IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

227 **CWP-6007 of 2019**
Date of Decision:17.02.2023

Santosh

.... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

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Present: Mr. V. K. Shukla, Advocate,
for petitioner.

Ms. Lavanya Paul, DAG, Punjab
for respondents No. 1 and 2.

Mr. T.S. Sidhu, Advocate,
for respondent No.3.

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<u>JASGURPREET SINGH PURI, J. (Oral)</u>

The present writ petition has been filed under Article 226 of the Constitution of India seeking a writ in the nature of *certiorari/mandamus* for quashing of the order dated 18.09.2018 (Annexure P-4) issued by the Corporation declining the claim of the petitioner for grant of family pension on account of death of her husband namely Sant Lal who was working as a Sweeper in the Municipal Council as it was then and now Municipal Corporation, Moga.

The brief facts of the present case are as follows:-

The husband of the petitioner was working as a Sweeper in the Municipal Council, Moga (which has now become Municipal Corporation, Moga from the year 2011). In this way, the services of the petitioner were governed by the Rules pertaining to Municipal Council and not Municipal Corporation. After the death of the husband of the petitioner on 01.04.1994, the petitioner was not granted the retiral/pensionary benefits and for that purpose, she filed a writ petition before this Court, i.e. CWP-10785 of 2018 which was decided on 07.05.2018 by raising a grievance that she has not been granted the pensionary benefits, i.e. the family pension, gratuity, leave encashment and GP fund etc. and a direction was issued to the respondents to look into the grievance unfolded by the petitioner in her legal notice/notice of demand in accordance with law, Rule, Regulations as well as the instructions issued by the Government from time to time within a period of four months. Liberty was also granted to the petitioner to have recourse to other remedies available to her under the law including to approach this Court in case she felt aggrieved by the orders passed by the respondents. Thereafter, vide Annexure P-4 an order was passed by the Commissioner, Municipal Corporation, Moga on 18.09.2018 and by way of a brief order, the legal notice of the petitioner as directed by this Court was rejected on the ground that she has already been paid her dues and it was also stated in the aforesaid order that the petitioner was not entitled for grant of pension as prayed by her in the writ petition because the petitioner has not deposited the employer's share of CPF within stipulated period as laid down in the General Notification No. GSR43/P.A.42/76/Ss 71 and 397/94 dated 28.07.1994.

Thereafter, the present writ petition has been filed challenging the aforesaid order by which the pension has been deprived to the petitioner.

It has been submitted by learned counsel for the petitioner that the impugned order (Annexure P-4) dated 18.09.2018 is totally contrary to the Statutory rules and the order is illegal and perverse and is liable to be set aside. He submitted that the husband of the petitioner died on 01.04.1994 when he was in the service of Municipal Council, Moga. In the year 1994, Statutory rules, i.e. the Punjab Municipal Employees Pension & General Provident Fund Rules, 1994 were framed and came into force. He referred to the relevant portion of the Rules, which he has reproduced in paragraph No.3 of the writ petition and has given the following dates:-

1)	Date of publication of Rules	:	16.03.1994
2)	Date of coming into force	:	01.04.1990
3)	Death of the husband of the petitioner	:	01.04.1994

He submitted that by way of these pension Rules, an option was to be exercised by the employees of the Municipal Council as to whether they opt the rules governed by the pension Rules or by the earlier system of CPF or not. While referring to Rule 3 of the aforesaid Rules, he submitted that in the event of an employee who dies without exercising his option within the stipulated period, he shall be deemed to have opted these Rules, i.e. Rule 3(1)(c). The relevant portion of the aforesaid Rules is reproduced as under:-

> **"The Punjab Municipal Corporation Employees Pension and General Provident Fund Rules, 1994**
>
> Published vide Punjab Govt. Notification No. G.S.R.PA3/11/S240 and Ss 38 and 39/ and 94 dated the 16th March, 1994.

