

**IN THE HIGH COURT OF JUDICATURE FOR THE STATES OF
PUNJAB AND HARYANA, AT CHANDIGARH**

Letters Patent Appeal No731 of 2015(O&M)

Date of Decision: September 02, 2015

The National Institute of Pharmaceutical
Education and Research (NIPER) Mohali, Punjab

---Appellant

Versus

Avtar Singh and others

---Respondents

**CORAM: Hon'ble Mr. Justice Satish Kumar Mittal
Hon'ble Mr. Justice Mahavir S. Chauhan**

Present: Shri Gautam Pathania, Advocate, for the appellant.

1. *Whether Reporters of local papers may be allowed to see the judgment? Yes/No*
2. *To be referred to the Reporter or not? Yes/No*
3. *Whether the judgment should be reported in the Digest? Yes/No*

Mahavir S. Chauhan, J.

Civil Miscellaneous No. 1513-LPA of 2015:

Heard.

02. From the submissions made at the bar and the grounds pleaded in the application, which is supported by an affidavit, it comes out that the appellant was prevented by a sufficient cause from refiling the appeal in time. Therefore, delay of 64 days in refiling the appeal is condoned and Civil Miscellaneous is, accordingly, disposed of.

LPA No. 731 of 2015:

03. Respondent-Avtar Singh was appointed to the post of Executive Engineer with National Institute of Pharmaceutical Education and Research (NIPER) Mohali, Punjab (for short 'the appellant-Institute') on October 11, 2001 and superannuated as such on May 31, and 2011. After his superannuation, the respondent was retained by the appellant-Institute as Consultant Engineer on contract basis till June 08, 2013.

04. On October 08, 2007, appellant-Institute introduced "Scheme for Medical Facilities after Retirement to the Employees of National Institute of Pharmaceutical Education & Research (NIPER), SAS Nagar (Mohali)" (here-in-after referred to as 'the Scheme') for providing post retirement medical facilities to its employees and their families. The Scheme envisaged a monthly contribution amount to be deducted from the salary of the employee for a minimum period of 20 years. In case of an employee retiring before completion of twenty years of service, he is required to pay a lump sum amount equal to twenty years' contribution. Respondent also opted for, and contributed to, the Scheme.

05. On January 13, 2013, respondent's son, who was suffering from mental disorder since birth, fell ill and had to be hospitalized. He remained admitted in Ivy Hospital, Super-Speciality Healthcare, Sector 71, SAS Nagar (Mohali) from January 13, 2013 to March 06, 2013. When the respondent intimated the appellant-Institute about the hospitalization of his son, he was informed that an amount of Rs.28,500/- had not been paid by him towards lump-sum payment of contribution under clause 17 of the Scheme which the respondent deposited on the very same day by way of a

cheque which was encashed by the appellant-Institute on January 31, 2013.

06. However, when the respondent submitted the medical bills pertaining to the treatment of his son to the appellant-Institute for reimbursement, he was informed vide letter dated October 22, 2013 (Annexure P-5) that as per the Scheme he was required to deposit the balance amount of Rs.28,500/- immediately on his retirement on May 31, 2011 to entitle him to the post retirement medical facilities under the Scheme and he having not deposited the lump-sum amount within stipulated time, he ceased to be part of the Scheme and, as such, his claim for medical reimbursement could not be considered.

07. The respondent preferred Civil Writ Petition No. 25202 of 2013 praying for quashing the order/letter dated October 22, 2013 whereby medical reimbursement in respect of treatment of his son was denied to him.

08. In the written statement filed by the appellant-Institute it was stated that the respondent was an employee of the National Buildings Construction Corporation Ltd., New Delhi and he had joined the appellant-Institute on deputation on December 21, 2001 but on his request was absorbed in its employment. Till the date of his retirement, i.e., May 31, 2011, the petitioner had contributed monthly installments of Rs.150/- only for 4 years and 2 months as against the required minimum of twenty years' contribution and did not deposit the balance of the twenty years' contribution in lump-sum at the time of his retirement, therefore, he was deemed to have abandoned the Scheme and, thus, on January 13, 2013 when his son was admitted in the hospital, the respondent – Avtar Singh could not be considered to be a member of the Scheme. It was also averred that deficit

amount of Rs.28,500/- was deposited by the respondent with the cashier of the institute by making a false statement that it was on account of some refund to be made to the appellant-Institute and when the true position came to the notice of the appellant-Institute, the said amount of Rs.28,500/- was returned to the appellant vide letter dated November 25, 2013 (Annexure R-2). Regarding the contention of respondent – Avtar Singh that he continued to work with the appellant-Institute even after attaining the age of superannuation, it was stated that the respondent had retired on May 31, 2011. After his retirement, the respondent was engaged as Consultant on lump sum consideration with the appellant-Institute upto June 08, 2013 and merely on account of retaining him as Consultant after superannuation, respondent – Avtar Singh cannot be said to be on the regular rolls of the Institute.

09. After hearing learned counsel for the parties, the learned Single Judge, vide order dated December 05, 2014, allowed the writ petition in the following terms:

“Accordingly, this the petition is allowed. The order/letter dated 22.10.2013 (Annexure P-5) is quashed. The petitioner is held entitled to be treated as a member of the Scheme and to avail of all benefits provided there under. The petitioner would be required to deposit the balance amount of twenty years' contribution with the respondents within two weeks from the date of receipt of certified copy of this order and the respondents are directed to process and release the medical claim of the petitioner as per the Scheme within two weeks thereafter.

