

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

CWP No.20907 of 2020
Date of decision: 12.02.2021

Dharam Paul Singla

...Petitioner

Vs.

Union of India and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. M.K. Sood, Advocate,
for the petitioner.

Mr. S.S. Sidhu, Advocate,
for respondent Nos.2 to 4.

Ritu Bahri, J. (oral)

Petitioner is seeking quashing of letter dated 14.01.2020 (Annexure P-9), whereby his representation to accept the recovery amount of contributory fund and issuance of pensionary benefits has been rejected by respondent No.2-New India Assurance Company Ltd.

Petitioner joined the respondent department on 01.10.1974 as Typist and his work and conduct was to the satisfaction of the department. During the service period, petitioner opted for Contributory Provident Fund. He retired from the respondent department after attaining the age of superannuation on 31.10.2010 as Assistant Manager (Marketing). He received the amount deposited in the Provident Fund along with the contribution made by the department. As per notification dated 23.04.2019, the Central Govt. amended the General Insurance (Employees) Pension Scheme 1995. As per the said scheme, a retired person had to deposit the

contributory fund within ninety (90) days as specified in clause (a). Respondent No.1, thereafter, issued administrative instructions dated 17.05.2019 (Annexure P-2). Pursuant to the said instructions, petitioner was informed vide letter dated 26.09.2019 (Annexure P-3) that if, he deposits an amount of Rs.5,36,009/-, his case for pension under the amended Scheme of 2019 can be considered. As per letter (Annexure P-4), petitioner was informed about the mode of payment and the account, in which, the amount was to be deposited.

Case of the petitioner is that, he deposited the amount of Rs.5,36,009/- through RTGS on 05.10.2019 along with scanned copy of undertaking. Vide email dated 06.10.2019 (Annexure P-5), petitioner informed respondent No.3 that amount of Rs.5,36,009/- was deposited vide UTR No.SIBLR201900500064358 dated 05.10.2019. He also attached the scanned copy of the undertaking. Thereafter, petitioner received one SMS, whereby he was informed about the successful debit amount by way of RTGS. This fact was acknowledged by the Regional Office as the same was recommended by him to the respondent No.3 vide email dated 04.12.2019 (Annexure P-6). Petitioner, thereafter, submitted application form along with other documents to respondent No.4. He had completed his option form and RTGS well in time as the last date for submission of the option and refund of the amount was 21.10.2019. On 03.12.2019, petitioner visited his bank and obtained the bank statement, from where, he found that entry of Rs.5,36,009/- was there in his account. Then, he came to know that it was the refund of RTGS as the amount was returned on the same day due to non mentioning of NIAPF in the account number, while doing the process of transfer online. Due to this bonafide error, the RTGS failed and the pension

papers of the petitioner were not processed. Petitioner again submitted a draft of Rs.5,43,940/- on 21.12.2019 along with representation dated 22.12.2019 (Annexure P-7). Thereafter, he sent a reminder dated 17.02.2020 (Annexure P-8) to respondent No.3. Eventually, case of the petitioner was rejected by passing the impugned order dated 14.01.2020 (Annexure P-9).

Upon notice, reply on behalf of respondent Nos.2 to 4 has been filed, wherein it has been stated that amount of Rs.5,36,009/- sent through RTGS on 05.10.2019 was never received in the account mentioned in Annexure P-4. The respondents have placed on record bank statement as Annexure R-1. This statement shows that on 04.10.2019, petitioner had deposited amount of Rs.1,80,000/- and Rs.3,50,000/-. After the debit of Rs.5,36,009/-, there was a balance of Rs.11,909.93/- in the said account. There was another deposit of Rs.21,050/- on 05.10.2019 and clearing of Yes Bank Cheque of Rs.4430/- credited to the account on 10.10.2019. As on 05.10.2019, amount of Rs.5,36,009/- was credited as RTGS return and the bank balance was Rs.5,68,968.93. As on 10.10.2019, the balance was Rs.5,73,393.93/-. It is further stated that as far as email dated 06.10.2019 (Annexure P-5) is concerned, it has been sent by Atul Dharam Paul Singla. It does not confirm the deposit of Rs.5,36,009/-. It is further stated that as per bank statement, petitioner had been operating the bank account before expiry of the date of deposit i.e. 21.10.2019 and he had the knowledge that amount of Rs.5,36,009/- had not been transferred to the NIA PF account as per Annexure P-4. The email dated 04.12.2019 (Annexure P-6) by Regional Office, Chandigarh did not validate the deposit of amount by the petitioner as per the provisions of General Insurance (Employee's) Pension Scheme