1. **Short title and commencement and application.** - (1) These rules may be called the Punjab Municipal Corporation Employees Pension and General Provident Fund Rules, 1994.

(2) They shall be deemed to have come into force on and with effect from the first day of April, 1990 in the case of employees who are members of the provincialised service of a committee, and in the case of employees who are members of a non-provincialised service of a committee, they shall come into force from such date, as the committee may determine, by a resolution passed in this behalf.

(3) They shall apply to the employees of the Committee:-

(i) who are appointed on or after the first day of April, 1990 on whole time regular basis; and

(ii) who were working immediately, before the first day of April, 1990 on whole time regular basis and opt for these rules:

Provided that the employees who were working immediately before the first day of April, 1990 and who retired during the period between the first day of April, 1990 and the date of publication of these rules in the Official Gazette, shall have the option to opt for these rules within a period of four months from the date of publication of these rules, subject to the condition that they shall have to refund the Corporation's contribution towards their Contributory Provident Fund including interest thereon received by them together with simple interest on the whole amount at the rate of ten per cent per annum from the date of withdrawal to the date of repayment.

3. Exercise of option. - (1) The option under clause (ii) of sub-rule (3) of Rule 1 to elect to be governed by these rules, shall be exercised in the Form appended to these rules so as to reach the competent authority within a period of four months from the date of publication of these rules in the Official Gazette: Provided that, -

(a) in the case of an employee who on the date of publication of these rules was on leave, the option shall be exercised within a period of four months from the date of joining his duty after returning from leave;

(b) where an employee is under suspension on that date, the option shall be exercised within a period of four months from the date he joins his duty; and

(c) in case of an employee, who dies without exercising his option within the stipulated period, he shall be deemed to have opted for these rules;

(2) The employees, who opt for these rules, shall cease to avail the benefit of Contributory Provident Fund and the employees who opt out of these rules, shall continue to avail the benefit of Contributory Provident Fund."

He submitted that in the present case, the husband of the petitioner had died on 01.04.1994 and the date of the publication of the Rules is 16.03.1994 which is prior to that and by virtue of Rule 3(1)(c), whenever an employee dies without exercising his option within the stipulated time period which is four months as contained in Clause (b), then he shall be deemed to have opted these Rules. In the present case, the husband of the petitioner had died on 01.04.1994 without exercising his option and therefore by virtue of express provision of Rule 3(1)(c), he is deemed to have exercised the option opting for pension in accordance with the rules and therefore immediately on the death of the husband of the petitioner i.e. 01.04.1994, the petitioner who is the widow of the employee was entitled for the grant of family pension.

He submitted that although at that point of time the petitioner had not deposited the employer's share of CPF but the petitioner at the time of the death of her husband was never informed by any authority or the Municipal Council for deposit of the same and she is also an illiterate lady. He submitted that it is not a case that the Municipal Council as it was then was not aware regarding the statutory rights available to the petitioner and he referred to Annexure P-2 which is a letter written by the Municipal Council, Moga to the Director, Local Government, Punjab in which it was stated that in case the employee is exempted from the condition of pension option even then his legal heirs cannot be granted family pension because his family did not deposit the amount of CPF with the Municipal Council and there are no instructions of the local Government to their knowledge under which the amount of CPF alongwith interest can be deposited from the legal heirs but if the Government grants sanction for getting the amount of CPF alongwith interest deposited in this case then Municipal Council, Moga will write to the legal heirs of the employee to deposit the due amount.

Learned counsel for the petitioner further submitted that it is very interesting to note that rather the Municipal Council, Moga at that point of time had rather sought clarification from the Department of Local Bodies, Government of Punjab and they were fully aware of the fact that the deceased and the petitioner are covered by the Statutory Rules, 1994 as reproduced but they only sought clarification from the Government of

Punjab and in pursuance of the aforesaid letter and even thereafter no such letter or intimation was sent to the petitioner which shows wilful default on the part of the Municipal Council in depriving the petitioner of her family pension. Learned counsel has also referred to a judgment of a Division Bench of this Court in **CWP-1810 of 2002, titeld as Raju Sharma versus State of Punjab and others, date of decision 09.12.2003** (which has been attached with the replication) and submitted that the case of the petitioner is covered by the aforesaid judgment.

