IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Regular Second Appeal No.1071 of 2014 (O&M)
Date of Decision: March 11th, 2019

Pepsu Road Transport Corporation, Patiala

...Appellant

Versus

Joga Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Anupam Singla, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Civil suit was filed by respondent No.1-plaintiff on 12.12.2014 for declaration to the effect that the action of the defendants by not granting pensionary benefits to the appellant is illegal, *ultra vires*, unconstitutional, *mala fide*, null and void, against the principles of natural justice and against service rules and regulations governing the services of respondent No.1-plaintiff and he was entitled to the pensionary benefits along with interest at the rate of 12% per annum to be compounded annually from the date of his his retirement till payment. The said suit was decreed in his favour by the trial Court on 08.09.2011, appeal preferred by the appellant-defendants was dismissed by the learned District Judge, Patiala, on 17.08.2013 leading to the filing of the present appeal.

2. Briefly the facts are that respondent No.1-plaintiff joined as Driver on 07.09.1956 in Pepsu Roadways and retired on 29.12.1988 from the Kapurthala Depot. Services of respondent No.1-plaintiff were transferred to the Pepsu Road Transport Corporation on 01.11.1956 as Driver with the coming into existence of the said Corporation. He continued as such till the date of his retirement. What is asserted is that respondent No.1 was initially appointed as a Government employee being in Pepsu

Roadways and with the coming into existence of the Pepsu Road Transport Corporation, his services could not have been transferred to the Pepsu Road Transport Corporation without his consent or without taking his option. The said plea was accepted and respondent No.1-plaintiff was given all retiral benefits and the Government employee along with pension.

3. It is the contention of learned counsel for the appellant that the issue involved in the present case is no more *res integra* as the issue stands settled by the Supreme Court in *Civil Appeal No.4703 of 2009* titled as *Pepsu Road Transport Corporation, Patiala, through its Managing Director and another Versus S.K. Sharma and others* decided on 08.08.2016, which judgment has been followed by this Court in *RSA No.1206 of 2011* titled as *P.R.T.C. Versus Avtar Singh and others* decided on 09.05.2017. He, thus, contends that the impugned judgments and decree passed by the Courts below cannot sustain and deserve to be set aside.

4. Notice of motion was issued by this Court and in the meanwhile, execution proceedings were stayed. Despite service having been effected upon the respondents, none has chosen to appear before this Court. Case has been fixed on various dates for the purpose of enabling the respondents to appear and put forth their submissions, however, they have chosen not to appear. The contesting respondent would be respondent No.1, who also has chosen not to appear.

5. I have gone through the impugned judgments passed by the Courts below with the assistance of the counsel for the appellant and have also gone through the judgment passed by the Hon'ble Supreme Court in *Pepsu Road Transport Corporation, Patiala, through its*

Managing Director and another Versus S.K. Sharma and others.

6. Perusal of the said judgment would show that the issue involved in the present case, which has similar facts, stands settled by the Supreme Court. Paras 16 to 18 would be relevant and, therefore, the reproduction of these paragraphs would be essential for highlighting the aspect with regard to the present case being covered by the said judgment. The said paragraphs read as follows:-

> *"16. The main controversy in this case is whether the claim of the respondents, a group of twenty one employees of PEPSU Roadways that in spite of transfer of that department to the Corporation they continue to be actually Government servants and therefore entitled to retiral benefits instead of CPF is acceptable or not. In this controversy, a judgment of this Court though rendered in slightly different factual matrix is substantially relevant and helpful. In* ***D.R. Gurushantappa v. Abdul Khuddus Anwar and Ors.*** *an issue arose in the context of election of the Mysore Legislative Assembly as to whether the respondent was holding office of profit under the Government. The respondent no. 1 of that case was initially a Government servant but subsequently the Government concern where he was working was taken over by a company registered under the Indian Companies Act, 1956. The shares of the company were fully owned by the Government but after the Government undertaking was taken over by the company, the employees were no longer governed by the Mysore Civil Services Regulations, their conditions of service came to be determined by the standing orders of the company. The first contention against respondent no. 1 was that since he was initially a Government servant, even after the concern was taken over by the company he would continue to be in the service of the Government. While dealing with this issue in paragraph 3, this Court rejected the contention in the following words:*
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> > *"3. So far as the first point is concerned, reliance is*

placed primarily on the circumstance that, when the concern was taken over by the Company from the Government there were no specific agreements terminating the Government service of Respondent 1, or bringing into existence a relationship of master and servant between the Company and Respondent 1. That circumstance, by itself, cannot lead to the conclusion that Respondent 1 continued to be in government service. When the undertaking was taken over by the Company as a going concern, the employees working in the undertaking were also taken over and since, in law, the Company has to be treated as an entity distinct and separate from the Government, the employees, as a result of the transfer of the undertaking, became employees of the Company and ceased to be employees of the Government."

