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2023:PHHC:165864

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-28497-2018

DECIDED ON: 11.08.2023

NANTI DEVI & ANR.

.....PETITIONERS

VERSUS

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Sandeep Singal, Advocate, for the petitioner.

Mr. Kapil Bansal, DAG Haryana.

Mr. Rajesh K. Sheoran, Advocate
for the respondents No.2 & 3.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing the order dated 11.04.2017 (Annexure P-6), whereby the claim of the petitioners for pension on account of death of late Sh. Risal Singh has been rejected, which is illegal and arbitrary.

2. Before this Court, the petitioners being LR's of deceased employee namely Lates Shri Risal Singh have sought pensionary benefits being entitled as per Punjab Civil Services Rules (Volume II), who was husband of petitioner No.1 and father of petitioner No.2.

3. Briefly stated, the factual matrix can be culled out to read that late Risal Singh joined the services as Security Guard in the year 1988 with the Haryana Board of School Education-respondent No.2 on regular basis. He was served upon a charge-sheet on 21.08.1991 and finally his services were terminated vide order dated 13.10.1994, which was challenged by serving a demand notice upon

respondent No.3 and a reference was made under Section 10 of the Industrial

Dispute Act, 1947 (hereinafter referred to as 'Act of 1947' to Industrial Tribunal-cum-Labour Court, Rohtak.

4. The termination order was set aside vide award dated 19.08.2009, which was assailed by the respondents by way of Civil Writ Petition No.1832 of 2011. The said writ petition was dismissed on 08.05.2013 upholding the award passed by the labour Court, whereby reinstatement in service was ordered alongwith 25 % back wages from the date of serving demand notice till the date of superannuation i.e., from 24.08.1996 to 31.07.2004.

5. Two aspects need to be noted here being very material for final adjudication of the instant petition would be that firstly the deceased Risal Singh attained the age of superannuation during the pendency of proceedings before the Industrial Tribunal-cum-Labour Court i.e., 31.07.2004 and secondly unfortunately he died during the pendency of CWP No.1832 of 2011, which was dismissed on 08.05.2013 by this Court.

6. The LPA No.834 of 2018 was preferred to assail the orders dated 08.05.2013 passed in Civil Writ Petition, however, the said appeal also met the same fate having been dismissed on 19.05.2014. Resultantly the award dated 19.08.2009 attained finality, but the legitimate dues to the petitioners alleged to have not been released inasmuch subsequently even the legal heirs-petitioners had to approach this Court, under compulsion by another CWP No.20010-2013 seeking pension and other retiral benefits, which was disposed of on 11.09.2013 with a direction to the respondents to consider and decide the case of the petitioners. The respondents still took the plea of pendency of LPA No.834 of 2018, the directions were not complied with and petitioners had again filed CWP No.1297 of 2014, which was also disposed of on 09.07.2014 directing the respondents to take a fresh decision on the claim raised by the petitioners, but still no action had been taken.

7. The another CWP No.24700 of 2014 was filed, which was dismissed on 09.12.2014 (Annexure P-4), with liberty to the petitioners to challenge the award

dated 14.08.2009 for claiming continuity of service and accordingly another CWP No.17370 of 2015 was preferred seeking relief of continuity of service. The award of the Labour Court was modified vide order dated 01.12.2016 (Annexure P-5) directing that the deceased employee is entitled to continuity of service only for the purpose of granting retiral benefits and respondents were asked to count the service from the date of termination till the date of retirement and such benefits be released alongwith interest @ 6 % per annum within four months from the date of passing of said order i.e., 01.12.2016.

8. It is also on record that said order was still not complied with and petitioners had to approach the contempt Court via COCP No.934 of 2017 and during the pendency of the same, the respondent No.3 passed an order dated 11.04.2017 (Annexure P-6) to submit that gratuity and leave encashment have been released and petitioners are not entitled to any pension whatsoever. The contempt petition was dismissed as withdrawn vide order dated 21.05.2018 (Annexure P-7) with liberty to avail appropriate remedies for the grouse, if any subsists.

9. It is in continuation of the aforesaid sequence of events and multiple round of litigations suffered by the petitioners, the instant petition came to be filed before this Court with the prayer that order dated 11.04.2017 vide which case of pension and leave encashment has been held to be not liable to be paid to the petitioners, be quashed and the respondents be directed to grant pension and other benefits on account of death of late Risal Singh.

10. To support their claim, learned counsel for the petitioners relies upon the judgment of this Court rendered in ***CWP-4677-2004 titled as Mahender Singh vs. Executive Engineer and Anr.***, wherein it has been held by relying upon full Bench decision of this Court in ***Kesar Chand vs. State of Punjab, 1988 (5) SLR 25*** and a judgment of Division Bench in ***Darshan Singh vs. Chief Accounts Officer, HSEB, CWP No.2402 of 1997 decided on 27.08.1997*** that nothing has been

notice of the petitioner. There is not even an averment in the written statement that this circular was ever got noted from him. In this situation, the relief admissible to the petitioner cannot be denied. Therefore, the petitioner's claim that the benefit of the service should be given to him towards the determination of the amount of pension, has to be sustained, however, it shall be subject to the condition that the petitioner does not claim the benefit of that period of service towards the Provident Fund. The amount deposited by the employer from the date of his appointment till his retirement alongwith interest shall be refunded by the petitioner. If the petitioner deposits this amount alongwith interest thereon up-to-date within two months from today, the respondents shall re-determine his pension and pay the arrears to him which may become due within two months thereafter.

11. Mr. Sandeep Sihag, learned Advocate claiming the relief on behalf of the petitioner lays stress to Rule 30 of the 'Board of School Education Haryana, Bhiwani (Employees Regulations,) 1990' urging that the matters, which are not specifically provided in these Rules are to be dealt with as per Punjab Civil Services Rules or any other Rules framed thereunder.

12. He further refers to Rule 5.27 of Punjab Civil Services Rules (Volume 2, Section IV), to say that deceased Risal Singh, who actually died on 10.03.2012 would be entitled to get pension w.e.f., 31.07.2004 to 10.03.2012 and family pension w.e.f., 11.03.2012 as per Family Pension Scheme 1954, since the continuity of service has now been granted vide order dated 01.12.2016 (Annexure P-5) in CWP No.17370 of 2015.

13. At the same, Mr. Rajesh K. Sheoran, Advocate for respondents No.2 & 3, opposes the writ petition contending that a letter was issued to the petitioner dated 25.05.1993 calling upon to exercise his option for pension scheme in lieu of Contributory Provident Fund (CPF) Rules issued vide memo no. 12/27/PE (FD)/91/A-1 Dated 26.06.1992 (Annexure R-1), but the petitioner never came forward

14. He further informs the Court that the payment of contributory provident fund has already been made to the petitioner on 08.08.1995 and, therefore, right to claim arrear of pension does not survive.

15. Mr. Sheoran, seeks dismissal of the writ petition having been rendered infructuous in view of stand taken through Para 7 of its written statement filed by Deputy Secretary, Board of School Education Haryana, the relevant part of which reads as under:-

“In compliance of the order dated 01.12.2016 (Annexure P-5), the payment of retiral benefits (i.e., gratuity and leave encashment alongwith interest @ 6 % P.A.,) as admissible according to the Rules and law had already been made to the petitioner accordingly.”

16. Heard learned counsel for the respective parties.

17. After having examined the record and considering the submissions made by learned Advocate for the respective parties, the admitted fact culminates to the effect that in compliance of order dated 01.12.2016 (Annexure P-5), the gratuity and leave encasement alongwith interest @ 6 % have been released to the petitioners after this Court in CWP No.17370 of 2015 ordered the respondents to count the service in continuation, however have disputed the release of pension to the petitioners (legal representatives of deceased Risal Singh) on the ground that deceased Risal Singh never opted for pension scheme and rather continued with the contributory provident fund, which was paid on 08.08.1995 and as a result thereof, it was argued by Mr. Sheoran that deceased Husband of petitioner No.1 has relinquished the pension scheme.

18. To scrutinize the claim for pension/family pension as staked by the petitioners, the relevant Service Rules need to be looked at for which provisions of Rule 3.26 (a) in consonance with Rules 5.27, 5.30 of the Punjab Civil Services Rules, (Volume -1 Part-1), which stipulate that:

rule, every Government employee shall retire from service on the afternoon of the last day of the month in which he attains the age fifty-eight years. He must not be retained in service after the age of fifty-eight years. He must not be retained in service after the age of compulsory retirement, except in exceptional circumstances with the sanction of the competent authority in public interest, which must be recorded in writing (provided that the age of compulsory retirement for the members of the (judicial Service, blind and Class-IV Government employee shall be sixty years).

Provided further that a Government employee whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of fifty eight or sixty years, as the case may be.”

Rule 5.27: *A superannuation pension is granted to Government employee entitled or required, by rule, to retire at a particular age. See Rule 3.26 of Volume I, Part 1, of these Rules.*

No claim to compensation from a Government employee who is required to retire at a particular age under rules will be entertained.

Rule 5.30: *Each Government employee's case should be taken up when he is approaching the age of superannuation and before the expiry of each extension of service.”*

19. This question came up before the Hon'ble Supreme Court of India in ***Civil Appeal No.4903 of 2009 titled as Dakshin Haryana Bijli Vitran Nigam and others vs. Bachan Singh, decided on 30.07.2009*** wherein, once again the instructions dated 06.08.1993 as well as amended instructions of 09.08.1994 came up for consideration as to whether, an employee can be denied the benefit of adhoc service on the basis of those very instructions. The Hon'ble Supreme Court of India held that unless and until those instructions are brought to the notice of the employee concerned, non-submitting of option, cannot be treated as a ground to deny the benefit of daily wage service to the said concerned employee. In the said case also, the respondents failed to produce any document to show that two

Hon'ble Supreme Court of India held the respondent employee therein entitled for the grant of benefit of daily wage service for computing the pensionary benefits.