Learned counsel for the petitioner further submitted that when a reply was filed by the respondent which is now Municipal Corporation with effect from the year 2011, they have misled this Court by attaching some other rules which are pertaining to the Punjab Municipal Corporation Employees Pension and General Provident Fund Rules, 1994 which have got no relevance with the present case and referring to rules which are not relevant to the present case amounts to abuse of process of law. He submitted that not only this, surprisingly even when the Commissioner of Municipal Corporation, Moga passed an order in pursuance of the orders passed by this Court, she also referred to the rules pertaining to the Municipal Corporation and on the basis of which the grievance of the petitioner was rejected. He submitted that a valuable right has been deprived not only by the Municipal Council but even now the Commissioner, Municipal Corporation, Moga has abused the process of law in its totality. He further submitted that last part of the aforesaid order would also show the level of application of mind by the Commissioner, Municipal Corporation, Moga whereby she has stated that she is disposing of 'the writ petition'. He submitted that even if it is an inadvertent mistake, the same should not be made by a senior officer at this level. He submitted that be that as it may, the petitioner has Statutory right of getting family pension in accordance with the aforesaid Rules of 1994 pertaining to Muncipal Council and is entitled for the same alongwith the interest. He also submitted that the petitioner undertakes to deposit the employer's share of CPF with the Municipal Corporation alongwith interest and family pension be released to the petitioner accordingly alongwith arrears and interest.

Mr. T.S. Sidhu, learned counsel appearing on behalf of the respondent Corporation submitted that after the death of the husband of the petitioner, the son of the petitioner was given job on compassionate basis and there has been no wilful default on the part of the Municipal Corporation which came into existence in the year 2011.

I have heard the learned counsels for the parties.

The issue involved in the present case is as to whether the petitioner who is the widow of an employee who was working as a Sweeper in the Municipal Council, Moga, is entitled for family pension who died on 01.04.1994 or not. In the year 1994, two different sets of rules were framed, one was framed for Municipalities for exercise of option for grant of pension and another was framed for Municipal Corporation. The husband of the petitioner was working in the Municipal Council, Moga which was thereafter formed as Municipal Corporation on 26.07.2011. The husband of the petitioner died on 01.04.1994 and therefore he was to be governed by the

Punjab Municipal Employees Pension and General Provident Fund Rules, 1994 which have been reproduced above and not by the Punjab Municipal Corporation Employees Pension and General Provident Fun Rules, 1994 which have been annexed alongwith the reply filed by the Corporation. As per the scheme of the aforesaid Rules, employees were to exercise an option within a period of four months from the date of publication of the Rules in the official gazette as to whether they wanted the pension scheme or they did not want the benefit of pension scheme. However, in Rule 3 which pertains to exercise the option, a proviso has been added and according to the same in case an employee who dies without exercise his option within the aforesaid stipulated period then he shall be deemed to have opted these Rules. In the facts and circumstances of the present case, the husband of the petitioner had died on 01.04.1994 and the date of publication of these Rules is 16.03.1994 prior to the death of the husband of the petitioner and therefore the husband of the petitioner had died within four months without exercising any option. According to the aforesaid Rules, the petitioner was therefore entitled for the family pension by virtue of deeming clause which has been created in the aforesaid proviso of Rule 3(1)(c). After the death of the husband of the petitioner, the petitioner was constrained to file a writ petition before this court wherein directions were issued to decide the legal notice and the retiral benefits have been given to the petitioner, but pension has not been given to the petitioner because according to the impugned order, she was not entitled for the family pension because she did not deposit the employer's share of CPF amount. A perusal of the impugned order would show that it is not only perverse and without application of mind but it also refers to those Rules which are not even applicable to the petitioner. The impugned order refers to the Rules of Municipal Corporation but the right of the petitioner accrues from the Rules of Municipal Council which have been reproduced as above. Learned counsel for the petitioner had also during the course of arguments referred to Annexure P-2 whereby the Municipal Council after the the death of the husband of the petitioner was even conscious of the fact regarding entitlement for the petitioner for grant of family pension but sought instructions from the Director, Local Bodies, Punjab as to whether the legal heirs should be permitted to deposit the CPF amount or not. This letter is of the year 2004 after about 10 years of the death of the husband of the petitioner. There is nothing on the record to show that the petitioner was ever put to notice or communicated any letter asking her to deposit the employer's share of CPF.

