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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-2263-2015 [O&M]
Date of Decision : November 19, 2018

Dr. Avtar Singh (deceased) through his
Legal Heirs

.... Petitioner.

Versus

State of Punjab and others .... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. G.S.Punia, Senior Advocate ,
with Ms. Jagriti Kalia, Advocate,
for the petitioners.

Mrs. Anju Arora, Addl.A G. Punjab
for respondent-State.

Mr. Ashok Kumar Bazaz, Advocate,
for respondent No. 3/Corporation.

SHEKHER DHAWAN, J.

Present writ petition under Articles 226/227 of the Constitution of India is for issuance of writ in the nature of Mandamus seeking directions to the respondents to pay to the petitioner, his share of Contributory Provident Fund (CPF) wrongly withheld against the Punjab Municipal Corporation Employees Pension and General Provident Fund Rules, 1994 (for short, “**1994 Pension Rules**”) wherein as per proviso to Rule 1(3), only Corporation's contribution towards Contributory Provident Fund with interest @ 10% is liable to be deposited.

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2. Petitioner has also sought quashing of order dated 17.10.2011 (Annexure P/1) whereby it has been ordered that the petitioner is not entitled to refund of his share of Contributory Provident Fund. Prayer has also been made for issuance of directions to the respondents to count the army service rendered during emergency period for the purpose of pensionary benefits as ordered vide Annexure P/1, passed by respondent No.2.

3. Facts relevant for the purpose of decision of this writ petition; that the petitioner initially served the Army during first national emergency from 29.03.1963 to 24.06.1970 holding the rank of Captain and thereafter he again served the Army from 29.03.1971 to 24.06.1976 as Doctor. The petitioner was appointed as Medical Officer with the respondents on 89 days basis. Thereafter his services were regularized on 10.4.1978 with effect from 14.02.1978. He retired on 31.3.1991. The 1994 Pension Rules were published on 28.7.1994. The petitioner was denied the benefit of pension on the ground that he did not fulfill the condition of minimum period of contribution to provident fund i.e. for 10 years as his deduction to the Provident Fund started from February, 1986.

4. The grievance raised by the petitioner in the writ petition was that the petitioner was wrongly required to deposit his share of Contributory Provident Fund, which is contrary to the 1994 Pension Rules and only Corporation's share was required to be deposited. More so, his military service rendered during National Emergency period is to be counted for pensionary benefits, but the same has not been released by the

respondents and as such, the present writ petition before this Court.

5. In the reply and subsequent affidavits having been filed by the respondents respondents have taken a stand that in compliance of the orders passed by this Court, Director-cum-Secretary, Local Government Department, Punjab has passed the following orders on 17.10.2011 (Annexure P/1) :-

> " As per notification dated 15.10.2009 issued by Defence Service, Welfare Department, military service rendered during Second National Emergency from 03.12.1971 to 25.07.1977, benefit of that can also be given for pensionary benefit..."

6. Respondents also took the stand that the department of Defence Services Welfare, Punjab vide letter dated 26.09.2013 (Annexure P/14) advised the Municipal Corporation, Ludhiana, respondent No. 3 to decide the case of the petitioner in the light of instructions dated 4.6.2004, 15.10.2009 and 10.4.2012. More so, the instructions dated 10.4.2012 are applicable to the persons, who are in service as on 1.12.2011 or are appointed thereafter, but the instructions contained in notification dated 10.4.2012 are not applicable in the case of present petitioner, who retired on 31.03.1991. Similarly, the instructions issued vide notification dated 15.10.2009 (Annexure P/16) as well as dated 4.6.2004 are not applicable in the case of the present petitioner.

7. As per additional affidavit filed by Additional Secretary, Local Government, Punjab, plea was taken that respondent No. 2 vide order dated 17.10.2011 has accepted the request of the petitioner to count the military service rendered during emergency for the purpose of pensionary

benefits. The Commissioner, Corporation Ludhiana had also directed to refix his pay alongwith the arrears for the period to be cleared within one month. It was prayed that the writ petition be dismissed.

8. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that the 1994 Pension Rules are applicable to the employees of the Corporation who were working immediately before the first day of April, 1990 on whole time regular basis and opt for these rules. Rule 1(3) and Rule 5 of the 1994 Pension Rules provide that the same shall be applicable to the employees of the Corporation who were working immediately before the first day of April, 1990 on whole time regular basis and opt for these rules and the petitioner was covered under that category. Further, as per proviso to Rule 1(3) of the 1994 Pension Rules, an employee is required to refund the Corporation's contribution to Contributory Provident Fund including interest received thereon and not Employee's share. For facility of reference, Rule 1(3) of 1994 Pension Rules is extracted below:-

> "(3). They shall apply to the employees of the Corporation :
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> (i). who are appointed on or after the first day of April, 1990 on whole time regular basis and;
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> (ii). who were working immediately before the first day of April, 1990 on whole time regular basis and opt for these rules.
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> Provided that the employees who were working immediately before the first day of April, 1990 and who retired during the period between the first day of April, 1990 and the date of publication of these rules in the official gazette, shall have the option to opt for these rules within a period of four months from

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the date of publication of these rules, subject to the condition that they shall have to refund the Corporation's contribution towards their Contributory Provident Fund including interest thereon received by them together with simple interest on the whole amount at the rate of 10% per annum from the date of withdrawal to the date of repayment."

9. Further as per Rule 5 of the 1994 Pension Rules, the amount was to be transferred and the Corporation's share was to be refunded. Rule 5 is extracted below:-

"5. **Transfer of amount to the Fund:** (1) The share of money contributed by the Corporation along with interest accrued thereon standing in the Contributory Provident Fund account to the credit of an employee of a Corporation, who opts for these rules or who is governed by these rules, shall stand transferred to the fund to the extent it was contributed by the Corporation during the period of service of the employee along with any loss caused to the contribution either by the Corporation or by the employee through withdrawal during the tenure of service of the employee or due to any other reason which shall be made good by the Corporation or the employee, as the case may be by paying the amount along with interest due for that period to the fund.

(2) The Corporation shall make monthly contribution towards the fund at the rate of 10% of the basic pay of the employee. The rate of monthly contribution shall be subject to any change which may be made by the Government from time to time.

(3) The amount of the fund shall be kept in any branch of the State Bank of India or the State Bank of Patiala of the Punjab State Co-operative Bank and where there is no branch of either of these banks, it may be kept with any other

scheduled bank."

10. Rule 10 of the 1994 Pension Rules provides that subscription made by the employee to the Contributory Provident Fund alongwith interest thereon shall stand converted to General Provident Fund.

11. Proviso to Rule 1(3) of 1994 Pension Rules makes it ample clear that the petitioner was required to deposit only Corporation's contribution towards Contributory Provident Fund and interest thereon and not the employee's contribution to the Contributory Provident Fund and the respondents had wrongly deducted the said amount vide impugned order dated 17.10.2011 (Annexure P/11). The case of the petitioner is covered under this category. As such, the impugned order, Annexure P/11, is liable to be quashed to that extent.

12. With regard to claim of the petitioner regarding grant of benefit of military service rendered by him during the emergency period, respondents No. 2 and 3 have accepted the request of the petitioner to count the military service rendered during emergency period for the purpose of pensionary benefits, but the required action has not been taken by respondent No. 4 despite unreasonable delay.

12. Resultantly, the impugned order, Annexure P/11 is set-aside so far as it has been ordered that the petitioner is not entitled to refund of Contributory Provident Fund of his share. Further, respondent no. 4 is directed to take the required action on the basis of recommendations have been made by respondent No. 2 and 3 to grant the benefit of military service rendered by the petitioner during emergency for pensionary

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purposes. The needful be done within a period of two months from the date of receipt of copy of this order.

(SHEKHER DHAWAN)
JUDGE

November 19, 2018.
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Whether speaking/reasoned? : Yes
Whether reportable? : Yes

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