

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.9740 of 1999 (O&M)

Date of decision: 01.03.2017

Ratti Ram

.....Petitioner

versus

PRTC and another

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Rajiv Atma Ram, Senior Advocate with
Mr.Ranjit Singh Kalra, Advocate for the petitioner
Mr.Anupam Singla, Advocate for the respondent

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

Kuldip Singh, J.

Petitioner was appointed as a Conductor with the respondent Pepsu Road Transport Corporation on 28.6.1959. He rose to the post of General Manager on 13.4.1995 and retired from service as General Manager on 30.4.1998.

The grouse of the petitioner is that on 15.6.1992, the Pepsu Road Transport Corporation Employees Pension/ Gratuity and General Provident Fund Regulations, 1992 (for short, 'Pension Regulation 1992') came into existence with immediate effect for the purpose of granting retiral benefits to the employees of Pepsu Road Transport Corporation. Petitioner has been contributing towards provident fund. The Pension Regulations 1992 were applicable to the employees of the Pepsu Road Transport Corporation, including the petitioner. Petitioner exercised the option on

7.8.1992 i.e. within the mandatory period of six months under Regulation 9 of the Pension Regulations 1992. He opted for retiral benefits admissible under the Pension Regulations 1992. The option was duly submitted to the General Manager, who forwarded the same to the Managing Director. Petitioner retired from service on 30.4.1998. However, his pension and retiral benefits were not released. Contributory Provident Fund amount of Rs.2.12 lacs was released to the petitioner. However, the pension as per said scheme has not been released to him. It is further stated that under Regulation 24, the dues, if any, could be adjusted. The fact that the provident fund amounting to Rs.2.12 lacs has been released to the petitioner after retirement goes to show that nothing was due against him. It was further stated that on account revision of pay scales w.e.f. 1.1.1996, the petitioner was entitled to amount of Rs.28,832/- approximately on account of arrears of salary. However, the respondents disbursed only a sum of Rs.14,416/- and remaining amount was not disbursed to the petitioner. Petitioner is also entitled to the same. Therefore, the petitioner seeks the writ of mandamus for directing the respondents to release the pension and other retiral benefits to him.

In the written statement, the respondents have admitted the existence of Pension Regulations 1992 w.e.f. 15.6.1992. It was stated that as per Regulation 3, the employees, who opted for pension/ gratuity and Regulation General Provident Fund, 1992 but failed to refund the advance taken out of the employer's share of contributory provident fund along with interest thereon within the stipulated period, shall not be entitled for the benefits under these Regulations. It was stated that the petitioner had taken a loan of Rs.41,000/- in the month of February and March 1990. Out of this, a

sum of Rs.29,000/- was employer's share which was repayable along with interest of Rs.11,269/- in December 1992. Therefore, in December 1992, a sum of Rs.40,269/- was required to be deposited by the petitioner. However, the petitioner did not repay the same. He was served with notices dated 15.9.1992 and 2.12.1992 but he still did not pay the same. Therefore, he is not entitled to the benefit under the Pension Regulations 1992. It was stated that the petitioner has received the provident fund of Rs.2,12,905/- without any protest. Regarding less payment of arrears of salary, it was stated that 50% of the total amount was paid to the petitioner, due to paucity of funds. On the availability of funds, the petitioner will be paid the balance amount along with other employees.

I have heard learned counsel for the parties and have also carefully gone through the file.

The petitioner claims the benefit of Pension Regulations 1992 (Annexure P1). Admittedly, the petitioner had submitted the option under the Pension Regulations 1992. It comes out that vide letter dated 5.2.1993 (Annexure R1), petitioner was informed that his option form for the pension has been cancelled as he has failed to deposit the loan amount along with interest, taken by him from the CPF fund of the Corporation within six months, which expired on 14.12.1992. Regulation 3 which governs the said option is reproduced as under:-

- Application (1) *These Regulations shall apply to the employees of the PEPSU Road Transport Corporation who:*
- (i) were/are appointed on or after the date of issue of Regulations on wholetime 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 employees who:*

- (a) *Opt out of these Regulations.*
- (b) *are on deputation with the Corporation.*
- (c) *are paid out of contingencies.*
- (d) *are work charged employees.*
- (e) *are employed on contract basis, except when the contract provides otherwise.*
- (f) *are re-employed after superannuation.*
- (g) *are specifically excluded wholly or partly from the operation of these regulations and*
- (h) *opt for the P.R.T.C. Employees Pension/Gratuity and Regulations General Provident Fund, 1992 but failed to refund the amount of advance taken out of the Employer's share of the Contributory Provident Fund along with interest thereon within the stipulated period.*

