

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-4389-2020 (O&M)
Date of Decision:06.03.2024

Sona Devi

.....Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam Ltd.and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Naveen Daryal, Advocate for the petitioner.

Mr.Anil Kumar Sharma, Advocate for respondents.

JASGURPREET SINGH PURI J.(Oral)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 03.01.2019 (Annexure P-11) passed by respondent No.3.
2. The brief facts of the present case are that the husband of the petitioner namely Ram Dia was working as Assistant Foreman in the office of respondents-Uttar Haryana Bijli Vitran Nigam Limited (hereinafter to be referred to as 'Nigam') and while he was in service, he met with a non-fatal accident and suffered 80% disability and consequent upon the same he was directed to be compulsorily retired on 16.02.1996 vide Annexure P-6. Thereafter, the husband of the petitioner unfortunately died in the year 2009. At the time when the husband of the petitioner was in service, he was enrolled in the Employees' Provident Fund (hereinafter to be referred to as 'EPF') and was subscribing to the funds in this regard and ordinarily at the time of his

retirement, he was to be given the aforesaid benefit of EPF and was not entitled for the grant of pension. However, the respondents-Nigam had invited options from the employees for switching over from EPF Scheme to GPF Scheme. The purpose of switching over from EPF scheme to GPF Scheme would be that an employee who switched over to GPF Scheme will be entitled for the pension and other retiral benefits. It was a part of a beneficiary scheme which was offered to the willing employees who were contributing to the EPF Scheme and they wanted to switch over the GPF Scheme.

3. In this regard, vide Annexure P-1 dated 12.1.1993 when the petitioner was still in service, a letter was written by the Chief Accounts Officer (CAO), Haryana State Electricity Board, Panchkula to all the Chief Engineers, and the Executive Engineers in HSEB in which it was so mentioned that for the purpose of switching over from EPF to GPF scheme it is necessary to have details of such EPF contributors and their superannuation dates etc. and therefore information was required in this regard. Vide Annexure P-2 dated 10.02.1993 a letter was written by the Sub Divisional Officer HSEB, Jundla (Karnal) where the husband of petitioner was working, to the Executive Engineer Sub Division Karnal, which was specifically with reference to the present petitioner by stating that the husband of petitioner has represented that he is willing to contribute from EPF to GPF Scheme in the light of Circular although the wording was not very clear in the aforesaid letter but it appears that the intention in the aforesaid letter was to switch over from EPF to GPF Scheme. Thereafter, vide Annexure P-3 dated 12.02.1993 a letter was written by the Executive Engineer S/U Divn. No.II, HSEB, Karnal, to the Chief Accounts Officer, HSEB, Panchkula, pertaining to the husband of

present petitioner only by specifically stating that he has represented that he is willing to switch to GPF Scheme in the light of Circular dated 12.01.1993 and as such the representation of the official is enclosed for sympathetic consideration. It was also mentioned in the aforesaid letter that the declaration forms of the husband of petitioner with the proforma is also enclosed. In fact this letter was basically for forwarding the earlier letter dated 10.02.1993 (Annexure P-2) to the Chief Accounts Officer for further action alongwith the documents submitted by the husband of petitioner. Thereafter in the year 1995 the husband of petitioner met with an accident and suffered 80% disability and therefore he was directed to be retired on invalidate grounds w.e.f. 16.02.1996 i.e. the date of declaration of 80% of disability by the medical authorities.

4. The petitioner who is the widow of the aforesaid Ram Dia is stated to be an illiterate lady which has been so stated by the learned counsel for the petitioner also that even the present petition has been filed by fixing thumb impressions because she could not even sign. As per the learned counsel for the petitioner, after the death of her husband, she was not even aware of her lawful rights being entitled for the family pension. Thereafter, she filed a writ petition before this Court vide CWP No.24280-2018 by raising the same grievance which has been raised in the present petition that the husband of the petitioner had opted from EPF to GPF and all the necessary documents were also supplied and forwarded by the relevant office to the Chief Accounts Officer level but the benefit was not granted to the petitioner. The aforesaid petition was filed by the petitioner on the basis of representation given by her dated 29.03.2016 (Annexure P-10). A Coordinate Bench of this Court in the aforesaid petition directed the official respondents/Nigam to look

into the grievances unfolded by the petitioner in the aforesaid legal notice and to take a conscious decision by passing a speaking order within a period of three months. However, thereafter vide impugned order Annexure P-11 dated 03.01.2019 was passed by the Executive Engineer (OP) Division, UHBVN, Gohana, by rejecting the claim of the petitioner on the ground that the husband of the petitioner was subscribed to EPF Scheme and as such was not entitled for being shifted into GPF Scheme and consequently pension was not admissible to the husband of the petitioner.

