

**C.M. NO.3834 C OF 2018 &  
R. S. A. NO.1477 OF 2018**

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

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**C.M. NO.3834 C OF 2018 &  
R. S. A. NO.1477 OF 2018**

**DATE OF DECISION: FEBRUARY 06, 2019**

Punjab State Ware Housing Corporation, Chandigarh and others

.....Appellants

**VERSUS**

Tej Ram

....Respondent

**CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH**

Present: Mr. S. S. Bedi, Advocate,  
for the appellants.

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**AUGUSTINE GEORGE MASIH, J. (ORAL)**

Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division), Moga, dated 16.09.2015, whereby the suit of the respondent-plaintiff was partly decreed to the effect that a sum of ₹4,03,279-55P alongwith interest @ 12% per annum from the date of retirement i.e. 31.12.2009 till the decision of the suit and future interest @6% per annum on this principal amount of ₹4,03,279-55P from the realization of the decretal amount with costs and with a relief of mandatory injunction in favour of the respondent-plaintiff alongwith a direction to the appellant-defendants to reconsider the matter regarding the option of C.P.F or pension scheme of the respondent-plaintiff within six months, appeal against which preferred by the appellant-defendants stands dismissed by the lower Appellate Court vide judgment dated 14.12.2017

with a modification that the future interest would be @ 9% per annum from the date of superannuation i.e. 31.12.2009 till the decision of the suit.

It is the contention of learned counsel for the appellants that the respondent is not entitled for reconsideration of his claim for grant of pensionary benefits as he has not opted for the said scheme at the time of its coming into force on 01.01.1996. He contends that the said scheme was duly notified and, therefore, the respondent was aware of the said fact of the pension scheme having coming into force and, thus, he having not opted for the said pension scheme would not be entitled for the said change of option under the Pension Scheme, 1996, especially when he has taken the benefit under the C.P.F Scheme on his retirement. He contends that the judgments as passed by the Courts below cannot sustain. His further contention is that the amount of ₹4,03,279-55P has been withheld because of the fact that he has been issued a show cause notice and because of the stay order granted by this Court, the matter could not be proceeded with as in the case of other employees, the issue is under consideration. He, thus, contends that the judgments and decree as passed by the Courts below cannot sustain and deserve to be set-aside and the suit of the respondent-plaintiff be dismissed.

I have considered the submissions made by learned counsel for the appellant and with his assistance have gone through the impugned judgments.

The facts are not in dispute. Respondent-plaintiff joined the service of the appellant-defendants on 05.04.1978 as a Technical Assistant. He was removed from service vide order dated 15.05.1989 and 08.05.1990 and, thus, this order was challenged before the Civil Court, Mansa. The suit of the respondent-plaintiff stood decreed on 04.02.1998 and in pursuance

thereof, he resumed his duties on 03.11.1998. It is during this interregnum that the pension scheme 1996 was floated. As per the said Scheme, employees were required to opt for the said scheme within a particular period of time. The respondent did not opt for the said scheme within the time stipulated and it is on this plea that the appellants are denying the claim of the respondent-plaintiff.

It is an admitted position that the pension scheme, which was introduced with effect from 01.01.1996, came into force when the respondent was out of service and it is during this period that the time given in the Scheme to give option expired. It is also admitted fact that he resumed his duties after his termination as per the decree passed by the Civil Court on 03/05.11.1998. Therefore, it was never open for the respondent-plaintiff to opt for the scheme within the time as stipulated under the scheme. It is also not disputed that the pension scheme was never put to the respondent, asking him for his option for the same. The claim of the respondent is that even after his reinstatement, he was not given an option to be a part of the pension scheme nor was he made aware of such scheme being in force where he could put forth his claim for opting for the pension scheme.

In the light of the above facts, it can safely be said that the respondent-plaintiff was not aware of the fact that he had to opt for the pension scheme. Learned lower Appellate Court has relied upon a judgment passed by this Court in the case of Punjab State Warehousing Corporation Vs. Rajinder Singh, CM-4902-LPA-2016 in/and LPA-1730-2015 (O&M), wherein this Court, in a similar situation, has held that as pension scheme was never circulated to the appellant therein nor its contents were got noted

from him, non-exercise of option by the employee after his reinstatement in service is fully justified. In the light of the said order as also keeping in view the judgment passed by this Court in Dharam Pal Deshwal Vs. Chaudhary Charan Singh Haryana Agricultural University, Hisar and another, 2010 (2) Recent Services Judgments 560, where again the same principle has been laid down. The conclusions, therefore, drawn by the Courts below while allowing the suit of the respondent-plaintiff and decreeing the same to the extent as has been mentioned therein, cannot be faulted with.

In view of the above, finding no merit in the present appeal, the same stands dismissed.

Since the main appeal stands dismissed, no orders are required to be passed in C.M. No.3834 C of 2018.

February 06, 2019  
khurmi

( AUGUSTINE GEORGE MASIH )  
JUDGE

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