In order to avoid recurrence of any situation like the present, the respondents may take corrective action to streamline the implementation of the Scheme and henceforth ensure that the balance amount of twenty years' contribution is deducted at the time of retirement unless the retiring

employee opts out of the Scheme in writing.”

10. To assail correctness of order dated December 05, 2014 passed by the learned Single Judge, this intra-Court appeal has been preferred by the appellant-Institute under Clause X of the Letters Patent.

11. Learned counsel appearing on behalf of the appellant – Institute has vociferously argued that the impugned order cannot sustain because the learned Single Judge has overlooked the fact that the respondent was required to make good the deficiency in his contribution towards the Scheme by depositing the balance amount of Rs. 28,500/- immediately on his superannuation, i.e., May 31, 2011, but he did not do so. Thus, on the day of admission of his son in the hospital respondent was not member of the Scheme and, therefore, was not entitled to reimbursement of the expenses incurred on the treatment of his son.

12. A similar contention raised on behalf of the appellant before the learned Single Judge has been repelled by the learned Single Judge by observing as under :-

“The petitioner being a serving employee had joined the Scheme. He paid monthly contribution of Rs.150/- for 4 years and 2 months till the day of his retirement on 31.05.2011. It was the responsibility of the respondent-Institute to have deducted the balance of 20 years medical subscription outstanding against the petitioner from his GPF/CPF/Gratuity at the time of his retirement. The petitioner, at no stage, gave any option in writing to opt out of the Scheme or objected to any deduction being made from his retiral dues. In these circumstances, if there is dereliction on the part of the officials of the respondent - Institute in not deducting the balance of 20 years' monthly subscription despite express authorization available with them in terms of the Scheme, it would be unfair and unjust to deny the

petitioner the benefits of the said Scheme.”

13. It has not been disputed before us that the respondent continued paying his contribution towards the Scheme, till the day of his superannuation. As per clause (3) of the Scheme, it is mandatory for all serving employees of the appellant-Institute unless an employee opts out of it and gives such option in writing. The Scheme became effective from March 24, 2007. It is admitted case of the parties that the respondent stood absorbed in the employment of the appellant-Institute as a regular employee with effect from December 22, 2004. Thus, on the day of enforcement of the Scheme, i.e., March 24, 2007, the respondent was a serving employee of the appellant-Institute. It is nobody's case that the respondent opted out of the Scheme at any stage or objected to deduction of the monthly contribution from his emoluments. Clauses (7) and (8) of the Scheme allowed even the retired employees of the appellant-Institute to become members of the Scheme on payment of the contribution. Clause (14) of the Scheme provides that, "Balance payment at the time of retirement will be determined and made by the retiring employees as per the group to which he/she belongs to at the time of retirement". According to Clause (19) of the Scheme "Proper record/calculation of installments through salary in respect of serving employees will be taken care of by the Section Officer (Accounts)". It is a matter of common knowledge that record of the employees is maintained by the employer and at the time of superannuation the employee is made aware of outstanding amount, if any, and the same is either got deposited by him or is deducted from the retiral benefits payable to such an employee. In any case, a combined reading of Clauses (14) and (19) of the Scheme would

reveal that it was duty of the appellant-Institute to determine the deficiency in the amount of contribution of the respondent towards the Scheme and after such determination the respondent was obliged to pay the amount so determined. It is not the case of the appellant-Institute that the amount payable by the respondent was determined and conveyed to him in terms of the Scheme and respondent – Avtar Singh did not pay the determined amount.

14. As regards the contention that the amount of Rs. 28,500/- was deposited by the respondent after the date of his retirement, it needs to be pointed out that the Scheme is applicable to “serving employees” of the appellant-Institute and the respondent – Avtar Singh continued serving the appellant-Institute till June 08, 2013, whereas the balance amount of contribution was deposited by him on January 28, 2013. Indisputably, on January 28, 2013 the respondent – Avtar Singh was a “serving employee” of the appellant-Institute. Incidentally, the Scheme does not distinguish between an employee serving as a regular employee and an employee serving on contract basis.

15. Still further, even if respondent – Avtar Singh is taken to be a retired employee on the day of deposit of the balance amount of contribution, still he was entitled to the benefits under the Scheme by making good the deficiency in the amount of contribution in so far as even retired employees are permitted to join the Scheme and make payment of contribution in one lump sum or in installments. A reference to Clause (17) of the Scheme is of great importance in this regard. This clause reads as under :-

“Since the employees who have retired/are going to retire in next few years would not have paid the monthly contribution as will be paid by the serving employees, they will pay a lumpsum amount equal to 20 years contribution. The period for which an employee has paid the monthly contribution before retirement would be reduced from this 20 year period. Director, NIPER, S.A.S. Nagar (Mohali) may, in special circumstances, allow payment of lumpsum contribution in two or three instalments”.

16. In view of the above, no fault can be found with the order of learned Single Judge allowing writ petition holding respondent – Avtar Singh eligible for the benefits under the Scheme. The Letters Patent Appeal, therefore, fails and is dismissed.

[SATISH KUMAR MITTAL]
JUDGE

[MAHAVIRS. CHAUHAN]
JUDGE

September 02, 2015
adhikari