

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

R.S.A No. 4824 of 2003 (O&M)

Date of decision:- 29.04.2015

Pepsu Road Transport Corpn. & anr.

...Appellants

Versus

Hari Singh

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. R.S. Ahluwalia, Advocate
for the appellants

Mr. Aashish Grover, Advocate, for the respondent

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RITU BAHRI J.

This regular second appeal is directed against the judgment dated 25.08.2003 passed by learned District Judge, Bathinda vide which the appeal filed by the respondent-plaintiff (for short 'the respondent') against the judgment and decree dated 10.02.2003 was allowed and the suit of the respondent was decreed to the effect that he is entitled for pension, commuted pension and other benefits attached with the same, subject to the conditions.

Brief facts of the case are that the respondent was serving as Driver in Pepsu Road Transport Corporation (for short 'Corporation'). He was retired from service, vide order dated 26.07.2000 after he attained the age of superannuation. Appellants-Corporation had adopted the Punjab Pension Rules w.e.f 15.06.1992. Thus, the employees of the Corporation have become entitled to pension benefit as per Punjab pattern. The Corporation released the

contributory fund to the respondent and have not released the full benefits of his service, as per Punjab pattern. Pension was not released to the respondent.

Upon notice, the appellants appeared and filed written statement admitting that the respondent was serving as Driver and was retired after the age of supperanuation. Further, the contributory fund was released to the respondent and he is not entitled to pensionary benefits, as he did not opt for pension as per Rules adopted by the Corporation.

From the pleading of the parties, the trial Court framed the following issues:-

- “1. Whether the plaintiff is entitled to pension, commuted pension and other benefits? OPP
2. Whether the plaintiff is entitled for declaration as prayed for? OPD
3. Whether the plaintiff has no locus standi to file the present suit? OPD
4. Relief.”

The trial Court after going through the evidence led by the parties, dismissed the suit of the respondent on the ground that he did not opt for pension as per Rules adopted by the Corporation.

Feeling aggrieved against the judgment passed by the learned trial Court, the respondent filed an appeal, which

was allowed.

The Lower Appellate Court examined the regulations for grant of retiral benefits to the employees of the Corporation (Ex D2) and as per clause IV of the above regulations, an employee was to exercise his option for pension, within the prescribed period of six months and has to return the amount taken against C.P Fund (corporation share) and due to non-fulfillment of the above conditions, the case of the respondent was not covered by the pension rules of 15.06.1992.

As per deposition of Raj Kumar D.W.1, the respondent had to deposit Rs.11,000/- within six months, which he had taken as C.P Fund non refundable loan from the Corporation. He neither filed in the option form for pension scheme nor deposited the amount. Further the respondent received cheque for Rs. 1,05,062/- on account of full and final payment of C.P Fund along with interest. The respondent did not given the option for pension nor did he deposit the contributory provident fund amount (corporation share). The respondent had made offer before the trial Court to return the loan amount so that the benefit of pension could be extended to him.

The Lower Appellate Court referred to the Division Bench judgment in a case of ***Smt. Usha Dogra vs. Central Bank of India 2002 (4) S.C.T 583 and Sridhar Malik vs. HSEB 2002 (3)***

SCT 1096 wherein in similar circumstances, a direction was given to the department to issue demand notice to the petitioner within 15 days from the date of receipt of the copy of the order as to how much amount should be paid by him so as to avail the benefit of the scheme. The authorities were further held at liberty to charge interest on the amount @ 9% per annum which the petitioner was supposed to pay. On receipt of the demand notice, the petitioner was ordered to deposit the amount mentioned in the demand notice within 15 days which option and on receipt of the amount and option, the respondents-authorities were ordered to give the benefit of pensionary scheme to the petitioner after taking decision within three months thereafter.

Applying the ratio of the above mentioned judgments, the suit of the respondent was decreed by the Lower Appellate Court, subject to the conditions that the Corporation was directed to issue demand notice to the respondent within one month from the date of receipt of certified copy of this judgment as to how much amount of C.P Fund (Corporation Share) should be paid by him (respondent) so as to avail the benefit of pension scheme. They would be at liberty to charge interest on that amount @ 9% per annum which the respondent was supposed to pay. On receipt of the demand notice, the respondent will deposit the amount as mentioned in the demand notice

within one month along with option and on receipt of the amount and option, the appellants-authorities would give the benefit of pensionary scheme to the respondent and take a decision within three months thereafter.

Learned counsel for the appellant has made reference to a judgment of Hon'ble the Supreme Court in a case of ***Pepsu Road Transport Corporation, Patiala vs. Mangal Singh and others and connected matters, 2011 AIR (SC) 1974*** wherein the Pepsu Road Transport Corporation Employees Pension/Gratuity and General Provident Fund Regulations (1992) was examined and it was held that the necessary benefit for grant of pension could be availed by an employee after fulfilling the conditions of the scheme. An employee was required to opt for the pension scheme within 06 months and he was required to repay the advance money taken from the CPF account, within 06 month to get the benefit of pension scheme. Non-compliance of the above conditions would not entitle an employee to get pension. In paragraphs 38, 39, 40 and 41 of the judgment, it has been observed as under:-

