IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

108+233 (6 Cases)

CM-9170-CWP-2024 in/&
CWP-6540-2016 (O&M)
Date of Decision :21.10.2024

Ranjit Singh and others ...Petitioners

Versus

Punjabi University Patiala and others ...Respondents

CM-9172-CWP-2024 in/&
CWP-3261-2016 (O&M)

Asha Rani Kalra and others ...Petitioners

Versus

Punjabi University Patiala and others ...Respondents

CM-9245-CWP-2024 in/&
CWP-8484-2016 (O&M)

Shingara Singh and others ...Petitioners

Versus

Punjabi University Patiala and others ...Respondents

CM-9246-CWP-2024 in/&
CWP-15153-2016 (O&M)

Bhagwati Parsad and others ...Petitioners

Versus

Punjabi University Patiala and others ...Respondents

CM-7897-CWP-2023 &
CM-13082-CWP-2024 in/&
CWP-6446-2020(O&M)

Taranjit Singh and others ...Petitioners

Versus

Punjabi University Patiala and others ...Respondents

CM-6704-CWP-2024 in/&
CWP-14062-2019(O&M)

Jai Chand and others ...Petitioners

Versus

Punjabi University Patiala and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. K.S. Bassi, Advocate for the petitioners
in CWP-6540,8484,15153 of 2016 & CWP-14062-2019.

Mr. Ranjit Singh Kalra, Advocate for the petitioners
in CWP-3261-2016.

Mr. Sameer Sachdeva, Advocate for the petitionrs
in CWP-6446-2020.

Mr. Abhishek Kaushik, Advocate for
Mr. Vipul Jindal, Advocate respondent-University

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Harsimran Singh Sethi, J. (Oral)

In the present bunch of petitions, the grievance being raised by the petitioners is that though, they were working with the respondent-Punjabi University, Patiala and have retired from service but they have not paid their pension and rather they are being considered under the CPF Scheme, which action on the part of the respondent-University is arbitrary, illegal and discriminatory.

Learned counsel for the petitioners argues that claim of the petitioners is squarely covered by the judgment of the Hon'ble Supreme Court of India in ***Civil Appeal No.3797-2022 titled as University of Delhi vs. Shashi Kiran and others, decided on 10.05.2022.***

Certain facts may be noticed for the correct appreciation of the issue in hand.

Respondent-University issued a pension scheme for its employees w.e.f. 01.04.1990. As per the said pension scheme, the employees, who were already continuing under the CPF scheme can opt for the pension scheme within a period of four months and in case, any employee does not opt for the said pension scheme, he/she will continue to be governed under the CPF Scheme, which was already in operation as on 31.03.1990. It is a conceded fact that except two petitioners, the other petitioners never opted for the pension scheme and consequently they remained under the CPF scheme till their retirement. Though, two petitioners are claiming to have opted for the pension scheme but it is also a conceded position that those two petitioners never deposited the required CPF amount with the respondent-University which was ought to be deposited so as to come under the pension scheme.

After the retirement from service, the petitioners have approached this Court with a prayer that they be treated under the pension scheme for all intent and purposes or now they be given opportunity to opt for the said pension scheme.

Further, it has been mentioned that two employees namely, Inderjit Kaur and Arvind Ritu Raj have already been granted the said benefit by the respondent-University and hence, the respondent-University is bound to accepts the claim of the petitioners being similarly situated to those employees so as to avoid discrimination.

Last argument which has been raised by the learned counsel for the petitioners is that under all circumstances, even if, the petitioners never opted for the said pension scheme, keeping in view the judgment of the Hon'ble Supreme Court of India in the case of ***Shashi Kiran (supra)***, the petitioners are entitled to be afforded another opportunity for the purpose of fresh opting for the pension scheme and hence, the respondent-University should grant the petitioner the benefit of pension scheme from the date of retirement and in the case of petitioners, who are already working, the said benefit be granted as and when they retire from service.