5. The learned counsel appearing on behalf of the petitioner submitted that while the husband of petitioner was in service and even much before of his accident had rather specifically opted for shifting over from EPF to GPF which is clear from Annexures P-2 and P-3 wherein all the documents were submitted by the husband of petitioner and forwarded to the concerned authorities. The learned counsel for the petitioner has also drawn the attention of this court to Annexure P-6 dated 26.09.1996 in which husband of the petitioner was directed to be retired and further submitted that there was a forwarding note at the bottom of the aforesaid Annexure P-6 which although inadvertently has not been typed/shown in Annexure P-6 but today he produced a photocopy of the order itself in this Court and has also prayed that the copy of the order may be taken on record. He while referring at Sr. No.3 of the aforesaid forwarding note which has been so forwarded to the XEN (OP) Division, Gohana in which it has also been stated that the pension be also released. The aforesaid note (3) which was a part of the forwarding is reproduced as under:-

“The Xen (OP) Division, Gohana alongwith copy of orders which may be delivered to Sh. Ram Dia, AFM & his dated

acknowledgment be sent to this office immediately. Pension papers, leave and other benefits may also be expedited.

6. While referring to the aforesaid note when the husband of petitioner was directed to be retired vide Annexure P-6 then by way of the aforesaid note, his pension papers were also forwarded which makes it abundantly clear that the process of his switching over from EPF to GPF was started way back in the year 1993 and submissions of pension papers were already with the department and that is why the pension papers were forwarded by the concerned authorities but the respondent-Nigam did not bother to do the needful and after the death of the husband of the petitioner no action was taken by the respondents-Nigam and the petitioner was not even aware of these documents and it was only when the first petition was filed by the petitioner then all the documents were gathered in which directions were issued as aforesaid to decide the legal notice but inspite of directions given by a Coordinate Bench of this Court, a non-speaking and cryptic order was passed by the Executive Engineer by stating that as per the record of the husband of the petitioner called from the head office, he was member of EPF Scheme and therefore he was not entitled. He further submitted that the action of the Executive Engineer (OP), Division, UHBVN, Gohana in passing of the impugned order was not only illegal and perverse but it was also contemptuous in nature. The petitioner being a widow had approached this Court by filing a writ petition and this Court had directed the Executive Engineer concerned, to pass a speaking order and in such fashion the aforesaid impugned order has been passed which has got no head or tail and absolutely in the nature of a cryptic and non-speaking order with a result that severe prejudice has been caused to the petitioner who is a widow and thereafter she

was constrained to file the present petition for impugning the aforesaid order.

7. Learned counsel further submitted that even otherwise also the case of the present petition is covered by judgement of a Coordinate Bench of this Court vide Annexure P-12 wherein in a similar situation the husband of the petitioner therein had died in the year 2002 which was rather much after the death of the husband of the petitioner herein and it was an admitted position that the husband of the petitioner of aforesaid petition did not exercise the option at all and still this Court had allowed the petition and granted the switching over based upon other judgments passed by a Division Bench of this Court which has been so referred in the aforesaid judgment passed by Coordinate Bench of this Court. He further submitted that the case of the petitioner is not only fully covered by the judgment of a Coordinate Bench of this Court and is rather on much better footing. He also submitted that thereafter a contempt petition was filed in the aforesaid Annexure P-12 and during the contempt proceedings all the arrears have been paid by the respondents-Nigam from the initial date. He further submitted that therefore the impugned order is liable to be set aside and the petitioner is entitled for the grant of family pension and also other retiral benefits alongwith interest apart from the arrears from the date when the husband of the petitioner was compulsorily retired.

