260 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RA-CW-397-2017 in
CWP-4218-2012
Date of decision : 07.05.2019

Ajmer Singh .... Review petitioner

versus

Pepsu Road Transport Corporation and others

...... Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

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Present: Mr. Vikas Chatrath, Advocate with
Mr.Anureet Budwar, Advocate,
Mr.Khushkaran Kumar, Advocate
for the review petitioners.

Mr.Anupam Singla, Advocate
for the respondents.

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<u>HARSIMRAN SINGH SETHI, J. (ORAL)</u>

Present review petition has been filed by the petitioner for reviewing the order dated 21.11.2016 on the ground that the same is contrary to the factual and legal position. Before adverting to the grounds for the review, certain facts are required to be noticed.

The grievance which the petitioner had raised in the writ petition, filed in the year 2012 was that though the petitioner retired on 31.01.2008 but he was not granted the pension under the PEPSU Road Transport Corporation Employees Pension/Gratuity and General Provident Fund Regulations, 1992 (hereinafter referred to as the '1992 Regulations') and his claim for the said benefit i.e. the pension under 1992 Regulations was wrongly declined by the respondents vide order dated 19.11.2010. In the writ petition, the claim which was raised by the petitioner was that the petitioner duly opted for pension under 1992 Regulations still, the petitioner has not been granted the pension after his retirement on 31.01.2008. Petitioner sought information under the Right to Information Act as to why he has not been granted the pensionary benefit but same was not supplied and thereafter petitioner served upon the respondents a legal notice claiming the benefits under 1992 regulations. As no relief was granted to the petitioner, he filed a writ petition bearing CWP No.11402 of 2010 claiming the retiral benefits. The said writ petition was disposed of by this Court on 01.07.2010 directing the Corporation to consider the legal notice which the petitioner had given in respect of his claim for the grant of pension and decide the same by passing a speaking order. In pursuance to the direction given by this Court, a speaking order was passed by the respondent-Corporation on 19.11.2010. In the said order the claim of the petitioner for the grant of pension was declined on the ground that the petitioner did not opt for the pension scheme as formulated in the year 1992 and further, the petitioner had not refunded the loan amount of Rs.23,000/- and as the said amount was pending in the name of the petitioner and as per the provisions of 1992 Regulations, any employee who is yet to refund the amount of the Corporation, will not be eligible to be considered under the 1992 Regulations. The said order declining the claim of the petitioner was challenged by the petitioner by way of CWP No. 4218 of 2012.

In the writ petition, the grievance of the petitioner was that though petitioner had opted for 1992 Regulations for the grant of pension but still he has not been granted the benefit of the pension for which he was entitled for upon his retirement on 31.01.2008. The prayer of the petitioner in the writ petition is as under:-

> *" It is further prayed that a writ in the nature of Mandamus be issued directing the respondents to release pension to the petitioner and grant him all the pensionary benefits in terms of the Regulations, 1992 framed by the respondent-Corporation along with 18% interest on delayed payment of the same."*

A bare perusal of the above prayer would show that the claim of the petitioner for the grant of pension was only under 1992 Regulations.

In reply to the writ petition, the claim of the petitioner was denied and it was stated that the petitioner was not entitled for the grant of pension under 1992 Regulations on two grounds:-firstly, the petitioner did not opt for the same and secondly, there were dues which was outstanding to the tune of Rs. 23,000/- in the name of the petitioner, which he failed to deposit, which was required to be deposited mandatorily under the provisions of 1992 Regulations and, therefore, as the petitioner failed to adhere to the provisions of 1992 Regulations, the benefit of pension cannot be granted to the petitioner.

Further in the reply, the objection taken by the respondent-corporation was that as the petitioner has now taken the benefit for which he was entitled under the CPF Scheme, the filing of the petition by the petitioner after a period of two years of his retirement, is an after thought. The relevant portion of the reply of the respondents is as under:-

> *"That as mentioned above, the petitioner is claiming benefits under the Regulations of 1992, therefore, before coming to the*

exact controversy in the writ petition, some of the relevant clauses of the regulations are required to be reproduced hereunder for the kind perusal of this Hon'ble Court:-

"CLAUSE 3

3. Application: *(1) These regulations shall apply to the employees of the PEPSU Road Transport Corporation who:*

(i) were/are appointed on or after the date of issue of Regulations on whole-time and regular basis; and
(ii) were working immediately before the date of issue of Regulations and opt for these regulations.
(2) These regulations shall not apply to the employee,who:
xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx"

(h) opt for the P.R.T.C. Employees Pension/Gratuity and General Provident Fund Regulations,1992, but failed to refund the amount of advance taken out of the Employer's share of the Contributory Provident Fund along with interest thereon within the stipulated period."

CLAUSE 4

4. Exercise of option: *The option under clause (ii) of the sub rule (1) of Regulation 3 shall be exercised in duplicate in writing in Form 1 so as to reach the Managing Director as forwarded by General Manager in case of depots and Administrative Officer in the case of headquarter with his counter signatures within a period of six months from the date of issue of these Regulations.*
Provided that:

xxx xxx xxx xxx xxx xxx xxx xxx xxx xxx"

(iii) an option once exercised shall be final provided the concerned employee deposit the Corporation's share of C.P. fund received by him/taken in advance, if any,within a period of six months from the date of issue of Regulations and if a person

> *fails to exercise his option under the said regulations within the specified period referred to above, it shall be deemed that he has to continue for the existing Contributory Provident Fund benefit."*

After the reply, the petitioner filed replication to the written statement by CM No. 7324 of 2015. In the replication, for the first time the petitioner relied upon a letter written by the Managing Director of the Corporation dated 20.07.2005 to claim that in view of the resolution dated 30.06.2005, the 1992 Regulations stood superseded and, therefore, there was no requirement of either for opting the pension rules or for depositing the outstanding loan amount for the reason that in view of the letter dated 20.07.2005 for the release of pensionary benefits, the Punjab Civil Services Rules will be applicable upon the employees, vide which there is no requirement of option to be given by the employer. The order passed by the Managing Director on 20.07.2005 was annexed as Annexure P-15 with the replication.

Writ petition was heard and decided by a Co-ordinate Bench on 21.11.2016. After noticing all the arguments raised on behalf of the petitioner, the writ petition was dismissed qua the grant of pension but a direction was given to the Corporation to reconsider the case of the petitioner for grant of the Assured Career Progression Scheme benefit by taking into consideration the total length of service.

The present review has been filed that the order dated 21.11.2016 is factually and legally incorrect and, therefore, is liable to be reviewed.

The ground taken for the review by the review petitioner is that the findings rendered by this Court that in view of the order dated 20.07.2005 though the Punjab Civil Services Rules were adopted by the Corporation still as the pension rules have not been adopted by the Pepsu Road Transport Corporation, therefore, the pension case of the petitioner is to be considered under 1992 Regulations and not under Punjab Civil Services Rules. The relevant finding given by the Coordinate bench while deciding the writ petition is as under:-

> *"The learned counsel for the petitioner has argued that the option form is with the respondents and they have not produced the same despite the information sought under the RTI Act. According to him, the option was given within stipulated time in the year 1992. However, the information under the RTI Act was sought in the year 2011. When the petitioner claims that he had given the option to the respondents, it was for the petitioner to prove that the option was given to the respondents within stipulated time. After the lapse of 19 years, he cannot say that since the copy of the option is not supplied to him under the RTI after 19 years, therefore, it should be presumed that he had given option under the Regulations of 1992. The learned counsel for the petitioner has also relied upon the order dated 20.7.2005 (Annexure-P-15), vide which the PRTC had adopted the Punjab Civil Services Rules, Punjab Government Employees (Conduct) Rules, 1966 with retrospective effect as well as prospectively. However, the pension rules have not been adopted by the PRTC. Therefore, the pension case of the petitioner is deemed to be considered under Regulations of 1992. Since the petitioner has failed to prove that he had exercised*

