IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No.8595 of 2018 (O&M)
Date of Decision:- 19.01.2021

Ruldu Singh ....Petitioner

vs.

Regional Provident Fund Commissioner and others ....Respondents

***

BEFORE :- HON'BLE MR. JUSTICE SUDHIR MITTAL

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Present:- Mr. G.S. Bal, Senior Advocate with
Mr. Sewa Singh, Advocate,
for the petitioner.

Mr. Gourav Tangri, Advocate,
for respondents No. 1 and 2.

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Sudhir Mittal, J.

The petitioner was appointed as DPS Labour in the Food Storage Depot at Bhucho, District Bathinda on 01.01.1995 on regular basis. He retired from service on attaining the age of superannuation on 05.08.2004. However, his claim for grant of pension under the Employees Pension Scheme 1995 (hereinafter referred to as the '1995 Scheme') has been rejected vide communication dated 02.06.2015 on the ground that he did not possess eligible service of 10 years. This action was challenged by him before the District Consumer Disputes Redressal Forum, Bathinda, but his claim was rejected vide order dated 21.06.2017. This order was challenged by him in appeal which was however dismissed as withdrawn vide order dated 19.12.2017 with liberty to the petitioner to avail the appropriate remedy. Hence, the present writ petition was filed.

On the date of his appointment, the Employees Family Pension Scheme, 1971 (hereinafter referred to as the '1971 Scheme') was in force. The same was replaced by the 1995 Scheme w.e.f. 16.11.1995. Thus, the pension entitlement of the petitioner was governed by the 1971 Scheme upto 15.11.1995 and thereafter the same was governed by the 1995 Scheme. His service can accordingly be split into two periods of 10 months 15 days and 8 years, 8 months and 20 days. There is no dispute that the claim of the petitioner is to be determined under the 1995 Scheme.

Certain relevant provisions of the 1995 Scheme are being reproduced here-in-under:-

> **Section 2. Definitions**
>
> (1) In this Scheme unless the context otherwise requires:-
>
> (i) xxxx xxxx xxxx
>
> (ii) "**actual service**" means the aggregate of periods of service rendered from 16th November, 1995 or from the date of joining any establishment whichever is later to the date of exit from the employment of the establishment covered under the Act;
>
> (iii) to (v) xxxx xxxx xxxx
>
> (vi) **"Existing Member"** means an existing employee who is a "Member of the Employees' Family Pension Scheme, 1971";
>
> (vii) to (xi) xxxx xxxx xxxx
>
> (xii) **"past service"** means the period of service rendered by an existing member from the date of joining Employees' Family Pension Fund till 15th November,

1995;

(xiii) to (xiv) xxxx xxxx xxxx

(xv) "**pensionable service"** means the service rendered by the member for which contributions have been received or are receivable.

(xvi) to (xviii) xxxx xxxx xxxx"

It is not in dispute that the petitioner has contributed for the entire period of his actual service.

Clause 9 of the aforementioned Scheme regarding determination of eligible service is as under:-

"9. Determination of eligible service.

The eligible service shall be determined as follows :

(a) In the case of "new entrant" the "actual service" shall be treated as eligible service. The total actual service shall be rounded off to the nearest year. The fraction of service for six months or more shall be treated as one year and the service less than six months shall be ignored.

Explanation.

In the case of employees employed seasonally in any establishment the period of "actual service" in any year, notwithstanding that such service is less than a year shall be treated as a full year.

(b) In the case of the "existing member" the aggregate of actual service and the 'past service' shall be treated as eligible service.

Provided that if there is any period in the "past service" for which the contributions towards the Family Pension Scheme, 1971 has not been received, the said period shall count as eligible service only if the contributions thereof have been received in the Employees' Pension Fund.

> Explanation: For the purpose of this sub-paragraph, the total past service for less than six months shall be ignored and the total past service for six months and above shall be rounded to a year."

The explanation to sub-clause 9 has been substituted as follows vide amendment notified in gazette notification dated 21.08.2009.

> "*Explanation.*-For the purpose of this sub-paragraph, the aggregate of actual service and past service for less than six months shall be ignored and six months and above shall be rounded off to a year."

The date from which the amendment has been brought into force has been clarified vide communication dated 05.11.2009 issued by the Employees Provident Fund Organization, a copy of which has been annexed as Annexure R-2 with the written statement filed on behalf of respondents No. 1 and 2. According to the said communication, the substituted explanation is effective from the date of notification. In law, this would otherwise also be the situation.

Clause 10 regarding determination of pensionable service is also reproduced herein-below:-

> "**10. <u>Determination of Pensionable Service</u>**
>
> (1) The pensionable service of the member shall be determined with reference to the contributions received or are receivable on his behalf in the Employees' Pension Fund.
>
> (2) In the case of the member who superannuates on attaining the age of 58 years, and/or who has rendered 20 years pensionable service or more, his pensionable

service shall be increased by adding a weightage of 2 years."