8. On the other hand, Mr. Anil Kumar Sharma, learned counsel appearing on behalf of the respondent-Nigam submitted that so far as the applicability of the judgment of a Coordinate Bench of this Court vide Annexure P-12 is concerned, he does not dispute the same in the facts and circumstances of the present case especially in view of the fact that the arrears

in that case were paid during the pendency of contempt proceedings. He further submitted that so far as the impugned order (Annexure P-11) is concerned, the directions passed by the Coordinate Bench of this Court were complied with and an order was passed and even if it is not a happily worded order, the fact remains that the claim of the petitioner was rejected by the aforesaid order and therefore it cannot be termed as contemptuous. He further submitted that after the retirement of the husband of the petitioner in the year 1996, he did not raise any claim pertaining to the aforesaid grant of pension and switching over from EPF to GPF scheme and thereafter he died in the year 2009 and therefore it cannot be assumed that he had intended to switch over from EPF to GPF. Since he was aware that he was subscribed for EPF and his share was also being deducted towards CPF. So far as the prayer of the learned counsel for the petitioner for grant of arrears is concerned, learned counsel for the respondents submitted that the petitioner was not entitled for grant of arrears of interest except to the extent of 38 months prior to filing of the present petition and has also referred to a judgment of a Hon'ble Supreme Court in ***Union of India and others Vs. Tarsem Singh 2008(8) SCC 648.***

9. At this stage, learned counsel for the petitioner while replying to the argument raised by learned counsel for respondents-State pertaining to the arrears of salary, he referred to another judgment of Hon'ble Supreme Court in ***S.K. Mastan Bee Vs. The General Manager, South Central Railway, 2002(7) SLR 1.***

10. I have heard learned counsel for the parties.

11. The husband of the petitioner while he was in service suffered 80 percent disability due to non-fatal accident and he was compulsorily retired

vide Annexure P.6 w.e.f. 16.01.1996 and thereafter he died in the year 2009.

The petitioner is the widow of the aforesaid employee namely, Ram Dia.

12. The issue involved in the present case as to whether the petitioner being a widow was entitled for the family pension after the death of her husband or not. The husband of the petitioner was enrolled in EPF Scheme to which no pension is permissible. However, as per Annexures P-2 and P-3 he had exercised his option with regard to switching over from EPF to GPF. A perusal of true copy of Annexure P-6 which has been supplied by learned counsel for the petitioner to this Court which is hereby taken on record as Mark 'X' would show that the husband of the petitioner was compulsorily retired due to his disability. A forwarding note was also put to the concerned departments by forwarding the pension papers of the husband of the petitioner. All these documents are related to the year 1993 and in pursuance of Annexure P-1 the husband of the petitioner had exercised an option for switching over from EPF to GPF Scheme but when he met with an accident he suffered 80% disability and thereafter he died in the year 2009. There is nothing on record to show that the husband of the petitioner had raised the claim after his retirement to receive the pension. However, there is no dispute that the husband of the petitioner was 80% disabled. After his death, the widow who is the present petitioner filed a petition before this Court bearing No.CWP-24280-2018 and a Coordinated Bench of this court vide order dated 21.09.2018 had directed the concerned authorities to pass a speaking order on the legal notice of the petitioner. The aforesaid representation is already attached with the present petition as Annexure P-10. A perusal of the same would show that a detailed representation was given by the petitioner with

regard to all the facts and circumstances as to how and when the husband of the petitioner had applied for switching over from EPF to GPF starting from the year 1993 and how he was entitled for the grant of pension and as a consequence of the same, the petitioner was entitled for the grant of family pension. However, a perusal of the order (Annexure P-11) would show that none of the grounds raised by the petitioner in the representation were considered by the Executive Engineer. After recording the facts only, the Executive Engineer had passed the impugned order by mentioning that information was received from the head office with the observation that the husband of the petitioner is a member of EPF and as per existing instructions, the pension is not admissible to him. The aforesaid impugned order is reproduced as under:-

Smt. Sona Devi Wd of Late Sh. Ramdiya filed CWP No.24280-2018 before the Hon'ble High Court Punjab & Haryana Chandigarh which has decided on 21.09.2018 & certified copy issued on dt. 06.10.2018 with the following complete directions:-

- 1. By virtue of instant civil writ petition, preferred under Articles 226/227 of the Constitution of India, petitioner has sought as issuance of a writ especially in the nature of Mandamus directing the respondents to release the family pension benefit, being a widow of Sh. Ram Dia, who was expired on 06.12.2009 with all consequential benefits along with interest @ 18% p.a. from the date of realization.*
- 2. Learned counsel for the petitioner contends that petitioner moved representation to the respondents on 14.08.1997 (P-9) when no action*

was taken, petitioner was constrained to serve a legal notice to the respondents on 29.03.2016 (P-10) which also did not fetch any fruitful result. He further submits that she feels satisfied in case a direction is issued to the respondents to decide the legal notice (P-10), in a time bound manner.