A similar issue arose for adjudication before this Court and a Division Bench of this Court in CWP-1810 of 2002 (Annexure P-5) observed that Proviso (c) under Rule 3 (1) is applicable in case an employee dies within stipulated period and so far as the stipulated period is concerned, the same is four months from the date of publication of Rules. However, in the aforesaid writ petition, the person had died in the year 1991 and therefore he was not granted the benefit but the interpretation of the aforesaid proviso has been made in the aforesaid judgment. However, in the facts of the present case, the case of the petitioner is not only covered by the aforesaid Rules of 1994 but also by the judgment of a Division Bench of this Court .

Whenever a right flows to an employee or the legal representatives or family pensioners under the Statutory rules, then it is incumbent upon the concerned authorities to confer the rights which flows to a person from a Statutory rules of their own. An employer cannot turn around and say that its employee has never claimed or demanded such right. Under the aforesaid Rules of 1994, a right was conferred by way of proviso (c) of Rule 3(1) under the Statutory rules and therefore it was obligatory on the part of the Municipal Council, Moga to have granted the family pension to the petitioner and in case the employer's share was already paid to the husband of the petitioner then that could have been got deposited from the petitioner that point of time but the petitioner could not have been deprived of her right of family pension merely on the ground that she failed to deposit the employer's share especially in view of the fact that there is nothing on record to show that the petitioner was ever put to notice or asked to deposit the aforesaid amount . Right to pension and pensionary benefits is a Constitutional right which is protected under Article 300-A of the Constitution of the India.

In view of the aforesaid facts and circumstances, the present petition is allowed. The impugned order dated 18.09.2018 (Annexure P-4) is hereby set aside. The petitioner shall be entitled for family pension from the date her husband had died on 01.04.1994. The respondent Corporation is directed to calculate the entire arrears of pension from the aforesaid date, i.e. 01.04.1994. The petitioner is also directed to deposit the employer's share of CPF with the Corporation as early as possible alongwith statutory interest

@10% (simple) which is the rate of interest which has been so provided in proviso to Rule 1(3). The respondent Corporation shall supply to the petitioner the calculated amount of CPF with interest by way of written communication within one month upon which the petitioner shall deposit the same within next one month.

The respondent Corporation shall calculate the arrears of pension on the deposit of employer's share of CPF by the petitioner. Thereafter, the petitioner shall be paid the arrears of pension alongwith interest @ 8% per annum (simple) within 2 months. In case the aforesaid amount is not paid within the aforesaid period of two months, then the petitioner shall be entitled for future interest @ 10% instead of 8%.

The entire exercise for the payment of arrears and adjustment of CPF shall be made within a period of four months from today.

Since the petitioner is a widow and it is her second round of litigation and the impugned order is totally without application of mind, the petitioner shall also be entitled for costs of Rs.20,000/- which shall also be paid by the Corporation within the aforesaid period of four months.

(JASGURPREET SINGH PURI)
JUDGE

February 17, 2023
dinesh Whether speaking : Yes/No
Whether reportable : Yes/No