

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-14469-2020 (O&M)
Date of Decision: 12.01.2023

Rasida

....Petitioner(s)

Versus

State of Punjab and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Chandra Kumar Jha, Advocate, for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

Mr. Parminder Singh, Advocate, for respondent No.3.

JASGURPREET SINGH PURI, J.

1. The present petition has been filed under Articles 226/227 of the Constitution of India seeking a writ in the nature of *Mandamus* directing the respondents to pay monthly pension and other retiral dues as admissible under Pension Rules of 1994 and also to pay the arrears of pension and other retiral dues with interest.

2. The brief facts of the present case are that the husband of the petitioner was appointed on regular basis as Mashki (Water Carrier) in the respondent-Municipal Council, Malerkotla on 29.01.1974. After attaining the age of superannuation at 60 years, the husband of the petitioner superannuated on 31.03.2015. Thereafter under the policy of the Government, he was granted two years extension and therefore he was

relieved on 31.03.2017. The employees of the Municipal Council were not earlier granted the benefit of pension because no pension was admissible to them. However, in the year 1994, the Government of Punjab framed the Punjab Municipal Council Employees Pension and General Provident Fund Rules, 1994 (hereinafter called as 'Municipal Council Rules, 1994'). These Rules were published in the official gazette on 16.03.1994 and by virtue of Sub-section (2) of Section 1, they came into force w.e.f 01.04.1990. These Rules were applied to the employees of the Council who were appointed on or after 01.04.1990 on whole time regular basis and also to those who were working immediately before 01.04.1990 on whole time regular basis and opted for these Rules. A proviso was also appended alongwith the same which provided that for the period wherein the employees who were working before 01.04.1990 and who retired during the interregnum period of coming into force of the aforesaid Rules and the date of publication, a period of four months was given to them to exercise the option. The relevant portion of the aforesaid is reproduced as under:-

(3) They shall apply to the employees of the Committees -

(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 Committees 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 annum from the date of withdrawal to the date of repayment.

3. The petitioner attained the age of superannuation on 31.03.2015 and about six months before the aforesaid date, according to the husband of the petitioner, he moved an application on 23.09.2014 by which he requested the Municipal Council to send his pension case to the competent authority for approval but no reply was received with regard to the same nor any action was taken in this regard. The husband of the petitioner thereafter died on 11.11.2018 leaving behind the petitioner as his widow, four daughters and two sons. The petitioner is stated to be an illiterate lady. The present petition has been filed seeking challenge to the action of the Municipal Council to have denied pensionary benefits to the petitioner.

4. Learned counsel appearing on behalf of the petitioner submitted that immediately prior to the date of superannuation, the husband of the petitioner had requested to the Municipal Council vide Annexure P-1 for preparing the pension documents so that the same may be sanctioned but no action was taken in this regard. Even a legal notice was also sent and still no action was taken by the respondent-Municipal Council. Thereafter the petitioner vide Annexure P-4 sought information from the Municipal Council under the RTI Act vide letter dated 03.12.2019 and sought copy of the option form regarding the exercise of option by the husband of the petitioner. Thereafter vide Annexure P-5 dated 27.12.2019 the Public

Information Officer of the Municipal Council, Malerkotla supplied the copy of the option exercised by the husband of the petitioner which is also attached alongwith Annexure P-5 of this petition.

5. Mr. Chandra Kumar Jha, Advocate appearing on behalf of the petitioner submitted that the husband of the petitioner was totally illiterate person and could sign only in broken Urdu whereas the proforma to exercise the option was in English and the husband of the petitioner had put his signatures in broken Urdu at the dotted place in the prescribed proforma as directed by the concerned official of the Municipal Council, Malerkotla. He submitted that in fact the husband of the petitioner had opted for pension and after the aforesaid filling up of the prescribed proforma till the time of retirement, no official of the Municipal Council, Malerkotla had informed him that he was not entitled for the pension and that was the reason as to why he had made an application vide Annexure P-1 for preparing of the pension documents but no action was taken in this regard.

6. Learned counsel also submitted that in similar circumstances pertaining to the same Municipal Council i.e. Municipal Council, Malerkotla one **Smt. Soma wife of Sh. Sadhu Ram** had filed a writ petition before this Court i.e. CWP No. 3827 of 2004 seeking grant of pension on similar grounds and a Division Bench of this Court allowed the writ petition vide Annexure P-6 on the ground that the petitioner was an illiterate lady and she had thumb-marked the necessary proforma exercising option for pension and other retiral benefits under 1994 rules. In that case the petitioner had been consistently representing to the respondent for the grant of pension but the same was not granted and therefore the writ petition was

