

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

CWP-6538 of 2018
Reserved on: 09.02.2024
Pronounced on: 12.03.2024

Satinder Kumar Jindal

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: Mr. Vijay Kumar Jindal, Advocate,
for the petitioner.

Mr. T.P.S. Walia, AAG, Punjab.

Mr. Anil Kumar Sharma, Advocate,
for respondent No.2.

NAMIT KUMAR, J.

1. Instant writ petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of *certiorari* quashing the order dated 05.12.2017 (Annexure P-8) passed by respondent No.2, vide which the option of the petitioner for pension has been declined and further for issuance of writ of *mandamus* directing the respondent-Corporation to release the pension of the petitioner instead of employee's share of CPF, after accepting the change of option so submitted by the petitioner in terms of Pension and Gratuity Scheme.

2. Brief facts as pleaded in the writ petition are that petitioner joined the services of respondent No.2 – Punjab State Warehousing

Corporation (hereinafter referred to as 'respondent-Corporation') on 04.07.1973 as Accounts Clerk. He has retired from the service on 31.01.2015 after getting extension in service for two years, in view of the instructions of the Government of Punjab. The employees of the respondent-Corporation were governed by the Employee's Provident Fund Regulations, 1974, according to which employees at the time of their retirement were given employee's and employer's share of provident fund. In the year 1996, Pension and Gratuity Scheme was introduced for the employees of the respondent-Corporation w.e.f. 01.01.1986. Office order dated 24.04.1996, whereby aforesaid pension scheme was floated reads as under: -

***"PUNJAB STATE WAREHOUSING CORPORATION
CHANDIGARH***

OFFICE ORDER

With the approval of State Govt. vide their memo No. 3/71/92- Agri. XI(IX)/10258 dated 13.11.95 and the Punjab State Warehousing Corporation vide resolution No. 74.19 and Supplementary Resolution No. 74.1 in their meeting held on 2.1.96 and as stand notified in Punjab Govt. gazette of date 29th March, 1996, 'PENSION & GRATUITY SCHEME' is, hereby, introduced for the employees of the Corporation w.e.f 1.1.86 on the following terms & conditions:-

1. Pension scheme for the retired/retiring employees of the PSWC will be at par with that of State Government employees alongwith allied benefits like gratuity, LTC, medical facilities etc. as existing as may be amended from time to time with effect from 1.1.86. However, where benefits of gratuity under the payment of Gratuity Act are more favourable, the provisions of the Act will prevail;

2. The admissibility of pension and other allied benefits under the scheme will be subject to the option to be exercised by the employees within 3 months from the circulation of the scheme. The employees who opt for the scheme will have to forego the benefits of CPF Employer's Share, which they were getting from the date of joining the

provident funds scheme under the PSWC Employees Provident Fund Regulation, 1974. Option once exercised will be final;

3. The employees, who have already retired, may opt for the scheme subject to the condition that the employer's share drawn by them at the time of their retirement will be deposited by them in lumpsum with the Corporation together with upto date interest at the rate of 12% with half yearly compounding. The interest on payment of arrears of pension to such employees will be paid @12% with half yearly compounding.

4. The procedure for sanction and disbursement of pension will be followed by the Corporation as in the case of State Govt. with regard to the eligibility, qualifying service, commutation, dearness allowances etc. with due alterations, where deemed necessary.

5. The appointing authority will be authorized to sanction the payment of pension in accordance with State Govt. instructions to all categories of employees of the PSWC. However, Chief Manager (Finance & Accounts) is authorized to disburse the amount of pension, after the approval of the appointing authority.

6. The 'Pension Fund' will be administered by the Managing Director as per directions of the EC/BODS from time to time and will be utilised BODs from time to time and will be utilised only for discharging liability of pension and other relevant retiring benefits.

All liabilities of pension account of employees shall be met with from pension funds only and not from the revenue and any other source the Corporation.