> *the option under the Regulation of 1992 and that he has also failed to refund the employer's share of contribution to CPF, therefore, he is not entitled to the benefit of pension under the Regulations of 1992. It is to be further noticed that from the year 1992 onwards till the retirement of the petitioner in the year 2008, his share of contribution towards CPF is being deducted, but in these 16 years, he never raised any objection that his CPF contribution is still being wrongly deducted. Naturally, the CPF statements were being sent to him. He was sleeping over the matter for 17 years and woke up only after his retirement to claim that he had given the option for shifting from CPF to pension."*

Counsel for the review petitioner contends that the finding recorded by the Co-ordinate bench while rejecting the claim of the petitioner for the grant of the pension under the Punjab Civil Services Rules is liable to be reviewed on the ground that once the Punjab Civil Services Rules have been adopted by the Corporation, the pension rules are the part and parcel of Punjab Civil Services Rules hence not to be adopted specifically.

Before the review petition could be heard, vide order dated 28.03.2019, counsel for the Corporation was directed to produce before the Court the agenda for 189th meeting which was held on 30.06.2005, in pursuance to which the order dated 20.07.2005 was passed by the Managing Director. Counsel for the respondents had produced before this Court the agenda item, in pursuance to which the Punjab Civil Services Rules were adopted by the PRTC. A copy of the same has also been furnished to counsel for the review petitioner. The agenda is as under:-

" Agenda Item No. 189.4

Subject:- ***Applicability of Punjab Civil Services Rules, Regulations, Notifications, Model Standing Orders etc. for officers of PRTC.***

The matter regarding applicability of Punjab Civil Service Rules including punishment and appeal rules, Notifications, orders, Model Standing Orders, amendments from time to time issued by the State of Punjab regarding service conditions applicable to Punjab Govt. employees to the extent it is practicable in PRTC for its officers till the finalization of PRTC Officers (Conditions of Appointment & Service) Regulations, was placed before the Board of Directors vide Agenda Item No. 141.9 and the following decision was taken:-

The proposal may be re-examined after taking the following points into consideration:-

a) Categories of posts on which labour laws are not applicable.

b) The service rules of certain other Corporation which are more progressive should be studied and wherever possible adopted by the PRTC.

The matter has been examined regarding (a) above, it submitted that the labour Laws are applicable on all the categories of employees of the Corporation covered under PRTC (condition of Appointment & Service regulation, 1981, the other officers of the Corporation for whom this proposal is meant are not covered under the Labour Laws like Factory Act, Motor Transport worker Act, Workmen Compensation Act, Industrial Disputes Act, Minimum wages Act etc. But certain Labour Laws like provident Fund Act, Gratuity Act, ESI Act etc., are applicable to the officers of the

Corporation Subject to the conditions contained in such Acts. Regarding (b) it is submitted that the Service Rules of certain other Corporation/Boards/Financial Institutions are being obtained and these will be studied & adopted while finalizing the PRTC Officers (Condition of Appointment & Service) Regulations.

Due to absence of officers Rules, the management is facing difficulties in dealing with cases of officers in courts.

In view of above, it is proposed that till the finalisation of officers Rules, the Punjab Civil Service Rules including punishment and appeal rules, notification orders, model standing orders, amendments from time to time issued by the State of Punjab regarding service condition applicable to Punjab Govt. employees to the extent the same are practicable in the PRTC should be made applicable for governing the service conditions of officers of PRTC Regarding other matters pertaining to delegation regarding appointing authority punishing authority, appellate authority and qualifications, experience for promotion etc. rules are approved by the Corporation from time to time be followed.

The matter was placed before the Board of Directors in its 142nd meeting for consideration and approval. The Board of Directors deferred the Agenda Item. The matter was again placed before the Board of Directors in its 143rd meeting and it was decided that a separate agenda will be placed before the Board.