filed which was allowed. Thereafter, the Municipal Council, Malerkotla assailed the aforesaid judgment of the Division Bench of this Court before the Hon'ble Supreme Court by filing an SLP which was also dismissed vide Annexure P-7. Learned counsel for the petitioner referred to yet another judgment of learned Single Judge of this Court in ***CWP No.23408 of 2016***, titled as ***'Santosh Versus State of Punjab and others'*** which was also allowed by this Court vide Annexure P-8 on 19.11.2018. He submitted that petitioner of that case was also a Safai Sewak and there were cuttings on the form on which the option was exercised and this Court took a view that the form on the basis of which the claim was denied to the petitioner does not show that she did not opt for the scheme because there were cuttings on the form and therefore the benefit of these cuttings has to be given to a person who is illiterate and therefore the writ petition was allowed. Thereafter, the Municipal Council assailed the aforesaid judgment by filing LPA No.839 of 2019 which was dismissed by a Division Bench of this Court vide Annexure P-9 on 02.05.2019. The Hon'ble LPA Bench also observed that a perusal of the form does not indicate conclusively as to whether the respondent-petitioner opted for the scheme or refused to join the same. Thereafter, the Municipal Council preferred an SLP before the Hon'ble Supreme Court which was also dismissed vide Annexure P-10. Learned counsel submitted that in the present case as well, the petitioner is at parity with the aforesaid two persons whose writ petitions have been allowed and they have been granted pension and therefore a direction be issued to the Municipal Council to fix the pension of the husband of the petitioner and grant all the benefits arising thereon

including family pension to the petitioner.

7. On the other hand, Mr. Parminder Singh, Advocate appearing on behalf of the Municipal Council submitted that in the year 1994 Municipal Council Rules, 1994 were notified which came into force w.e.f. 01.04.1994. He submitted that there is a clear cut provision in the aforesaid Rules under Rule 1 (3) (ii) that these rules will apply only when an employee who was working immediately before 01.04.1990 on whole time regular basis opts for these rules. He submitted that a clear perusal of the form wherein the husband of the petitioner had signed which has been annexed alongwith the present petition as Annexure P-5 including the vernacular of the same would show that the husband of the petitioner had specifically stated that he does not opt for these rules. The husband of the petitioner even signed in Urdu at two places on the aforesaid form which was countersigned by the officer of the Municipal Council as well for identifying. He submitted that rather at two places, he has so stated that he does not opt for these rules and therefore now after a period of 20 years, the petitioner who is the widow of the employee cannot turn around and say that the husband of the petitioner did not opt for these rules. He submitted that the form Annexure P-5 speaks for itself that there is neither any cutting nor any interpolation on the aforesaid form.

8. Learned counsel further submitted that in the year 1994 when the aforesaid rules came into force the rationale for giving the option to the existing employees was that it was for each and every employee to see as to what would be to their advantage or disadvantage. At that point of time the employees thought that the old system of CPF would be more beneficial

to them as compared to the pension scheme and therefore they opted for the same. He submitted that total 115 employees of the Municipal Council had opted for the same and there is no evidence or any material to show that at that point of time there was any undue influence or coercion on all the employees especially in view of the fact that none of the employees had objected to the same for long number of years thereafter. He submitted that all the employees who did not opt for the aforesaid rules including the petitioner were granted the benefit of their Contributory Pension Scheme, leave encashment and gratuity at the time of their retirement and they were satisfied with the same since they had themselves thought not to opt for the new rules.

9. Learned counsel further submitted that so far as the aforesaid two persons namely Soma and Santosh are concerned, their case is totally distinguishable from the present case. In the case of Soma, she had put her thumb-mark on the form and was illiterate and thereafter she herself had represented number of times to the Municipal Council for grant of pension on the ground that she opted for pension but no action was taken by the Municipal Council. However, in the present case, the husband of the petitioner had rather signed two times on the form and therefore it is not possible to presume that he did not understand the nature and meaning of the form. Furthermore, the aforesaid form was signed in the year 1994 and for the first time the husband of the petitioner gave an application for preparing his pension papers in the year 2014 vide Annexure P-1 i.e. after 20 years which was just six months prior to his retirement. He submitted that for 20 years he did not give any representation and he did not object to what he

had signed nor his signatures are disputed. He however unfortunately died and thereafter the petitioner who is the widow is pursuing the present case on the ground that her husband did not voluntarily sign more than 20 years ago. He submitted that therefore the aforesaid judgment in the case of ***Soma (Supra)*** is not applicable to the present case and is distinguishable on facts. Learned counsel further submitted that so far as the second judgment pertaining to Santosh is concerned, the same is also distinguishable on facts. He submitted that in the aforesaid judgment of ***Santosh (Supra)***, she was also a Safai Sewak and the learned Single Judge on the basis of perusal of the form on which she had signed came to the conclusion that there were cuttings in the form and she had also thumb-marked and therefore the benefit of these cuttings were given to the aforesaid Santosh being illiterate. He submitted that the cuttings in the form would show that both the columns were struck off by putting a line on the same and there was only one tick mark on the option that she did not opt for these rules. Even the Hon'ble Division Bench in LPA also considered the aforesaid factor after perusal of the form and observed that the form did not indicate conclusively as to whether the petitioner opted for the scheme or refused to join the same and the LPA was also dismissed. Learned counsel submitted that the present petitioner cannot claim parity with the aforesaid two persons whose writ petitions were allowed in facts and circumstances of those cases only.

