

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.10499 of 2013 (O&M)
Date of decision: October 13, 2015

Sunita Bajaj

...Petitioner

Versus

State of Haryana and others

...Respondents

Coram: HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.N.C.Kinra, Advocate assisted by
Mr.Harsh Kinra, Advocate for the petitioner.

Mr. RKS Brar, Addl. AG, Haryana.
Mr. Vikas Kumar, Advocate for respondent No. 5

HARINDER SINGH SIDHU, J.

By filing the present writ petition, the petitioner has challenged the order dated 25/26.2.2013 (Annexure P-6) passed by respondent No.3, whereby, the request of the petitioner for exercising the option to contribute the CPF subscription from the date of her initial appointment, was rejected.

The petitioner joined as Home Science teacher in S.D.Jagdish Girls High School, Bhiwani – respondent No.5 on 22.10.1991. After completing the probation period of one year, she has been continuing as regular mistress. As per the Contributory Provident Fund Scheme which was then applicable, deduction of the CPF share from the salary of the petitioner was started by respondent No.5 w.e.f. March, 1995.

Thereafter, communication dated 5.8.2008 regarding implementation of Rule 114 of Haryana School Education Rules, 2003 as amended at Sr.No.32 of Haryana School Education (Amended) Rules, 2007 was addressed to all the DEOs/DEEOs by respondent No.2, seeking options on the prescribed proforma (Annexure P-3/1) from the employees for counting of their service on probation and before regularization as qualifying service for the purpose of retiral/ pensionary benefits, provided, they deposit their share of C.P.F. along with the interest. The employers were also intimated to deposit their share of CPF along with the interest.

It is the case of the petitioner that the aforesaid instructions were never communicated to her, so she could not submit her option on the prescribed proforma, though, she has always been willing to deposit her share of CPF along with the requisite interest. It is further stated by her that when the instructions (Annexure P-3) regarding the reckoning of the period of service from 21.10.1991 onwards as qualifying service for the purpose of retiral/ pensionary benefits, came to her notice, she made representation dated 5.10.2012 (Annexure P-4), which was rejected vide impugned order dated 25/26.2.2013 (Annexure P-6).

Aggrieved, she has filed the present writ petition.

The sole contention raised on behalf of the petitioner is that once the instructions were not circulated to the petitioner, she could not be denied the benefit of the same on the ground of late submission of the option. Reliance has been placed on **Dakshin**

Haryana Bijli Vitran Nigam and others vs. Bachan Singh,
(2009) 14 Supreme Court Cases 793, Ram Dia and others vs.
Uttar Haryana Bijli Vitran Nigam Vitran Nigam Ltd. (UHBVNL)
and another, 2005(8) SLR 765 and O.P.Garg vs. State of
Punjab and others, 2014(2) RSJ 655.

In the written statement filed on behalf of the respondents, it has been stated that the relevant instructions had been circulated in the field offices and a copy of the same had been endorsed to all the Manager/ Managements of aided schools in the State of Haryana and it was the duty of the Manager of the concerned school to communicate the instructions issued by the department from time to time. It is stated that as the petitioner had failed to submit her option within the stipulated period her representation has been rightly dismissed on the ground of delay.

Having heard the Ld. Counsel for the parties , I am of the view that the petition deserves to be allowed.

In **Bachan Singh's case** (supra), wherein, the respondent Bachan Singh had failed to exercise option within the stipulated period (*within 3 months of regularisation or from the date of circular/instructions dated 6.8.1993 and 9.8.1994*) for grant of benefit of work-charged service towards pensionary benefits. The Hon'ble Supreme Court held that as the the appellants had failed to produce any record showing that the instructions dated 6.8.1993 and 9.8.1994 were actually got noted in writing by the respondent, it could be inferred that the respondent had no knowledge about the

options called by the appellants. It was observed as under:

*“25. In **Ramana Dayaram Shetty v. International Airport Authority of India & Ors.**, (1979)3 SCC 489 again this court observed that a discriminatory action of the Government is liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.*

26. In view of the law as has been articulated in a large number of cases where this court has observed that any discriminatory action on the part of the Government would be liable to be struck down. Hence, in this case, it would be totally unreasonable and irrational to deny the respondent the pensionary benefits under the scheme particularly when the appellants have failed to produce any record showing that the instructions dated 6.8.1993 and 9.8.1994 were actually got noted in writing by the respondent. In the absence of any such material it can well be inferred that the respondent had no knowledge about the options called by the appellants.