*CHANDIGARH, DATED
THE April, 24, 96*

*D.S. JASPAL, IAS,
Managing Director."*

3. In pursuance of aforesaid office order, petitioner did not opt for said Pension and Gratuity Scheme but opted to continue with Punjab State Warehouse Corporation Employees Provident Fund Regulations, 1974. Respondent-Corporation vide communication dated 27.06.1997 again called for exercise of options. The said communication reads as under: -

**"PUNJAB STATE WAREHOUSING CORPORATION
CHANDIGARH**

NO. PWC/ADMN./E-5/21947-22086/97:

DATED: 27.6.97

From

*The Managing Director,
PSWC, Head Office.*

To

- 1. All the Distt. Managers, PSWC.*
- 2. Chief Port Manager, CFS, Ludhiana.*
- 3. Port Manager, CFS, Jalandhar/Chhehratta.*
- 4. All the Warehouse Managers, PSWC.*

**SUBJECT:- INTRODUCTION OF PENSION &
GRATUITY SCHEME FOR
EMPLOYEES OF PSWC- OPTION FOR
ADDITION REGARDING.**

In accordance with circular issued under endst. No. PWC/Admn./E-5/6959-7124/96, dated 15.5.96, all the employees were required to give their option for adopting of the pension & Gratuity Scheme within three months from the circulation of the scheme. It has been observed that a number of employees intended to exercise their option but for one or the other reason could not opt within the prescribed/stipulated period. Keeping in view persistent demand of employees, it has been decided to afford another opportunity to all such employees. All of you are requested to bring these instructions in notice of staff working under you to submit option on the prescribed proforma (in case not sent earlier within stipulated period) within 15 days from receipt of this communication. It is made clear that this is LAST OPPORTUNITY.

*Sd/-
CHIEF MANAGER (ESTT.)
For MANAGING DIRECTOR.*

NO. PWC/ADMN./E-5/22087-098/97, DATED: 27.6.97

A copy of the above is forwarded for similar action to All the Branch Officers, PSWC at Head Office.

*Sd/-27.6.97
CHIEF MANAGER (ESTT.)
For MANAGING DIRECTOR."*

4. At the relevant time, petitioner was working as Godown Assistant at Punjab State Warehouse, Sangrur. On coming to know about the said communication, through his Warehouse Manager, petitioner opted for pension scheme, through the District Manager, PSWC, Sangrur, on 10.07.1997 (Annexure P-4). After submission of aforesaid option petitioner remained under bona fide impression that his request for pension scheme has been accepted. However, at the time of his retirement, when petitioner requested for release of his pensionary benefits as per said Scheme, he came to know that he was not taken under the Pension and Gratuity Scheme by the respondent-Corporation, despite his request whereby he opted for pension scheme through proper channel. Petitioner approached this Court by way of filing CWP No.15008 of 2017, for acceptance of his option submitted by him in terms of Pension and Gratuity Scheme. The said writ petition was disposed of vide order dated 14.07.2017, by directing the respondents to treat the petition as representation, look into the grievances of the petitioner and take appropriate action in accordance with law, within a period of three months, from the date of receipt of certified copy of the order. On 20.12.2017, petitioner was communicated the impugned order dated 05.12.2017, passed by respondent No.2, whereby claim of the petitioner has been declined

observing that last opportunity was only for those employees who could not opt earlier. Hence this petition.