- 3. Instant petition is disposed of with a direction to respondents to look into the grievances unfolded by the petitioner in the legal notice dated 29.03.2016 (P-10) and to take a conscious decision by passing a speaking order, within a period of three months from the date of receipts of a certified copy of the order.*
- 4. In this content it is stated that the para wise reply of representation dated 14.08.1997 was already given vide this office memo No.ch229/PF-54 dated 03.09.1997 (photocopy attached). Mentioning that the salary from the month of Oct.1995 is lying in deposit under account 44.210 which can be taken on production of HR to SDO City S/Divn. HSEB Gohana duly pass from this office. No amount of GIS was deducted from the pay. The case for sanction of gratuity will be sent on receipt of NDC from concerned office. You have already 264 days leave which has already been sanctioned by CE (OP) Z-II HSEB Delhi vide his office order No.35/TPM-3005 dt. 24.02.1997 & payment was made accordingly. You were the member of EPF not GPF. Hence you are not entitled for pension as per normal rules. You proceeded on leave on dated 29.05.1995 to 01.06.1995 and met with non fatal accident on dated 30.05.1995 at about 6 PM while remaining on leave such it does not cover under compensation act as you did not meet with*

accident on official duty. While you were the member of EPF then from where the payment of EPF is made & GPF not admissible to your.

It is further added that service book & pension paper received back from the office of the CAO pension HSEB Panchkula vide his office memo No.1089/CAO/pen-M/file dt. 17.02.1998 with the observation that Sh. Ram Diya AFM, is a member of EPF scheme. As per existing instructions that pension/DCRG are not admissible to him under CSR rules. Only service gratuity is admissible (Photocopy attached).

*Sd/-
XEN (OP), Division
UHBVN, Gohana*

13. Learned counsel for the petitioner has also argued that the aforesaid order is a non-speaking order and unreasoned order and therefore the action of the respondent-Executive Engineer is contemptuous in nature to which the learned counsel for respondents submitted that since the order has been passed it cannot be termed as contemptuous. However, a perusal of the aforesaid order would show that the order on the face of it, is a non-speaking and unreasoned order inspite of directions issued by Coordinate Bench of this Court to pass a speaking order.

14. So far as the rights of the petitioner to receive family pension is concerned, a perusal of Annexures P-2, P-3 and P-6 would show that right from the year 1993 at the time when the husband of the petitioner was alive and was in service he had switched over to the GPF Scheme and his pension papers were also forwarded to the concerned authorities vide Annexure P-6. The husband of the petitioner met with an accident by which he had undisputedly become 80% disabled and the learned counsel for the

respondents has raised a plea that the husband of the petitioner did not raise the claim after his retirement but the undisputed fact remains that the husband of the petitioner was 80% disabled and therefore such kind of plea raised by learned counsel for the respondents cannot be sustained in view of the aforesaid fact. Apart from the above, once the respondents themselves have processed the pension papers of the husband of the petitioner which is clear from Annexure P-6 especially from the forwarding note then the respondents now cannot deny and say that no claim was raised by the husband of the petitioner.

15. The petitioner, however, filed a petition earlier before this Court in the year 2018 and directions were issued to the respondents-Nigam to pass a speaking order on her representation but it is clear from the aforesaid order (Annexure P-11) that even directions issued by this Court were not complied with in true sense and instead of passing of a speaking order, a totally cryptic and non-speaking order was passed. In this way the petitioner was again constrained to file a successive present writ petition. Therefore, it is very much clear that the petitioner who is a widow had been running from pillar to post to seek justice. Not only this, some other employees had also preferred petition before this Court and one of the employees who was also deprived of the aforesaid relief of GPF, was granted relief by this Court vide Annexure P-12. By way of the aforesaid judgment of Coordinate Bench of this Court in the case of another employee namely Dukhna (petitioner therein), a Coordinate Bench of this Court relying upon Division Bench judgments of this Court had allowed the petition being squarely covered by plethora of judgments on the issue. The applicability of the aforesaid judgment upon the

present case was not disputed by the learned counsel for the respondents during the course of arguments. Therefore, so far as the entitlement of family pension is concerned, the case of the petitioner is also squarely covered by the aforesaid judgment (Annexure P-12). Even otherwise also on the facts and circumstances of the present case once the respondents-Nigam had forwarded the pension papers of the husband of the petitioner vide Annexure P-6 and the husband of the petitioner had switched over from EPF to GPF vide Annexures P-2 and P-3 then there was no justification for the Nigam to have deprived the benefits of pension to the husband of the petitioner and thereafter family pension to the petitioner who is his widow (present petitioner).