Clause 12 is also relevant and is reproduced hereunder:-

"**12. <u>Monthly Member's Pension.</u>**

(1) A member shall be entitled to : -

(a) **superannuation** pension if he has rendered eligible service of 10 years or more and retires on attaining the age of 58 years;

(b) **early** pension, if he has rendered eligible service of 10 years or more and retires or otherwise ceases to be in the employment before attaining the age of 58 years;

(2) In the case of a new entrant, the amount of monthly superannuation pension or early pension, as the case may be, shall be computed in accordance with the following factors, namely: -

Monthly member's pension =

$$\frac{\text{Pensionable salary X Pensionable service}}{70}$$

(3) In the case of an existing member in respect of whom the date of commencement of pension is after the 16th November, 2005:"

Learned Senior counsel for the petitioner has argued that refusal to release pension to the petitioner is illegal as in fact, the petitioner possesses 10 years eligible service. Explanation to clause 9 (b) of the Scheme provides for rounding off service of more than six months to one year. The past service of the petitioner is 10 years and 15 days and by rounding it off, the same would become one year. The service after the 1995

Scheme came into force is 8 years, 8 months and 20 days and the same is covered by the definition of 'actual service'. In terms of clause 9(a), such service shall also be rounded off to the nearest year and accordingly, the same would become 9 years and both have to be added for the purpose of 'determining eligible service' as is evident from clause 9 (b). Thus, the stipulation of 10 years eligible service as provided in clause 12 (1)(a) is satisfied. Under clause 10 (2), the petitioner would be entitled to weightage of two years as he retired on attaining the age of superannuation of 58 years and, thus, the petitioner is entitled to be granted pension for having served for twelve years.

Learned counsel for respondents No.1 and 2 submits that explanation to clause 9 (b) was substituted vide notification dated 21.08.2009 and the same has been clarified vide communication dated 05.11.2009 whereunder it has been stated as follows:-

"To be more clear all monthly member pension cases where date of commencement of pension is before 21.08.2009, member would not be eligible for combined rounding off of aggregate of actual service and past service." Therefore, adding the past service and actual service of the petitioner, the period is 9 years,7 months and 5 days, which is less than 10 years. The petitioner, thus, does not possess eligible service for the purposes of pension.

A perusal of unamended clause 9 (b) leaves no manner of doubt that in case of 'existing member', 'eligible service' would be the aggregate of actual service and past service. In the case of the petitioner, the past service is 10 months and 15 days and the same has to be rounded off to one year in terms of the unamended explanation to the said sub-clause. The unamended explanation would apply because the claim for pension of the petitioner fructified on the date he retired i.e. 05.08.2004 and on that date the amendment had not been introduced. Amendment of 2009 is only prospective and the same is the understanding of the Employees' Provident Fund Organization also as is clear from communication dated 05.11.2009 (Annexure R-2). 'Actual service' has to be rounded off in terms of explanation to clause 9 (a). Thus, the total eligible service of the petitioner is 10 years to which a weightage of two years is to be added in terms of clause 10 (2).

Contention of learned counsel for respondent Nos.1 and 2 is unacceptable as the same is based upon executive instructions contained in communication dated 05.11.2009. Substituted explanation to clause 9 (b) provides for rounding off of the aggregate service and past service. Admittedly, aggregate service of the petitioner is 9 years 7 months and 5 days and after rounding off it would become 10 years. The scheme has to be interpreted as it exists and nothing can be added to it or subtracted therefrom by virtue of executive instructions.

In view of the aforementioned reasons, order dated 02.06.2015 (Annexure P-4) impugned in the writ petition is quashed. Respondent No.1 is directed to release pension payable for 12 years pensionable service within 4 weeks from the date of receipt of a certified copy of this order along with arrears. As the petitioner has been denied the benefit of pension for sixteen long years, he is also entitled to payment of interest at the rate 9% per annum on the arrears payable from 06.08.2004 till date of payment. Interest is being awarded to offset inflation and to compensate the petitioner by following judgments of the Supreme Court in ***D.D.Tewari*** vs. ***Uttar Haryana Bijli Vitran Nigam,*** ***2014 AIR (SC) 2861*** and ***Megh Varan Sharma*** vs. ***State of U.P.,*** ***2015 (2) RSJ 715.*** In ***D.D. Tewari*** ***(supra)*** interest @ 9% has been awarded and in ***Megh Varan Sharma*** ***(supra)*** it has been held that the aggrieved employee would be entitled to the highest of the maximum interest being paid currently on fixed deposits by Scheduled Banks. This observation has been made after examining the relevant provisions of Interest Act, 1978. I have checked the website of Reserve Bank of India to find out rates of interest being currently paid on fixed deposits and I have found that interest rates on term deposits have been 'freed'. Thus, I am choosing 9% as the appropriate rate in view of ***DD Tewari (supra)***.

January 19, 2021 **(SUDHIR MITTAL)**
poonam **JUDGE**

Whether Speaking/Reasoned **Yes**

Whether Reportable **Yes**