5. Learned counsel for the petitioner contended that respondent-Corporation has wrongly declined the option exercised by the petitioner for switching over to Pension and Gratuity Scheme. The process of taking options was continuing and had not become final. He further contended that petitioner as well as other employees, who did not exercise option, were continuing under the CPF Scheme. He contended that action of the respondent-Corporation to call options from the left over employees and not allowing the petitioner, who had earlier exercised his option, to shift to Gratuity and Pension Scheme is discriminatory. He further contended that no prejudice would be caused to the respondent-Corporation, if the subsequent option of the petitioner is approved. In support of his contentions, learned counsel placed reliance on the judgments of the Hon'ble Supreme Court in ***Indian Ex-Servicemen Movement & others v. Union of India and others, 2022(2) S.C.T. 244; Calcutta State Transport Corporation and others v. Ashit Chakraborty and others, 2023 AIR (Supreme Court) 2270*** and order of this Court in ***LPA-221 of 2010 – Chaudhary Charan Singh Haryana Agricultural University and another v. Dharampal – passed on 22.02.2010***. He also submitted that a sum of Rs.16,21,697/- (employer's share of CPF) is lying with the Corporation and the same has not been paid to the petitioner till date for one reason or the other.

6. *Per contra*, learned counsel for respondent No.2 contended that petitioner had already exercised his option of continuing

under the earlier Scheme of Provident Fund. He further contended that vide Circular dated 27.06.1997, opportunity to exercise option was given to only those employees who could not give their option earlier, however, petitioner had already given his option to continue with the CPF Scheme. Therefore, subsequent option of the petitioner has rightly been rejected by the respondent-Corporation vide impugned order. In support of his contentions, learned counsel for respondent No.2 placed reliance upon the judgment of this Court in ***CWP-4085 of 2009 – Sohan Lal v. Pepsu Road Transport Corporation Limited, Patiala and others and other connected cases – decided on 13.05.2019.***

7. I have heard learned counsel for the parties and perused the record.

8. Admittedly, respondent-Corporation introduced Pension and Gratuity Scheme w.e.f. 01.01.1986 and vide office order dated 24.04.1996, invited options from the employees either to continue with the old scheme or to opt for the Pension and Gratuity Scheme. Undisputedly, petitioner opted to continue with the CPF Scheme. Thereafter, vide communication dated 27.06.1997, respondent-Corporation once again called for exercise of option, within 15 days from the employees who could not opt earlier.

9. The question for consideration in the present petition before this Court is as to whether the petitioner can be allowed to shift to Pension and Gratuity Scheme in view of his second option, once he had already opted for CPF Scheme, pursuant to the earlier circular and

subsequent option was called only from those employees who could not give their option for one reason or the other.

10. Hon'ble Supreme Court in ***Col. B.J Akkara (Retd.) v. Government of India, (2006) 11 SCC 709***, summarised the principles relating to pension and observed as under: -

"20. The principles relating to pension relevant to the issue are well settled. They are:

(a) In regard to pensioners forming a class, computation of pension cannot be by different formula thereby applying an unequal treatment solely on the ground that some retired earlier and some retired later. If the retiree is eligible for pension at the time of his retirement and the relevant pension scheme is subsequently amended, he would become eligible to get enhanced pension as per the new formula of computation of pension from the date when the amendment takes effect. In such a situation, the additional benefit under the amendment, made available to the same class of pensioners cannot be denied to him on the ground that he had retired prior to the date on which the aforesaid additional benefit was conferred.

(b) But all retirees retiring with a particular rank do not form a single class for all purposes. Where the reckonable emoluments as on the date of retirement (for the purpose of computation of pension) are different in respect of two groups of pensioners, who retired with the same rank, the group getting lesser pension cannot contend that their pension should be identical with or equal to the pension received by the group whose reckonable emolument was higher. In other words, pensioners who retire with the same rank need not be given identical pension, where their average reckonable emoluments at the time of their

retirement were different, in view of the difference in pay, or in view of different pay scales being in force.

[...]

One set cannot claim the benefit extended to the other set on the ground that they are similarly situated. Though they retired with the same rank, they are not of the "same class" or "homogeneous group". The employer can validly fix a cut-off date for introducing any new pension/retirement scheme or for discontinuance of any existing scheme. What is discriminatory is introduction of a benefit retrospectively (or prospectively) fixing a cut-off date arbitrarily thereby dividing a single homogeneous class of pensioners into two groups and subjecting them to different treatment."

