

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 5001 of 2016

Date of decision : 16-01-2019

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Subhash Bhatia

.....Petitioner

Versus

Haryana Power Generation
Corporation Limited and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Jagbir Malik, Advocate for the petitioner.

None for the respondents.

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RITU BAHRI, J.

The petitioner is seeking directions to the respondent-Haryana Power Generation Corporation Limited to accept the genuine claim of the petitioner to switch over from EPF Scheme to GPF Pension Scheme.

The petitioner was appointed to the post of Work Charge T. Mate in the year 1968 with the Haryana Power Generation Corporation Limited. In the year 1971, he was regularized as T.Mate. During his service tenure, he was given some promotions and lastly he was promoted as Operator-1. On 31.5.2006, the petitioner retired from service after attaining the age of superannuation. The petitioner has placed on record a

decision (Annexure P-1) whereby Punjab Civil Services Rules applicable to the State of Haryana were adopted by the Haryana Power Generation Corporation without any change in terms of Haryana State Electricity Reforms Act, 1998. It was clarified by the EPF Department vide letter dated 31.1.1996 (Annexure P-2) that the EPF Scheme has been made applicable only to the work-charge employees of the respondent-Corporation. Thereafter on 10.7.1995 (Annexure P-3), the Provident Fund Commissioner, Faridabad wrote a letter to respondent no.3-The Chief Accounts Officer/Pension, Haryana Power Generation Corporation Limited, Urja Bhawan, Sector – 6, Panchkula and clarified that the Excluded Technical employees of the Board may be allowed to join General Provident Fund Scheme. The claim of the petitioner is that under Section 26 of EPF Scheme, 1952, he fell into the category of excluded employee and he had right to switch over to the GPF Scheme as per letter dated 10.7.1995 (Annexure P-3). But the respondents never provided any chance to submit an option to switch over from EPF to GPF.

The stand taken by the respondents in the written statement is that the erstwhile HSEB in order to settle the issue of switching over of the employees from EPF to GPF Scheme once and for all vide office order dated 20.1.1988 fixed the cut off date for the purpose of exemption as 07.01.1986, meaning thereby that the employees who have been granted exemption from the provisions of EPF and Misc. Provident Fund Act, 1952 prior to 07.01.1986, be allowed pensionary benefits from Employees Provident Fund to General Provident Fund and Pensionary Benefit Scheme.

The said letter was pasted on the notice board and the other colleagues of the petitioner have opted to join the GPF Scheme from EPF Scheme. Since the petitioner had not obtained exemption from the provisions of EPF and Misc. Provident Fund Act, 1952 as on 07.01.1986, he is not entitled to the relief as prayed for by him in the present writ petition and hence the same deserves to be dismissed. It was further submitted in the written statement that the petitioner being a regular employee of the respondents, continued to remain member of EPF even on his timely promotion but has not made any objection regarding deduction of EPF instead of GPF during his tenure of service despite GPF Scheme being in existence cannot be allowed to switch over now to the same as the option exercised by him being final in view of Rule 1.1 (a) & (b) envisaged in Punjab Civil Services Rules as applicable to Haryana in Chapter 1, Volume 2, Part I.

Counsel for the petitioner has referred to the judgment of this Court in ***CWP No. 225 of 2009*** decided on **07.07.2010** titled, '***Randhir Singh vs. State of Haryana and others***' (Annexure P-4), wherein the petitioner initially joined the PWD Electricity Branch Department Government of Punjab on 17.11.1965 as Assistant Lineman and was transferred to the Haryana State Electricity Board. He retired w.e.f 31.5.2002 after serving for more than 37 years. The petitioner was not given any option to switch over to the pension scheme from the EPF/GPF Scheme. The petitioner claimed grant of pension instead of EPF benefits w.e.f the date of his retirement i.e 31.5.2002. The writ petition was allowed in view of the judgment passed in **CWP No.15434 of 1997** titled, '***Ravi***

Dutt Mehta vs. State of Haryana and others' decided on 18.8.2004 and a direction was given to the respondent to grant pensionary benefits/pension to the petitioner w.e.f 31.5.2002 along with other retiral dues subject to the condition that the petitioner will deposit the entire amount of EPF along with interest as demanded by the respondents.

Learned counsel for the petitioner has further referred to a judgment passed by a LPA Bench of this Court in **LPA No. 1449 of 2013** titled, '*N.P Sharma vs. Haryana Power Generation Corporation Ltd. and others'* decided on 14.5.2015, whereby the LPA Bench was considering a case where the learned Single Judge had dismissed the writ petition in limine in which a direction was sought to the respondent-Corporation to allow the petitioner/appellant to switch over from EPF Scheme to Pension Scheme. In this case the appellant joined the Haryana Power Generation Corporation Ltd as a Boiler Operator on 1.4.1979. That post was subsequently redesignated as Junior Engineer Thermal/Junior Engineer Generation in the erstwhile Haryana State Electricity Board now known as the respondent-Corporation. The appellant while in service had opted for EPF Scheme and subsequently he wanted to switch over to Pension Scheme but his request was turned down. The appellant retired from service on 30.4.2006 on attaining the age of superannuation. Thereafter, he again applied for switching over from EPF to GPF Scheme but his request having been rejected vide communication dated 14.8.2012, he approached this Court. The writ petition was dismissed on the ground of delay and laches as the appellant had retired from service on 30.4.2006. LPA Bench set aside

the judgment of the learned Single Bench by holding that the benefit of Pension Scheme cannot be denied to the appellant merely because there has been delay on his part in approaching the Court. Reference was made to the judgment in the case of *Karta Ram vs. State of Haryana and others (CWP No.11430 of 1999)* and in the case of *Ravi Dutt Mehta vs. State of Haryana and others (CWP No. 15434 of 1997)* decided on 18.8.2004 in cases of similarly placed employees.

After hearing counsel for the parties and going through the records of the case, in my opinion, the present writ petition deserves to be allowed. Petitioner's case is squarely covered by the aforementioned judgments. The writ petition is being allowed with a direction to the respondent-Corporation that if the petitioner deposits the entire amount of EPF received by him along with interest as per the rules/Instructions applicable in the respondent-Corporation from time to time, the respondent-Corporation shall permit the petitioner to switch over to the pension Scheme. The arrears of pension shall be paid to the petitioner within a period of three months from the date of deposit of the amount of the EPF of the petitioner. The respondent-Corporation shall inform the petitioner within two weeks from the date of receipt of a certified copy of this order, the amount of EPF along with interest which is required to be deposited by the petitioner.

Allowed.

16-01-2019

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(RITU BAHRI)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No