27. In our considered opinion, the view taken by the Division Bench of the High Court in the impugned judgment is indeed a rational, just and fair view and no interference is called for.”

A Division Bench of this Court in **Ram Dia's case** (*supra*), while considering that respondents (therein) had failed to show any material that the circular dated 6.8.1993 whereunder an employee had to submit an option within three months from the date of regularization or from the date of issue of the circular whichever is later, that he or she intends to avail the pensionary benefits or to continue to be a member of the EPF, was actually got noted in

writing from the petitioners (therein), held that in such circumstances it is unreasonable to deny the pensionary benefits to the petitioners. This decision was challenged in the Hon'ble Supreme Court, where, the appeal was dismissed relying upon its earlier decision in **Bachan Singh's case** (supra).

The decisions in the above cases were followed by a Division Bench of this Court in **O.P.Garg's case** (supra) and it was concluded that in the absence of condition to opt being made known to the petitioner, he cannot be denied the benefit of pay fixation in terms of the condition of the notification amending Rules. It was observed:

*“3. Learned counsel for the petitioner relies upon an order passed by the Division Bench of this Court in **Ram Dia & others v. Uttar Haryana Bijli Vitran Nigam Ltd. & another** 2005 (8) SLR 765, wherein in respect of option to avail pension scheme, it was observed that there is no material that the circular was actually got noted in writing from the petitioners. It was, thus, inferred that the petitioner had no knowledge about the option was called by the respondents vide the aforesaid circular. **Special Leave Petition (Civil) No. 2323 of 2006 titled "Uttar Haryana Bijli Vitran Nigam Ltd. & another v. Ram Dia & others"** against the said order was dismissed in view of the judgment of the Supreme Court in **Dakshin Haryana Bijli Vitran Nigam & others v. Bachan Singh** 2009 (14) SCC 793.....*

4. In the present case, the amendment in the Rules was carried out on 15.05.1990. It is the circular issued on the said date itself, which is said to have been sent to all the

District & Sessions Judges. The petitioner was promoted three years later, on 30.07.1993. There was no occasion for him even to consider the exercise of option for refixation of salary in the year 1990, when the alleged circular was issued. There is no assertion that there was any communication to the petitioner to exercise option soon after his promotion on 30.07.1993.

5. In view of the above, we find that in the absence of condition to opt not known to the petitioner, he cannot be denied the benefit of pay fixation in terms of the condition of the notification amending Rules. Thus, the present writ petition is allowed. The respondents are directed to fix pay in terms of the option submitted considering the same to be within time and pay the arrears of salary within three months. In the event of non-payment of arrears of salary within three months of the receipt of the certified copy of this order, the respondents shall pay interest @ 9% p.a. from the day the arrears are payable till the date of payment. The respondents shall also recalculate and pay arrears of pension within six months from the date of receipt of copy of the order.”

In the present case also , the respondents have not been able to show that instructions/ circular dated 5.8.2008 (Annexure P-3) were got noted from the petitioner. Hence, it can well be inferred that the petitioner had no knowledge of the options called for by the respondents. This being the case, the present case is fully covered by the ratio of the cited cases.

Accordingly, this petition is allowed. The impugned order dated 26.02.2013 (Annexure P-6) is quashed. The respondents are

directed to allow the petitioner to exercise the option in terms of the instructions/ circular dated 5.8.2008 (Annexure P-3) within a period of two months from the date of receipt of certified copy of this order and grant her the consequential benefits in accordance therewith.

October 13, 2015

gian/atul

**(HARINDER SINGH SIDHU)
JUDGE**