10. Learned counsel further submitted that in case the plea taken by the learned counsel for the petitioner is accepted that after a period of 20-25 years of the exercise of option a benefit is again to be granted, then the

entire object and rationale of the Rules whereby it provided for option would be forfeited. He submitted that it will also amount to undue enrichment of the employees or their legal representatives and therefore the present petition is liable to be dismissed.

11. I have heard the learned counsel for the parties.

12. The petitioner is a widow of one Late Sh. Abdul Rehman who worked in the Municipal Council for about 40 years. He was appointed on 29.01.1974 and attained the age of superannuation at 60 years on 31.03.2015 and thereafter, he was also granted two years extension. Before coming into force of the Municipal Council Rules, 1994, the employees of the Municipal Council were not entitled for any pension but they were granted CPF and other retiral benefits. These rules were framed for the purpose of grant of benefit of pension to the employees of the Municipal Council. A perusal of these rules would show that these rules came into force w.e.f. 01.04.1994. Rule 1(3) provides that these rules would apply to two categories of employees. The first category are those employees who were appointed on or after 01.04.1990 on whole time regular basis and secondly, those employees who were already working immediately before 01.04.1990 on whole time regular basis and opted for these rules. It is only the second category which is relevant in the present case. Rule 1 (3) (ii) clearly shows that there are two conditions which are conditions precedent and *sine qua non* for the purpose of grant of benefit of pension. First condition is that an employee is working immediately before 01.04.1990 on whole time regular basis and the second condition is that he opts for these rules. Both these conditions are not only conditions precedent but they are also co-existing

and both the conditions must be satisfied together. Although there is one proviso appended alongwith the aforesaid Rule 1(3) (ii) but the proviso will not be applicable in the present case because it would apply to those who retired after 01.04.1990 till the date of publication and they were granted the period of four months for exercising option. Therefore so far as the husband of the present petitioner is concerned, Rule 1 (3) (ii) is applicable wherein both the conditions must co-exist.

13. In the facts and circumstances of the present case, the husband of the petitioner satisfied the first condition i.e. he was working immediately before 01.04.1990 on whole time regular basis but the only question which is to be determined in the present case as to whether he satisfied the second condition regarding opting of the rules or not which is the core issue involved in the present case. At the time when these rules came into force a cyclostyled form was to be signed by all the employees. The date on the form is 22.11.1994 vide form attached as Annexure P-5 and name of husband of the petitioner is mentioned. It would show that it is so stated in the form that he had carefully gone through and understood the meaning and implications of the Punjab Municipal Council Employees Pension and General Provident Fund Rules, 1994 and he does not opt for these rules. In this cyclostyled form a (/) has been so provided to provide for an option. The expression used prior to the (/) is 'opt for these rules' and the expression used after the (/) is 'do not opt for these rules'. The husband of the petitioner had the cut first part which is prior to the (/) by way of a line drawn on the same and had ticked right mark in the affirmative on the later part wherein it is so stated that he does not opt for these rules. Meaning

thereby that he exercised the option by stating that he does not want to opt for these pension rules. This option/undertaking is done at two times at the same page. For the purpose of understanding, the relevant portion is also reproduced as under : -

FORM

(See Rule-3)

I, Abdul Rehman S/o Ramjan employed as Mashki in Municipal Council, Malerkotla, District Sangrur have carefully gone through and understood the meaning and implications of the Punjab Municipal Employees Pension and General Provident Fund Rules, 1994 and I hereby opt for these rules / do not opt for these rules.