“38) The common thread which runs through all these appeals canvassed before us is that the respondents have failed to comply with the terms and conditions of the Regulations, which govern the Pension Scheme. We have

already considered the 34 nature and effect of the Regulations, which are made under a statute. These statutory Regulations require to be interpreted in the same manner which is adopted while interpreting any other statutory provisions. The Corporation as well as respondents are obliged and bound to comply with its mandatory conditions and requirements. Any action or conduct deviating from these conditions shall render such action illegal and invalid. Moreover, the respondents have availed the retiral benefits arising out of the C.P.F and gratuity without any protest. The respondents in all these appeals, before us, have made a claim for pensionary benefits under the Pension Scheme for the first time only after their retirement with an unreasonable delay of more than 8 years. It is not in dispute, in some appeals, that the respondents never opted for the Pension Scheme for their alleged want of knowledge for non-service of individual notices. In other appeals, although respondents applied for the option of the Pension Scheme but indisputably never fulfilled the quintessential conditions envisaged by the Regulations which are statutory in nature.

39) The learned counsel for the respondents in support of

their contention for want of knowledge of the Pension Scheme due to 35 non-service of individual notices relied on the decision of this Court in Dakshin Haryana Bijli Vitran Nigam v. Bachan Singh, (2009) 14 SCC 793. The said decision is clearly distinguishable on facts. In that case, the appellant, Haryana State Electricity Board, had issued instructions dated 23.06.1993 and circular dated 09.08.1994 in order to provide an option to the employees for pensionary benefits in lieu of their work charged service with an express condition of noting of instructions from all the employees and acknowledging the receipt of the letter. In these appeals, before us, there is no such condition of noting from the employees or serving individual notices in the Pension Scheme or Regulations. Therefore, in our opinion, Bachan Singh's decision will not assist the respondents.

40) In our view, in the facts and circumstances of the present case and in view of absence of such condition in the scheme, it is not necessary for the Corporation to give an individual notice to respondents for exercising of option for pension Scheme and also for asking respondent to refund the employers contribution of C.P.F. at each stage.

Furthermore, when notice or knowledge 36 of the Pension

Scheme can be reasonably inferred or gathered from the conduct of the respondents in their ordinary course of business and from surrounding circumstances, then, it will constitute a sufficient notice in the eyes of law. In Union of India v. M.K. Sarkar, (2010) 2 SCC 59, this Court has :

21. The Tribunal in this case has assumed that being “aware” of the scheme was not sufficient notice to a retiree to exercise the option and individual written communication was mandatory. The Tribunal was of the view that as the Railways remained unrepresented and failed to prove by positive evidence, that the respondent was informed of the availability of the option, it should be assumed that there was non-compliance with the requirements relating to notice. The High Court has impliedly accepted and affirmed this view. The assumption is not sound.

22. The Tribunal was examining the issue with reference to a case where there was a delay of 22 years. A person, who is aware of the availability of option, cannot contend that he

was not served a written notice of the availability of the option after 22 years. In such a case, even if Railway Administration was represented, it was not reasonable to expect the department to maintain the records of such intimation(s) of individual notice to each employee after 22 years. In fact by the time the matter was considered more than nearly 27 years had elapsed. Further when notice or knowledge of the availability of the option was clearly inferable, the employee cannot after a long time (in this case 22 years) be heard to contend that in the absence of written intimation of the option, he is still entitled to exercise the option.

23. This Court considered the meaning of “notice” in Nilkantha Sidramappa Ningashetti v. Kashinath Somanna Ningashetti, AIR 1962 SC 666. This Court held: (AIR p. 669, para 10) “10. We see no ground to construe the expression ‘date of service of notice’ in Column 3 of Article 158 of the Limitation Act to mean

only a notice in writing served in a formal manner. When the legislature used the word 'notice' it must be presumed to have borne in mind that it means not only a formal intimation but also an informal one. Similarly, it must be deemed to have in mind the fact that service of a notice would include constructive or informal notice. If its intention were to exclude the latter sense of the words 'notice' and 'service' it would have said so explicitly."

41) The Regulation 4 (iii) of the Regulations is a deeming provision to the effect: firstly, if an employee fails to exercise his option within a period of 6 months from the date of issue of these Regulations and; secondly, even on exercise of option, if an employee fails to refund the amount of advance taken from employers contribution of the C.P.F. within 6 months from the date of issue of these Regulations, then it shall be deemed that employee has opted to continue for the existing C.P.F. benefit. Therefore, the failure on the part of the respondents to opt for the Pension Scheme and refund the advance taken from the employer's

contribution of C.P.F. will disentitle them from 38 claiming any benefit under the Pension Scheme. Therefore, we cannot sustain the Judgment and order passed by the High Court.”

As per the above mentioned judgment, even no notice was required to be given by the Corporation to an employee to exercise the option of pension scheme.

Applying the ratio of the above mentioned judgment and keeping in view the fact the respondent had not opted for the pension scheme and had not repaid the advance money taken from the CPF account, within 06 month, the present appeal is allowed and the judgment dated 25.08.2003 passed by learned District Judge, Bathinda is hereby set aside. There will be no order as to costs.

29.04.2015
G Arora

(RITU BAHRI)
JUDGE