16. The learned counsel for the respondent also brought to the notice of this Court that even if the present petition is to be allowed and family pension is to be granted then arrears of family pension can be restricted only to 38 months prior to the filing of the writ petition and he referred to a judgment of Hon'ble Supreme Court in ***Union of India and others Vs. Tarsem Singh's case (supra)*** whereas on the other hand learned counsel for the petitioner has also referred to another judgment of Hon'ble Supreme Court in ***S.K. Mastan Bee's case (supra)*** to contend that the petitioner is a widow and poor destitute and as such the arrears are to be granted from the date when they initially accrued to the petitioner.

17. After considering the aforesaid judgments and hearing learned counsel for the parties, this Court is of the view that the present petition deserves to succeed.

18. Consequently the present petition is allowed. The impugned order dated 03.01.2019 (Annexure P-11) is hereby set aside and quashed. It is

directed that the petitioner is entitled for the grant of pension, pensionary benefits and all the retiral benefits which accrued to her on account of death of her husband from the date of the death of the husband of the petitioner. The respondents-Nigam is directed to fix the family pension of the petitioner, calculate all the pensionary, retiral benefits of the petitioner and pay to her within a period of three months from today.

19. So far as the grant of arrears is concerned, the order of Hon'ble Supreme Court in *Union of India and others Vs. Tarsem Singh's case (supra)*, while considering the earlier judgments had observed that where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. However, there is an exception to the same. In that case an exception was carved out and petitioner of that case was seeking disability pension after a period of about 16 years and that petition was filed after a delay of 16 years and it was so directed that he is entitled to arrears of three years preceding from the date of filing of the petition. However in another judgment of Hon'ble Supreme Court in *S.K. Mastan Bee's case (supra)* the same was filed by a widow and it was so observed that denial of rights of arrears of family pension from the date of its accrual would be violative of Article 21 of the Constitution of India. Although the judgment so cited by learned counsel for the petitioner is prior in time but that judgment is specifically based upon the circumstances of the petitioner of that petition who was also a widow whereas the judgment which was cited by learned counsel appearing for the respondents was that of disability pension. There is another

fact which has to be considered while considering as to whether the arrears of salary should be granted to the petitioner from the date of death of the husband of the petitioner or from three years preceding the date of institution of the present petition. The petitioner has come to this Court not the first time. Earlier also the petitioner had filed a writ petition in the year 2018 and therefore it cannot be said that the petitioner will be entitled only for arrears of preceding three years.

18. Apart from the above when the case of the petitioner is squarely covered by judgment of Coordinate Bench of this Court vide Annexure P-12 which was brought to the notice of this Court by both the learned counsel for the parties, in that case the arrears were given to the petitioner of that case not three years preceding the institution of the petition but right from the beginning and the same was, however, done during the pendency of the contempt proceedings. Therefore there is no justification to make the petitioner un-equal as compared to the aforesaid petitioner namely Dukhna whose petition was allowed by a Coordinate Bench of this Court who was granted the arrears from the initial date.

19. Therefore, in view of the judgment of Hon'ble Supreme Court in ***S.K. Mastan Bee's case (supra)*** the petitioner is held entitled for the grant of the arrears of pension from the date of retirement of the petitioner i.e. from 16.02.1996 to which the husband of the petitioner was entitled. The aforesaid arrears shall also be calculated and paid to the petitioner within a period of three months from today. However the arrears of pension shall be paid to the petitioner within the aforesaid period after adjustment made by the respondents-department pertaining to the amount which the husband of the

petitioner had already received pertaining to the EPF.

20. With regard to the fact that impugned order (Annexure P-11) was ex-facie, non speaking and cryptic order and the petitioner being a widow was compelled to file the present successive petition, although this court would have proceeded against the XEN for issuance of notice of contempt for not passing a speaking order despite directions of this Court, but taking a lenient view it would be just and proper and in the interest of justice to impose cost upon the officer who had passed the order which is ex-facie, cryptic and non speaking order and violative of the express directions issued by this Court in the aforesaid CWP-24280-2018. The petitioner shall be paid a cost of Rs.25,000/- by way of a demand draft in her name within a period of three months from today. The costs shall be paid by the respondent-Nigam at the first instance and will be recovered by Nigam from the aforesaid officer by appropriate method.

(JASGURPREET SINGH PURI)
JUDGE

06.03.2024
shweta

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