

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

**C.M. No. 3221 of 2016 in/and
C.W.P No. 4944 of 2015
Date of decision : 17.03.2016**

Bali Ram

...Petitioner

versus

Kurukshetra University & anr.

..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. S.S. Rana, Advocate
for the petitioner.

Mr. A.S. Virk, Advocate
for the respondents

RITU BAHRI , J.

C.M. No. 3221 of 2016

Application is allowed as prayed for.

Accordingly, replication is taken on record.

C.W.P No. 4944 of 2015

Petitioner is seeking issuance of a writ in the nature of certiorari quashing orders dated 06.11.2012, 20.12.2012 and 20.02.2009 (P-6 to P-8) vide which the case of the petitioner for option for pension and pensionary benefits has been declined and further prayer is for issuance of direction to the respondents to accept his request/option submitted on 01/06.12.2006 (P-4) and transfer the amount of C.P.F in to

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G.P.F as per rules.

Petitioner was working on the post of Mali in the respondent-department and his services were confirmed on 30.12.1994 and has to retire from service in the year 2020. Vide letter dated 13.11.1997, the respondents introduced the pension scheme for its employees and the same was made applicable w.e.f 01.04.1995 and it was compulsory for all employees who were appointed after the issuance of said notification. It was optional for those who were appointed on regular basis before the said date of notification.

As per above notification, the options for switching over to the pension scheme were invited upto 12.02.1998. However, the scheme was not brought into the notice of staff working under the University, therefore, the respondents again issued instructions dated 21.10.2004 (P-3) wherein it was provided that the employees, who have not earlier given option for pension scheme as per the pension scheme, 1997, may give option up to 17.10.2004. Thus, many employees submitted their options for pension and pensionary benefits. However, the pension scheme introduced by the University (P-2 and P-3) were not brought into the notice of many class IV employees including the petitioner and thus some of the employees could not submit their options for pension and pensionary benefits within stipulated period i.e 17.11.2004.

Neither the above said letter (P-3) was not brought to the notice of the petitioner nor it was got noted down in writing down from him and when the petitioner came to know about the scheme, he submitted option on 01/06.12.2006 and mentioned that when the options were taken for pensionary benefits, he was not apprised about the scheme and there were four other employees, who had not submitted options for pensionary benefits, in pursuance of the scheme (P-2 and P-3). Thus, the case of the petitioner along with other four employees was sent to the Higher Education commissioner, Haryana, Panchkula vide order dated 16.10.2008 for consideration of their request.

On 05.10.2012, the petitioner sought information under RTI Act requesting the authorities to supply the information regarding the acceptance of his option submitted by him on 01/06.12.2006. The department vide letter dated 06.11.2012 informed the petitioner that his case was sent to the Higher Education Commissioner, Haryana, Panchkula and the Government did not agree with the proposal and further the Administrative Officer (Accounts-II) informed the petitioner regarding non-acceptance of proposal by the Government along with decision dated 20.02.2009 (P-8) sent to the Registrar, Kurukshetra University, Kurukshetra.

The contention of learned counsel for the petitioner is that

once the scheme for submission of option for pension was not brought into the notice of the petitioner and further the scheme was not got noted down in writing from the petitioner, the authorities cannot deprive the petitioner from the benefits arises out of the scheme.

To give force to its contention, reference has been made to a judgment of Hon'ble the Supreme Court in a case of ***DHBVN and others v. Bachan Singh 2009(14) SCC 793*** wherein an employee was not apprised about the circular/instructions and were not actually got noted down in writing by the respondents authorities and the employee had no knowledge about the option, the employee was held entitled to exercise the right of option as per the instructions even after the expiry of stipulated period.

Reference has further been made to a division bench judgment of this Court in a case of '***Ram Dia and others v. UHBVN Ltd 2005(4) SCT 387***' wherein it was held that where the department has not shown any material that the employee was informed in writing about the exercise of option and the employee had no knowledge about the circular, the authorities were directed to take option and grant pension and pensionary benefits.

Learned counsel for the respondents on the other hand contends that the employees who had not opted the pension scheme shall continue to be governed under the existing CPF scheme. Further

the petitioner instead of option the new pension scheme opted to be governed under the existing CPF scheme vide form submitted on 07.01.1998, which was countersigned by the Estate Officer, Deptt of Land Scaping and Horticulture, Kuk (R-2).

Further learned counsel for the respondents contends that the notifications were widely circulated amongst the employees and the petitioner instead of opting for pension scheme consciously opted to continue with the existing CPF scheme by submitting his form dated 07.01.1998 (R-2)

The moot point for consideration before this Court is once the petitioner has not opted for the pension scheme and opted to continue with the existing CPF scheme, whether a direction can be given to the respondents to accept his request/option submitted on 01/06.12.2006 (P-4) which was beyond the stipulated period.

In Bachan Singh's case (supra), Hone'ble the Supreme Court while relying upon the judgment of ***E.P. Royappa v. State of T.N, 1974 (4) SCC 3, Maneka Gandhi v. Union of India, 1978 (1) SCC 248 and Ajay Hasia v. Khalid Mujib Sehravardi, 1981 (1) SCC 722*** has held that any discriminatory action on part of Government liable to be struck down. Totally unreasonable and irrational to deny respondent pensionary benefits under the scheme particularly when appellants failed to produce any record that instructions dated 06.08.1993, and

09.08.1994 were actually got noted in writing by respondent.

Respondent had no knowledge about the options.

In the present case as well, the department has failed to produce on record that the instructions have been got noted down from the petitioner. Petitioner being IV class employee and illiterate cannot be deprived of the benefit, which has been opted by other employees. It was the mistake on the part of the respondent-department that they had not got circular/instructions noted down from the employees. When the petitioner came to know about the instructions/circular, he immediately submitted option on 01/06.12.2006 and mentioned that when the options were taken for pensionary benefits, he was not apprised about the scheme and there were four other employees, who had not submitted options for pensionary benefits, in pursuance of the scheme (P-2 and P-3).

This Court in a case of ***Om Kumari vs. Kurukshetra University, Kurukshetra and another***, passed in CWP No. 5012 of 2000, decided on 04.03.2002 was examining a case of Common Room Peon working in women's hostel in Kurukshetra University. She continuously worked for 34 years but the benefit of pension was denied to her on the ground that she is not covered under the Rules. However, Kurukshetra University introduced pension Scheme/Rules for its staff w.e.f 01.04.1995 and in this background, she challenged the order

whereby pension has been denied to her. This Court allowed the writ petition by observing that the service book of the petitioner shows that she had been working against a substantive post and was also getting annual increments from time to time. Petitioner was held to be covered under the benefits of aforesaid scheme as she retired after 01.04.1995.

Applying the ratio of the above said judgments, the writ petition is allowed and orders dated 06.11.2012, 20.12.2012 and 20.02.2009 (P-6 to P-8) are hereby quashed. Respondents are directed to consider the case of the petitioner under the pension scheme (P-2 and P-3) in all respects and take appropriate action, in accordance with law, within a period of three months from the date of receipt of certified copy of this order.

(RITU BAHRI)
JUDGE

17.03.2016

G Arora