The relevant paragraph 26 of the said judgment is as under:-

“26. In view of the law as has been articulated in a large number of cases where this court has observed that any discriminatory action on the part of the Government would be liable to be struck down. Hence, in this case, it would be totally unreasonable and irrational to deny the respondent the pensionary benefits under the scheme particularly when the appellants have failed to produce any record showing that the instructions dated 6.8.1993 and 9.8.1994 were actually got noted in writing by the respondent. In the absence of any such material it can well be inferred that the respondent had no knowledge about the options called by the appellants.”

20. In the case in hand, admittedly the deceased Risal Singh attained the age of superannuation on 31.07.2004 after having served the respondent-Board since 1988. The payment of CPF on 08.08.1995 as alleged by the respondent No.2 does not inspire confidence of this Court since the deceased petitioner was in service on that day and regarding option for pension scheme, the respondents could not produce any circulation inviting options on that account to establish that the deceased Risal Singh ever refused to opt for pension scheme and wanted to continue with the contributory provident fund, as is the mandate of Division Bench of this Court in '***Mahender Singh vs. Executive Engineer and Anr., CWP No.4677 of 2004 dated 06.09.2005***'.

21. As regards to the main contention of the state that petitioner has failed to exercise his option under the pension scheme dated 26.02.1992 same also stands rebutted by apex court in ***Basheshar Nath v. Commissioner of Income Tax , Delhi and Rajasthan, AIR 1959 SC 149*** wherein it has been held that there cannot be waiver of Fundamental right. And as Right to pension has been held as one of the

the option the same cannot be denied as the very object of these statutes is to provide financial help to the families and the same being the beneficial legislation should be construed liberally in the favour of the employees.

22. A reference can also be made to a decision of apex court in ***D.S Nakara and others vs Union of India, AIR 1983 SC 130*** wherein it has been held that pensionary benefits cannot be denied by putting time restriction in the regulation. The prescription of time limit under the regulation to exercise the right shall not prevail over the fundamental rights guaranteed to the pensioners, as, such regulation would deprive, as envisaged under Articles 14, 19, and 21 of the Constitution of India and therefore the prescription of time limit for submission of option forms by the pensioners has to be held bad in law.

23. Further Regulation 30 of the Board of School Education, Haryana (Employees Service) Regulation, 1990 is also quite handy for this Court which needs to be reproduced hereinbelow:-

“30. In matters for which no specific provision has been made in these regulations or any other regulation made by the Board, the rules contained in Punjab Civil Services Rules, as amended from time to time and such other rules as are framed by the Government on the subject shall apply mutatis mutandis”.

24. It is crystal clear on reading of the aforesaid rules collectively that where on a subject matter regulations of 1990 of the Board of School Education, Haryana are silent, the Rules contained in the Punjab Civil Services Rules, as amended from time to time by the Government shall apply *mutatis mutandis* to the case of petitioner as well. Therefore, this Court is fully in agreement with the arguments raised on behalf of the petitioner to order that the legal representatives of deceased Risal Singh are entitled to be granted pensionary benefits including family pension w.e.f. 31.07.2004 to 10.03.2012 and family pension as per scheme of 1964 w.e.f., 11.03.2012 onwards.

effect that pension payable to a retired Government servant is no longer a bounty which is payable on the sweet will and pleasure of the government. It is actually a statutory right which flows to such an employee by virtue of the rules which governed his employment, as has been said in '*Deokinandan Prasad v. State of Bihar and Ors.*, AIR 1971 S.C. 1409' by the Supreme Court.

26. The grant of pension did not depend upon an order being passed by the authorities to that effect. It may be that for the purposes of quantifying the amount having regard to the period of service and other allied matters, it may become necessary for the authorities to pass an order to that effect but the right to receive pension flows to the government servant not because of the said order but by virtue of the rules which have a statutory force, as was the view of the Supreme Court in *State of Punjab v. Iqbal Singh*, A.I.R. 1976 S.C. 667, and subsequently also reiterated further in *State of Kerala and Ors. v. M. Padmanabhan*, AIR 1985 S.C. 356, having made following observations:-

"Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment."

27. Thus, a right to pension has been held to be a right in property, and till the Constitution (Forty Fourth Amendment) Act, 1978, came into force, property right was a fundamental right under [Article 19\(1\)\(f\)](#) of the Constitution. Thereafter on the enforcement of the said amendment property right is no longer a part of fundamental rights and has been provided for as a constitutional right in [Article 300-A](#) and in terms thereof no person can be deprived of his property save by authority of law.

28. This Court also cannot lose sight of the pain and sufferings suffered by LRs of a deceased employee, who have to go in multiple round of litigations as recorded in the factual matrix hereinabove.

29. In light of the above discussion made, added with the fact that unreasonable hardship has been caused to the petitioners, the respondents are directed to release the pension w.e.f., 31.07.2014 to 10.03.2012 and family pension w.e.f., 11.03.2012 onwards alongwith interest @ 9% interest per annum, in case petitioners surrender the contributory provident fund share, if actually availed by late Shri Risal Singh on 08.08.1995.

30. The petition is allowed in the aforesaid terms.

11.08.2023

Meenu

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>