

CWP-18855-2019 (O&M)

Date of Decision : 28-10-2024

HARDEV SINGH

.....Petitioner

VERSUS

PUNJAB AGRICULTURAL UNIVERSITY AND ORS.

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Mannat Anand, Advocate for the petitioner.

Mr. Deepak Agnihotri, Advocate with
Mr. Uday Agnihotri, Advocate
For the respondents.

HARSIMRAN SINGH SETHI, J. (Oral)

In the present petition, the grievance of the petitioner is that the petitioner before retirement had opted for the Pension Scheme from CPF which pension was not extended to him on the ground that an employee who has less than one year of service before retirement cannot opt for the Pension Scheme whereas the persons who never opted for the Pension Scheme, have been allowed to exercise the option after retirement by relaxing the Rules, which is causing prejudice to the petitioner.

Learned counsel appearing on behalf of the petitioner submits that the claim of the petitioner is being rejected on the ground that the petitioner never applied for the Pension Scheme before one year to retire, to seek the benefits under the Pension Scheme whereas, the employee who exercised the option for the said pension after retirement has been allowed

the same by relaxing the norms in their favour hence, the petitioner be also granted the benefit of Pension Scheme by accepting this option which the petitioner exercised before retirement.

Upon notice of motion, the respondents have filed their reply. In their reply, the respondents have stated that as per the Scheme, the employees were given chance to re-opt for the Pension Scheme from CPF and in case, there is no option given by employees, the employees remain the part of CPF however the petitioner never opted for the Pension Scheme vide Annexure P-3 and he retired under the CPF but in the year 1998, the University in order to give the benefits to its employees decided that an employee who opts for the Pension Scheme three years prior to the retirement, the said benefits be extended to them and later on, the said period of three years was reduced to more than one year on 31.01.2008 but , on 10.04.2008, the said decision was kept in abeyance as the petitioner never gave an option from CPF to Pension Scheme before 3 years of his retirement but only supplied information dated 27.06.2007 (Annexure P-3) hence, the petitioner could not be granted the benefit as he was only 7 months away from his retirement which was on 31.08.2008 hence, it was less than one year.

Qua the grant of the benefit, other employees, whose option have been attached by the petitioner collectively as Annexure P-4, wherein the said employees have been allowed to opt for the pension after their retirement, the learned counsel for the University submits that the norms have been relaxed by the University in their favour hence, the petitioner cannot claim parity with those employees, who have been allowed the benefit to opt for pension after retirement.

I have heard learned counsel for the parties and have gone through the records of the present case with their able assistance.

The question in the present petition is whether, the petitioner has been discriminated with regard to the option for the grant of pension or not.

In the present case, it is a conceded fact which is clear from Annexure P-2 and Annexure P-3 that before retirement, the petitioner had opted for the Pension Scheme whereas, from the option which have been collectively attached as Annexure P-4, the employees have been allowed the option for Pension Scheme even after retirement.

Once, other employees have been allowed the benefit of option to opt for the Pension Scheme after retirement, the petitioner who opted for the Pension Scheme while in service, has been discriminated against.

As per the respondent-University the Rules have been relaxed in favour of the employees, whose options have been attached as Annexure P-4. Once, the University itself relaxed the norms of requirement of minimum of one year service at the time of the option before the said employee was to retire, to grant benefit of exercising the option for Pension Scheme in favour of 38 people, who had already retired the same should have been given to the petitioner also.

The question of law, being raised qua discrimination has been settled by the Hon'ble Supreme Court of India in ***"Smt. Shashi Kiran and ors. Vs. University of Delhi"***, decided on 10.05.2022, wherein it has been held that even if an employee had initially opted out of the Pension Scheme but later on, the benefit of option for Pension Scheme has been given to the similarly situated employees, the other employees who also wanted to opt

for Pension Scheme should also be given the said benefit. The relevant paragraph of the said judgment is as under:-

“The differential treatment afforded to those 2469 employees as against the employees in Shashi Kiran batch of cases, was not founded on any rationale. No justifiable reason was coming forth. If those 2469 employees could be afforded chance to exercise an option of switchover to GPF, even though they had consciously opted to be under CPF, on principle of parity or equality, the case was certainly made out.”

Learned counsel for the respondent has not been able to rebut the said judgment to be applicable upon the petitioner as, in the present case 38 people have been given the relaxation so as to opt for the Pension Scheme after their retirement which benefit, sought by the petitioner while in service, has not been extended to him.

At this stage, learned counsel for the respondents submits that the petitioner never filled the option form to opt for Pension Scheme. The bare perusal of Annexure P-2 would show that the reference order says that the petitioner is requesting to shift from CPF Scheme to Pension Scheme by giving option.

Once, the said option was already given for the consideration of the Department, which makes the intention of the petitioner clear to shift from CPF Scheme to Pension Scheme even if, the petitioner has not been given an opportunity to fill the actual pension form or option form, the same will not take away the right of the petitioner to claim the benefit especially when at no stage petitioner was allowed to change the option to opt for Pension Scheme so that he could fill the Pension form.

Keeping in view of the above, the claim of the petitioner for the grant of pension is allowed.

The option of the petitioner given on 27.06.2007 be considered as a change from CPF to Pension Scheme.

The learned counsel for the petitioner after having instructions from the petitioner, who is present in the Court submits that as the petitioner has already retired and had taken the benefit under the CPF Scheme all the benefits already availed be adjusted with regard to considering the claim of the petitioner under the Pension Scheme.

The petitioner will also be bound to give interest on the amount of CPF received to the respondent-University upto 31.12.2024, by which date the claim of the petitioner for the grant of pension will be finalised.

The difference, which the petitioner becomes entitled for under the Pension Scheme, be released to the petitioner by 15.02.2025.

Hence, the present petition is allowed in the above terms.

Pending application, if any, shall stands disposed of.

28-10-2024
Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE

NOTE: Whether speaking: YES/NO
Whether reportable: YES/NO