IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-2004-C-2022 in/&
RSA-4936-2011
Date of Decision :07.02.2023

The Commissioner, Municipal Corporation Ludhiana ...Appellant

Versus

Som Nath and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Harsh Aggarwal, Advocate
for the appellant-Corporation.

Mr. G.S. Madaan, Advocate and
Mr. Bhupinder Gupta, Advocate for the respondents.

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Harsimran Singh Sethi, J. (Oral)

CM-2004-C-2022

The present application has been filed for fixing some actual date of hearing in the main regular second appeal.

Notice of the application was issued to the respondents.

Learned counsel for the respondents appears and raises no objection for the grant of prayer as made in the present application.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the application is allowed. The main appeal is taken up for hearing today itself.

RSA-4936-2011

The present regular second appeal has been filed by the Municipal Corporation Ludhiana by which, the judgment and decree of the trial Court dated 01.11.2007 as well as judgement of the Lower Appellate Court dated 29.08.2011 have been challenged.

Certain facts need to be mentioned to appreciate the controversy in a correct perspective.

The respondent/plaintiff was appointed as Laboratory Technician with the respondent-Municipal Corporation, Ludhiana on 02.09.1968 and at that time, when the respondent/plaintiff joined the service of the corporation, there was no pension scheme available for the employees of the Corporation. Punjab Municipal Corporation Employees Pension and General Provident Fund Rules, 1994 (in short, '1994 Rules') were enacted and notified on 28.07.1994 and the same were to be made applicable w.e.f 01.04.1990. Keeping in view the 1994 Rules, the employees, who were working in the Municipal Corporations in the State of Punjab became eligible for the grant of pensionary benefits in respect of the services rendered with the Municipal Corporations in the State of Punjab. As per the 1994 Rules, the employees who were recruited after promulgation of 1994 Rules were governed by the said rules automatically and the employees, who were already in service at the time of enactment of 1994 Rules were to opt for the benefit of the said 1994 Rules so as to become eligible for the pensionary benefits within a period of four months of the promulgation of the said 1994 Rules.

The respondent/plaintiff ultimately retired on attaining the age of superannuation on 31.01.2001 after which, he sought benefit of the 1994 Rules on the ground that within a period of four months of the promulgation of the 1994 Rules, the respondent/plaintiff had opted for the benefit of 1994

Rules hence, he was entitled for the grant of the benefit of pension as envisaged under 1994 Rules, whereas the department was of the view that by an option submitted by the respondent/plaintiff on 30.11.1994, the respondent/plaintiff opted out for the applicability of the said 1994 Rules hence, the said option is to be treated as valid option so as to decline the pensionary benefit as claimed by the respondent/plaintiff .

As the benefit of pension was not being extended to the respondent/plaintiff, he approached this Court by filing CWP-18095-2003, which writ petition was disposed of by this Court vide order dated 18.11.2003 directing the appellant-Municipal Corporation to consider the representation of the respondent/plaintiff with regard to his claim for the grant of pensionary benefits by passing an appropriate speaking order within a period of four months. The said claim of the respondent/plaintiff was declined by the Municipal Corporation vide an order dated 18.03.2004, which was again challenged by the respondent/plaintiff by way of filing CWP-6870-2004, which writ petition was ultimately withdrawn by the respondent/plaintiff with liberty to approach the Civil Court so as to prove his claim with regard to the valid option submitted by him in order to claim the benefits under 1994 Rules.

Keeping in view the liberty granted by this Court, the respondent/plaintiff filed a civil suit claiming the benefit of 1994 Rules so as to claim pensionary benefits in respect of the services rendered by him with the appellant-defendant-Municipal Corporation.

Notice in the civil suit was issued and reply was filed by the appellant-defendant-Corporation wherein, it has been mentioned that option being claimed to have been submitted by the respondent/plaintiff on 24.09.1994 is a forged document and is not on record whereas, as per the option which was submitted by the respondent/plaintiff on 30.11.1994, he had specifically opted to be out of the benefit of 1994 Rules hence, the claim of the respondent-plaintiff is bad.

Keeping in view the evidence which had come on record, the trial Court came to the conclusion that option dated 24.09.1994, according to which, respondent/plaintiff opted for the pension scheme makes him entitled for the grant of benefit under the 1994 Rules and option dated 30.11.1994 cannot be treated as valid to oust the respondent/plaintiff for consideration of his claim as the same was beyond the period of four months from the date of notification and direction was issued by the trial Court to grant the respondent/plaintiff benefits under the 1994 Rules qua the pensionary benefits while passing judgement and decree dated 01.11.2007.

