IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(119+318)

CM-16429-CWP-2022 in/and
CWP No. 20224 of 2021
Date of Decision : 18.10.2022

Shree Krishan Sharma and others

...Petitioners

Versus

Employees Provident Fund Organization and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Jai Bhagwan Sharma, Advocate for the petitioners.

Mr. Rajesh Hooda, Advocate for respondents No. 1 and 2.

Mr. Rajesh Gaur, Advocate for respondent No. 3.

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<u>Harsimran Singh Sethi J. (Oral)</u>

<u>CM-16429-CWP-2022</u>

Present application has been filed for placing on record replication to the written statement filed on behalf of respondents No. 1 and 2.

Application is allowed and replication to the written statement filed on behalf of respondents No. 1 and 2 is taken on record.

<u>CWP No. 20224 of 2021</u>

In the present petition, the prayer of the petitioners is for quashing of the letter dated 13.02.2020 (Annexure P-1) as well as order dated 21.07.2020 (Annexure P-2) by which, the claim of the petitioners for the grant of pension under the Employees Provident Fund Pension Scheme, 1995, has not been extended.

As per the facts mentioned in the petition, the petitioners had joined the service of the respondents and retired on various dates, the details of which have been given in para 2 of the petition. The Employees Provident Fund Scheme, 1952 as well as Family Pension Scheme, 1971, which was operated in the Corporation, the petitioners were made members of the same and their contribution toward the said pension scheme was being deducted by the respondent-Corporation and was being forwarded to the appropriate authority under the Family Pension Scheme, 1971. The said deduction was being made on the basis of the actual salary being drawn irrespective of the ceiling fixed. The conceded position is that the Employees Provident Fund Pension Scheme was amended by the competent authority vide amendment dated 22.08.2014, which came into operation w.e.f. 01.09.2014. After the amendment, the employees were required to again give fresh option under paragraph 11 (iv) of the said scheme. The petitioners are the one, who had opted and given the fresh option but inadvertently, while exercising the option, rather than opting for pension scheme, the same was for Provident Fund Scheme.

Learned counsel for the petitioners argues that the petitioners have not been paid their pension for which they are entitled for keeping in view their subscription, which they had already deposited hence, the said clerical mistake, which occurred while opting for the pension scheme after amendment in the year 2014 be directed to be ignored keeping in view the facts and circumstances of this case and appropriate direction be issued to the authorities to release the pension from the date it had become due along with arrears.

Learned counsel for the respondent-Provident Fund Organization submits that though the petitioners had opted for the pension scheme and their contribution on the basis of the actual salary was also deducted and deposited with the authorities but after the amendment to the pension scheme, effected in the year 2014, while exercising the option, the same has been inadvertently opted by the petitioners for Employees Provident Fund Scheme instead of Employees Pension Scheme though, even after 2014, the deductions were made from the salary of the petitioners towards the Pension Scheme. Learned counsel for the respondents submits that till the said inadvertent mistake is rectified, the petitioners cannot be granted the benefit of pension.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It is a conceded position between the parties that the petitioners had opted for the Pension Scheme and contribution required to be made by the petitioners towards the said pension scheme were being duly deducted on the basis of the actual salary being drawn by them. The only question is whether, inadvertent mistake while exercising the fresh option in the year 2014, wherein, the petitioners inadvertently opted for the Provident Fund Scheme instead of Pension Scheme, the same can be treated to their disadvantage for the grant of pension or not.

Once, it is conceded by the respondent-authorities that even after exercising the fresh option in the year 2014, the deductions were made from the salary of the petitioners towards the pension fund according to their actual salary, it can be safely said that the mentioning of Employees Provident Fund Scheme instead of Employees Pension Scheme was inadvertent on the part of the petitioners while exercising the option in the year 2014 as enumerated in paragraph 11(iv) of the amended pension scheme. The said inadvertent mistake needs to be ignored keeping in view the facts and circumstances of the present case as, concededly the petitioners have made contribution towards the Pension Scheme continuously even before and after the amendment made in the year 2014.

Further, learned counsel for the respondent-Provident Fund Organization submits that in case the said option is to be treated as inadvertent to be taken as option under the Pension Scheme, the petitioners are entitled for the benefit. That being so, the respondent-authorities are directed to consider the option given by the petitioners in pursuance to the amendment done in the year 2014 as to be exercised under the Pension Scheme and not under the Provident Fund Scheme.

Keeping in view the above, the respondents are directed to compute the benefit for which the petitioners have become entitled for by treating the option submitted by the petitioners in the year 2014, as envisaged under paragraph 11(iv) of the amended pension scheme of 2014 under the Pension Scheme and not under the Provident Fund Scheme and the benefits for which the petitioners become entitled for be computed and calculated and released to the petitioners within a period of two months from the date of receipt of copy of this order.

Petition is allowed in above terms.

October 18, 2022 **(HARSIMRAN SINGH SETHI)**
kanchan **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No