Upon notice of motion, the respondents have filed reply wherein, it has been mentioned that once, the pension scheme was formulated, which was made applicable uniformly upon all the employees, the petitioners were under an obligation to opt for the said pension scheme within a period of four months of the date of its notification. It has further mentioned in the reply that as per the said pension scheme, the same was only applicable for the employees, who opted for the said pension scheme with a specific condition that in case, any employee does not opt for the pension scheme he/she will continue to remain under the CPF scheme, which was applicable as on 31.03.1990. As per the respondent-University, none of the petitioners despite having knowledge of the said pension scheme, have not opted for the pension scheme and hence, they continued to remain under the CPF Scheme until their retirement. Respondent-University has further mentioned that keeping in view the fact that even for the employees who opted for the pension scheme, the University is facing financial difficulty in releasing their pension and had to borrow a sum of Rs.8 crore per month so as to discharge the said liability qua the retired employees, who have already opted for the same, henceforth, the petitioners cannot be given another opportunity to opt for the same.

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

The question which arises before this Court is whether the petitioners knowingly the provisions of the pension scheme so as to opt for the same within a period of 04 months of its date of publication chose not to apply for the same, can claim pension after the period of more than two decades by exercising a fresh option after a period of more than two and a half decade.

It is a conceded fact between the parties that as per the pension scheme, which was formulated by the respondent-University made operational from 01.04.1990, the petitioners were bound to opt for the said pension scheme and in case, any employee does not subscribe for the said pension scheme within a period of four months from the issuance of the said notification, the said employee was to continue under the CPF scheme. The petitioners never opted for the pension scheme and continued to be a part of the CPF Scheme upto the date of their retirement or even as of now with regard to the petitioners, who are still in service.

Once, a scheme has been formulated and made operational with certain terms and conditions, the petitioners cannot claim that they are entitled for the fresh option to opt for the Pension Scheme and that too in violation of the terms and conditions of the said scheme. The eligibility for the grant of pension has to be seen under the terms and conditions of the pension scheme and no modification or relaxation can be done by this Court especially, when the petitioners failed to opt for the said pension scheme, which was formulated and came into operation w.e.f. 01.04.1990 so as to subscribe themselves for the grant of pension as admissible under the said scheme.

The employees who opted for the same have been granted the benefit of pension but the petitioners chose not to opt for the said pension scheme so as to remain under the CPF scheme and hence, now after a period during which the petitioners could subscribe for the pension scheme, has already came to an end, this Court cannot direct the authorities to relax the provisions of the Pension Scheme in favour of the petitioners at the belated stage especially, when the respondent-University are on record to say that direction, if any, given by this Court to include the petitioners under the pension scheme keeping in view the liability which the respondent-University is already facing qua the employees who already opted for the said pension scheme and are getting pension as the respondent-University is taking loan of Rs.8.5 crore per month to discharge the said liability, this Court cannot direct the respondent-University to grant the petitioners another opportunity to opt for the pension scheme qua the employees, who have already retired from service or those who are in service.

Second argument which has been raised by the learned counsel for the petitioners is that the claim of the petitioners is covered by the judgment of the Hon'ble Supreme Court of India in ***Shashi Kiran (supra),*** it may be noticed that the facts in the case of ***Shashi Kiran (supra)*** were entirely different as compared to the facts of the present case.

In the case of ***Shashi Kiran (supra)*** in the terms and conditions of the pension scheme it was mentioned that in case, any employee does not opt for the pension scheme, he/she will be automatically brought under the pension scheme. That being so, in case, any employee has not opted for the said pension scheme, the said employee automatically becomes the member of the pension scheme.

Qua the employees who had opted to remain under the CPF scheme, Hon'be Supreme Court of India held that apart from Shashi Kiran i.e. the petitioner therein, there were more than 2000 other employees who opted out the pension scheme initially by exercising their option to remain under the CPF scheme but those employees were allowed to change their option to come under the pension scheme by the University by offering them 09 opportunities and in case, the University has allowed 2000 employees to change their option, by which they exercised to remain under the CPF scheme, to bring them under the pension scheme, then why the same cannot be afforded once again to the petitioner Shashi Kiran so that there will be no discrimination between the similarly situated employees.

The facts in the present cases are entirely different. No fact has been brought on record that any employee who did not opt for the pension scheme at an early stage was brought into pension scheme by the respondent-University on their own hence, the facts existing in the case of ***Shashi Kiran (supra)*** are missing in the case of the petitioners. The judgment has to be made applicable keeping in view the facts of each case and not by reading the same in isolation and the judgment has to be applied in case the facts are identical or at least similar. Hence, the judgment in the case of ***Shashi Kiran (supra)*** is not applicable upon the petitioners.

