

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

(240)

CWP-23408-2016

Date of Decision: November 19, 2018

Santosh

..Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Chandra Kumar Jha, Advocate, for the petitioner.

Mr. Ayush Sarna, AAG, Punjab.

Mr. Rishav Jain, Advocate, for
Mr. Jaspreet Singh, Advocate, for respondent No.3.

HARSIMRAN SINGH SETHI, J.(ORAL)

The petitioner has filed the present writ petition claiming the pensionary benefits admissible to her under the Punjab Municipal Corporation Employees Pension and General Provident Fund Rules 1994 (hereinafter referred as the 'Rules, 1994').

As per the pleadings, the petitioner joined as a Safai Sewak on 10.01.1991 and after 23 years of service, on attaining the age of 60 years, she superannuated on 31.12.2014. Thereafter, she was given one year extension and she was relieved from service on 31.12.2015.

The grievance raised in the present writ petition is that she is being denied the pensionary benefits even though she has rendered 23 years of service with the respondent.

In reply to the claim filed by the petitioner, respondent No.3 has stated that the petitioner did not opt for the pension scheme and therefore the claim being made by the petitioner under the Punjab

Municipal Corporation Employees Pension and General Provident Fund Rules, 1994 is not admissible.

I have heard learned counsel for the parties.

Petitioner has attached Annexure P-3 dated 05.08.2016 along with the writ petition by which the petitioner was supplied the information under the Right to Information Act in respect of her application for exercising options made in respect of the Rules, 1994. The said request is dated 22.11.1994. From the vernacular of Annexure P-3, it transpires that there is cutting on the said form. From the said form, it cannot be ascertained as to whether the petitioner opted for the rules or made a request that she is not interested for opting pensionary benefits under these rules. Petitioner claims that she is an illiterate lady and the form was filled up by the office and she was all along made to believe that she has opted for the pensionary benefits.

As the petitioner is an illiterate lady, it was the duty of the employer to make her understand the benefits of the said scheme and merely asking for the option was not good enough. Further from the form, on the basis of which claim is being denied to the petitioner, does not show that she did not opt for the said scheme. There are cutting on the form. Benefit of these cuttings has to be given to a person who is illiterate.

Under these circumstances, claim of the petitioner is allowed and the respondents are directed to calculate the pension of the petitioner as if she had opted for the same in November, 1994.

Petitioner undertakes to deposit the contribution which the respondents might not have deducted, which was mandatory, in order to get the pension. The said contribution will be calculated by the Municipal

Council and will be informed to the petitioner within a period of three months and the petitioner will deposit the same within next one month. Thereafter, the pension of the petitioner will be calculated and granted to her, within next 2 months.

In the peculiar facts of this case, the petitioner will not be entitled for any interest upon the same.

The writ petition is allowed, in above terms.

November 19, 2018

harsha

**(HARSIMRAN SINGH SETHI)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No