

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

101

2024:PHHC:018205-DB

LPA-1212-2023 (O & M)
Date of Decision: 09.02.2024

Executive Officer, M.C., Gobindgarh

.....Appellant(s)

Versus

Parveen Kumar and others

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA,
ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE LAPITA BANERJI**

Present: Mr. Balvinder Sangwan, Advocate,
for Mr. Ajay Jain, Advocate,
for the appellant.

G.S.SANDHAWALIA, ACTING CHIEF JUSTICE (Oral)

1. The present letters patent appeal is directed against the order dated 22.03.2023 passed by the learned Single Judge in CWP No.19828 of 2019, Parveen Kumar vs. State of Punjab and others. The present appeal is barred by 106 days in filing of the same.

2. In view of the reasons given in the application duly supported by affidavit, we condone the delay.

3. By virtue of the order under challenge, learned Single Judge directed the writ petitioner, who was working as a Sweeper and retired on 31.12.2020, to exercise his option under the Municipal Employees Pension and General Fund Rules, 1994 (in short 'the 1994 Rules') for grant of pension within a period of eight weeks. The writ petitioner was made liable to refund the entire provident fund amount to the Municipal Council at the time of exercising such option along with interest, if any, received by the petitioner. In case the option is exercised by the writ petitioner within the period stipulated and if he refunds the amount of the provident fund, the present appellants were to process the claim of the writ petitioner and release necessary terminal benefits to him within

4. The argument which has been raised is that reliance placed by the learned Single Judge upon the case in ***CWP No. 3827 of 2004, Smt. Soma vs. State of Punjab and another decided on 28.07.2005*** is not justified since there was a specific finding in the said case that the employer had not specified what steps have been taken to redress the grievance of the illiterate employee as to the request that she had made for grant of pensionary benefits. It is pointed out from the written statement that the stand taken before the learned Single Judge was that the employee had given an undertaking (Annexure R-1) before the Department under the 1994 Rules not to opt for the pension on 25.11.1994. Thus, an effort has been made to distinguish the abovesaid judgment upon which the learned Single Judge has relied upon and allowed the writ petition.

5. We are of the considered opinion that the effort made for distinguishing the judgment in *Smt. Soma's case (supra)* is without any basis since it is specific pleading that the writ petitioner being an illiterate person, there was no occasion for him to sign the proforma that he is not interested in the pension since the Rules are framed in such a manner that if the employee did not opt for pension, it would be considered that the employee is not interested for pension and as per Rule 3(2), there is an option of both of 'opting for the Rules' and 'opting out of the Rules'.

6. A similar view was also taken by another Division Bench of this Court in ***LPA-1291-2011, Municipal Council, Fazilka vs. Dropati and others, decided on 22.05.2014*** wherein also, representation had been filed after the retirement. Keeping in view the fact that Class-IV employees are poor and illiterate employees and thumb impression had been obtained on the proforma without informing her of its consequences, the co-ordinate Bench had not interfered with the order of the learned Single Judge granting the benefit which

said judgment was also challenged before the Apex Court by filing ***SLP (C) No. 20690 of 2014, Municipal Council, Fazilka vs. Dropati and others***, which was dismissed on 15.12.2014.

7. We have also perused the proforma (Annexure R-1) as such which has been filled by the employee who has signed in vernacular. A perusal of the signatures would go on to show that the employee, who is working as a Sweeper, has barely been able to put his name together in vernacular and, therefore, we are of the considered opinion that the option as such to 'go out of the purview of the benefit of pension' was not properly explained to him at that point of time. In such circumstances, we do not find it a fit case as such to interfere in the relief which has been granted by the learned Single Judge.

8. The Apex Court in ***SLP (Civil) No.16030 of 2018, Vinod Kanjibhai Bhagora Vs. State of Gujarat and another*** while examining the underlying principle for grant of pension came to the conclusion that it is earned by a government servant in lieu of tireless service rendered by him during the course of their employment and a wide interpretation should be given to consider the right for grant of pension. The Apex Court was seized of the long period of service as such rendered with the Central Government before having been appointed in proper due course after getting no objection from the State Government which had been denied by the State Government and upheld by the High Court. Accordingly, the appeal was allowed and the State was directed to grant pensionary benefits to the appellant while keeping in mind the principles and rules in question. Relevant portion of the said judgment reads as under:-

“10. As a precursor, it would be relevant to consider the raison d'etre qua the grant of pension. Similarly, it would be equally important to clarify that pension is earned by a government servant in lieu of tireless service rendered by him/her (as the case may be) during the course of their

employment; and often is an important consideration for person(s) seeking government employment. Accordingly, in our considered opinion, the raison d'etre qua the grant of pension by the State Government would inextricably be linked to a concentrated effort by the State Government to enable its former employee(s) to tide over the vagaries and vicissitudes associated with old age vide a pension scheme.

xxx xxx xxx xxx

17. It is well settled that pension scheme(s) floated by the State Government form a part of delegated beneficial legislation; and ought to be interpreted widely subject to such interpretation not running contrary to the express provisions of the Pension Rules¹. Furthermore, it would be relevant to underscore that the State Government is a model employer; and ought to uphold principles of fairness and clarity."

9. Accordingly, the present appeal stands dismissed. However, the period for compliance, as directed by the learned Single Judge, is extended by 12 weeks from today.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

09.02.2024
shivani

(LAPITA BANERJI)
JUDGE

Whether reasoned/speaking	Yes
Whether reportable	No