IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

RSA No.1206 of 2011 (O&M)
Date of Decision: 09.05.2017

P.R.T.C. ....Appellant

Versus

Avtar Singh and others ....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Anupam Singla, Advocate
for the appellant.

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DAYA CHAUDHARY, J.

Plaintiff-Balwant Singh filed a suit for declaration on the ground that he was entitled to pensionary benefits along with interest since the date of his retirement and the action of defendants in not granting the same, was illegal, unconstitutional and mala fide. Said suit was decreed in his favour and he was held entitled for the benefits of 38 months preceding the date of filing of the suit i.e 07.07.2002. Said judgment and decree of the trial Court was challenged by ***Pepsu Road Transport Corporation*** (here-in-after referred to as the `PRTC') by way of filing the appeal before the District Judge, Patiala, which was dismissed vide judgment dated 21.10.2010.

The present Regular Second Appeal has been filed by PRTC to challenge the judgments and decrees dated 13.09.2006 and 21.10.2010 passed by the trial Court as well as by the lower Appellate Court.

Notice of motion in the case was issued on 21.03.2011 and thereafter, the case was adjourned on various dates. During pendency of the appeal, it was brought to the notice of this Court that on the same issue, Civil Appeal No.4703 of 2009 is pending before Hon'ble the Apex Court and judgments and decrees passed by the trial Court and Appellate Court have been stayed. Subsequently, said Civil Appeal has been decided in favour of PRTC and against the respondents vide judgment dated 08.08.2016.

Learned counsel for the appellant has not disputed the fact regarding allowing of Civil Appeal No.4703 of 2009 titled as ***PEPSU Road Transport Corporation, Patiala through its Managing Director and another vs S.K. Sharma and others***, on 08.08.2016.

In said case, Shri S.K. Sharma and others were working in the department of PEPSU described as PEPSU Roadways. PEPSU Roadways lost its utility due to creation of PEPSU Road Transport Corporation vide notification dated 07.01.1956, which shows that Corporation was created by aforesaid notification under the provisions of the Road Transport Corporation Act, 1950 which was enforced with effect from 10.08.1954. The services of all temporary employees were transferred to the Corporation with effect from 16.10.1956 on the prevailing terms and conditions, however, they continued to serve the Corporation till their retirement. After the enforcement of Regulations of 1992, the employees, who received their retiral benefits under the 1957 Regulations, filed a writ petition. Originally their grievance in the writ petition was as to why the Regulations of 1992 were not made retrospective but through an amendment in the year 1998, the writ petition was amended so as to claim that they continued to be employees of the State in the department of PEPSU Roadways till PEPSU

State was reorganized and from 01.11.1956, the date of reorganization, they became employees of State of Punjab having rights of availing pension as available to Government servants. The writ petition filed by them was allowed by the Single Bench on the premise that they were transferred from the parent department to serve in the Corporation and therefore, they continued to be Government servants as no order was passed for their absorption in the Corporation. The Letters Patent Appeal was filed which was dismissed. Thereafter, said judgment dated 24.04.2006 passed in the Letters Patent Appeal was challenged before the Hon'ble Apex Court by PEPSU Road Transport Corporation, Patiala, which was allowed on 08.08.2016. The relevant portion as mentioned in paras No.16 to 18 of said judgment of Hon'ble the Apex Court, is reproduced as under :-

> "**16.** The main controversy in this case is whether the claim of the respondents, a group of twenty one employees of PEPSU Roadways that in spite of transfer of that department to the Corporation, they continue to be actually Government servants and therefore entitled to retiral benefits instead of CPF is acceptable or not. In this controversy, a judgment of this Court though rendered in slightly different factual matrix is substantially relevant and helpful. In ***D.R. Gurushantappa v. Abdul Khuddus Anwar and Ors.*** an issue arose in the context of election of the Mysore Legislative Assembly as to whether the respondent was holding office of profit under the Government. The respondent no.1 of that case was initially a Government servant but subsequently the Government concern where he was working was taken over by a company registered under the Indian Companies Act, 1956. The shares of the company were fully owned by the Government but after the Government undertaking was taken over by the company, the employees were no longer governed by the Mysore

Civil Services Regulations, their conditions of service came to be determined by the standing orders of the company. The first contention against respondent no.1 was that since he was initially a Government servant, even after the concern was taken over by the company he would continue to be in the service of the Government. While dealing with this issue in paragraph 3, this Court rejected the contention in the following words :

"**3.** So far as the first point is concerned, reliance is placed primarily on the circumstance that, when the concern was taken over by the Company from the Government there were no specific agreements terminating the Government service of Respondent 1, or bringing into existence a relationship of master and servant between the Company and Respondent 1. That circumstance, by itself, cannot lead to the conclusion that Respondent 1 continued to be in government service. When the undertaking was taken over by the Company as a going concern, the employees working in the undertaking were also taken over and since, in law, the Company has to be treated as an entity distinct and separate from the Government, the employees, as a result of the transfer of the undertaking, became employees of the Company and ceased to be employees of the Government."

