

CWP No. 4218 of 2012 (O/M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 4218 of 2012 (O/M)
Date of decision : 21.11.2016

Ajmer Singh

..... Petitioner (s)

Versus

PEPSU Road Transport Corporation, Nabha Road, Patiala, and others

..... Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Vikas Chatrath, Advocate, for the petitioner.

Mr. Anshul Gupta, Assistant A.G. Punjab.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J.

The petitioner, who retired as an Inspector from the office of General Manager, PEPSU Road Transport Corporation, Chandigarh, has invoked the writ jurisdiction of this Court under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the impugned order dated 19.11.2010 (Annexure-P-6), whereby the reasons for declining the pensionary benefits has been conveyed, claiming that the action of the respondents is contrary to the PEPSU Road Transport Corporation Employees Pension/Gratuity and General Provident Fund Regulations, 1992, and that the petitioner has been deprived of his pensionary benefits inspite of the fact that he had opted for the same and

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fulfilled the conditions thereof. The petitioner also seeks a writ of mandamus directing the respondents to release pension and grant him all the pensionary benefits in terms of the PEPSU Road Transport Corporation Employees Pension/Gratuity and General Provident Fund Regulations, 1992, framed by respondent-Corporation alongwith 18% interest per annum on the delayed payment of the same. It is further stated that once the petitioner is reinstated in service, he cannot be denied the benefit of Assured Career Progression Scheme (in short 'ACP Scheme').

The petitioner was appointed as a Conductor in PEPSU Road Transport Corporation (in short 'PEPSU') on 25.8.1969. He was promoted as a Sub Inspector on 19.12.2003 and then promoted as an Inspector on 30.11.2007. He retired from service on 31.1.2008 on attaining the age of superannuation. During his service, the petitioner was suspended from service on 4.5.1994 and ultimately after holding the inquiry, the petitioner was dismissed from service on 20.6.1996. The petitioner raised an industrial dispute. The Labour Court, Patiala, vide award dated 25.7.2001, reinstated the petitioner in service with continuity of service and full back wages. Against the said award, the respondents moved this Court and filed CWP No. 14848 of 2002, titled as PRTC Versus Presiding Officer, Labour Court and another, which is still pending before this Court, in which the operation of the award was not stayed and the back wages were ordered to be paid. It is stated that the petitioner had opted for pensionary benefits under regulations called 'the PEPSU Road Transport Corporation Employees Pension/Gratuity and General Provident Fund Regulations, 1992 (in short 'the Regulations of 1992')'. When he was promoted as Sub Inspector and Inspector on 19.12.2003 and 30.11.2007 respectively, the

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petitioner was entitled to get additional increment under Rule 4.4 of the Punjab Civil Services Rules, Volume-1, Part-1. However, the same was not granted to him. He was also entitled to one additional increment on completion of 16/24/32 years of service under the Assured Career Progression Scheme, 1998, applicable with effect from 1.1.1996, since he completed 16/24/32 years of service as a Conductor on 25.8.1985, 25.8.1993 and 25.8.2001. Earlier, the petitioner had filed CWP No. 11402 of 2010, which was decided by this Court on 1.7.2010, in which the respondents were directed to decide the legal notice within a period of three months from the date of receipt of certified copy of the order. Now, the legal notice has been decided, vide order dated 19.11.2010 (Annexure-P-6), in which the pensionary benefits have been denied on the ground that the petitioner had not opted for the pension scheme when the same was introduced in the respondent-Corporation with effect from 15.6.1992. The claim for benefit of ACP scheme has also been declined. The petitioner claims that he had moved an application under the Right to Information Act, 2005 before the Ludhiana Depot of respondent-department, which told him that the information will be available at Chandigarh Depot only and that the Chandigarh Depot of respondent-department, vide letter No. 1686, dated 27.7.2011, stated that the information could be supplied by Ludhiana Depot. Therefore, none of the depot supplied the document vide which it could be substantiated that the petitioner has not filled the option.

