

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Letters Patent Appeal No.1153 of 2016 (O&M)
Date of Decision: October 21, 2016

Kurukshetra University, KurukshetraAppellant
versus
Manjit SinghRespondent

**CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE SUDIP AHLUWALIA.**

Present: Mr.Amarjit Singh Virk, Advocate, for the appellant.
Mr.Namit Kumar, Advocate, for the caveator-respondent.

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1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Surya Kant, J. (Oral)

The question that fell for the consideration of learned Single Judge was whether the appellant-University has rightly declined the claim of respondent for the grant of pension?

[2] Learned Single Judge has answered the question against the appellant. Before advertng to those reasons, some relevant facts and provisions of the Pension Scheme may be noticed.

[3] The respondent is a differently abled person. He joined the appellant-University as daily wager on 20.03.1990 as a Security Man. His appointment was converted into *adhoc* appointment in the year 1993. Thereafter, he was appointed on regular basis on 05.12.1996.

[4] The appellant-University introduced 'Kurukshetra University Employees Pension Rules/Scheme 1997' (for short, 'the Scheme') (P-2) w.e.f. 01.04.1995. Its clause 1 (a) reads as follow:-

...1. (a) This Scheme called the 'Kurukshetra University Employees' Pension Scheme 1997' formulated to afford the

benefit of pension in lieu of C.P.F. by creating a Corpus Fund by transferring the up-to-date contribution of C.P.F. made by the University alongwith interest accrued thereon in respect of employees who were in service on 01.04.1995 and have not attained the age of superannuation prescribed in these rules on this day and have also opted for the said Scheme unde these Rules.....”

[5] Clause 3 of the Scheme deals with to the extent of its applicability and is to the following effect:-

“3. EXTENT OF APPLICATION

This Scheme shall apply to all employees who:

- (i) are appointed to the sanctioned aided posts on regular basis on or after 01.04.1995.
- (ii) were appointed to the sanctioned posts on regular basis before 01.04.1995 and continue to work as such after that, provided that the employees who were appointed to the sanctioned aided posts on regular basis before 1st April, 1995 and who have attained the age of superannuation as prescribed in these rules on or after that date shall have the right to opt for this scheme within a period of three months from the date of publication of this scheme.

This Scheme shall not apply to:

- (a) an employee appointed on part time basis against sanctioned aided posts;
- (b) an employee, who had retired from the sanctioned post before 1st April 1995 and an employee who had attained the age of superannuation as provided in these rules before the said date.
- (c) an employee who is governed by the Contributory Provident Fund.
- (d) an employee employed on a leave gap arrangement, on contract basis, apprenticeship etc. and the service for which no C.P.F. Contribution has been

made by the University...”

[6] Clause 6 of the Scheme requires its existing employees to exercise option under the Scheme and relevant extract of the said provision is to the following effect:-

“6. OPTION:

- (i) The existing employees of the University, who are appointed before 01.04.1995 and are continuing in service and have not attained the age of superannuation on this date; and
- (ii) The employees, who have since retired on attaining the age of superannuation or sought voluntary retirement under these rules or have died before attaining the age of superannuation during the period from the date of introduction of pension scheme, i.e., 01.04.1995 to the date of notification of this Scheme, they or their eligible spouse whatever the case may be, shall have the right to either opt:
 - (a) to continue to be governed by the C.P.F.rules,
 - OR
 - (b) to elect, to be governed by the Pension Scheme contained in these rules....”

[7] The dispute that arose in this case was whether the above-stated Scheme was conveyed to the respondent and if so, whether he exercised the option to be governed under the Scheme?

[8] Learned Single Judge has answered the question in favour of the respondent and consequently accepted his claim. It is in this backdrop that the appellant-University lays stress on the factual plea that neither in the year 1997 nor in 2004 when the Scheme was circulated and re-circulated amongst the employees, the respondent exercised the option.

[9] The litmus test, in our considered view, is whether or not the

respondent was required to exercise such option?

[10] It may be seen from its Clause 3(i) that the Scheme is applicable to all the employees who have been “appointed to the sanctioned aided posts on regular basis on or after 01.04.1995”.

[11] The respondent, admittedly, was appointed on regular basis on 05.12.1996, i.e., after 01.04.1995. Qua him, the Scheme is applicable unequivocally, unconditionally and unilaterally.

[12] The discretion to opt or not for the 'pension scheme' is given in para No.3(ii) of the Scheme to those employee only “who were appointed on sanctioned posts on regular basis before 01.04.1995 and continued to work as such after that....”

[13] Clause 3(ii) of the Scheme has again been re-enforced by way of Clause 6(i) where-under option is required to be exercised only by these existing employees of the University who are appointed before 01.04.1995 and were continuing in service and have not attained the age of superannuation.

[14] It is thus clearly decipherable from the Scheme that those regular employees who have been appointed after 01.04.1995 shall be governed by pension scheme without any discretion but those who were appointed on regular basis before 01.04.1995 and were yet to attain the age of superannuation were given choice either to opt for pension scheme or to continue to be governed by the Contributory Provident Fund Rules. There is no ambiguity in the Scheme as it intended to keep it open only for such employees who were in service prior to 01.04.1995, to decide whether pension scheme was more beneficial or the Contributory Provident Fund Scheme?

[15] So far as the respondent is concerned, he being post-01.04.1995 appointee, he was not required to exercise any option as pension scheme was made applicable on him as a condition of service.

[16] The second question re: counting of *adhoc*/daily-wager service rendered by the respondent as 'qualifying service' for the purpose of pension, learned Single Judge has rightly referred to the earlier case law for accepting the respondent's claim.

[17] For the reasons afore-stated, we do not find any merit in this appeal which is accordingly dismissed but for different reasons.

[18] Needless to say that the monetary benefits released in favour of the respondent on the assumption of he being governed under the CPF Scheme, shall be adjusted towards arrears of pension in accordance with the University Scheme.

[19] The needful shall be done within a period of three months from the date of receiving a certified copy of this order.

[SURYA KANT]
JUDGE

October 21, 2016
mohinder

[SUDIP AHLUWALIA]
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No