



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(104+210)

CM-12974-CWP-2024 in/and
CWP-2567-2015
Date of Decision : 11.09.2024

Ravinder Nath Aery

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Madhav Pokhrel, Advocate for the petitioner.

Mr. Satnam Preet Singh, Deputy Advocate General, Punjab.

Harsimran Singh Sethi J. (Oral)

1. In the present petition, the prayer of the petitioner is that the petitioner should be allowed to re-opt for the pension scheme, which was formulated for the employees of the Aided Institution, made effective from the year 1992 titled as Punjab Privately Managed Recognized Aided Schools Retirement Benefit Scheme, 1992 (hereinafter referred to as '1992 Scheme').
2. Learned counsel for the petitioner submits that when the 1992 Scheme came into operation, the petitioner was in service but at that time the petitioner decided not to opt for the pension scheme so as to continue with the existing Contributory Provident Fund Scheme (hereinafter referred to as 'CPF Scheme') but, after the retirement, the petitioner sought to change his option as the pension scheme would have been more beneficial to the petitioner.



3. Learned counsel for the petitioner submits that the petitioner is ready to deposit all the amount received under the CPF Scheme along with interest and the petitioner be allowed to change his option of the pension Scheme.

4. Upon notice of motion, the respondents have filed the reply, wherein, it has been mentioned that it is not the case that petitioner never knew about the 1992 Scheme for the grant of pension and rather, when the option was given, the petitioner gave in writing that he does not want to opt for the 1992 Pension Scheme so as to continue with the CPF Scheme and after the retirement, the petitioner was also given all the benefits of the CPF Scheme but now, much after his retirement, the petitioner is seeking the change of the option which is no permissible as the same will be violative of rules of 1992 Scheme.

5. I have heard learned counsel for the parties and have gone through the record with their able assistance.

6. The question which arises before this Court is whether, the petitioner can be allowed to change his option so as to be governed under the 1992 Scheme or not.

7. It may be noticed that when 1992 Scheme was brought into operation, the petitioner was very much in service. Further, it was clearly mentioned that the 1992 Scheme will apply to all the employees except those who specifically opts out of the said Scheme. Petitioner opted out of the said Scheme in writing, which is not a disputed fact. It is also not a disputed fact that till the retirement of the petitioner, he never changed his option rather



after the retirement, the petitioner availed the benefits of CPF Scheme and he was paid accordingly. It is only that after the retirement, as the petitioner felt that the 1992 Scheme would have been more beneficial to him, he sought to change his option.

8. Once, a Scheme was formulated, wherein the petitioner was also made the part of 1992 Scheme unless he opts out and the petitioner opted out of the said Scheme i.e. a conscious decision was taken by the petitioner which remained in operation till his retirement, hence, after the retirement, the said option cannot be allowed to be changed as the same will be contrary to the 1992 Scheme, where it has been clearly mentioned that any employee who opts out of the Scheme within a period of 04 months, the Scheme will not be applicable upon him/her. Further, in case the benefit sought by the petitioner is allowed at this stage, it will open a Pandora Box with regard to the other employees, who also opted out of the Scheme as they will also claim the benefit of re-option which is contrary to the provisions of the Scheme itself.

9. Further, as per the judgment of the Hon'ble Supreme Court of India in Civil Appeal No. 542 of 2023 titled as ***National Institute of Rural Development Vs. Shyam Sunder Prasad Sharma and others***, decided on 28.02.2023, an option once exercised cannot be allowed to be changed under any circumstances. The relevant paragraph of the said judgment is as under :-

“15. The Tribunal, as well as the High Court, have proceeded on an erroneous basis that after regularisation, respondent no.1 was entitled to change his option from CPF to



the old pension scheme in terms of Bye-law 52. The High Court erroneously observed that regularization would relate back to the date of initial appointment made in the year 2002 when the order of regularisation dated 4th May 2012 expressly states that the regularisation will operate from the date of the said order. The High Court came to the conclusion that in view of the second proviso to sub-clause (a) (4) of Bye-law 52 of the Bye-laws, on the failure to communicate the option in the prescribed manner it shall be deemed that the employee has opted for the old pension scheme and GPF. Sub-clause (a)(4) of Bye-law 52, as observed earlier, will not apply to an employee whose service has been regularised under the Regularisation Rules. In the present case, in view of the provisions of the Regularisation Rules, there was no question of making available such an option.

16. In the circumstances, we find it difficult to sustain the impugned judgments. It appears that respondent no.1 has returned the benefits received by him under the CPF scheme. As a consequence of setting aside the impugned order, we direct the appellant to pay the amount to which respondent no.1 was entitled to under CPF. The amount shall be paid within a period of two months from today failing which the same will carry interest at the rate of 8% p.a. from the date on which the amount was returned to the appellant by respondent no. 1.”

10. In the said case also, after opting for CPF Scheme the employee wanted to change to the pension scheme, which was not allowed. As the similar claim as raised by the petitioner in the present petition has already been rejected in ***National Institute of Rural Development (supra)***, the claim of the petitioner cannot be accepted.

11. No other argument is raised.



- 12. Keeping in view the above, no ground is made out for any interference by this Court in the present petition.
- 13. Dismissed.
- 14. Pending miscellaneous application, if any, also stands disposed of.

September 11, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes