204 **2023:PHHC:130043**

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-18767-2016 (O&M)
Date of decision : 07.10.2023

Jaspal Singh and others **...Petitioners**

Vs.

State of Punjab and others **...Respondents**

CORAM: HON’BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Rajinder Singh Magoo, Advocate
for the petitioner.

Mr. Arun Gupta, AAG, Punjab
for respondent Nos.1 to 3.

Mr. Malkeet Singh Balianwali, Advocate
for respondent No.4.

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<u>DEEPAK MANCHANDA, J.(Oral)</u>

1. Petitioners have filed this writ petition under Article 226 Constitution of India for issuance of a writ in the nature of mandamus for issuance of directions to the respondents to consider the option exercised by the them for pension as a valid option, which has been exercised as per the pension scheme notified by the Punjab Govt.on 28.07.1994 and further to release the pension as well as arrears of pension to them along with interest @18% per annum.

2. Learned counsel for the petitioners contends that petitioners exercised their options as per the notification dated 28.07.1994 (Annexure P-1) published in the Punjab Govt.Gazette dated 29.07.1994 and they were allotted

their respective Contributory Provident Fund numbers, but no pension has been released to them, therefore, he prays for issuance of appropriate directions to the respondents to consider the option and further release pension and other retiral benefits to the petitioners. In support of his contention, learned counsel has placed reliance upon the judgment of the Hon'ble Supreme Court rendered in "***Dakshin Haryana Bijli Vitran Nigam and others Vs. Bachan Singh, 2009 (3) SCT 741***.

3. On the other hand, learned counsel on behalf of respondent No.4 while referring to the reply dated 25.05.2017 filed by way of affidavit of Nachhatar Singh, Executive Engineer, Municipal Corporation, Ludhiana has submitted that petitioners are not within the purview of the notification dated 28.07.1994, therefore, they are not entitled for pension.

4. I have heard learned counsel for the parties and have perused the material available on record.

5. This Court has also decided the same issue, while deciding CWP No.14259 of 2018 decided on 09.08.2023 titled as ***"Jagjit Singh Vs. State of Punjab and others"***. Further, this issue is already settled where similar employees of Municipal Corporation, Ludhiana approached this Court through CWP No. 18381-2003, which was allowed vide order dated 19.04.2010 and LPA bearing No.1192-2010 as well as SLP bearing No.7745–7747-2015 filed by the respondent-State were dismissed. The relevant paragraphs of the above judgment dated 19.04.2010 read as under:-

> *"xxxxxx*
> *3. The learned counsel appearing for the petitioners refers to a decision of the Hon'ble Supreme Court in* ***Dakshin Haryana Bijli Vitran Nigam & Others Vs. Bachan Singh*** *2009 AIR (SC) 2745, where the court was considering the issue of the counting of the period of an employee on work*

charge basis when he was subsequently regularized as well as the issue of the effect of a person not exercising an option within a particular period. Referring to a clause under the scheme that the provisions of the scheme were particularly to be brought to the notice of the concerned employees, the Hon'ble Supreme Court held that it would be unreasonable and irrational to deny the employees the pensionary benefits when the Nigam failed to produce any record showing that the instructions that specifically provided for getting them noted in writing had indeed been apprised and in the absence of such material, the Hon'ble Supreme Court made an inference that they had no knowledge about the option called for from the persons.

4. The counsel for the State and of Municipal Corporation would join issue that there had been no specific instructions requiring the claim to be noted from each and every employee. The scheme merely provided for an exercise of an option within a period of four months from the date of notification and admittedly, the petitioners had not exercised the option within that period. Learned counsel appearing for the Corporation relies on a judgment of the Hon'ble Supreme Court in ***Union of India and others Vs. M.K.Sarkar*** *(2010) 2 Supreme Court Cases 59 to support his contention. In this case, the Hon'ble Supreme Court, while rejecting a claim for pension of persons who did not exercise the option within a specified time, dealt with the situation of the claim by persons who are making that option 22 years after retirement. The Hon'ble Court also considered the effect of permitting persons to secure double benefits of both provident fund scheme as well as pension scheme and found that such situation would be unjust and impermissible.*

5. In my view, Hon'ble Supreme Court in Union of India and others Vs. M.K.Sarkar(supra) was not laying down a general proposition that if an option is not exercised within a particular time, it could not be done at all. The case must be rooted on the specific facts of an extra-ordinary delay of 22 years and the possible claim of double benefit which the petitioners therein had claimed. In this case all but out of the petitioners were still in service at the time when the writ petitions were filed. Learned counsel for the petitioner also points out that this petitioner himself joined along with others who filed CWP No.71868 of 2002 when they were all in service when this Hon'ble Court had merely directed the respondents to pass a speaking order. By that time when the present writ petition was filed, one of them had been superannuated. The ends of justice would be best been to meet to ensure that no double benefit obtains to the petitioners. The petitioners shall refund the amounts that have received from contributory provident fund with simple

> *interest at the rate of 9% p.a., when the respondents admit the petitioners to the pension scheme. They shall also give undertaking that they will make any contribution that the scheme stipulates as payable towards the employee's contribution. The amount shall be calculated by the respondents and informed to the petitioners giving a period not less than four weeks for making the payment and on such payment, the petitioner shall be entitled to the payment of pension arrears. The arrears of pension shall be made with simple interest at the rate of 9% per annum.*
> *The writ petition is allowed.*
> *There shall, however, be no direction as to costs."*

6. In view of the above, the present petition is allowed in same terms as in CWP-18381-2003 and respondents are directed to take necessary steps regarding the release of the pension on the payment of amount by the petitioners and to release the same within three months from the date of receipt of copy of this order/payment of contribution, whichever is later, failing which the petitioners shall also be entitled to interest at the rate of 9% per annum for the delayed payment of pension.

(DEEPAK MANCHANDA)
07.10.2023 **JUDGE**
vanita

Whether speaking/reasoned : Yes No
Whether Reportable : Yes No