224

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

****

CWP-37727-2018
Date of Decision: 09.03.2022

Harpal Singh

..... Petitioner

Versus

PEPSU Road Transport Corporation, Patiala and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Jagjit Singh, Advocate,
for the petitioner.

Mr. Anupam Singla, Advocate,
for the respondents.

(Through Video Conference)

*****

HARSIMRAN SINGH SETHI J. (ORAL)

In the present petition, grievance of the petitioner is that prayer of the petitioner for grant of retiral benefits under the pension scheme of 1992, formulated by the respondents-Corporation, has been denied and that too without any valid justification.

Learned counsel for the petitioner argues that the petitioner joined as a conductor in the year 1983 and while he was working on the said post, the Employee's Pension/Gratuity and General Provident Fund Regulations, 1992 (hereinafter referred to as 1992 Regulations), were framed by the PEPSU Road Transport Corporation on 15.06.1992. Learned counsel submits that options were given to the employees, who were already working, as to whether they would like to opt for the said 1992 Regulations or not and the petitioner opted for the same and his GPF was deducted regularly for a period of two years thereafter. Learned counsel further submits that the petitioner was shifted from 1992 Regulations to the Contributory Provident Fund Scheme, without there being any knowledge to him or even without passing any order regarding the same, and the deductions which were being done from salary of the petitioner, were being deposited in the Contributory Provident Fund rather than under the General Provident Fund created under 1992 Regulations. Learned counsel also submits that no consent was taken from the petitioner by the respondents-Authorities before the deductions, which were being made from pay of the petitioner, were deposited in the Contributory Provident Fund Scheme rather than the General Provident Fund Scheme created under 1992 Regulations. Learned counsel further submits that at the time of retirement, on 31.08.2015, he was informed that he is entitled for the pensionary benefits under the Contributory Provident Fund Scheme and not under 1992 Regulations, keeping in view the facts that starting from the year 1994, his deductions are being deposited with the Contributory Provident Fund Scheme and not under the General Provident Fund Scheme created under 1992 Regulations. The petitioner immediately raised an objection to the said stance of the respondents and approached this Court by filing CWP-2852-2018, praying that he be granted the pensionary benefits under the PRTC Pension Rules, 1992.

This Court directed the respondents to decide claim of the petitioner, in pursuance of which impugned order dated 22.10.2018 was passed by the respondents, wherein it has been mentioned that as the petitioner never raised any objection on depositing the amount, being deducted from his salary, towards the Contributory Provident Fund Scheme, now the petitioner cannot be considered for the grant of pension under the

PRTC Pension Rules, 1992 especially where gratuity paid to the petitioner is under the 1972 Act and not under the 1992 Rules governing the Pension Rules of the respondents-Corporation. The said order dated 22.10.2010 is under challenge in the petition.

Learned counsel for the petitioner argues that once the petitioner has opted for the Pension Rules of the year 1992 and deductions made from his salary were to be deposited in the said Pension Scheme, there was no occasion for the respondents to change the option of petitioner unilaterally from General Provident Fund Scheme to Contributory Provident Fund Scheme, and that too without any information to the petitioner. Learned counsel for the petitioner submits that any action unilaterally taken by the respondents-Corporation cannot be made binding upon the petitioner, and therefore, he is entitled for grant of pensionary benefits under the 1992 Rules.

Learned counsel appearing on behalf of the respondents submits that though it is a conceded position that the petitioner had opted for the 1992 Rules for the grant of pensionary benefits but later on, the deductions made from his salary, were deposited in the Contributory Provident Fund Scheme, though there is nothing on record that the same was done on the asking of the petitioner. Learned counsel for the respondents-Corporation submits that it is matter of fact that from the year 1994 till the petitioner retired, the deductions which were being made from his salary were deposited in the Contributory Provident Fund Scheme and not under the General Provident Fund Scheme as envisaged under the 1992 Rules. Learned counsel for the respondents further submits that at the time of retirement, the petitioner was given gratuity, not under the 1992 Rules but under the 1972 Act, and as the funds have already been transferred to the Regional Provident Fund Commissioner, Chandigarh, therefore, at this stage, prayer of the petitioner for considering him for the grant of pensionary benefits under the 1992 Rules may kindly be declined.

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

Once after the 1992 Rules came into operation and the options from the employees were sought as to whether they want to apply for the pensionary benefits under the 1992 Rules or not, and the petitioner duly opted for grant of the pensionary benefits under the 1992 Rules, there was no occasion with respondents to unilaterally change the petitioner's option to the Contributory Provident Fund Scheme. Nothing has been placed on record that the petitioner ever requested that he wants to withdraw from the 1992 Rules, so as to be governed by the Contributory Provident Fund Scheme. The argument of learned counsel for the respondent that the petitioner never objected to the same, cannot be accepted in view of the facts that the deductions were being done from salary of the petitioner and further, according to the petitioner, he was never informed that the deductions are being done for the Contributory Provident Fund Scheme rather than the General Provident Fund Scheme as envisaged under the 1992 Rules.

Even otherwise, once the petitioner opted for being governed under the 1992 Rules, the said option can be withdrawn by the petitioner only and that too by written request. In the absence of any written request made on behalf of the petitioner for the same, coupled with the stance which has been taken by the petitioner that the respondents in fact unilaterally changed his option from 1992 Rules to that of Contributory Provident Fund Scheme and the petitioner refused the payments at the first instance under Contributory Provident Fund after his retirement, hence *bona fide* of the petitioner cannot be doubted. Therefore, once the petitioner opted for pension under the 1992 Rules and the deductions from his salary were deposited in the General Provident Fund Scheme as envisaged under the 1992 Rules for a period of two years, the unilateral change effected by the respondents themselves cannot be permitted and the same is totally arbitrary, illegal and without jurisdiction. Therefore, the petitioner is held entitled for the pensionary benefits as envisaged under the 1992 Rules, governing the respondents-Corporation.

As far as the argument being raised by learned counsel for the respondents that the petitioner has been paid the gratuity under the 1972 Act, the same cannot come in the way of petitioner for the reason that after the retirement, whatever was offered to him, he had taken but the same cannot be treated as estoppel to deny petitioner the benefit which he is otherwise entitled for under the law. Further, the petitioner has undertaken before this Court that whatever gratuity the petitioner has been paid under the 1972 Act, the same be adjusted while calculating the emoluments for which the petitioner will be found entitled under the 1992 Rules.

Learned counsel for the petitioner further submits that in case any deposit is to be made by the petitioner under the General Provident Fund Scheme, more than the amount deducted from the salary of the petitioner, which was already deposited by the respondents under the Contributory Provident Fund Scheme, the petitioner will make the difference good, if demanded by the respondents after undertaking the calculations.

Keeping in view the above, prayer of the petitioner is allowed and the respondents are directed to treat the petitioner under the 1992 Rules for the grant of pensionary benefits and the same be released to him. Whatever payment the petitioner will be entitled for as per the 1992 Rules be released to him. It is made clear that any excess payment which may have been made to the petitioner already, if found after undertaking calculation work under this order, same be adjusted from the amount, which the petitioner is found entitled to be paid now. Let the said calculation be done within a period of two months from the date of receipt of this order and the payments, if any, required to be made to the petitioner be released to him within a period of next four weeks.

09.03.2022 **(HARSIMRAN SINGH SETHI)**
Apurva **JUDGE**

1. Whether speaking/reasoned : Yes

2. Whether reportable : Yes