IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Regular Second Appeal No.4539 of 2010 (O&M)
Date of Decision: September 19th, 2015

Hardial Singh

...Appellant

Versus

Pepsu Road Transport Corporation Patiala

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. S.K. Sharma, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J.

CM No.13530-C of 2010

Prayer in this application is for condonation of delay of 2607 days in re-filing the appeal.

It is the contention of the counsel for the applicant-appellant that the appeal was filed within the period of limitation but the same was returned with some objections by the Registry on 14.08.2003. The Clerk of the counsel had taken back the paper book of the appeal and by mistake, kept the same along with the bundle of admitted cases. Because of the mix-up of the same and also for the reason that the office of the counsel was shifted from 1st floor to the ground floor, the file could not be traced out initially. With great difficulty the file having been traced and the objections removed, the appeal was re-filed, which resulted in the delay of 2607 days. The delay in filing the appeal is neither intentional nor deliberate nor has any benefit been derived or conferred upon the applicant-appellant. He, therefore, prays that the present application be allowed.

Keeping in views the submissions made by the counsel for the applicant-appellant and the application having been supported by the affidavit of Clerk of the counsel, the delay of 2607 days in re-filing the appeal stands condoned.

The application stands disposed of accordingly.

RSA No.4539 of 2010

A suit for declaration was filed by the appellant-plaintiff that he is entitled to pension and other retiral benefits as allowed under the Pepsu Road Transport Corporation Employees Pension/Gratuity and General Provident Fund Regulations, 1992 (hereinafter referred to as '1992 Regulations'), which has been dismissed by the Civil Judge (Junior Division), Patiala, by judgment and decree dated 30.08.1999 and the appeal preferred against the said judgment and decree stands dismissed by the Additional District Judge, Patiala on 20.09.2002, which has led to the filing of the present appeal.

2. It is the contention of the counsel for the appellant-plaintiff that after the issuance of the 1992 Regulations, no option was called for from the appellant-plaintiff and, therefore, he had no occasion to opt under the 1992 Regulations. He contends that Surjit Singh DW-1, who had appeared for the department, has admitted in his cross-examination that there is no report regarding affixation of the Scheme on the Notice Board. He thus contends that since individual notice was not given to the appellant-plaintiff, he could not exercise his option, for which he cannot be denied the benefit under the Regulations. His further contention is that since the appellant-plaintiff has been placed under suspension on 13.07.1992 and the 1992 Regulations had come into force on 15.06.1992, he did not have the occasion to exercise his option for the benefit under the Regulations. He thus contends that the judgments passed by the Courts below cannot sustain and deserve to be set

aside. Reliance has been placed upon the Single Bench judgment of this Court in *Regular Second Appeal No.2713 of 2004* titled as *Pepsu Road Transport Corporation through its Managing Director and another Versus Sant Ram Fitter,* decided on 25.05.2004, where under the 1992 Regulations, the benefit was granted to the employee by the Courts below, which has been upheld by this Court and the SLP preferred against the same stands dismissed by the Hon'ble Supreme Court on 01.10.2004. He thus contends that the present appeal may be allowed and the judgments and decree passed by the Courts below be set aside.

3. I have given my thoughtful consideration to the submissions made by the counsel for the appellant-plaintiff and have gone through the judgments passed by the Courts below.

4. Respondent-Corporation introduced the 1992 Regulations for the grant of retirement benefits and issued the said Regulations by memo No.5368 dated 15.06.1992. As per the said Regulations, the appellant-plaintiff was entitled to the benefit under the Scheme, provided he opted for the same within a period of six months from the date of issue of these Regulations. In terms of the 1992 Regulations, an employee who was under suspension on the date of issue of these Regulations, option was required to be exercised within a period of six months from the date of his joining the duty. An option once exercised was to be final, provided the concerned employee deposited the Corporation share of Contributory Provident Fund received by him/taken in advance, if any, within a period of six months from the date of issue of Regulations. It further provides that if a person fails to exercise his option under the said Regulations within the specified period, it shall be deemed that he has opted to continue for the existing Contributory

Provident Fund benefit.

5. The appellant-plaintiff joined as a Cleaner on 24.03.1962 with the respondent-Pepsu Road Transport Corporation (hereinafter referred to as 'Corporation') and retired from the post of Head Mechanic (Tyres) on 30.11.1995 on attaining the age of superannuation. The appellant-plaintiff was a member of the Employees Provident Fund Scheme/Contributory Provident Fund Scheme. The deductions were made from his salary towards the Employees Provident Fund Scheme. In 1971, the Regional Provident Fund Commissioner, Chandigarh, had sought option from the employees of the respondent-Corporation to opt for the Pension Scheme, which the appellant-plaintiff did not exercise, so no deduction of family pension share was made during his tenure of service.

6. The appellant-plaintiff was placed under suspension on 13.07.1992 and was reinstated on 10.06.1994. He continued in service till the date of his superannuation i.e. 30.11.1995 but during this period, he did not exercise his option for pension etc. under the Regulations. On retirement, the appellant-plaintiff was paid the entire due amount of Contributory Provident Fund through a cheque dated 13.01.1997, which was received by him on 13.02.1997. The appellant-plaintiff had taken an advance of ₹30,000/- from the Contributory Provident Fund. Out of that amount, an amount of ₹22,344/- was the contribution of the respondent-defendant, whereas the remaining amount of ₹7,656/- was out of the employees share i.e. of the appellant-plaintiff. All these facts are admitted including the fact that he did not deposit the share of the Corporation of the Contributory Provident Fund received by him (taken in advance) within a period of six months from the date of issue of the Regulations.