Extract from Regulation 4(iii) regarding option is also reproduced as under:-

- (iii) *An option once exercised shall be final provided the concerned employee deposit the Corporation's share of C.P. Fund received by him/ taken in advance, if any, within, a period of six months from the date of issue of Regulations and if a person fails to exercise his option under the said regulations within the specified period referred to above, it shall be deemed that he has opted to continue for the existing Contributory Provident Fund benefit.*

A reading of Regulation 3 read with Regulation 4(iii) shows that an employee could opt for Pension Regulations 1992 and that the Regulations were not to apply to the employees who opt for Pension Regulation 1992 but failed to refund the amount of advance taken out of the employer's share of the contributory fund along with interest thereon within the stipulated period as per clause (f) of Regulation 3. Regulation 4(iii) shows that such loan was to be refunded within six months from the date of

issue of the Regulation. Option was also to be exercised within the said period. Admittedly, the petitioner has exercised the option within the said period.

The plea of the petitioner is that according to the respondents they had issued certain letters to the petitioner on 15.9.1992 and 2.12.1992 but these were never received by the petitioner. The said fact has been admitted in reply to the affidavit dated 13.10.1999 of the petitioner Ratti Ram, dated 25.10.1999, in which it is stated that the said letters were sent by the head office to Chandigarh Depot for further sending it to the petitioner. These were not received back undelivered by the head office. Now, it has been learnt that the said letter dated 5.2.1993 is not entered in the receipt register of Chandigarh depot and that the averment that the letter dated 5.2.1993 was conveyed to the petitioner is incorrect and inconvenience caused to this Court is unintentional and is deeply regretted. Therefore, it has been pressed that since letters were never communicated to the petitioner, therefore, the petitioner could not repay the loan.

I am of the view that the non-conveying of the letters is immaterial. The fact that the petitioner had exercised the option under Pension Regulations 1992 shows that he was aware about the contents of the said Regulation. The Regulation itself provides that option is to be exercised within six months and that the employee who failed to refund the amount of loan taken out of the employer's share of the contributory fund along with interest within six month, shall not be governed by these Regulations. Therefore, the petitioner having knowledge of these Regulations, was not required any further intimation to refund the loan to enable him to be covered by the said Regulations. Petitioner admittedly failed to refund the

said loan taken from the employer's share of the contributory provident fund and therefore, he was rightly held to be not covered by the said Regulations. It comes out that loan was to be deposited till 14.12.1992. Petitioner did not refund the same. He retired from service on 30.4.1998 and from 14.12.1992 till his retirement on 30.4.1998 the petitioner remained silent.

Learned counsel for the petitioner has vehemently argued that under Regulation 24 the loan could have been adjusted from the retiral benefits. Regulation 24 is reproduced as under:-

24. Adjustment and recovery of dues: (1) The competent authority shall take steps to assess the dues outstanding against the employee two years before the date on which he is due to retire on superannuation.

(2) The assessment of the outstanding dues against the employees shall be completed by the competent authority eight months prior to the date of his retirement.

(3) The dues as assessed including those dues which come to the notice subsequently and which remain outstanding till the date of retirement of the employee, shall be adjusted against the amount of death-cum-retirement gratuity becoming payable to the employee on his retirement.

I am of the view that the petitioner is precluded from seeking protection of Regulation 24. Regulation 24 does not nullify the effect of Regulation 3. It only pertains to adjustment and recovery of dues on account of retirement. Adjustment and recovery of dues is one thing and dis-entitlement under Regulation 3(h) is another thing. Under Regulation 24 if some recovery is due from the employee, it could be adjusted. However, it does not mean that even if employee failed to comply with Regulation 3(h), then the said amount is to be adjusted at the time of retirement and the employee is still entitled to benefit of pension under Pension Regulations

1992.

Learned counsel for the respondents has relied upon the authority of the Hon'ble Apex Court in Pepsu Road Transport Corporation, Patiala vs. Amandeep Singh and others, 2017(1) SCT 432, in which case no option was exercised by the employee and he had received the CPF benefit without any protest. Therefore, he was held to be not entitled to benefit of the said Scheme.