It is also proposed that in addition to the above the Govt. employees (Conduct) rules 1966 may also be applicable on the officers/officials of the Corporation where-ever these are required.

The matter is again placed before the Board of Directors for consideration and approval.

Following are the categories of Officers on which the Punjab Civil Service Rules, Regulations, Notification, Model Standing Orders etc. as mentioned in the Agenda Item will be applicable:-

1. CAE-TA
2. XEN
3. SLA
4. General Managers
5. SDO
6. Deputy Controller, (F&A)
7. Asstt. Controller (F&A)
8. Work Manager
9. Service Engineers
10.Body Fabrication Engineers
11.Traffic Manager
12.Legal Advisors
13.Medical Officers"

A bare perusal of the agenda would show that the Corporation was deciding that the officers of the PRTC were not covered under the Labour Laws like Factory Act, Motor Transport Workers Act, Workmen Compensation Act, Industrial Disputes Act, Minimum Wages Act etc. Therefore, till the service rules for the officers of the PRTC are framed and approved, in order to decide the matters covering the officers of the PRTC, a recommendation was made that Punjab Civil Services Rules including Punishment and Appeal Rules, Notifications, Model Standing Orders amended from time to time to be adopted for regulating the conditions of the service of the officers of the PRTC. In the agenda it was made clear that who are the officers for whom the PRTC was adopting Punjab Civil Services Rules. The detail of the cadres was also mentioned in the agenda itself, which is clear from the reproduction made herein above. Counsel for the review petitioner has very fairly admitted that the category to which the petitioner belongs does not find mention for whom the Punjab Civil Services Rules were proposed to be adopted in its meeting which was scheduled for 30.06.2005 i.e. 189th meeting of the Board of Directors. Board of Directors only approved the agenda after the order dated 20.07.2005 was passed. The same is as under:-

> " *The Board of Directors in it 189th meeting held on 30.6.2005 vide agenda item No. 189.4 approved the adoption of Punjab Civil Service Rules, Punjab Govt. Employees (Conduct) Rules 1966, Notification, Model Standing orders etc.,. for the officers/officials of PRTC. This decision will cover all the decision made under all these rules/notification/standing orders with retrospective effect as well as prospectively.*"

Counsel for the review petitioner argues that once there is an adoption of the Punjab Civil Services Rules and Pension Rules are part and parcel of the Punjab Civil Services Rules, therefore, the finding recorded by the Co-ordinate Bench while rejecting the claim of the petitioner vide order dated 21.11.2016 by holding that the case of the petitioner was still to be considered under 1992 Regulations is liable to be reviewed. Counsel for the review petitioner argues that the order dated 20.07.2005 has not been correctly interpreted by the learned Single Judge, wherein it has been duly mentioned that the Punjab Civil Services Rules have been adopted for the officials/officers of the Corporation but still held that for the grant of pension, 1992 Regulations will be applicable as they were never rescinded and, therefore, the interpretation which has been given by learned Single Judge to the letter dated 20.07.2005 is liable to be reviewed.

Counsel for the respondents on the other hand states that the finding has been recorded by the learned Single Judge and no review is permissible as no factual error has been pointed out in the facts which have been stated by the Co-ordinate bench in the order dated 21.11.2016 and, therefore, no review petition is maintainable on the grounds which have been raised by the petitioner in the review petition.

I have heard counsel for the parties and have gone through the record.

I am afraid that no factual error has been pointed out by learned counsel for the review petitioner. Learned counsel for the review petitioner is trying to argue that the interpretation which has been given by learned Single Judge in respect of the order dated 20.07.2005 is not borne out of the said order, hence the order dated 21.11.2016 passed by the coordinate bench is liable to be reviewed. The review petition is only maintainable in case order is passed on the basis of wrong fact. In the present case, counsel for the review petitioner is praying for correct interpretation of the order dated 20.07.2005, which according to him has not been correctly interpreted by the learned Single Judge while passing the order dated 21.11.2016. The said argument is beyond the scope of review. If according to the petitioner, the interpretation given by the learned Single Judge while considering the case for the grant of pension is contrary to the law or the interpretation given by the Court to the letter dated 20.07.2005 is not borne out of the order/said letter, the remedy is appeal and not review.