Sd/- in Urdu

Abdul Rehman

(Signature with Designation)

Date : 22-11-94

Place: MALERKOTLA

Name :

Designation:

Name of Municipal Council, in which employed

14. A perusal of the aforesaid would show that the husband of the petitioner had signed although in Urdu but at two places since one undertaking/exercise of option was taken in duplicate on the same page. The signatures of the husband of the petitioner are not in dispute. There does not appear to be an ambiguity or cutting in the aforesaid form since the husband of the petitioner had clearly opted that he does not opt for these rules and had ticked right mark in affirmative on the second part which is after the (/). This option was exercised in the year 1994 and the husband of the petitioner attained the age of superannuation in the year 2015 which was more than 20 years and for long period of 20 years, he did not either object to what he had signed or did not give any representation or notice etc.

for any grievance whatsoever. It was only six months prior to his attaining the age of superannuation that he vide Annexure P-1 after 20 years wrote a letter to the Municipal Council that his pension case should be processed. It is not understandable as to how after a period of 20 years without even agitating or disputing the form Annexure P-5, such application was made. Even a perusal of Annexure P-1 would show that it only states that his pension case be prepared and does not state anything with regard to the option he exercised that he did not opt for the pension rules vide form Annexure P-5.

15. So far as the aforesaid two cases which the learned counsel for the petitioner has claimed parity are concerned, the same also require to be considered individually.

16. So far as the writ petition filed by one Soma who was also an employee of the Municipal Council, Malerkotla, a perusal of the judgment Annexure P-6 would show that the petitioner of that case was a lady who was appointed as Safai Sevika in the year 1978 and while in service, she requested on several occasions to the authorities of the Municipal Council for completion of necessary formalities for the grant of pension and other benefits but no steps were taken by the authorities nor any intimation was given to the petitioner that she was not entitled. However, in the present case, the husband of the petitioner did not represent to the Municipal Council for more than 20 years and it was only just six months prior to his retirement that he gave a representation Annexure P-1 but did not state anything with regard to the authenticity of option exercised by him in form Annexure P-5. In the case of aforesaid Soma, she had thumb-marked

on the proforma whereas in the present case the husband of the petitioner had signed in Urdu and therefore it cannot be said that the husband of the petitioner did not understand the effect and the meaning of the form on which he had signed. Therefore the aforesaid judgment is totally distinguishable on facts from the present case.

17. So far as the second judgment in *Santosh (Supra)* is concerned, in that case as well, the petitioner was a lady and was a Safai Sewak appointed in the year 1991 and when the matter came up for hearing before learned Single Bench of this Court, on the perusal of the form on which she had signed it became clear that there was a cutting on the said form and from the form nothing could be understood as to whether she opted or she did not opt because there were cuttings at both the places i.e before the (/) and after the (/). Therefore, this Court had given the benefit of cuttings to that petitioner who was illiterate. Even in LPA, the Hon'ble Division Bench also observed that on the perusal of the form, it does not indicate conclusively as to whether the petitioner opted for the scheme or refused to join the same.

18. During the course of arguments, learned counsel for the respondent-Council in the present case produced a copy of the form of the aforesaid Santosh before this Court. A perusal of the form pertaining to Santosh would show that there were clear cut cuttings at both the places i.e. before the (/) and after the (/) which means that both the options were cut. The cyclostyled form was although on one page but the contents were in duplicate in two places pertaining to the same content matter. On the first undertaking there were cuttings at both the places whereas on the second

place there was a cutting at the first place prior to the (/) but after the (/) there was no cutting and it was tick marked as affirmative. This Court had granted benefit to the aforesaid Santosh on the ground of ambiguity and cuttings on the form and also because that petitioner also thumb-marked on the form. However, in the present case the intention of the husband of the petitioner was clear as he had put a line on the first part of option i.e. before the (/) and did not cut the later part and rather put a tick of affirmation on the same and this position was at both the places of the form. Therefore, this Court is of the view that there is neither any interpolation nor any ambiguity in the form which was signed by the husband of the petitioner and rather the intention for not opting for the rules was totally clear. Apart from the above, the husband of the petitioner had rather signed and not thumb-marked. Therefore the aforesaid judgment in *Santosh (Supra)* is also totally distinguishable on facts from the present case.

19. The argument raised by the learned counsel for the respondent-Council that in case the plea of the petitioner is accepted after a period of 25 years, then the rationale and objective of the Rules itself would be forfeited carries weight. In the year 1994, the Rules were published and specifically it was so stated that those employees who were working prior to cut of date i.e. 01.04.1990 if they wanted to opt for the pension rules, then they had to opt for the same and the husband of the petitioner did not opt for the same as per form Annexure P-5 and therefore for the first time after a period of 20 years just before his retirement, he had written a letter to the Council for preparation of the pension papers. This Court is in agreement with the

arguments raised by the learned counsel for the respondent-Council. In the absence of any undue influence, coercion or fraud, an employee or the legal representative cannot be permitted to take undue advantage after a lapse of large number of years only because the balance of advantages and disadvantages of opting of Rules changed after a number of years.

20. In view of the aforesaid facts and circumstances of the present case, the present petition is devoid of any merit and the same is hereby dismissed. However, there shall be no order as to costs.

12.01.2023

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)
JUDGE

: Yes/No
: Yes/No