Aggrieved against the said judgement and decree dated 01.11.2007 of the trial Court, the appellant-Corporation filed an appeal before the Lower Appellate Court, which appeal came to be decided vide order dated 29.08.2011 of the Lower Appellate Court whereby, the judgement and decree dated 01.11.2007 of the trial Court was upheld and the appeal was dismissed. Hence, the present regular second appeal.

Learned counsel for the appellant-Corporation argues that in the present case, the claim of the respondent/plaintiff has been allowed by the Courts below by ignoring the fact that vide option dated 30.11.1994, the respondent/plaintiff opted out of the pension scheme which creates estoppel so as to claim the pensionary benefits as envisaged under the 1994 Rules in respect of the services rendered by the respondent/plaintiff with the Municipal Corporation. Learned counsel for the appellant submits that even otherwise, the alleged option form dated 24.09.1994 is not available on record and was being treated as forged by the department hence, no benefit of the said option form dated 24.09.1994 could have been granted by the trial Court while allowing the suit so as to claim benefit under the 1994 Rules.

On being asked, as to how the findings of the trial Court as well Lower Appellate Court are perverse, learned counsel for the appellant submits that findings that option form dated 30.11.1994 given by the respondent/plaintiff has been held to be invalid as the same was given beyond the period of four months of issuance of Notification dated 28.07.1994 and the fact that said option form dated 30.11.1994 creates estoppel has not been considered in a correct perspective by the Courts below.

In this regard in order to create estoppel, there has to be a valid exercise of option within the time framed given in 1994 Rules. Once the option dated 30.11.1994 was concededly exercised after expiry of period of four months of 1994 Rules, the same cannot be treated as valid option exercised under 1994 Rules hence, the findings of the Courts below cannot be faulted with as the same are not perverse either to any fact or evidence pointed out to this Court during the course of hearing.

In case the same argument is seen from the other perspective than an employee who has not submitted his option within a given time frame i.e. within a period of four months of promulgation of 1994 Rules and then he opted for the same after the expiry of said period of 04 months, the appellant-corporation would have treated the said option to be time barred. The same rules applies in the present case qua the said option dated 30.11.1994 hence, the findings recorded by the Courts below cannot be treated as perverse to the facts and evidence on record.

Further an argument has been raised by the learned counsel for the appellant is that alleged option dated 24.09.1994, which has been brought on record by the respondent/plaintiff to claim the benefit of 1994 Rules was not given by him under 1994 Rules and the same was forged one but the said fact has been ignored by the Courts below while accepting the suit filed by the respondent/plaintiff and by the Lower Appellate Court while rejecting the appeal filed by the appellant-Corporation. On being asked as to what evidence which had come on record to prove that the said option was forged, learned counsel for the appellant submits that as the said option dated 24.09.1994 was not on record, the same has to be treated as forged.

Merely because a document is not available on official record does not mean that the said document is forged one. A specific evidence needs to be led that the said document is created subsequent to the date in order to claim undue benefit. Learned counsel for the appellant has not been able to point out any such evidence brought on record by the Municipal Corporation to nullify the said option dated 24.1.1994. Rather the Courts below on the basis of the evidence which has come on record, has recorded the finding that option dated 24.09.1994 submitted by the respondent/plaintiff contained the signature/sanction of the competent authority concerned supporting the option given. In the absence of any evidence contrary to the same pointed out by the learned counsel for the appellant, the findings recorded by the Courts below cannot be treated perverse.

Keeping in view the fact and circumstances recorded hereinbefore as no perversity has been pointed out by the learned counsel for the appellant in the findings recorded by the Court below, the same are upheld and the appeal is accordingly dismissed.

At this stage learned counsel for the appellant submits that certain pensionary benefits have already been made admissible to the respondent/plaintiff thus, the benefits, which have already extended to the respondent/plaintiff needs to be adjusted from the total emoluments, for which, the respondent/plaintiff becomes entitled under the 1994 Rules. Learned counsel for the appellant further submits that it is conceded position that certain deposits were required to be deposited under the 1994 Rules, which have not been deposited and the same needs to be deposited by the respondent/plaintiff along with statutory interest in order to become eligible for the grant of the said pensionary benefits under 1994 Rules.

Learned counsel for the respondent/plaintiff concedes the said fact and undertakes that whatever amount, for which the respondent/plaintiff is liable for deposit along with statutory interest, be deducted from the arrears, which are found to be paid to the respondent/plaintiff under the 1994 Rules and the amount already paid as pensionary benefits be adjusted while calculating the arrears for which respondent/plaintiff becomes entitled for under this order.

Ordered accordingly.

Keeping in view the above, the present regular appeal is dismissed with above observations.

February 07, 2023 **(HARSIMRAN SINGH SETHI)**
aarti **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No