Learned counsel for the respondents has relied upon the authority of the Hon'ble Apex Court in Pepsu Road Transport Corporation, Patiala vs. Mangal Singh and others, 2011 AIR (SC) 1974. The relevant extract from the aforesaid judgment is reproduced as under:-

38. The common thread which runs through all these appeals canvassed before us is that the respondents have failed to comply with the terms and conditions of the Regulations, which govern the Pension Scheme. We have already considered the nature and effect of the Regulations, which are made under a statute. These statutory Regulations require to be interpreted in the same manner which is adopted while interpreting any other statutory provisions. The Corporation as well as respondents are obliged and bound to comply with its mandatory conditions and requirements. Any action or conduct deviating from these conditions shall render such action illegal and invalid. Moreover, the respondents have availed the retiral benefits arising out of the C.P.F and gratuity without any protest. The respondents in all these appeals, before us, have made a claim for pensionary benefits under the Pension Scheme for the first time only after their retirement with an unreasonable delay of more than 8 years. It is not in dispute, in some appeals, that the respondents never opted for the Pension Scheme for their alleged want of knowledge

for non-service of individual notices. In other appeals, although respondents applied for the option of the Pension Scheme but indisputably never fulfilled the quintessential conditions envisaged by the Regulations which are statutory in nature.

39. *The learned counsel for the respondents in support of their contention for want of knowledge of the Pension Scheme due to non-service of individual notices relied on the decision of this Court in Dakshin Haryana Bijli Vitran Nigam v. Bachan Singh, (2009) 14 SCC 793. The said decision is clearly distinguishable on facts. In that case, the appellant, Haryana State Electricity Board, had issued instructions dated 23.06.1993 and circular dated 09.08.1994 in order to provide an option to the employees for pensionary benefits in lieu of their work charged service with an express condition of noting of instructions from all the employees and acknowledging the receipt of the letter. In these appeals, before us, there is no such condition of noting from the employees or serving individual notices in the Pension Scheme or Regulations. Therefore, in our opinion, Bachan Singh's decision will not assist the respondents.*

40. *In our view, in the facts and circumstances of the present case and in view of absence of such condition in the scheme, it is not necessary for the Corporation to give an individual notice to respondents for exercising of option for pension Scheme and also for asking respondent to refund the employers contribution of C.P.F. at each stage. Furthermore, when notice or knowledge of the Pension Scheme can be reasonably inferred or gathered from the conduct of the respondents in their ordinary course of business and from surrounding circumstances, then, it will constitute a sufficient notice in the eyes of law.*

The Hon'ble Apex Court further observed as under:-

41. *The Regulation 4 (iii) of the Regulations is a deeming provision to the effect: firstly, if an employee fails to exercise his option within a period of 6 months from the date of issue of these Regulations and; secondly, even on exercise of option, if an employee fails to refund the amount of advance taken from employers contribution of the C.P.F. within 6 months from the date of issue of these Regulations, then it shall be deemed that employee has opted to continue for the existing C.P.F. benefit. Therefore, the failure on the part of the respondents to opt for the Pension Scheme and refund the advance taken from the employer's contribution of C.P.F. will disentitle them from claiming any benefit under the Pension Scheme. Therefore, we cannot sustain the Judgment and order passed by the High Court.*

Learned counsel for the petitioner has argued that in this case, the Regulation 24 was not considered. This Court has considered Regulation 24 and it has been held that it does not nullify the effect of Regulation 3(h).

Learned counsel for the petitioner has relied upon Single Bench authority of this Court in Mohinder Singh vs. Managing Director, Pepsu Road Transport Corporation, Patiala and another, 2009(3) RSJ 372 and pressed that the respondents can be directed to issue notice to the petitioner calling upon him to refund the amount which is standing as loan against the employee and then receive the same along with interest and the pension be ordered to be paid to the employee.

I am of the view that in view of the authority of the Hon'ble Supreme Court of India in Managal Singh's case (supra), such directions cannot be issued. The petitioner was aware about the regulation and the fact that if he opt for the pension scheme, he was required to deposit back the loan amount taken by him from the employer's share of CPF within six

months. Therefore, no notice was required to be issued to the petitioner. The petitioner did not deposit back the loan amount within six months with interest and remained silent till his retirement i.e. 30.4.1998. He cannot take shelter of Regulation 24 that same should be recovered from the arrears of the provident fund.

In these circumstances there is no illegality or infirmity in the orders of the respondents denying the benefit of Pension Regulations 1992 to the petitioner. Accordingly, the petition qua the said relief stands dismissed. So far as arrears of Rs. 14,416/- are concerned, the respondents are directed to pay the same along with interest @ 9% per annum, if the amount has not already been paid. The petition is accordingly dismissed with above noted directions to repay the arrears of salary, if any.

01.03.2017*gk***(Kuldip Singh)
Judge**

Whether speaking/ reasoned:

Yes

Whether Reportable:

Yes