17. In the facts of the case, we have no hesitation to hold that the High Court erred in allowing the writ petition and second appeal of the respondents and in dismissing the Letters Patent Appeal of the appellants. The judgments on which the respondents have relied upon for advancing the submission that they cannot lose the status of a Government servant till they are absorbed in the Corporation after offering an option in favour of such absorption is entirely misconceived and in applicable in the facts of the present case. The stand of the respondents could have been acceptable had there been no decision of the PEPSU State as evidenced by the letter of Chief Secretary dated

16.10.1956 which finds mention and reiteration by way of admission by the Corporation in order dated 30.11.1956. There can be no such belated challenge to the decision of PEPSU State whereby PEPSU Roadways, one of the departments came into and merged with the Corporation lock, stock and barrel before the merger of PEPSU with Punjab on 01.11.1956. Hence, the provisions of the States Reorganization Act ceased to have any significance in the matter because the respondents ceased to be employees of State Government of PEPSU prior to 01.11.1956. They accepted such merger and alteration of their service conditions without any protest. Since 1957, under the Regulations of the Corporation, they participated and contributed to the scheme of CPF and obtained the benefits of retirement from the Corporation between 1985 and 1991 without any protest. The High Court clearly erred in ignoring such conduct of the respondents, the effect of the Chief Secretary's letter dated 16.10.1956 containing decision of PEPSU State and its acceptance by the Corporation reflected by the order dated 30.11.1956. The High Court further erred in relying upon law which is applicable when there is no merger of Government concern with the private concern but only individual employees are transferred on deputation or on foreign service to other organizations/services. The ordinary rules providing for asking of option or issuance of letters of absorption depend upon nature of stipulations which may get attracted to a case of deputation. There may be similar stipulations in case of merger by transfer. But if there are no such stipulations like in the present case then the transferee concern like the Corporation has no obligation to ask for options and to issue letters of options to individual employees who become employees of the transferee organization simply by virtue of order and action of transfer of the whole concern leading to merger. No doubt in case of any hardship, the affected employees have the option to protest and challenge either the merger itself or any adverse stipulation. However, if the employees choose to accept the transition of their service from one concern to another and acquiesce then after decades and especially after their retirement they cannot be permitted to turn back and challenge the entire developments after a gap of decades.

18. On the basis of laws and facts discussed above, we are constrained to hold that the respondents had accepted to continue as employees of Corporation pursuant to order of merger/transfer of PEPSU Roadways with effect from 16.10.1956 and on completing their service under the Corporation and reaching the age of retirement they were entitled to receive only the benefits of CPF and gratuity as admissible to them under then prevailing regulations of the Corporation. Since they accepted those retiral benefits, there is no relationship left between the Corporation and the respondents and in such a situation further claim against the Corporation that it should treat the respondents to be Government servants and adjust their retiral benefits accordingly was totally untenable and wrongly allowed by the High Court. The impugned judgment of the High Court granting relief to the respondents is therefore set aside. The second appeal and the writ petition of the respondents shall stand dismissed. This appeal is accordingly allowed but the parties are left to bear their own costs."

A perusal of said judgment of Hon'ble the Apex Court shows that the impugned judgment of the High Court granting relief to the employees was set aside. The second appeal and the writ petition of the employees were dismissed and the appeal filed by the PRTC was allowed.

In the present case also, similar controversy is there. However, it is made clear that notice to legal representatives of deceased-Balwant Singh was issued but no one put appearance on their behalf, despite service.

On perusal of judgment of Hon'ble the Apex Court, it appears that the controversy as well as the claim in the present case are similar.

Accordingly, the appeal filed by appellant-PRTC is allowed in the same terms as in ***Civil Appeal No.4703 of 2009*** titled as ***PEPSU Road Transport Corporation, Patiala through its Managing Director and another vs S.K. Sharma and others***, decided on ***08.08.2016*** and the impugned judgments and decrees dated 13.09.2006 and 21.10.2010 passed by the trial Court as well as by the lower Appellate Court are hereby set aside.

(DAYA CHAUDHARY)
JUDGE

09.05.2017
gurpreet

Whether speaking/reasoned Yes

Whether Reportable Yes