In the reply, the respondents have taken the plea that the PEPSU Road Transport Corporation Employees Pension Gratuity and General Provident Fund Regulations, 1992, do not apply to the employees, who opt for the said regulations, but failed to refund the amount of advance

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taken out of the employer's share of contribution to CPF alongwith interest thereon, as stipulated in Clause 3 of the said Regulations of 1992. Under Clause 4 of the said Regulations of 1992, the option was to be exercised within a period of six months from the date of issuance of the said regulations and once the option is exercised, the concerned employee shall deposit the employer's share of contribution towards CPF, received by him/taken in advance, if any, within a period of six months from the date of issuance of the Regulations of 1992 and that in case, the option is not exercised within the specified period, the employee shall be deemed to be continuing in the existing contributory provident fund benefit. It is stated that since the petitioner did not submit any option under Regulations of 1992 and that he also failed to deposit the advance of Rs. 23,000/- taken by him out of employer share within a stipulated period, therefore, he is not entitled to benefit of Regulations of 1992. The suspension of the petitioner and his termination from service and subsequently reinstatement in service was admitted, stating that against the award of the Labour Court, Patiala, CWP No. 14848 of 2002, filed by respondents is pending before this Court for final adjudication. The petitioner was allowed to join duty with effect from 27.6.2002, subject to the final outcome of the said writ petition. It was stated that the petitioner was granted 8 years increment with effect from 1.7.1989 on completion of 8 years of service under the ACP Scheme. He was promoted as a Sub Inspector on 19.12.2003 and as an Inspector on 30.11.2007. As he did not complete 8 years of service on one post after his reinstatement in service with effect from 27.6.2002, therefore, he is not entitled to any benefit of ACP Scheme.

I have heard the learned counsels for the parties and have also

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carefully gone through the file.

There are two parts of the claim of the petitioner; first is for grant of pension and the second is for grant of benefit of ACP Scheme on completion of 8/16/24/32 years of service.

Admittedly, the petitioner was granted 8 years increment with effect from 1.7.1989 under the ACP Scheme, under which the ACP was to be granted on completion of 8/16/24/32 years of service. The ACP Scheme was implemented on the recommendations of the 4th Pay Commission, vide Government notification dated 25.9.1998 with effect from 1.1.1996, under which if an employee is not promoted to the next higher level on account of non availability of a vacancy at such higher level or non existence of a promotional level, he shall be granted the pay scales in the next higher hierarchy on completion of 8 years of service in a post. In that case, his pay is to be fixed at the next higher stage in the master scale and he will be allowed next increment with effect from the date he would have earned the next increment. Thereafter, on completion of 16/24 years of service, he was to be granted proficiency step up if he still continues on the same post. In this case, the petitioner admittedly joined service on 25.8.1969. The ACP Scheme was introduced with effect from 1.1.1996. As per the stand of the respondents, the petitioner was granted 8 years increment with effect from 1.7.1989.

In the present case, the petitioner was suspended on 4.5.1994 and his services were terminated on 20.6.1996. On account of award of the Labour Court, Patiala, the petitioner was allowed to join the duty with effect from 27.6.2002. Therefore, his entire service during the period he remained under termination, is to be counted as qualifying service for the

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purpose of grant of ACP. The petitioner was promoted as a Sub Inspector on 19.12.2003 and thereafter as an Inspector on 30.11.2007. However, before that, he was entitled to ACP as he continued on the same post of Conductor. It is apparent that the benefit of ACP Scheme with effect from 1.1.1996 was not granted to him, for which he is entitled after considering his entire service including the period he remained under suspension and termination.