Further Hon'ble Supreme Court of India while deciding ***Civil Appeal No.3842-2011 titled as, Pepsu Road Transport Corporation, Patiala vs. Amandeep Singh and others, decided on 03.01.2017*** interpreting a similar pension scheme wherein, the employees were asked to submit their option within a period of six months of the scheme with a condition that in case, an employee does not opt for the same, he/she will not brought under the scheme, has held that the said clause is mandatory and whosoever not opted for the scheme, cannot claim benefit of the scheme at later date so as to opt for the said scheme by changing the option. Relevant portion of the judgment is as under:-

> 13. A perusal of the Regulations indicates that the Regulations are applicable to the following two categories of employees i.e. : Who were/are appointed on or after the date of issue of Regulations on whole-time and regular basis, and Who were working immediately before the date of issue of Regulations and opt for these Regulations.
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> 14.The applicability of Regulations to the employees who were working immediately before the date of issue of Regulations i.e. 15th June, 1992 was dependent on the opting for Regulations within a period of six months from the date of issue of Regulations as provided under Regulation 4.
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> 15.Further as per Regulation 4 (iii) if an option is not exercised within a period of six months from the date of issue of Regulations, it shall be deemed that the employee has to continue with the existing Contributory Provident Fund benefit, thus in the event of non-exercise of option within the period prescribed, the employee is deemed to continue in the existing CPF benefit. The deeming clause has been incorporated in the statutory provisions for achieving a purpose i.e. those who do not opt within six months new scheme, they shall continue in the existing CPF benefit. There are no exceptions engrafted in the deeming provisions and the deeming is a legal fiction which embraces all the employees who do not opt for new pension scheme. The suit filed by the plaintiff had been decreed mainly on the ground that notice inviting option has not been personally served on the plaintiff. Whether notice is required to be personally served to an employee before the period of six months as provided in Regulation 4 may start running is the question to be answered. A plain reading of the Regulations does not indicate that period of

> six months which is provided for submitting an option is dependent on personal service of notice. Although, as noticed above the Regulation has been forwarded on 15th June, 1992 itself to the General Manager of all the Depots and other places and the letter dated 15th June, 1992 further contemplates putting on the notice board in the Head Office and the Depots, the Corporation has thus taken care of circulation of Regulation to all concerned including the Head Office and all the Depots."

A bare perusal of the above would show that whosoever not applied for the scheme within time frame granted, cannot claim benefit of another option after expiry of time and the clauses of the scheme are mandatory in nature.

Last argument which has been raised by the learned counsel for the petitioners is that two employees namely Inderjit Kaur and Arvind Rity Raj have been granted the said benefit.

Today, the respondent-University have filed an affidavit giving details that in the case of Inderjit Kaur, she had opted for the pension scheme but there was a controversy with regard to the required amount to be deposited by her due to which she was not brought into pension scheme. The said Inderjit Kaur approached the Civil Court and the findings have been given by the Civil Court that not only the option but the substantial amount has already been paid by her in terms of the scheme and, therefore, she was entitled for the grant of benefit of pension scheme and, the said Inderjit Kaur was given benefit only on the basis of the judgment of the Civil Court which was binding between the parties hence, keeping in view the same, the petitioners cannot claim that they are similarly situated as the said Inderjit Kaur.

With regard to employee namely, Arvind Ritu Raj, it has been mentioned in the affidavit that the said employee had joined only in the year 2011 hence, he was automatically deemed to be part of the pension scheme and is not similarly situated, as the petitioners were already working at the time when the pension scheme was formulated w.e.f. 01.04.1990, keeping in view the same, the claim of the petitioners that they have been discriminated by the respondent-University by giving the same benefit to other two similarly situated employees, cannot be accepted.

Keeping in view the facts and circumstances noticed hereinbefore, no ground for interference by this Court is made out and the all the writ petitions are accordingly dismissed.

CMs-9170,9172,9245,9246 & 6704 of 2024 & CM-7897-CWP-2023 & CM-13082-CWP-2024

Present applications are also disposed of.

Any other civil miscellaneous application pending, is also disposed of.

A photocopy of this order be placed on the file of connected case.

October 21, 2024 **(HARSIMRAN SINGH SETHI)**
aarti **JUDGE**

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