Further, counsel for the review petitioner argued that the case of the petitioner was covered by the letter dated 20.07.2005 as after the said letter, Punjab Civil Services Rules are applicable upon the petitioner and

Pension Rules are part and parcel of the Punjab Civil Services Rules, therefore, the case of the petitioner is not liable to be considered under 1992 Regulations as the same will not be applicable upon the employees of the corporation after 20.07.2005 and the order passed by the coordinate bench rejecting the claim of the petitioner needs to be reviewed.

A bare perusal of the agenda item would show that adoption of the Punjab Civil Services Rules was for a totally different reason other than for the grant of pensionary benefits under Punjab Civil Services Rules and for particular categories, which does not include the category of the petitioner. Adoption of the Punjab Civil Services Rules was only for the officers of the PRTC and that too for the reason as there were no service regulations for the officials of the PRTC as their cases were not covered by the Labour Laws like Factory Act, Motor Transport Workers Act, Workmen Compensation Act, Industrial Disputes Act, Minimum Wages Act and in the absence of any Rules governing the services of the officers of the Corporation, proposal was to adopt certain rules for regulating the services of the officers by the Corporation before Rules are framed/finalised by the corporation. The details of the categories for which the Punjab Civil Services Rules were being adopted were also mentioned in the agenda. Counsel for the review petitioner has very fairly admitted that category of the petitioner was not there for which the Punjab Civil Services Rules were sought to be adopted in the agenda which was ultimately accepted as it is, by the Board of Directors in its 189th meeting held on 30.06.2005.

Further, counsel for the respondents informs this Court that right from the date when 1992 Regulations have been made applicable upon the employees of the Corporation, the pension is being given to all the employees, irrespective of the cadre to which they belong under the said 1992 Regulations. Even after the issuance of the letter dated 20.07.2005 by the Managing Director wherein the Punjab Civil Services Rules were made applicable to certain categories of the officers for regulating their services but pension to all the employees/officers is being paid under 1992 Regulations only and not under the Punjab Civil Services Rules as being claimed by the petitioner herein. Therefore, the counsel states that pension Regulations of 1992 were never superseded or rescinded and still continue to hold the field for the grant of pension.

Further more, in the writ petition there is no prayer/claim of the petitioner for grant of pension under Punjab Civil Services Rules. The prayer of the petitioner, as made in the writ petition, has already been reproduced in preceding paragraphs, the prayer/claim of the petitioner is only for the grant of pension under 1992 Regulations and, therefore, the prayer which is not there in the writ petition for grant of pension under Punjab Civil Services Rules cannot be made a ground for review of the order dated 27.11.2016 passed by the coordinate bench, whereby Court declined to give any benefit of pension to the petitioner under Punjab Civil Services Rules.

In view of the above, once, for all the categories, the 1992 Regulations are being made applicable from the date of its inception without an exception, petitioner cannot claim that they are governed by the pension rules under the Punjab Civil Services Rules and not under 1992 Regulations especially when, the Hon'ble Supreme Court of India in the SLPs which have been decided in 2011 titled **Pepsu Road Transport Corporation,Patiala v. Mangal Singh and others** and in 2017 titled **Pepsu Road Transport Corporation, Patiala v. Amandeep Singh and**

others held that the pension Regulations of 1992 are to be considered for the grant of pensionary benefits.

In view of the above, once there is no factual error and the grievance as against the interpretation of order dated 20.07.2005 as interpreted by the learned Single Judge vide order dated 21.11.2016 as well as the facts noticed above is not maintainable as no ground has been made to review the same, the review petition is not maintainable and, therefore, the same is dismissed.

(HARSIMRAN SINGH SETHI)
JUDGE

07.05.2019
sunita

Whether speaking/reasoned Yes/No
Whether Reportable Yes/No