

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

CWP No.19075 of 2013 (O&M)

Date of decision: 02.02.2016

Surjeet Kaur

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

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

Present: Mr. Sandeep Kotla, Advocate,
for the petitioner.

Mr. Pravinder Singh Chauhan, Addl. A.G., Haryana,
for respondent No.1.

Mr. Pardeep Singh Poonia, Advocate,
for respondent Nos. 2 and 3.

Ritu Bahri, J.

The petitioner is seeking direction to the respondents to allow him to switch over from EPF scheme to GPF and thereafter, grant him pension and gratuity.

Husband of the petitioner, who was an employe of the Haryana State Electricity Board, expired on 23.11.1995. He had served on the rank of UDC on regular basis. The Haryana State Electricity Board and thereafter, the Nigam in terms of Haryana State Electricity Reform Act, 1998, adopted the Civil Services Rules to its employees without any change in the service

conditions. Neither the husband of petitioner was covered by the EPF scheme from the date of regular appointment nor he was made member of this scheme. He was wrongly retained in EPF scheme despite being a regular employee, as the EPF scheme was to be made applicable in case of only work-charge employees. He had made a number of representations to the respondent-Nigam for converting EPF scheme into GPF scheme. Thereafter, the Senior Accounts Officer (O&M), PTPS, HSEB, Panipat, sent a letter dated 16.02.1990 (Annexure P-2) to the General Manager, Panipat Thermal Power Station, to consider the request of the petitioner. The Board vide memo dated 12.01.1993 (Annexure P-3) sought information with respect to the employees wanting to switch over from EPF to GPF scheme. However, no such information was ever sought from the husband of petitioner by the concerned EXN and hence, he could not exercise his option for switching over from EPF to GPF scheme. Thereafter, the Board had framed a policy vide memo dated 06.08.1993 (Annexure P-4), according to which, every employee of the Board, who was member of EPF, after his regularization from work-charge service, was to be allowed to change over to GPF scheme. But, husband of the petitioner had not been allowed to switch over to GPF scheme. Similarly situated employees, like the husband of the petitioner, filed CWP No.1305 of 1998 (Rajender Parshad Garg and others Vs. State of Haryana and others) for counting their work-charge services towards pension, which was allowed by this Court vide order dated 13.02.2012 (Annexure P-5). SLP against the said decision was dismissed by the Hon'ble Supreme Court. Thereafter, the order passed by this Court had been implemented by the respondents. Husband of the petitioner made a representation (Annexure P-7) to the respondent-authorities seeking the

(Annexure P-5), but to no avail.

Upon notice, written statement on behalf of respondent Nos.2 and 3 has been filed, wherein they took a stand that the present petition is hopelessly time barred, as husband of the petitioner had expired on 23.11.1995, whereas the present petition has been filed on 29.08.2013 after an inordinate delay of about 18 years. The cut off date for switching over from EPF to GPF scheme was 07.01.1986 and as per the decision of the Hon'ble Supreme Court in **Gian Singh Mann Vs. The High Court of Punjab and Haryana and another**, 1980 (4) SCC 266 and **S.S. Balu and another Vs. State of Kerala and others**, 2009 (2) SCC 479, this petition is liable to be dismissed. It has been further stated that the respondents vide office memo dated 20.01.1988 (Annexure R-3/2) fixed the cut off date for the purpose of switching over from EPF to GPF scheme as 07.01.1986. However, the husband of the petitioner had not obtained exemption from the provisions of EPF and Misc. Provident Act, 1952 as on 07.01.1986. Therefore, his claim has been rightly rejected vide order dated 20.02.1991 (Annexure R-3/1). The circular dated 20.01.1988 (Annexure R-3/2) was subject matter of litigation before this Court in CWP No.6835 of 1997 (**Rishal Singh and others Vs. Haryana State Electricity Board and another**). In that case also, the petitioners were regular employees of the respondents. Ultimately, the said petition was dismissed and the circular was upheld vide judgment dated 17.12.1997 (Annexure R-3/3). It has been further submitted that the petitioner has already withdrawn her husband's provident fund, as is evident from the memo dated 23.01.1986 (Annexure R-3/4). Further reference has been made to a judgment passed by the Division Bench of this Court in LPA No.1824 of 2001, titled as **Executive Engineer, HSEB Vs. Dharam Singh and others**, 2005 (2) SCT 87, wherein the judgment passed

by the learned Single Judge on 16.02.2001 had been set aside by relying upon **Rishal Singh's** case (supra). It was held that the regular employees of the respondents are not entitled to switch over after the cut off date mentioned in the policy.

