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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-14259-2018
Date of decision : 09.08.2023

Jagjit Singh **...Petitioner**

Vs.

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

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Harish Sharma, Advocate
for the petitioner.

Mr. Vikas Arora, AAG, Punjab.

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

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DEEPAK MANCHANDA, J.(Oral)

1. Petitioner-Jagjit Singh has 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 him for pension as a valid option, which has been exercised on the basis of letter dated 14.11.2011 (Annexure P-2) issued by the Punjab Govt. and further to release the pension as well as arrears of pension to him along with interest @18% per annum.

2. The facts in brief leading to the present petition are that petitioner joined the Municipal Corporation, Ludhiana-respondent No.4 on 01.12.1979 as Plumber and on attaining the age of superannuation retired on 28.02.2018 from

the said post. The Govt. of Punjab had issued a notification dated 28.07.1994 published in the Punjab Govt. Gazette dated 29.07.1994 (Annexure P-1) in which Municipal Corporation Employees Pension and General Provident Fund Rules, 1994 were published. According to the said rules, the employees have to opt for the rules within a period of four months from the date of publication of the said rules subject to the condition that they shall have to refund the Corporation Contribution towards Contributory Provident Fund including interest thereon received by them back with simple interest on the whole amount @ 10% per annum from the date of withdrawal to the date of return. The petitioner being a technical trade person and remained deployed in the field area away from the administrative offices, therefore, he had no occasion to see Punjab Govt. Gazette and even never informed about the same. He was never called upon to given option to opt for the said rules. However, Govt. of Punjab issued another letter endorsement dated 14.11.2011 (Annexure P-2) according to which one more opportunity was given to the employees to exercise the option. The petitioner exercised his option and the same was accepted and he was issued with GPF No.8962. However, after retirement of the petitioner, he was not paid any pension on the ground that the Local Govt./Finance Department is not allowing to deposit the amount of contribution in the GPF account of the petitioner, due to which contribution of the petitioner was not sent to the GPF. The petitioner has not been paid pension and other retirement benefits and the same has been withheld without any reason. Aggrieved against the same, the petitioner sent a legal notice dated 17.04.2018 (Annexure P-3) to the respondents, but no reply has been received. Being aggrieved and facing similar situation, some of the working/retired employees of Municipal Corporation, Ludhiana approached this Hon'ble Court through CWP-18381-2003, which was allowed vide order dated 19.04.2010 (Annexure P-4) and LPA No.1192-2010 as well as SLP No.7745-7747-2015 filed by the respondent-State against the above order was dismissed vide orders dated 21.05.2014 and 25.10.2017 (Annexures P-5 and P-6, respectively). Hence the present writ petition.

3. Learned counsel for the petitioner contends that petitioner is entitled to pension as the Municipal Corporation Employees Pension and General Provident Fund Rules, 1994 are fully applicable in case of the petitioner. Learned counsel for the petitioner contends that the petitioner exercised his option on time according to the letter dated 14.11.2011 (Annexure P-2) issued by Govt of Punjab and although GPF No.8962 was allocated, but no pension has been released to him, therefore, he prays for issuance of appropriate directions to the respondents to consider his option and further release pension and other retiral benefits.

4. On the other hand, learned State counsel while referring to the reply dated 20.08.2019 filed by way of affidavit of Rakesh Kumar, Joint Director, Department of Local Government, Punjab has submitted that employees of Urban Local Bodies prior to 28.07.1994 were only entitled to benefit of Contributory Provident Fund Scheme and were not entitled to pension, However, the Department of Local Government, Govt.Punjab on 28.07.1994 notified the Punjab Municipal Corporation Employees Pension and General Provident Fund Rules, 1994 (for short "Pension Rules, 1994") and the same were made operative w.e.f. 01.04.1990 to all regular employees who are appointed on regular basis on or after 01.04.1990 and also for another category

of employee who were working before 01.04.1990 on regular basis and have opted for the same.

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

6. Admittedly, the petitioner retired from the corporation/respondent No. 4 and un-disputedly, he exercised option on time according to the letter dated 14.11.2011 (Annexure P-2) issued by Government of Punjab and accordingly GPF No. 8962 was also allocated to him. Moreover, 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 (Annexure P-4) and LPA bearing No.1192-2010 as well as SLP bearing No.7745–7747-2015 filed by the respondent-State were dismissed. Once the petitioner has exercised the option and had opted for pension as well as in light of the judgement passed by this Court in CWP No. 18381-2003, which has also attained finality. The relevant paragraphs of the above judgment 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."

7. Further the stand taken by the respondents is not tenable by saying that the pension rules were not amended. While dealing with the similar issue, the Coordinate Bench of this Court in CWP No. 15266 of 2014 titled as "Raman Kapoor Vs. State of Punjab and others" has allowed the petition vide order dated 11.07.2016 by giving directions to the respondents, where the plea taken by the respondents for amending the Rules was rejected and directions were issued to take necessary steps regarding the release of the pension.

8. In view of the above, the present petition is allowed in same terms and respondents are directed to take necessary steps regarding the release of the pension on the payment of amount by the petitioner 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 petitioner shall also be entitled to interest at the rate of 9% per annum for the delayed payment of pension.

(DEEPAK MANCHANDA)
JUDGE

09.08.2023
vanita

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