

CWP-2905-2013 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-2905-2013 (O&M)

Date of Decision: February 26, 2019

Rita Singh and Anr

... Petitioners

vs.

National Institute of Technical Teachers' Training and Research

.. Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. K.L.Singla, Advocate
for the petitioners.

Mr. I.S.Sidhu, Advocate
for the respondent.

ARUN MONGA, J

The present writ petition has been filed, *inter alia*, for issuance of a writ in the nature of *certiorari* to quash the impugned order dated 20.03.2012 (Annexure P5), whereby, the petitioners have been denied the family pension admissible to them consequent on the death of Sheo Shankar Singh, the husband of petitioner No.1 and father of petitioner No.2, who died in harness.

2. Succinctly, the factual backdrop is that the husband of petitioner No.1 joined the service of respondent-National Institute of Technical Teacher's Training & Research (NITTTR) as Technician on 30.04.1992 and died in harness on 08.06.1999. Upon his death, the petitioners were paid employer's share of Contributory Provident Fund (CPF) amounting to Rs. 40,609/- besides gratuity and leave encashment etc. vide order dated 05.07.2001 (Annexure P3). It is undisputed position that the employee had indeed rendered the regular service for seven years and he died in harness.

3. In the written statement/affidavit filed in response to the petition, the stand taken is that the services of the deceased-employee were only

partially governed by the CCS (Pension) Rules and the same are not applicable *mutatis and mutandis*. No other legal defence has been taken.

4. Having gone through the pleadings and heard the rival contentions of learned counsels for the parties, I am not persuaded to accept the view taken by the respondent(s) and canvassed by their learned counsel in course of his arguments.

5. In fact, earlier also, an order dated 19.07.2017, was passed by the then learned Judge hearing the matter as under:-

“On 27.10.2016, following order was passed:-

“The petitioners’ grievance is relating to conversion of CPF to that of GPF. Learned counsel for the petitioners submitted that as per the Resolution passed vide Annexure P/A/3 to replication, the respondent-Institute have adopted the Government of India Rules and Regulations and orders etc. issued from time to time together with amendments. Therefore, the petitioners contended that CPF be converted into GPF on par with the employees of the Central Government.

On the other hand, learned counsel for the respondent relied on communication of Government of India dated 4.5.2006 wherein the Under Secretary by its communication has clarified that such conversion of CPF to GPF is permissible only for the Central Government employees and not for employees of Autonomous Institution/Boards. The respondent counsel is directed to verify and submit whether any fresh Resolution has been passed while withdrawing the Resolution dated 2.1.1998 (Annexure P/A/3) and 2004 Resolution before the next date of hearing.

List this matter on 9.11.2016.”

Learned counsel for the respondent submitted that there were no fresh resolutions passed by the respondent. Therefore, the respondent is hereby directed to consider petitioner's grievance relating to conversion of CPF to that of GPF within a period of six weeks from today and place the decision/order on record, on the next date of hearing.

List this matter on 18.9.2017.”

6. In the backdrop of the above order, an order dated 22.11.2017 (Annexure R8) was passed, whereby the claim of the petitioners was rejected

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on the ground that they cannot be given permission to switch over to the pension Rules, as the initial option for CPF given in 1992, as applicable to the deceased-employee, was not covered by the Government Rules at that point of time.

7. I am afraid that the said stand taken by the respondent(s) does not stand the judicial scrutiny and cannot be sustained. The opening lines of the said letter itself are sufficient pointer to show that the said stand is contradictory to the Rules applicable to the deceased-employee. It would be instructive to extract the opening lines of the said letter which are reproduced herein below:

“As per Department of Pension and Pension's Welfare's O.M.No. 4/1/87-PIC-1 dated 1st May, 1987, all Government employees are deemed to have come to pension scheme w.e.f. 01st January, 1986 unless they have specifically opted out. Therefore, the employees who joined Government service after 1st January, 1986 are supposed to be working automatically under pension scheme”.

8. Sheo Shankar Singh (deceased) had joined service on 30.04.1992. In view of this and the above position as reflected from the letter dated 22.11.2017, there is no ambiguity left as to the applicability of the pension scheme qua the deceased-employee as also the entitlement of the family of the deceased for family pension when he died in harness.

9. Learned counsel for the petitioners has also drawn my attention to office order dated 27.06.1991 passed by the respondent- NITTTR, whereby, another employee, who served as Sweeper and died in harness, having rendered about 1½ years of service and the benefit of family pension was granted by asking the legal representatives to refund the employees' share of CPF. The said order also states that the approval of the grant of family pension

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to the heirs of the deceased therein was accorded in the light of Government of India instructions conveyed vide their letter No. 4/1/87- PIC-I dated 01.05.1987 adopted by the respondent/institute as per approval of the Board of Governors vide their 51st meeting held on 18.03.1989. It is rather intriguing that on the one hand, stand has been taken that the Government instructions are not applicable and on the other hand, the benefits based on the same instructions were given in the case of another similarly situated employee with 1½ years service, but are being denied in this case where the employee had put in 07 years' service and the petitioners have been discriminated against.

10. In view of my discussion above and the reasoning contained therein, the present writ petition stands allowed and the impugned order dated 20.03.2012 (Annexure P5) is set aside. The respondent is directed to grant family pension to petitioners No.1 and 2, as per their admissibility, in accordance with law. It is further made clear that the petitioners shall be entitled to the consequential benefits w.e.f. the date of the death of the deceased-employee subject to their refunding the employee share of CPF alongwith interest as applicable under the CPF Rules. Likewise, the petitioners shall also be entitled to the same rate of interest on the consequential benefits/arrears which are found due to be paid w.e.f. the date of the death of deceased-employee until the actual date of payment.

11. Let needful be done within a period of 03 months from the date of receipt of certified copy of this order.

12. Disposed of in above said terms.

February 26, 2019
smriti

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No