IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-4547-2015
Date of decision: - 02.04.2019

Tarsem Lal

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Ms. Shallie Mahajan, Advocate
for Mr. Sharwan Sehgal, Advocate
for the petitioner.

Mr. Mehardeep Singh, Additional Advocate General, Punjab.

Mr. Sanjeev Soni, Advocate
for respondent No.3.

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HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the grievance of the petitioner is that after he retired from service on 30.06.2013, he has not been paid his pensionary benefits.

As per the facts mentioned in the present writ petition, petitioner joined the Municipal Corporation, Ludhiana on 15.11.1974 as a Sweeper. The services of the petitioner were terminated on 03.06.1986, which order was challenged by the petitioner before the Industrial Tribunal. By an award dated 21.12.1995, order of the termination of services of the petitioner was set aside and he was reinstated in service with 50% back wages. The said award was challenged by the respondents before this Court, which writ petition was dismissed. After the respondents failed to get any relief from this Court, in pursuance to the Award of the Labour Court, petitioner was reinstated in service and he continued working till he attained the age of superannuation on 30.06.2013. After the retirement, petitioner was not given the pensionary benefits. On enquiry, the petitioner was informed that service book of the petitioner was lost but the pension is not to be given to him as he has not opted for the Rules called the Punjab Municipal Corporation Employees Pension and General Provident Fund Rules, 1994 notified vide notification dated 29.07.1994 (hereinafter referred as 'Rules of 1994'). Petitioner has filed present writ petition claiming pensionary benefits.

Upon notice of motion, a reply has been filed by the respondents.

In the reply, the respondents have submitted that the pension is only to be given to the employees, who opted for Rules of 1994 and in the case of the petitioner, he was asked orally as to whether, he wants to opt for the pension scheme or not, which offer was declined by the petitioner. Relevant paragraph of the said reply is as under: -

> "8-9 That the contents of Para No.8 & 9 of the Civil Writ Petition are wrong & incorrect. However, it is submitted that the petitioner was paid his provident fund under the CPF Scheme and the employees who have opted not for pension are only entitled for payment of provident fund under the CPF Scheme and all other employees who were opted for pension were paid the provident fund under the GPF Scheme. Since, under the CPF Scheme, the amount of the provident fund becomes double, therefore, number of

> employees have not opted for pension and similarly the present petitioner was specifically asked orally that whether he wants to opt for pension or not and on his request that he wants the provident fund under CPF Scheme accordingly his case was prepared and sanction was accorded from the higher authorities to make the payment under CPF Scheme. Therefore, the petitioner is not entitled for pension, if, in case, this Hon'ble Court come to the conclusion that the petitioner is entitled for pension then the petitioner has to return the excess amount alongwith interest paid to him under CPF Scheme."

Counsel for the petitioner states that the petitioner, who is a Class-IV employee and was working as a Sweeper, did not know as to whether the petitioner is entitled for pensionary benefits or benefits under the CPF Scheme. Counsel for the petitioner further states that the assertion of the respondents that the petitioner declined the oral request of the respondents for opting the Rules of 1994 is incorrect.

I have heard the counsel for the parties and have gone through the record with their able assistance.

The dispute is as to whether the petitioner opted for the pension scheme or not?

Respondents-State of Punjab, Department of Local Body, vide notification dated 29.07.1994, had framed the Rules of 1994. These rules came into effect from 01.04.1990 and the employees who were already working before 01.04.1990 were to be opted for these rules. At the time when the Rules of 1994 were framed, the petitioner was not in service as his services had already been terminated in the year 1986 and he was only reinstated in service in the year 1998. No record has been produced by the respondents to show that the petitioner was asked to choose an option as to whether, he wants the pension under Rules of 1994 or not. Rather, the respondents have clearly admitted in the information given to the petitioner under RTI that the service book of the petitioner has already been lost. Once, the service record of the petitioner has been lost, it cannot be conclusively proved by the respondents that the petitioner never opted for the Pension Scheme or he was given an offer for opting of the pension scheme, which request was declined by the petitioner.

In the reply, the respondents themselves have stated that the offer given to the petitioner was oral, which statement cannot be believed as seeking of option has to be in writing and no oral option can be given to an employee and that too an Class IV employees, who generally are not aware of the rules and what is in their best interest.

Once, it is clear that Rules of 1994 were never put to the petitioner after he was reinstated in service the year 1998, therefore, it cannot be said that the petitioner declined to opt for the Rules of 1994. Further, due to the missing record, the benefit has to go to the employee especially a Class IV, who was working as a Sweeper.

Keeping in view the above facts, the present writ petition is allowed. The respondents are directed to consider the case of the petitioner for the grant of pension under Rules of 1994 by treating that the petitioner had opted for the same. Whatever the benefits, the petitioner had got under CPF Scheme, shall be deposited by the petitioner alongwith 9% interest. The respondents shall calculate the amount, to be deposited by the petitioner, within a period of two months from the date of receipt of certified copy of this order and the same shall be conveyed to the petitioner with due receipt.

Counsel for the petitioner states that after the petitioner is informed about the deposit of the amount alongwith interest, the same will be deposited by the petitioner within a period of one month. After the petitioner deposits the dues, as claimed by the respondents-Corporation, the respondents shall release the pension and other benefits for which petitioner will be entitled under Rules of 1994 from the date petitioner retired alongwith arrears and the same shall be released to the petitioner within a period of two months of the deposit of the amount by the petitioner. The amount, so released to the petitioner, shall also carry interest @ 9% per annum.

Present writ petition is allowed in the above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

April 02, 2019
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Whether reasoned/speaking? Yes
Whether reportable? Yes