Amendment, 2019 and it was never received within the stipulated period of the notification (Annexure P-1). It is further stated that since, the petitioner failed to deposit the amount in the NIA PF account before 21.10.2019, his claim for giving him the benefit of pension scheme as per notification (Annexure P-1) has been rightly rejected by passing the impugned order dated 14.01.2020 (Annexure P-9). In the preliminary objections, respondents have further taken a stand that the petitioner was not diligent in depositing/remitting the amount in NIA PF account in the Kotak Mahindra Bank as per letter (Annexure P-4) with letter dated 26.09.2019 (Annexure P-3). The saving account is not of New India Assurance Company Ltd., but of NIA PF trust. It is further stated that the petitioner himself was not vigilant to comply with the requirement of the notification dated 23.04.2019 issued by the Ministry of Finance. Therefore, his case has been rightly rejected. In the written statement, respondents have referred to the administrative instructions dated 17.05.2019 for implementation of the scheme dated 23.04.2019 (Annexure P-1), which read as under:-

“The notification of 2019 made it mandatory to exercise the option within a period of one hundred twenty days and after the expiry of one hundred twenty days within next sixty days, the retired employee has to refund the entire amount of the company's contribution to the provident fund account and interest accrued thereon together with interest at the rate of 9% per annum from the date of such withdrawal till the date of its refund.”

As per reply filed, petitioner had complied with the first provision by submitting Form-2. However, since he did not comply with the second provision of deposit of the said amount within time i.e. upto 21.10.2019, he has been denied the benefit of Pension Scheme, 2019.

Heard.

Short question for consideration in the present petition is,

“whether the benefit of Pension Scheme can be denied to the petitioner only on the ground that he was not diligent in depositing/remitting the amount in NIA PF account in Kotak Mahindra Bank as per letter/instructions (Annexure P-4)?”

A perusal of letter (Annexure P-4) shows that details of the Kotak Mahindra Bank were given, wherein the amount of Contributory Provident Fund had to be deposited along with interest. Respondents, in their written statement, are not denying that the petitioner had made an attempt to deposit the said amount through RTGS pursuant to the letter (Annexure P-4). But, the petitioner did not mention the correct account i.e. NIAPF trust. The fact that the petitioner had sent the due amount through RTGS, has not been denied by the respondents. On coming to know that the amount had not been credited in the account of Kotak Mahindra Bank, petitioner immediately approached the office of respondent No.2. He again submitted a draft of Rs.5,43,940/- on 21.12.2019 along with representation dated 22.12.2019 (Annexure P-7). This Court is of the view that the petitioner could not deposit the amount beyond 21.10.2019, but in the present case, he had sincerely made an effort to send the amount of Rs.5,36,009/- through RTGS on 05.10.2019 much before 21.10.2019. This fact is not being denied by the respondents in the written statement. The only stand taken is that he was not diligent enough to deposit the amount in the NIAPF account in Kotak Mahindra Bank as per letter (Annexure P-4). Vide letter/email dated 04.12.2019 (Annexure P-6), even the Regional Manager of respondent-company had stated that the petitioner was genuinely willing for Pension option under OMOP-2019 scheme and had received a debit message from the concerned bank on 06.10.2019 and shared UTR number

through email dated 06.10.2019. Hence, for all intents and purposes, it is not a case, where the petitioner had not deposited the amount in time through RTGS with the bank as per letter (Annexure P-4). Moreover, the main object for amending the General Insurance (Employees) Pension Scheme 1995 and issuance of administrative instructions dated 17.05.2019 (Annexure P-2) was for the benefit of those employees, who had since retired and they were to be given an option to deposit the contributory fund, so that they could also join the Pension Scheme. As per said instructions, this benefit was to be given to the retired employees/families of deceased employees or deceased retirees, who were in service prior to 28.06.1995, but did not join the Pension Scheme. Further, this Scheme was for the benefit of those employees, who are in the age group of 70 years.

In the present case, petitioner is 70 years of age and had sincerely made an effort, well within time, to deposit the due amount through RTGS. He was not diligent enough to write the correct number of the account, in which the amount was to be credited. The Pension Scheme was a welfare scheme for all the retired employees of the Insurance Company. Reference, at this stage, can be made to a judgment passed by Co-ordinate Bench of this Court in **Vijay Rani vs. Department of Social Justice & Empowerment Haryana and others**, 2017 (2) RCR (Civil) 388. This was a case, where a scheme, known as Rajiv Gandhi Parivar Beema Yojna, had been launched for awarding compensation in accidental cases. Son of the petitioner had died in a road accident and her application for grant of compensation under the said scheme was received after a period of six months of the accident. The case for compensation was rejected. This Court held that the benefit could not be denied on the basis of technicalities.

Ultimately, the writ petition was allowed by condoning the delay.

A Single Bench of this Court in **Ramvir Sharma and others vs. State of Haryana and others**, CWP No.11192 of 2012 (decided on 02.09.2014) had an occasion to examine the similar issue. Petitioners, in that case, had retired from different cadres with effect from different dates from the Aggarwal Senior Secondary School, Ballabhgarh, a privately managed Aided School. One of the questions involved in that petition was, “whether the pensionary benefits can be given after taking into consideration the period of service from the date of their initial appointments till the date of subscription to the Contributory Provident Fund as qualifying service for pensionary benefits?”