7. The facts, as has been recorded above, are not disputed. For the purpose of disposal of the present appeal, reference to the relevant Regulations of the Pepsu Road Transport Corporation Employees Pension/Gratuity and General Provident Fund Regulations, 1992, would be necessary. The same are as follows:-

> *"Regulation 3. <u>Application</u>: (1) These Regulations shall apply to the employees of the PEPSU Road Transport Corporation who:*
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> *(i) Were/are appointed on or after the date of issue of Regulations on whole-time and regular basis; and*
>
> *(ii) Were working immediately before the date of issue of Regulations and opt for these Regulations.*
>
> *(2) These Regulations shall not apply to the employees, who:*
>
> *a) Opt out of these Regulations.*
>
> *b) Are on deputation with the Corporation.*
>
> *c) Are paid out of contingencies.*
>
> *d) Are work charged employees.*
>
> *e) Are employed on contract basis, except when the contract provided otherwise.*
>
> *f) Are re-employed after superannuation.*
>
> *g) Are specifically excluded wholly or partly from the operation of these Regulations; and*
>
> *h) Opt for the PRTC Employees Pension/Gratuity and Regulations General Provident Fund, 1992, but failed to refund the amount of advance taken out of the Employer's share of the Contributory Provident Fund along with interest thereon within the stipulated period."*
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> *Regulation 4. <u>Exercise of Option</u>: The option under clause (ii) of the sub-rule (1) of Regulation 3 shall be exercised in duplicate in writing in Form I so as to reach the managing director as forwarded by the general manager in case of depots and administrative officer in the case of headquarters with his counter signatures within a period of six months from the date of issue of these Regulations.*
>
> *Provided that:*
>
> *(i) In the case of an employee, who on the date of the issue of these Regulations was abroad or on leave, the option shall be exercised within a period of six months from the date of taking the charge of his post.*
>
> *(ii) Where an employee is under suspension, on the date of issue of these Regulations, the option shall be exercised within a period of six months from the date of his joining the duty.*
>
> *(iii) An option once exercised shall be final, provided the concerned employee deposits the Corporation's share of C.P. Fund received by him - taken in advance, if any, within a period of six months from the date of issue of Regulations and if a person fails to exercise his option under the said Regulations within the specified period referred to above, it shall be deemed he has opted to continue for the existing Contributory Provident Fund benefit.*
>
> *(iv) An employee who dies on or after the issue of these Regulations and who could not exercise his option the legal heir of such employee, who is entitled to receive retirement benefits under the said Regulations, shall exercise option, subject to the condition that the legal heir shall have to*

deposit the amount of the Corporation's share of the C.P. Fund received by the deceased employee.

(v) The employee recruited after the introduction of the said pension Regulations will be covered under these Regulations.

The Hon'ble Supreme Court had an occasion to deal with a similar question, as has been raised in the present appeal, in Pepsu Road Transport Corporation, Patiala and another Versus Mangal Singh and others AIR 2011 Supreme Court 1974, where in the earlier part of this judgment, it was held by the Hon'ble Supreme Court that 1992 Regulations, which were framed under Section 45 of the Road Transport Corporations Act, 1950, were statutory in nature and, therefore, the Regulations being statutory in nature would apply uniformly to everyone or to all members of same group or class. The said Regulations impose obligation on the statutory authorities and they cannot deviate from them. The Corporation is thus bound to comply with the mandatory provisions of the Regulations framed under the statute. Thereafter the Court in paras 38 to 41 dealt with various issues including the issue of non-issuance of individual notices to the employees to give an option for the Pension Scheme under the Regulations. The same read as follows:-

*"**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 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 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 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: (AIR 2009 SC (Supp) 2158 : 2009 AIR SCW 7621), 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 <u>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.</u>*
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> *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. <u>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.</u> 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 claiming any benefit under the*

> *Pension Scheme. Therefore, we cannot sustain the Judgment and order passed by the High Court".*

8. In view of the above, the contention as raised by the counsel for the appellant-plaintiff, cannot be accepted as it has been held by the Hon'ble Supreme Court that no individual notices are required to be given under the 1992 Regulations. The judgment relied upon by the counsel for the appellant-plaintiff in the case of ***Sant Ram Fitter*** *(supra)*, cannot thus hold the field.

9. That apart, in the present case, the appellant-plaintiff was in service when the 1992 Regulations came into force i.e. 15.06.1992 and was placed under suspension only on 13.07.1992, therefore, he was required to give his option within a period of six months as per Regulation 4. Even if it is assumed for the sake of arguments that since he has been placed under suspension on 13.07.1992 and six months have not expired from the date of issue of these Regulations and, therefore, could not give an option for grant of the benefit under the Pension Scheme as per proviso 2 to Regulation 4, he could have opted for the benefit of Pension Scheme within a period of six months from the date of his joining duty. It is admitted that he joined duty on revocation of his suspension on 10.06.1994, therefore, he could have opted for the benefit of pension within a period of six months from the date of his reinstatement which he admittedly did not even up-to his date of retirement i.e. 30.11.1995 on superannuation. He has also been paid the benefit under the Contributory Provident Fund Scheme through cheque dated 13.01.1997 which was received by him on 13.02.1997. Admittedly, he has not deposited the Corporation share of Contributory Provident Fund received by him/taken in advance within the period of six months from the date of issue of the 1992 Regulations or within a period of six months from

the date of his reinstatement. He having not fulfilled the conditions as mandated under the 1992 Regulations cannot be held entitled to the benefit under the 1992 Regulations as claimed by him.

10. Both the Courts below have returned concurrent findings after properly appreciating the evidence and the same cannot be interfered with as there is no perversity or illegality in the same.

11. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

September 19th**, 2015** **(AUGUSTINE GEORGE MASIH)**
Puneet **JUDGE**