IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.3500 of 2018
Date of Decision : 04.03.2020

Nandu …Petitioner

Versus

State of Haryana and others …Respondents

Coram: Hon'ble Mr. Justice B.S. Walia

Present: Mr. P.S. Jakhar, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

Mr. V.K. Kaushal, Advocate for respondent No.3.

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B.S. Walia, J.

1. Prayer in the petition under Articles 226/227 of the Constitution of India is for the issuance of a writ of Mandamus directing the respondents to consider the petitioner for grant of pension on the ground that the petitioner has wrongly been shown to have relinquished his right to pension as the same was never endorsed by the petitioner, rather obtained by fraud by the Municipal Corporation, Hisar.

2. Brief facts of the case leading to the filing of the instant petition are that 30/35 years prior to the filing of the writ petition, the petitioner was appointed as Sweeper in the Municipal Council, Hisar, now Municipal Corporation, Hisar. The petitioner who is illiterate

learnt that employees who had not opted for pension would not be entitled to the benefit of pension after retirement. It is further the stand of the petitioner that as per notification Annexure P/1, the Haryana Municipal Employees Pension and General Provident Fund Rules, 1993 (hereinafter referred to as 'the 1993 rules'), were notified on 05.03.1993 and were applicable to employees working immediately prior to 16.04.1992 and those employees who opted for the applicability of the rules would be entitled to pension whereas employees who did not opt for the rules would continue to be governed by the provisions pertaining to the Contributory Pension Fund as laid down in the Municipal Account Code, 1930. Rule 5 provides for establishment of pension fund and stipulates that share of money along with interest standing in the contributory fund account to the credit of an employee of a municipality who opts or is governed by the rules shall stand transferred to the pension fund to the extent it was contributed by the concerned municipality during the period of service of the employee and that any loss caused to the contribution of the concerned municipality through withdrawal during the employees service would be made good by the employee by paying the amount along with interest due for that period to the pension fund. Rule 9 deals with the grant of pension while Rule 10 deals with the payment of pension. Rule 11 deals with the conversion of the amount for the subscription made by the employee to the contributory provident fund along with interest accrued thereon to be converted into the general provident fund.

3. The stand of the petitioner is that he is illiterate, totally unaware of the aforementioned rules and was not explained about the rules, their ambit and scope and the implications thereof due to which he could not opt for the pension and was merely asked to affix his thumb impression on the form. It is further the stand of the petitioner that he is ready to pay the amount of contributory provident fund along with interest but despite notice Annexure P/2 dated 08.04.2017 for opting for the pension fund under the pension scheme, no reply in respect thereto has been received.

4. Written statement has been filed by respondent No.3 on behalf of respondent No.1, taking up the preliminary objection that the 1993 rules were circulated amongst the employees and after going through the same and understanding the same, the petitioner did not opt for the said pension scheme and signed the form under Rule 4 i.e. Annexure R/1, therefore, the petitioner cannot take up the plea of illiteracy and of not being aware of the policy and since the petitioner did not opt for pension, he was not entitled for the same.

5. I have considered the submissions of learned counsel for the parties.

6. The only point for consideration is whether the thumb impression of the petitioner on form Annexure R/1 constitutes knowledge of the rules and the implications thereof in the absence of there being any noting on the said form of the petitioner having been explained the meaning and implication of the 1993 rules in the language understood by the petitioner as also of the petitioner having understood the scope and ambit of the rule and the implication thereof

as the form is in English, name and designation of the petitioner has been entered in Hindi, while the signature of the petitioner is by way of thumb impression and there is no noting as referred to above on the said form.

7. Learned counsel for the petitioner has relied upon the decision of a Division Bench of this Court in **Dilwar Singh vs. Haryana Power General Corporation Ltd. and others 2006 (3) RSJ 689**, to contend that notice of instructions as to option for pension to the employee is a must and in the absence of any material as to notice to the employee, the employees claim for pension could not be declined and that he would have to deposit back the employer's contribution towards EPF along with interest. The said case is on the basis that there was no material to show that the circular for getting option noted was got noted in the writing of the employee concerned, therefore, it had to be inferred that the petitioner therein had no knowledge of the circular to take the option. Accordingly directions were issued to the authorities to take options and grant pension as per rules by requiring the employee to refund the entire amount of contribution along with interest thereto towards his EPF in lump sum from the date of his contribution till retirement along with interest for crediting to the Board's account. Besides the employee's contribution fund along with interest would have to be deposited with the Board for crediting to his GPF account in accordance with the rules/circular.

8. Reliance has also been placed on the decision of a Coordinate Bench of this Court in **Santosh vs. State of Punjab, in CWP No.23408 of 2016**, in which the claim to pension under the

Punjab Municipal Corporation Employees Pension and General Provident Fund Rules 1994, was denied to a Safai Sewak on her superannuation on the ground that she had not opted for the pension scheme. The same was allowed on the ground that the petitioner was an illiterate lady and it was the duty of the employer to make her understand the benefit of the said scheme and merely asking for the option was not sufficient and that perusal of the form on the basis of which claim was being denied to the petitioner did not show that she did not opt for the said scheme besides there was cutting in the form and benefit of the same had to be given to a illiterate person.

