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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-4374-2016 (O&M)
Date of Decision:19.01.2023

RAM CHARAN

....Petitioner(s)

Versus

STATE OF PUNJAB AND OTHERS

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. S.K. Rattan, Advocate, for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

Mr. Dhirinder Chopra, Advocate, for respondent No.3.

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Article 226/227 of the Constitution of India seeking a writ in the nature of Certiorari for quashing of the impugned order dated 01.04.2015 (Annexure P-2) which was passed by respondent No.2 i.e. Director, Department of Rural Development and Panchayat, Punjab wherein the claim of the petitioner for grant of pension was rejected on the ground that the petitioner had submitted documents pertaining to two options signed by him i.e. on 13.07.1999 and another option signed by him on 27.09.1999 and there was another third document pertaining to the said option which was not attested by the then Executive Officer which was of the year 2000.

The brief facts of the present case are that the petitioner retired

on 31.12.2010 as Panchayat Secretary and thereafter, he submitted pension papers to the concerned department and thereafter, he had pursued his case for grant of pension on the strength of three documents which were in the nature of option. One document was dated 13.07.1999, second was dated 27.09.1999 and the third was dated 01.08.2000. At that point of time Punjab Panchayat Samiti & Zila Parishad Employees Pension & Provident Fund Rules, 2000 had come into force and option was sought from the employees as to whether they wanted to exercise the option for getting pension or for the Contributory Provident Fund. The department kept on delaying the decision which was to be taken by the department as to whether pension is to be granted or Contributory Provident Fund is to be granted to the petitioner and ultimately by way of impugned order (Annexure P-2) which was passed by the Director, Department of Rural & Panchayat, Punjab on 01.04.2015, it was decided that the petitioner did not exercise the option during the prescribed period i.e. 28.07.2000 to 27.11.2000 for the purpose of exercising the option as per Rule 3 of Punjab Panchayat Samiti & Zila Parishad Employees Pension & Provident Fund Rules, 2000 and therefore, his claim for grant of pension was rejected and it was also directed that the amount of CPF be transferred in the name of the present petitioner. By way of this order, the earlier two options of 1999 were not accepted by the Director, Department of Rural & Panchayat, Punjab particularly in view of the fact that it was not probable that such an option could have been exercised prior to coming into force of the aforesaid Rules of 2000.

Learned counsel for the petitioner has submitted that during the pendency of the present petition, the matter was considered at the level of

department and now during the pendency of the present petition, the aforesaid option of 01.08.2000 which fell in that bracket which was the prescribed period was enquired into by the department from the concerned quarter and they came to the conclusion after ascertaining from the Executive Officer and the other authorities that the said option form of 01.08.2000 was not only validly existing but it was duly attested by the concerned Executive Officer at that point of time and therefore, the department itself came to the conclusion that the petitioner has validly exercised the option in accordance with the Rules and consequent upon the same, now the entire pension and pensionary benefits have been duly sanctioned by the Competent Authority. The amount of CPF which was paid to the petitioner has also been adjusted and the arrears of pay and the pensionary benefits have been paid to the petitioner on 28.02.2019. He submitted that when the matter was being considered an affidavit was sought from the petitioner to state that the department has already started his pension and therefore, he will withdraw the present petition from this Court. He submitted that such an affidavit which was sought and which was given by the petitioner has no force of law and is not enforceable being void ab initio. He submitted that no authority can compel anybody to give an affidavit for the purpose of withdrawing of any case and it cannot be *quid pro quo* for grant of benefit.

Learned counsel submitted that now since the department itself has rectified their mistake and have granted other pensionary benefits to the petitioner by relying upon the option form dated 01.08.2000 which now they came to the conclusion was a correct and valid document, then he is

entitled for the grant of interest on the date the right of pensionary benefits accrued to the petitioner till the time of disbursement.

Mr. Dhirinder Chopra, learned counsel appearing on behalf of respondent No.3 as well as Ms. Akshita Chauhan, learned DAG, Punjab have submitted that so far as the factual position with regard to now grant of pension and pensionary benefits is concerned, the same is correct. They submitted that it is correct that during the pendency of the present petition on the basis of an inquiry being conducted the option certificate dated 01.08.2000 was found to be correct as being duly attested by the Executive Officer and consequent thereupon, pension and pensionary benefits have been granted to the petitioner after adjusting the amount of CPF and in this way, the impugned order Annexure P-2 has become redundant. They submitted that so far as the claim of the petitioner for grant of interest is concerned, since the mistake was rectified by the department itself, the petitioner is not entitled for the grant of interest.

I have heard the learned counsel for the parties.

The petitioner retired on 31.12.2010. Thereafter, he had made an option by filing option form but the same was rejected by the Director, Department of Rural Development and Panchayat, Punjab vide impugned order (Annexure P-2) and the petitioner was not granted the pension and pensionary benefits but was granted the benefit of CPF. However, during the pendency of the present petition, the department itself has realised its mistake and on the basis of the inquiry conducted, it was found that the option form dated 01.08.2000 was valid and correct being duly attested by the Executive Officer and that the petitioner was entitled for the pension

and pensionary benefits and after realizing such a mistake, the respondents have now granted pension and all the pensionary benefits to the petitioner after adjusting the CPF which the petitioner had initially received the same from the respondent-State. It is therefore clear that the delay has been caused not by the petitioner but the delay was caused because of the mistake of the respondent-State and consequently, after a period of 9 years now in the year 2019, he has been paid his pension and pensionary benefits. It is a settled law that pension and pensionary benefits are not the bounty of the Government and it is a right to property which is a Constitutional right vested in an employee which is to be granted to him at the time of retirement. The facts and circumstances of the present case suggest that it was not the fault of the petitioner but it was the fault of the respondent-State to have passed the impugned order (Annexure P-2) which has now become redundant after the grant of pension and pensionary benefits to the petitioner. So far as affidavit which was executed by the petitioner that he will withdraw the present petition because the pensionary benefits have been paid to him, this Court is of the view that such kind of affidavit is totally unenforceable and void. The State cannot ask an employee to furnish such kind of affidavits where otherwise an employee is entitled for a relief under the law. Furthermore, there can be no estoppel against the law.

In view of the aforesaid facts and circumstances, this Court is of the view that the petitioner deserves the benefit of interest on the delayed payments.

Consequently, the present petition is allowed. Respondent No.2 is directed to calculate the interest on the delayed payments of all the

pension and pensionary benefits from the date of its accrual till the date of its disbursement @ 6% per annum within a period of three months from today.

The petitioner was constrained to have three rounds of litigation by filing two writ petitions and one COCP before this Court. The first petition was filed by him i.e. CWP No.2026 of 2014 wherein this Court vide Annexure P-1 directed the department to take a final decision on the legal notice served by the petitioner. This petition was filed by the petitioner alongwith other petitioners. Thereafter, he had to file contempt petition before this Court which was rendered infructuous vide order Annexure P-3 because at that time the impugned order had already been passed and now the third writ petition has been filed challenging the impugned order.

In view of the aforesaid facts and circumstances, the petitioner shall also be entitled for costs which are assessed as Rs. 25,000/-. The respondents shall also pay the aforesaid costs to the petitioner within a period of three months from today.

The present petition stands disposed of accordingly.

19.01.2023

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)
JUDGE

: Yes/No
: Yes/No