In order to controvert the stand taken by the respondents in their written statement, learned counsel for the petitioner has referred to the judgment passed by this Court in **Jaswant Singh Chaudhary Vs. Haryana Vidhut Parsaran Nigam Limited**, 11209 of 2009 (decided on 15.12.2011).

The main ground for rejecting the claim of the petitioner is that her husband had expired on 23.11.1995, whereas this petition has been filed after a delay of 18 years, therefore, it suffers from delay and laches.

In this case, husband of the petitioner had made a number of representations to the respondents for converting the EPF scheme to that of GPF. This petition cannot be dismissed solely on the ground that it has been filed after 18 years from the death of petitioner's husband. It is so said because husband of the petitioner had made so many representations to the respondent-authority for converting from EPF to GPF scheme, consequent upon which, the Senior Accounts Officer (O&M), PTPS, HSEB, Panipat, sent a letter dated 16.02.1990 (Annexure P-2) to the General Manager, Panipat Thermal Power Station, to consider the request of the petitioner. Reference, at this stage, can be made to the judgment passed by this Court in **Jaswant Singh Chaudhary's** case (supra). In that case, the petitioner-employee, who had been in service since 1968, had not exercised his option to switch over from EPF to GPF before 07.01.1986 i.e. cut off date. Later on, he made his option vide communication dated 30.04.1987. the action of the respondents was found discriminatory to plead a case of financial

well. The said petition was allowed and the petitioner was permitted to switch over to the GPF scheme.

After making representation by husband of the petitioner, the Board had framed a policy vide memo dated 06.08.1993 (Annexure P-4), according to which, every employee of the Board, who was member of EPF, after his regularization from work-charge service, has been allowed to change over to GPF scheme. Husband of the petitioner was a regular employee at the time of his death i.e. on 23.11.1995, but despite his request, he was not allowed to switch over to GPF scheme.

After going through the facts and circumstances of this case, this Court is of the opinion that the matter had been kept pending by the respondent-authorities on one pretext or the other and husband of the petitioner was not allowed to switch over from EPF to GPF scheme. His application was kept pending under consideration unnecessarily, whereas the respondent-board was entertaining such conversions even in the year 1993. The claim of the petitioner could not be denied on the ground of delay and laches.

Further reference can be made to another judgment passed by a Division Bench of this Court in **N.P. Sharma Vs. Haryana Power General Corporation Ltd. and others,** LPA No.1449 of 2013 (decided on 14.05.2015) setting aside the judgment dated 12.02.2013 passed by the learned Single Judge. In that case, N.P. Sharma had joined the respondent-corporation as Boiler Operator on 01.04.1979. That post was, subsequently, re-designated as Junior Engineer. He retired from service on 30.04.2006 and thereafter, applied for switching over from EPF to GPF scheme. However, his request was rejected vide communication dated 14.08.2012.

and laches. It was held that the claim of pension was continuous cause of action and could not be turned down on the ground of delay and laches, though equities can always be balanced between the parties. The scheme was introduced in the year 1986 and the benefit of switching over from EPF to Pension Scheme has been allowed by this Court in a number of cases i.e. **Karta Ram Vs. State of Haryana and others**, CWP No.11430 of 1999 (decided on 13.02.2012), **Ravi Dutt Mehta Vs. State of Haryana and others**, 15434 of 1997 (decided on 18.08.2004) and **Randhir Singh Vs. State of Haryana and others**, CWP No.225 of 2009 (decided on 07.07.2010).

Ratio of the above said judgment is directly applicable to the facts of the present case, wherein husband of the petitioner had made a representation and the department had also issued relevant instructions dated 06.08.1993 (Annexure P-4) to switch over from EPF to GPF scheme. A perusal of the judgment passed in **Karta Ram's** case (supra) shows that the department has been making pick and choose policy in accepting the change of option in the case of some employees and keeping the cases of other employees pending on one pretext or the other.

In the light of the above discussion and keeping in view that similar benefit has been extended to a number of employees, as set out in **N.P. Sharma's** case (supra), this petition is allowed and the respondents are directed to allow the petitioner to switch over from EPF to GPF scheme pursuant to the representation made by her husband. Further direction is given that in case the petitioner shall deposit the entire amount of EPF, received by her, as per rules/instructions applicable in the Corporation from time to time, the respondent-corporation shall permit the petitioner to switch

to the petitioner within a period of three months from the date of deposit of EPF amount. The respondent-corporation shall inform the petitioner with regard to the amount to be deposited by her, within two weeks from the date of receipt of certified copy of this order.

02.02.2016
ajp

(RITU BAHRI)
JUDGE