Now, coming to the question regarding grant of option, it comes out that the Regulations of 1992 were promulgated in the year 1992. The petitioner was governed by those regulations in the year 1992. The petitioner claims that he had given option under Clause 4 of the said Regulations of 1992. However, the respondents denied the same. They have also relied upon Clause 3 (2) of the said Regulations of 1992, under which an employee who has taken advance out of the employer's share of the contributory provident fund is required to refund the same and on its failure, he is not entitled to the said benefits. Clause 3 of the said Regulations of 1992 is reproduced as under :-

“Clause 3

3. Application : (1) These regulations shall apply to the employees of the PSPSU Road Transport Corporation who :

(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 employee, who :

XXXXX

XXXXX

XXXXX

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(h) opt for the PRTC Employees Pension/Gratuity and General Provident Fund Regulations 1992, but failed to refund the amount of advance taken out of the Employer's share of the Contributory Provident Fund alongwith interest thereon within the stipulated period.”

The petitioner does not claim that he had deposited the said advance. Therefore, Clause 3 (2) of the said Regulations of 1992 is attracted and he is not entitled to benefit of said Regulations of 1992, so as to claim the pension.

The learned counsel for the petitioner has argued that the option form is with the respondents and they have not produced the same despite the information sought under the RTI Act. According to him, the option was given within stipulated time in the year 1992. However, the information under the RTI Act was sought in the year 2011. When the petitioner claims that he had given the option to the respondents, it was for the petitioner to prove that the option was given to the respondents within stipulated time. After the lapse of 19 years, he cannot say that since the copy of the option is not supplied to him under the RTI after 19 years, therefore, it should be presumed that he had given option under the Regulations of 1992. The learned counsel for the petitioner has also relied upon the order dated 20.7.2005 (Annexure-P-15), vide which the PRTC had adopted the Punjab Civil Services Rules, Punjab Government Employees (Conduct) Rules, 1966 with retrospective effect as well as prospectively. However, the pension rules have not been adopted by the PRTC. Therefore, the pension case of the petitioner is deemed to be considered under Regulations of 1992. Since the petitioner has failed to prove that he had exercised the option under the Regulations of 1992 and that he has also failed to refund the

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employer's share of contribution to CPF, therefore, he is not entitled to the benefit of pension under the Regulations of 1992. It is to be further noticed that from the year 1992 onwards till the retirement of the petitioner in the year 2008, his share of contribution towards CPF is being deducted, but in these 16 years, he never raised any objection that his CPF contribution is still being wrongly deducted. Naturally, the CPF statements were being sent to him. He was sleeping over the matter for 17 years and woke up only after his retirement to claim that he had given the option for shifting from CPF to pension.

The learned counsel for the petitioner has relied upon the authority of the Apex Court in Bangalore Turf Club Ltd. Versus Regional Director, Employees State Insurance Corporation, 2015 AIR (SC) 221 and the authorities of this Court in Didar Singh Versus The Presiding Officer, Labour Court, Bathinda, 2003 (3) SCT 334 and Charan Dass Versus Punjab State Electricity Board, Patiala, and another 2005 (8) SLR 734 and it has been argued that in case of social welfare legislation, the benefit has to be granted by giving liberal interpretation.

I am of the view that there is no question of liberal interpretation. In the present case, the petitioner was to prove that he had given the option for shifting from CPF to pension and he had refunded the advance taken from the employer's share of contribution towards CPF. At no stage, the petitioner refunded the said advance taken from the employer's share of contribution towards CPF. Therefore, he is not entitled to the benefit of Regulations of 1992.

In view of the foregoing discussion, the present writ petition is partly allowed. The petition, so far as quashing of order dated 19.11.2010

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(Annexure-P-6) declining the grant of pensionary benefits to the petitioner, is dismissed. So far as the grant of ACP is concerned, the writ of mandamus is issued, directing the respondents to compute the entire service of the petitioner including the period during which he remained under termination and thereafter grant the benefit of ACP Scheme dated 25.9.1998 (Annexure-P-4), effective from 1.1.1996 in terms of the said instructions of the Government and pass necessary orders within three months from the date of receipt of certified copy of this order. The arrears, if any, shall be paid at the rate of 9% per annum, starting from the date it became due.

The present writ petition is partly allowed.

(KULDIP SINGH)
JUDGE

21.11.2016
sjks

Whether speaking / reasoned : Yes

Whether Reportable : No