

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

**CWP No.4580 of 2012 (O&M)
Reserved on 20.12.2018**

Date of Pronouncement:26.02.2019

Vijay Laxmi and others

... Petitioners

Versus

Board of School Education, Haryana and another

... Respondents

CWP No.20624 of 2011 (O&M)

Raj Singh

... Petitioner

Versus

Board of School Education, Haryana and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. S.K.Chauhan, Advocate,
for the petitioners.

None for the respondents.

ARUN MONGA, J.

1. Present petitions have been filed, *inter alia*, seeking issuance of a writ in the nature of certiorari to quash the order dated 07.07.2009 (Annexure P-3), whereby the claim of the petitioners to opt for pension in lieu of Contributory Provident Fund (CPF) was rejected.

2. Succinctly, the factual background is that the Finance Department, Haryana issued Circular/Instructions dated 26.06.1992 (Annexure P-1) introducing Pension Scheme in Boards and Corporations in the State of Haryana. The said Pension Scheme was meant for the employees who had earlier opted for

Contributory Provident Fund. The Circular envisaged that the Board and Corporations will allow the existing employees to exercise the option within a period of 03 months.

3. Accordingly, the School Education Board, Haryana vide its decision dated 23.04.1993 also introduced the Pension Scheme effective from 01.04.1992. The Board in its meeting dated 23.04.1993 vide agenda item No.42 approved the Pension Scheme as per Government of Haryana. An opportunity was given to the employees to opt for pension in lieu of Contributory Provident Fund Scheme.

4. The employees who opted for Pension Scheme were asked to give an undertaking to surrender the amount of Contributory Provident Fund (CPF) inclusive of interest accrued thereon. The said Pension Scheme was provided to all the employees appointed after 01.04.1992. But, for the employees appointed prior to 01.04.1992, an opportunity was given to opt for the Pension Scheme in lieu of the Contributory Provident Fund within a period of 03 months.

5. On 23.04.1993, Board provided a first opportunity to its employees to opt for pension which was followed up by three further opportunities on 15.05.1996, 18.09.2001 and 02.03.2006. However, 19 employees (petitioners) out of the entire lot could not opt for the pension despite the said opportunities and later on represented to opt for the same.

6. The options of 18 other employees offered on 02.03.2006, despite expiry of 03 months way back in the month of

July, 1993, were approved in its meeting/proceedings dated 02.03.2006 (Annexure P-2), the relevant whereof is extracted hereinbelow:-

“Decision of the Board

Finance Department was of the opinion that Pension Rules are not approved by the State Government, opportunity for option can be given only one time. Therefore, with entire justification matter be sent to Finance Department. After the discussion on this item, the decision is taken because Pension Rules of the Board have not been approved by the Government, therefore, acceptance is granted to provide one more opportunity to change the option.”

7. The petitioners state that they were not personally notified to give their options within a period of 03 months. Belated requests of the petitioners to opt for pension scheme were put before Board in its meeting dated 07.07.2009 vide agenda item No.15 in the following terms:-

“To grant acceptance for providing one more last opportunity regarding option of pension to the present 19 employees/officers of the Board appointed before 01.04.1992.”

8. However, the Board in its meeting/proceedings dated 07.07.2009 cryptically rejected the said agenda item No.15 by stating that “Item has been taken back” without assigning any reasons thereof.

9. A joint reply to the petition has been filed on behalf of the respondents contesting the claim of the petitioners to opt for Pension Plan in lieu of CPF.

10. It is stated by the respondents that as per the Scheme,

the employee concerned was to undertake to surrender the amount of contribution (inclusive interest accrued up to date) in lieu of the aforesaid Pension Scheme as per Circular dated 25.05.1993 (Annexure R-1) issued by the respondents. The said Circular (Annexure R-1) issued by the Board also envisages that the employee has to opt for the Pension Scheme within a period of 03 months as directed by the State of Haryana vide its Circular dated 26.06.1992 (Annexure P-1).

11. Grant of further opportunities, despite expiry of the cut off date, on different occasions viz 15.05.1996, 18.09.2001 and 02.03.2006 is not denied by the petitioners. However, the claim has been contested primarily on the ground that while granting opportunities, each time, it was stated that the same “will be last opportunity” and after that again “no opportunity will be given”. The petitioners' case, therefore, was rightly rejected vide impugned decision dated 07.07.2009 (Annexure P-3) by the Board.

12. The rejection of the claim of the petitioners is also sought to be justified by the respondents on the ground that the petitioners represented for the first time on 04.02.2011 i.e. after about 2 years of the rejection of their claim vide impugned decision dated 07.07.2009 by the Board.

13. I have gone through the respective pleadings as also the Annexures appended thereto and having heard the learned counsel for the petitioners, I am of the view that the impugned decision taken by the Education Board in its meeting/proceedings dated 07.07.2009 is devoid of any merit and does not stand the

judicial scrutiny. The denial to the petitioners is violative of the principles of law, equity and justice.

14. Concededly, Haryana Government Notification dated 26.06.1992 (Annexure P-1), vide which the Pension Scheme was introduced was adopted mutatis mutandis by the Board vide its Memo dated 26.05.1993 (R-1). The Pension Scheme envisaged the cut off period for giving option as 03 months. Notwithstanding, the respondents kept on extending the benefit of opting for Pension Scheme to its employees on different dates from time to time, way after the expiry of the cut off period i.e. 15.05.1996, (03 years after cut off), 18.09.2001 (8 years after cut off) as late as 02.03.2006 (13 years after cut off).

15. The contention of the respondents, that the petitioners are dis-entitled to opt for pension scheme as they did not respond within the time period, to say the least, is completely absurd. The mandate of the Education Board for seeking the option w.e.f the order dated 23.04.1993 for Pension Scheme within a period of 03 months of the issuance of the date of its Memo dated 25.05.1993 (Annexure R-1) clearly stood vitiated and completely diluted, if not washed out, in view of its having entertained the request of its employees even after a lapse of 13 years.

16. Another aspect of the matter is that perusal/comparison of minutes/proceedings dated 02.03.2006, with those of 07.07.2009 of the Education Board, clearly reflect that 18 other employees were granted the benefit in the proceedings dated 02.03.2006. On the other hand, 19 employees (petitioners herein) were not

granted the same benefit vide letter/proceedings dated 07.07.2009 (impugned herein).

17. In both these Board proceedings, the reason given is that since the Pension Rules, under which the Government Notification dated 26.06.1992 (Annexure P-1) was issued, have still not been approved by the Government, therefore, the employees were not entitled to opt for the Pension Scheme. Whereas, in proceedings dated 02.03.2006 (Annexure P-2) based on the same reasoning, the employees were given the option to seek Pension Scheme. But in the impugned proceedings dated 07.07.2009 (Annexure P-3), they were denied benefit on the same very ground. Viz. that pension Rules are yet to be approved and it is not permissible under Government Notification (Annexure P-1) read with the Pension Rules, 1994 to grant the benefit to the petitioners.

18. Relevant Rule 4 (i) and 26 of the Pension Rules, *ibid*, are extracted hereinbelow for ready reference:-

4(i) "The option under Clause (ii) of sub rule (1) of Rule-2 to opt for these rules shall be exercised in the form appended to these rules within a period of 4 months from the date of publication of these rules in the official gazette."

X-X-X-X-X-X-X

"Interpretation-26 "If any question of doubt arises as to the interpretation of these rules the decision of the board shall be final."

19. In view of the my observations above that the cut of period of 3 months as provided by the Notification of the Education Board (R-1) stood completely diluted and was not mandatory. I am

of the view that, any reliance on Rule 4 (i) *ibid* qua the cut off period of 04 months provided therein is completely misplaced.

20. In any case, all the opportunities were granted by the Board, notwithstanding, the said cut off period of Rule 4(i) *ibid*. Therefore, the applicability of said Rule has no significance, particularly, in view of the Rule 26 *ibid*. Rule 26 clearly states that in the event of any doubt, the decision of the Board shall be final. Further more Rule 27 of the Pension Rules, 1994 is very significant and is reproduced as below:-

“Review of Scheme-

The Board shall have the right to review/modify/withdraw the pension scheme at any time after considering the financial position of the Board.”

21. A perusal of the above leaves no doubt, of any manner, that it was the Board which had the final authority in respect of the Pension Scheme. To reject the claim of the petitioners on the ground of same being not permissible under the Government Notification (Annexure P-1), issued under the Pension Rules, 1994, is discriminatory, unfair and also contrary to the earlier conduct of the Board.

22. Learned counsel for the petitioners has relied on the following case law in support of his arguments:-

Ashok Kumar Vs. State of Haryana 2016 (3) RSJ 370, Dakshin Haryana Bijli Vitran Nigam and others Vs. Bachan Singh (2009) 14 SCC 793, Hari Kishore Sharma Vs. State 2012 (4) SLR 423 (Raj), Radha @ Arpna Vs. State of Punjab 2012 (4) RSJ 41, Ramesh

Kumar Musafir and others Vs. State of Haryana and another 2012 (3) RSJ 362 and Kamla Vs. State of Haryana 2012 (3) RSJ 670.”

23. The relevant para 18 of **Ashok Kumar's case (supra)** is reproduced as below:-

“Further, pension/family pension, being a recurring payment to be made on a monthly basis to a retired employee/his family, delay in subscribing/making payment to avail of the full benefit of a pension scheme, cannot be used as an excuse, by an employer, to deny the benefits of pension/family pension. However, of course, in case of any delay on the part of an employee in making any payment/in taking action as he/she was required to take, to obtain the benefit of such pension, appropriate interest would be payable by the employee in case of a payment to be made, and further, arrears of pension/family pension, can be commensurately denied to him/her.”

24. Similarly, relevant paras 21 and 28 of **Dakshin Haryana Bijli Vitran Nigam and others (supra)** are reproduced hereinbelow:-

“21. The appellants had issued Circulars dated 06.08.1993 and 09.08.1994 for giving pensionary benefits to the respondent and similarly placed employees.

28. In view of the law as has been articulated in a large number of cases where this Court has observed that any discriminatory action on the part of the Government would be liable to be struck down. Hence, in this case, it would be totally unreasonable and irrational to deny the respondent the pensionary benefits under the scheme particularly when the appellants have failed to produce any record showing that the instructions dated 06.08.1993 and 09.08.1994 were actually got noted in

writing by the respondent. In the absence of any such material it can well be inferred that the respondent had no knowledge about the options called by the appellants.”

25. Having gone through the afore-said judgments and I am of the opinion that the case of the petitioners is also covered by the same.

26. In view of my observations and reasoning given in the foregoing paragraphs, the impugned decision taken vide minutes/proceedings dated 07.07.2009 (Annexure P-3) is set aside. The respondents are directed to process the case of the petitioners by giving them the benefit of Pension Scheme in lieu of the Contributory Provident Fund Scheme.

27. However, it is made clear that respondents shall be at liberty to recover the amount which may be found due by the petitioners on account of non-contribution/late contribution to the Provident Fund along with the applicable interest thereon, before granting them the benefit to opt the Pension Scheme.

28. Petitions are allowed in the aforesaid terms.

26.02.2019
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes