup>th</sup> September, 2018, and the present petition was thereafter filed in the year 2020. It is therefore appropriate to restrict arrears to the period commencing from that date.

39. This approach balances the equities. It recognises the Petitioner's entitlement based on the earlier option and the governing scheme, while limiting the financial burden on PNB in view of the prolonged delay. It also ensures that no double benefit is conferred.

*Scope of Judicial Review and Limits on Supplementing Reasons*

40. PNB has submitted that the impugned decision can be sustained on grounds not expressly stated in the rejection letters. While the Court may take into account relevant facts for the limited purpose of moulding relief, the principle in *Mohindhr Singh Gill* remains firmly applicable. When a statutory or administrative authority makes an order on certain grounds, its validity must be judged by the reasons so mentioned in the order itself, and



it cannot be supported by fresh reasons subsequently brought forth in the form of affidavits or otherwise. Judicial review, therefore, proceeds on the basis of the reasons which informed the decision at the time it was made, and not on supplementary justifications advanced later.

41. The rejection letters did not question the existence of the option dated 30<sup>th</sup> September, 1994, nor did they state that the option was invalid in form. They did not record that the Petitioner had consciously elected the provident fund scheme in preference to pension. The principal reason stated was that the Petitioner, having been compulsorily retired before 29<sup>th</sup> September, 1995, was not covered under the pension scheme and that, for that reason, his option was not considered. That reasoning does not accord with the 1995 regime read with the November 1995 Circular. The additional grounds now urged are relevant to relief, but do not cure the defect in the decision-making process.

### ***Findings***

42. In view of the above discussion, the Court holds as follows:

- (i) The Petitioner's option dated 30<sup>th</sup> September, 1994, submitted in response to PNB Circular No. 1431 dated 27<sup>th</sup> June, 1994, was liable to be treated as an option under the 1995 Regulations, subject to the monetary conditions attached to such option.
- (ii) The November 1995 Circular expressly preserved options earlier submitted under Circular No. 1431 dated 27<sup>th</sup> June, 1994 and provided that employees who had already submitted such options were not required to submit fresh option letters.
- (iii) The Petitioner's compulsory retirement by order dated 31<sup>st</sup> January, 1995, given effect to from 24<sup>th</sup> February, 1995, did not, by itself, render him



ineligible for consideration under the 1995 pension regime, particularly when he had exercised the option prior to the notified date and had ceased service after 1<sup>st</sup> November, 1993 but before 29<sup>th</sup> September, 1995.

(iv) PNB erred in declining to consider the Petitioner's option dated 30<sup>th</sup> September, 1994 by applying the later second-option window of 29<sup>th</sup> September, 1995 to 27<sup>th</sup> April, 2010 to a claim founded on the original option and the 1995 regime.

(v) The Petitioner is not entitled to receive pension while retaining the benefit of PNB's contribution to the provident fund. The said amount must be refunded or adjusted with applicable interest.

(vi) The Petitioner's delay disentitles him to arrears for the entire period from 1995/1996. Arrears shall accordingly stand restricted to the period commencing 17<sup>th</sup> September, 2018.

### ***Relief and Directions***

43. The writ petition is allowed in part, and the following directions are issued:

(i) The communications dated 30<sup>th</sup> May, 2019 and 18<sup>th</sup> September, 2019, to the extent they reject the Petitioner's claim for being treated as a pension optee, are set aside.

(ii) PNB shall treat the Petitioner's option dated 30<sup>th</sup> September, 1994 as a valid pension option under the 1995 Regulations, subject to refund or adjustment of PNB's provident fund contribution with applicable interest in terms of this order.

(iii) PNB shall process the Petitioner's claim under the 1995 pension regime, on the footing that his option dated 30<sup>th</sup> September, 1994 stood preserved under the November 1995 Circular. The claim shall not be



rejected on the ground that no fresh option was submitted after issuance of the said Circular, nor on the ground that the Petitioner was compulsorily retired prior to 29<sup>th</sup> September, 1995. The claim shall also not be treated as one arising under the later second-option dispensation of 2010/2018.

44. Within eight weeks from the date of this order, PNB shall compute, in accordance with the applicable provisions of the 1995 Regulations and the governing scheme, the following:

- (a) the pension payable to the Petitioner under the 1995 Regulations, after reckoning his qualifying service and applying the provisions governing pension payable upon compulsory retirement;
- (b) the arrears of pension payable to the Petitioner from 17<sup>th</sup> September, 2018 till the date of commencement of regular monthly pension;
- (c) the amount representing PNB's contribution to the provident fund which was paid, adjusted, or otherwise credited to the Petitioner's benefit at the time of settlement dated 8<sup>th</sup> January, 1996, together with interest accrued thereon;
- (d) further simple interest at 6% per annum on the amount referred to in clause (c), from 8<sup>th</sup> January, 1996 till the date of actual adjustment or refund.

45. The amount computed towards PNB's provident fund contribution and interest shall first be adjusted against the arrears of pension payable to the Petitioner.

46. If, after such adjustment, any amount remains payable to the Petitioner, PNB shall release the net amount within four weeks of completing the computation in accordance with the aforesaid Regulations and scheme. Regular monthly pension shall commence from the succeeding month.



47. If, after such adjustment, any amount remains payable by the Petitioner to PNB, PNB shall communicate a detailed statement of calculation within the period specified above. The Petitioner shall deposit the shortfall within six weeks from receipt of such communication. Upon such deposit, PNB shall release any arrears that remain payable and commence regular monthly pension from the succeeding month.

48. Since arrears have been restricted on account of delay, the Petitioner shall not be entitled to interest on arrears for the period prior to the date of this order. However, if PNB fails to complete the exercise within the time granted, any amount found payable to the Petitioner shall carry simple interest at 6% per annum from the date of default till payment.

49. It is clarified that the Petitioner shall not be required to pay the additional contribution contemplated under the later second-option settlement. The present case is not being allowed under the 2010/2018 dispensation. The Petitioner's obligation is confined to refund or adjustment of PNB's provident fund contribution with interest as contemplated under the 1995 regime.

50. The writ petition is disposed of in the above terms.

**SANJEEV NARULA, J**

**APRIL 25, 2026/ab**