17. In the facts of the case, we have no hesitation to hold that the High Court erred in allowing the writ petition and second appeal of the respondents and in dismissing the Letters Patent Appeal of the appellants. The judgments on which the respondents have relied upon for advancing the submission that they cannot lose the status of a Government servant till they are absorbed in the Corporation after offering an option in favour of such absorption is entirely misconceived and inapplicable in the facts of the present case. The stand of the respondents could have been acceptable had there been no decision of the PEPSU State as evidenced by the letter of Chief Secretary dated 16.10.1956 which finds mention and reiteration by way of admission by the Corporation in order dated 30.11.1956. There can be no such belated challenge to the decision of PEPSU State whereby PEPSU Roadways, one of the departments came into and merged with the Corporation lock, stock and barrel before the merger of PEPSU with Punjab on 01.11.1956. Hence, the provisions of the States Reorganization Act ceased to have any significance in the matter because the respondents ceased to be employees of State Government of PEPSU prior to 01.11.1956. They accepted such merger and alteration of their service conditions without any protest. Since 1957, under the Regulations of the Corporation they participated and contributed to the scheme of CPF and obtained the benefits of retirement from the Corporation between 1985 and 1991 without any protest. The High Court clearly erred in ignoring *such conduct of the respondents, the effect of the Chief Secretary's letter dated 16.10.1956 containing decision of PEPSU State and its acceptance by the Corporation reflected by the order dated 30.11.1956. The High Court further erred in relying upon law which is applicable when there is no merger of Government concern with the private concern but only individual employees are transferred on deputation or on foreign service to other organizations/services. The ordinary rules providing for asking of option or issuance of letters of absorption depend upon nature of stipulations which may get attracted to a case of deputation. There may be similar stipulations in case of merger by transfer. But if there are no such stipulations like in the present case then the transferee concern like the Corporation has no obligation to ask for options and to issue letters of options to individual employees who become employees of the transferee organization simply by virtue of order and action of transfer of the whole concern leading to merger. No doubt in case of any hardship, the affected employees have the option to protest and challenge either the merger itself or any adverse stipulation. However, if the employees choose to accept the transition of their service from one concern to another and acquiesce then after decades and especially after their retirement they cannot be permitted to turn back and challenge the entire developments after a gap of decades.*

18. On the basis of laws and facts discussed above, we are constrained to hold that the respondents had accepted to continue as employees of Corporation pursuant to order of merger/transfer of PEPSU Roadways with effect from 16.10.1956 and on completing their service under the Corporation and reaching the age of retirement they were entitled to receive only the benefits of CPF and gratuity as admissible to them under then prevailing regulations of the Corporation. Since they accepted those retiral benefits there is no relationship left between the Corporation and the respondents and in such a situation further claim against the Corporation that it should treat the respondents to be Government servants and adjust their retiral benefits

> *accordingly was totally untenable and wrongly allowed by the High Court. The impugned judgment of the High Court granting relief to the respondents is therefore set aside. The second appeal and the writ petition of the respondents shall stand dismissed. This appeal is accordingly allowed but the parties are left to bear their own costs.*

7. In view of the above, the present appeal is allowed.

8. Impugned judgment dated 08.09.2011 passed by the Civil Judge (Junior Division), Patiala and judgment and decree dated 17.08.2013 passed by the District Judge, Patiala, are set aside and the suit of respondent No.1-plaintiff is hereby dismissed.

9. In the light of the decision of the appeal, the application for stay i.e. CM No.2468-C of 2014, stands disposed of as infructuous.

March 11th, 2019 **AUGUSTINE GEORGE MASIH)**
Puneet **JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No