

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

CWP No.13742 of 1997

Date of Decision:22.04.2016

Krishan Kumar Khanna (now deceased)

through LRs Petitioner

Vs.

HSEB and another

.....Respondents

CORAM:- HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. D.R. Bansal, Advocate for the petitioner.

Mr. Tarun Singla, Advocate for Mr. Ashok Aggarwal,
Senior Advocate for the respondents.

RITU BAHRI, J.(Oral)

This writ petition has been filed against the orders Annexure P.1 dated 14.7.1995 and Annexure P.3 dated 17.1.1995 whereby the petitioner was not held entitled for pension and DRCG under CSR Volume-II.

The petitioner is allegedly dead. His legal representatives have been impleaded to pursue this petition. Petitioner (deceased) - Krishan Kumar was working as Oiler-cum-Cleaner at Sohana, District Gurgaon. He was promoted to the rank of Assistant Sub Station Attendant on 20.10.1960 and thereafter, promoted to the rank of Sub Station Attendant on 1.1.1968. He sought voluntary retirement at the age of 57 years on the ground of ill health on 28.2.1994. After rendering 34 years service, he was granted the benefit of leave encashment of 8 months. On account of ill health of the petitioner, his wife Smt. Janak Rani made representation for grant of leave encashment of 240 days and submitted papers regarding retiral benefits which have been returned on the ground that he was a member of EPF and

is not entitled to pension and DCRG vide order dated 17.1.1995 Annexure P.3. He has referred to the case of one Munshi Ram and another who has filed writ petition No.4174 of 1994 which was disposed of on 23.1.1996 on the statement made by counsel for the respondents that the relief of pensionary benefits shall be granted to him within a period of two months. The petitioner has also made reference to the case of one Hans Raj son of Shri Ram Chand who retired as Foreman Grade-III and was member of EPF scheme and the writ petition No.10541 of 1991 for counting his work charge period claiming pensionary benefits was allowed by this Court. The facts stated in paragraphs No.13 and 14 of the writ petition have not been disputed by the respondents in the written statement.

Counsel for the petitioner has now placed on record the order dated 23.1.1996 (Annexure P.12) in the case of Munshi Ram and another v. State of Haryana. Since the respondents have not disputed that they have extended the benefit of pension to some employees who were members of the EPF Scheme, they cannot be allowed to take a different stand in the case of the petitioner. The petitioner has since died on 18.11.2010 and thereafter, his LRs have now been impleaded as petitioners to pursue this writ petition in CM No.16666 of 2012. Vide order dated 2.9.2015, the respondents were directed to verify whether the petitioner had opted for pension scheme or not and whether the EPF benefits have been settled to the petitioners or not. Counsel for the respondents had not given any information on this account. This Court had allowed the writ petition in the case of one S.C. Jain who had retired on 30.11.1996 and at that time, he was governed by the

provisions of Employees Provident Fund and Miscellaneous Provisions Act, 1952. He had remained on deputation and the employer's share had not been deposited in his provident fund. Thereafter, in 1988, the decision was taken and pension was given to the employees to switch over from Employees Provident Fund Scheme to Pensionary Scheme and the employees were required to refund the amount which they have accumulated in their account in former scheme. Even the accounts of Regional Provident Fund has been settled with the petitioner that an amount of Rs.1,71,586/- had been refunded to the petitioner. The switch over to pension scheme was denied on the ground that he had not applied for exemption under Section 27 of the Act to the Regional Provident Fund Commissioner. The Pensionary Scheme was a financial scheme and has to be applied liberally to the employees and cannot be denied by placing narrow and constructive interpretation thereto. After depositing the Provident Fund, the petitioner was neither given the pensionary benefits nor the benefits of provident fund. In this background, the writ petition was allowed and a direction was given to the respondents to adjust the Employees Provident Fund and pay the benefit of pensionary scheme to the petitioner.

In the present case, the petitioner has stated in paragraph 11 of the writ petition that he had given his option for getting the pension and was ready to leave the benefit of PPF which was lying with the HSEB. This fact has not been denied by the respondents in their written statement on merits in reply to paragraph 11. The respondents in reply to paragraph 11, had

taken a stand that the petitioner was not asked by the respondent Board to give option for the pension scheme, he gave the option but his claim for pensionary benefits has rightly been rejected and he could not be entitled to switch over the Pension Scheme. Option was sought only from the work charged employees on 6.8.1993. Whether the respondents have admitted that the petitioner has given his option to switch over the pension scheme. The judgment passed by this Court in the case of S.C. Jain is directly applicable to the case of the petitioner. The writ petition is allowed. The respondents are directed to adjust the EPF amount if already released to the petitioner along with interest and then pass the final orders on pension scheme within a period of two months. If the due is left with the Provident Commissioner, it can be adjusted without interest. The retiral benefits after calculation shall be paid @ 9%.

April 22, 2016
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(RITU BAHRI)
JUDGE