The Haryana School Education Rules, 2003 (for short '2003 Rules') were notified on 30.04.2003 and as per the amendment to Rule 114, the retirees were given fresh option to deposit the subscription of their Contributory Provident Fund along with interest within 90 days, so as to entitle them to the benefit of counting the period from the initial date of appointment towards grant of pensionary benefits under the Haryana Aided Schools (Special Pension) and Contributory Provident Fund Rules, 2001. In the aforesaid judgment, it was held that the State cannot insist upon exercising of option within 90 days of the notification dated 19.01.2007. In that case, the letter dated 14.03.2008 had been issued by the District Education Officers to the schools, but the retirees were not personally intimated to exercise their option within 90 days. Delay in exercising the option could not be made a ground to deny them the benefit of pension as per 2003 Rules. The petition qua grant of pension without insisting upon exercising the option within 90 days was allowed. However, learned Single

Judge had dismissed the aforesaid petition qua the relief of leave encashment at par with the Government employees on the ground that under Rule 91 (5) the Haryana School Education Rules, 2003, it is discretion of the management to give the benefit of leave encashment. Against the said judgment, petitioners (**Ramvir Sharma and others**) filed LPA No.1037 of 2015, which was allowed vide judgment dated 21.03.2017 by granting the benefit of leave encashment. While allowing the said LPA, reference was made to a decision given by the Division Bench of this Court in **State of Haryana and others vs. Ram Kumar Shastri and another**, LPA No.908 of 2012 (decided on 30.01.2013), whereby it was held that the benefit of leave encashment to the teachers, who retired from Government Aided Privately Managed Schools, cannot be denied on the ground that under Rule 91 (5) of 2003 Rules, it is the discretion of the management, whether to grant this benefit or not. Decision given in **Ram Kumar Shastri's** case (supra) has attained finality and has been implemented by the respondent-State of Haryana.

In the present case, even the respondents are not denying that the petitioner had sent an amount of Rs.5,36,009/- through RTGS well in time. However, the amount could not be credited in the account as correct number was not mentioned by the petitioner. It is not the case of condoning the delay. It is only the case of irregularity in depositing the amount in correct account for which, the petitioner cannot be punished or pushed out from getting the benefit of Pension Scheme. This Court in **Gurnam Singh vs. Ajit Singh etc.**, 1981 (2) RCJ 662, had an occasion to examine the case, where plaintiff had filed a suit against the defendant-respondents (who were minors) for declaration of title in regard to the plaintiff-appellants being the

mortgagees of the land in suit. In that suit, minors were shown to be under the guardianship of their father Bachan Singh. Father refused to accept notice of the suit and one Gulzar Singh, maternal-grand father of the minors, accepted the notice and was appointed a Guardian of the minors. The Court never corrected the name of Bachan Singh as guardian and the suit was dismissed by the Subordinate Judge, Second Class, Ludhiana and the appeal was dismissed by the District Judge only on the ground that in the array of parties, name of Gulzar Singh had not been mentioned. This Court, while hearing Regular Second Appeal, held that not mentioning the name of Gulzar Singh was only a technical mistake and this could not be made a ground to dismiss the appeal. Ultimately, the case was remanded for fresh decision on merits.

In the facts of the present case, on account of technical procedural error, the petitioner could not deposit the amount of Rs.5,36,009/- through RTGS in the account of Kotak Mahindra Bank. The fact that this amount was deposited through RTGS is not being denied by the respondents. Hence, for all intents and purposes, the petitioner had complied with the instructions dated 17.05.2019 (Annexure P-2), which were issued pursuant to the notification dated 23.04.2019 (Annexure P-1) issued by the Ministry of Finance. Petitioner is 70 years of age and this inadvertent mistake cannot go against him to deny the benefit of Pension Scheme. Hence, his case could not be rejected on the ground that he has not deposited the payment of Contributory Pension Scheme before 21.10.2019.

Resultantly, the impugned letter dated 14.01.2020 (Annexure P-9) is set aside and the petitioner is held entitled for the benefit of Pension Scheme dated 23.04.2019 (Annexure P-1) and 17.05.2019 (Annexure P-2).

A direction is given to respondent No.2 to accept the amount of Rs.5,43,940/- towards contributory fund along with interest at the rate of 6% per annum within a period of 15 days from the date of receipt of certified copy of this order. After accepting the amount, respondent No.2 will proceed further to grant the benefit of Pension Scheme to the petitioner as per instructions dated 17.05.2019 (Annexure P-2).

Allowed accordingly.

12.02.2021
ajp

(RITU BAHRI)
JUDGE

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