9. Learned Counsel next referred to **Krishana Devi vs. State of Haryana, in CWP No.9276 of 2015**, i.e. a case pertaining to an illiterate Sweeper working in Municipal Council, Thanesar, who was denied pension on account of not having given her option under the 1993 rules. It was held that nothing had been produced on the record to show that the 1993 rules were brought to the notice of the employee concerned who was working in the Municipal Council in writing or even otherwise nor the same was put on the notice board inviting option of the interested employees and in the absence of the same and especially on account of the petitioner therein being an illiterate lady, it could not be said that she had the knowledge about the existence of the 1993 rules, so as to exercise the option, therefore, another chance was required to be given to submit her option to apply for 1993 rules.

10. In **Anand Sawrup Data vs. Punjab National Bank, 1997 (2) PLR 659**, a Coordinate Bench of this Court held that

execution of a document in legal sense would mean that a person who wants to execute a document must be fully conscious of his acts and he must be in a position to know the consequences of a document which he was going to execute and if a person is called just to put his thumb impression or signature on a document and he does so, it will not be considered as due execution of the document as required under the law. Relevant extract of the same is reproduced as under:-

> "5. After considering the rival contentions of the parties I am of the considered view that the plaintiff-Bank has failed to discharge the onus of issue No. 2 and the due execution of the documents has not been proved. In legal proceeding the due execution of document is not a mere formality but a solemnity is attached with the execution of the documents. The principles of procedure cannot be put at naught. It is a well settled law that mere accepting the documents does not convey that those documents have been duly proved according to the procedure and as per the provisions of the Indian Evidence Act. The execution of a document in legal sense would mean that the person who wants to execute the document must be fully conscious of his acts and he must be in a position to know the consequences of a document which he was going to execute. If a person is called upon just to put his thumb impression or signatures on a document and he does so, it will not be considered as a due execution of the document as required under the law. In this regard I will have to see

the statement of Shri R.K. Gupta, who appeared as PW. 2. His examination-in-chief would show that through his mouth some documents were got exhibited by the learned counsel for the plaintiff, who represented the Bank in the trial Court; so much so those documents were duly objected to by the contesting defendants. If the examination-in-chief of Shri R.K. Gupta is read in extenso, there will be no two opinions that he has simply stated that some documents have been got executed in favour of the Bank. He nowhere states that the documents were read over and explained to the contesting guarantors or that they had signed the same in token of correctness after understanding its contents. It is also settled law that the plaintiff has to prove his own case and he has to stand on his own legs and cannot be allowed to rely upon the weakness of the defendants. It is also the law that admitted facts need not be proved but a bare suggestion given in the cross-examination cannot take the place of proof. The preponderance of evidence in a civil suit has to be proved by the plaintiff."

11. The petitioner is an illiterate person and has rendered service of 30/35 years. Since the petitioner is illiterate and had merely affixed his thumb impression on the form, it was the duty of the employer/person getting the thumb impression of the petitioner on Form-4, to make the petitioner understand the scope and ambit of the rules as also the implications of giving/not-giving an option for pension under the rules

applicable, on the basis of which, the employee giving the option would be entitled to pension and in case of non-giving of option, would not be entitled to pension. Note to the above effect was required to be given on the form to show that there had been compliance with the basic requirement of principles of natural justice in bringing the scope and ambit of the rules to the notice of the concerned illiterate employee as also the implications of not opting for pension under the said rules. The noting was also required to mention that the entire aspect of the matter had been explained to the employee concerned in the language he understood and that he had affixed his thumb impression after understanding each and every aspect of the matter including of non-entitlement to pension in the eventuality of not opting for the rules. The form attached by the respondents does not reflect any such noting. Accordingly, the benefit of the same has to be given to the illiterate petitioner.

12. In the light of the position as noted above the writ petition is allowed. The respondents shall within two months from the date of receipt of certified copy of this order give notice to the petitioner to exercise option under the 1993 rules within one month thereafter by informing him the scope and ambit of the 1993 rules in the language he understands as also the implications thereof and in case the petitioner gives his option for pension within the said period of one month, the same shall be accepted as per rules. However, in said eventuality whatever benefits the petitioner is entitled to under the Contributory Provident Fund scheme as envisaged under the

Municipal Account Code, 1930, shall be adjusted by the respondents / refunded by the petitioner as the case may be.

13. Writ petition allowed in the aforementioned terms.

04.03.2020. (B.S. Walia)
rajesh.k.khurana Judge

Whether speaking/reasoned? : Yes/No
Whether reportable? : Yes/No