

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

201

CWP No.25695 of 2016 (O&M)

Decided on : 16.11.2019

Smt. Kailash Sethi and others

... Petitioners

Versus

State of Punjab and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Sharwan Sehgal, Advocate for the petitioners.

Ms. Ambika Bedi, AAG, Punjab.

G.S. Sandhawalia, J. (Oral)

The petitioners in the present writ petition filed under Article 226 of the Constitution of India seek directions to the respondents to consider the option exercised by them for pension as a valid option, as the same had been exercised on the basis of the letter issued by the Punjab Government dated 14.11.2011 (Annexure P-2). Resultantly, the petitioners seek monthly pension as well as the arrears of pension from the date of their retirement alongwith interest.

2. It is not disputed that the petitioners were serving with respondent No.4 and retired on the following dates:-

Sr. No.	Names	Date of Retirement
Petitioner No.1	Kailash Sethi	30.11.2010
Petitioner No.2	Surinder Kaur	31.10.2008
Petitioner No.3	Ram Pal	31.07.2008
Petitioner No.4	Raj Kumar	30.04.2012

3. On 28.07.1994 (Annexure P-1), the Municipal Corporation Employees Pension and General Provident Fund Rules, 1994 were notified. The employees were to opt from the date of the publication of the said rules

subject to the condition that they have to refund the Corporation contribution towards the Contributory Provident Fund received by them. The respondents on 14.11.2011, vide Annexure P-2 had given a second option to employees who could not exercise the option with regard to the pension in time and the same was to be done by 31.12.2011. Since the petitioners had not opted for the pension at the first instance, it is their case that in pursuance of the same they had given their option for the pension on 21.11.2011, 12.12.2011 and 01.12.2011. Copy of the option exercised by petitioner No.1 has been appended as Annexure P-4.

4. In the reply filed by respondent No.4, it is admitted that the petitioners had submitted their options but none of them was intimated of acceptance of their options. The petitioner had not deposited the amount in the Contributory Provident Fund alongwith up to date interest already drawn by them. The relevant paragraph of the reply filed by respondent No.4 is as under:-

“6. That though the petitioners in pursuance of Govt. letter dated 14.11.2011 has submitted their option in favour of the Pension Rules, 1994 yet none of the petitioner was ever intimated of acceptance of their option. Further, though the petitioner submitted their written option in favour of the Pension Rules, 1994 yet the petitioners did not deposit the amount of employees share in the Contributory Provident Fund alongwith up to date interest already drawn by them immediately after their retirement from service alongwith interest.”

5. The stand of respondents No.1 to 3 regarding the second option as such is also in the same lines and has not been denied. The

only defence is that there was a huge financial liability in implementing the Instructions dated 14.11.2011. The defence as such is only that on an earlier occasion notification of Punjab Municipal Corporation Employees Pension and General Provident Fund Rules, 1994 had been published and, therefore, it was not necessary to give individual notice to the petitioners for exercising options.

6. In similar circumstances, this Court in **CWP No.15266 of 2014 'Raman Kapoor Vs. State of Punjab and others'** decided on 11.07.2016 (Annexure P-5) has held as under:-

“Admittedly, the petitioner retired as Executive Officer from Improvement Trust, Kapurthala, on 31.1.2009. It is also admitted that the pension rules were made applicable to the employees of the Local Government. It is not denied that a meeting was held on 31.10.2011 and a letter (Annexure-P-1) was circulated to the different departments including the Department of Local Self Government, whereby it was decided that those employees who could not opt for the pension scheme, can adopt the same till 31.12.2011. Undisputedly, before the said date, the petitioner exercised the said option, vide Annexure-P-2. The problem put forward by the State is that the Pension Rules, 1994, were not amended, which is mandatory for implementing Annexure-P-1. The financial constraints of the State in releasing the funds has also been revealed.

I am of the view that it is a job of the Government to amend the rules and implement the decision and if they sit back and do not work on it, they are to blame themselves. It is nothing, but a willful neglect on the part of the State in not amending the pension rules. Otherwise, there is no legal bar on the Government to amend the said Rules. As per the letter (Annexure-P-1), the petitioner had opted for pension rules.

The constraints of the funds is no ground to withhold the pension. It being so, the petitioner is held entitled to the pension as per the option exercised by him, on the payment of amount of contributory provident fund plus interest. Accordingly, the present writ petition is allowed. The State is directed to take necessary steps regarding the release of the pension on the payment of amount by the petitioner and release the same within three months from the date of receipt of copy of this order/payment of contribution, whichever is later. It is made clear that it is for the State to make the necessary amendments in the Pension Rules of 1994 and take other necessary steps regarding release of the funds. However, the petitioner shall be entitled to interest at the rate of 9% per annum for the delayed payment of pension.”

7. A perusal of Annexure P-7 would go on to show that **LPA No.2099 of 2016** against the judgment passed in **Raman Kapoor (supra)** was dismissed in view of the judgment rendered in **LPA No.1192 of 2010 'Municipal Corporation, Ludhiana Vs. Davinder Singh and others'** and others connected cases decided on 21.05.2014. It is not disputed that the said judgment has also been upheld by the Apex Court. The decision of the Division Bench in **LPA No.2099 of 2016-Raman Kapoor' case** (supra) dated 20.07.2018 reads as under:-

“This intra-court appeal under clause X of the Letters Patent is directed against the judgment and order dated 11.07.2016 passed by the learned Single Judge.

Learned counsel appearing for the petitioner-respondent points out that the issue raised in this appeal is identical and covered by judgment dated 21.05.2014 rendered in LPA No.1192 of 2010 and other connected appeals. However, since the said judgment was put to challenge by means of Special Leave Petition before Hon’ble the Apex Court, this

appeal was adjourned *sine die*. We are informed that Hon’ble the Apex Court vide judgment and order dated 25.10.2017 has dismissed the said special leave petition.

Learned counsel appearing for the State of Punjab points out that a review against the said judgment of Hon’ble the Apex Court has been filed. However, in our considered opinion filing of a review is of no consequence. The issue stands covered by the decision of Hon’ble the Apex Court dismissing the special leave petition.

Accordingly, this appeal stands disposed of in terms of the judgment and order dated 21.05.2014 rendered in LPA No.1192 of 2010.”

8. In such circumstances, it is apparent that the matter is squarely covered against the respondents. Accordingly, the present writ petition is disposed of with the directions to the respondents that the petitioners would pay back the Contributory Provident Fund alongwith interest.

9. Necessary steps be taken to release their pension on the receipt of amounts made by the petitioners within a period of 3 months from the receipt of payment made by the petitioners. The amount of interest payable to the petitioners would be the same, which the respondents would charge from the petitioners.

10. The writ petition stands allowed, accordingly.

NOVEMBER 16, 2019
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No