

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

RSA No.1399 of 2015 (O&M)

Date of Decision: 10.11.2017

Balwinder Singh

. . . Appellant

Versus

The Registrar, Guru Nanak Dev University,
Amritsar

. . . Respondent

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Vikram Bali, Advocate
for the appellant.

Mr. Amrit Paul, Advocate
for the respondent.

Ajay Tewari, J. (Oral)

This appeal has been filed against the concurrent judgments of the Courts below dismissing the suit of the appellant who was an ex-serviceman, joined the University on 20.02.1992.

In the year 1994, the respondent-University introduced a pension scheme to replace the existing Contributory Provident Fund Scheme. Annexure Ex.D-2 was written to all the Heads of Departments informing them about this fact and directing them to bring it to the notice of all the employees so that those desirous could opt for the said scheme and refund the Provident Fund accumulation. The last date for exercise of option was 30.06.1994. The appellant superannuated from the University

RSA No.1399 of 2015 (O&M)

on 31.12.2011. Prior to that also he had represented, but the University having refused to permit him exercise the option after cutoff date. He had filed a civil suit. Both the Courts below rejected his claim on the ground that he had not opted for the pension by the cutoff date.

Today, learned counsel has argued that there is no material on record, which would show that notice regarding the pension scheme was ever served upon the appellant and even a perusal of Ex.D2 would reveal that though the Head of Departments were directed to ensure that notice was brought to the knowledge of all the employees, there was no mechanism put in place (like getting it noted) to, in fact ensure that the notice was brought to the knowledge of all the employees. As per learned counsel, this was an important letter affecting the future of the employees and therefore, it was incumbent upon the respondent to show that it had in fact been served upon the employees.

Counsel for the respondent has argued that it is highly incredible that everybody else who wanted to came to know of this, opted this option and it is a clear case where the appellant has acted from afterthought. He has pointed out that the Courts below have recorded that the appellant accepted that he knew of the pension scheme. To this, counsel for the appellant pointed out of by arguing that merely because other people came to know of the scheme and opted for, it could not give rise irresistible conclusion that the appellant had also come to know and this is at best a conjectural argument.

Regarding the admission referred to by Courts below, the counsel has shown to this Court that the exact statement made by the

RSA No.1399 of 2015 (O&M)

appellant before the Court that “I am aware of the pension scheme”. As per learned counsel, this only shows that at the time the appellant gave his deposition that he was aware of the pension scheme, but it cannot be taken to suggest that he knew of the pension scheme at the relevant time.

Learned counsel for the respondent has relied upon **D.P. Patil Versus Union of India**, reported as **1997 (3) SCT 3** and particularly on Para 2 which is quoted herein below:

“ The controversy is no longer res integra. The entitlement to the benefit of the pension was considered by this Court in **Krishna Kumar vs. Union of India & Ors.** [AIR 1990 SC 1782-JT 1990 (3) SC 173]. Following that judgment, this Court had set aside the order of the Tribunal. It is seen that the Claim of the petitioner is that he did not have knowledge of the extension of the last date for giving the option. It is his case that he retired in November 30,1975 and he did not have any opportunity of knowing the extended date. That is falsified by the record. For the first time, it was extended upto January 1,1973. It was further extended upto July 23,1974; thereafter, upto June 25,1975, June, 30, 1976, January 3,1978 and the last of the extensions was till December 31,1978. While he was in service, he had the opportunity to register the option on three occasions, namely, on January 1,1973, July 23, 1974 and June 25,1975. He did not exercise the option at that time. The option was as regards principle of gratuity. He thought that would be a better principle advantageous to him. He withdrew the retinal benefits. Later, when the pension scheme was sought to be given to several persons, he came forward at a belated stage saying that he was not in know of extension till 1991. When others were given benefit by the Tribunal, he came to file the petition. In view of the aforesaid facts, it is hard to

RSA No.1399 of 2015 (O&M)

believe that he had no notice of exercising the option for the pensionary benefits. Under these circumstances, we do not find any illegality in the order passed by this Court for recalling the order.”

In my opinion, this judgment is not strictly applicable. Their Lordships have given a categorical finding that the petitioner in that case knew of the scheme. In the present case, the same cannot be said to be with certitude.

In the circumstances, the appeal is allowed. The appellant would be entitled to pensions, in case he deposits the Contributory Fund which he had received at the time of retirement along with interest which would be as per the long term fixed deposit rate of the State Bank of India from time to time.

The respondent is directed to give him the pension within three months of the date of deposit by him in the aforesaid manner and in case the same is not paid within three months, he would be entitled to interest @ 8% per annum on the amount(s) from the date of deposit by him.

[AJAY TEWARI]
JUDGE

November 10, 2017.
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Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No