11. Hon'ble Supreme Court in ***Indian Ex-Servicemen Movement v. Union of India, 2022 (2) SCT 244*** laying down the principles governing the pensions and cut-off dates has held that the benefit of a new element in a pensionary scheme can be prospectively applied. However, the scheme cannot bifurcate a homogenous group based on a cut-off date.

12. Hon'ble Supreme Court in ***University of Delhi v. Smt. Shashi Kiran and others, 2022(3) S.C.T. 93*** has held as under: -

"22. 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.

23. *We may now consider the matter from the perspective of financial impact if the decision of the Division Bench is affirmed.*

24. *According to the notification dated 01.05.1987, the employees joining the service after 01.01.1986 would always be under GPF. With respect to those who were in service on 01.01.1986, said employees would be deemed to have "come over" to GPF unless an option to continue to be under CPF was consciously exercised before the cut-off date. Thus, when the Scheme was framed and was sought to be implemented, the concerned authorities must have taken into account the entire magnitude such as, the number of employees and the likelihood of impact on the management of the fund, so that reasonable returns can be effected by way of pension upon retirement of such persons. Going by the intent of the notification, those who were to opt for CPF, were an exception and the general rule was that everybody after 01.01.1986 would normally be covered by GPF. It is in this context that the number of original petitioners in Shashi Kiran batch of cases has to be seen. We are concerned with only 75 persons. On the other hand, the bulk of people namely 2469 employees were granted the choice of reverse switchover and they were allowed all the benefits under GPF. It can reasonably be said that when the notification dated 01.05.1987 was issued, the authorities were conscious of the possibility that all the employees may come over to GPF. With that possibility in mind, the fund was constituted and the affairs were arranged. The shift of those 75 employees would not in any way affect the strength and the character of the fund if a direction that the entire contribution made by the authorities be returned with reasonable rate of interest is Issued. These 75 petitioners had approached the Court in the year 2010. At*

this length of time, it is not as if any floodgates are going to open and there will be drain on the resources of the State. A direction can, therefore, be issued, as was done by the learned Single Judge in paragraph 20 of his Judgment in R.N. Virmani batch of cases and which aspect was mentioned in the letter dated 23.01.2017 referred to in paragraph 8 hereinabove, for recouping the contribution under CPF with 8% simple interest per annum.

25. Considering the circumstances on record, in our view, the decision rendered by the Division Bench of the High Court in Shashi Kiran batch of cases does not call for any interference except to the extent of direction for recouping of the contribution under CPF with 8% simple interest per annum. It is possible that at this length of time, some of the employees in Shashi Kiran batch of cases may not be interested in switchover to GPF. But an option must be afforded to them in such manner as the authorities deem appropriate.”

13. In the present case, before introduction of Pension and Gratuity Scheme, all the employees of the respondent-Corporation were under the CPF Scheme and the employees who opted for new scheme within the stipulated time were eligible for pension scheme. The employees who did not exercise any option due to one reason or other and the employees, including petitioner, who opted for CPF Scheme were kept under the Employees Provident Fund Regulations, 1974. Subsequently, the respondent-Corporation invited option from those employees who did not opt within the prescribed/stipulated period. Thus, present case appears to be a case of discrimination and arbitrariness particularly when similar benefit was granted to similarly situated employees, one of them is Daljit Singh, who, though did not

opt earlier. Apart from that, one Baldev Singh Khanna, who joined respondent No.2-Corporation on 08.06.1977, resigned vide resignation dated 08.04.1992, which was accepted by the respondent-Corporation on 04.01.1993 and his CPF of Rs.37,551/- was released to him. However, on his request dated 31.10.1996, he was appointed afresh by respondent No.2 on 16.12.1996. He was given the benefit of earlier service and seniority as well as change from CPF to pension scheme. Further, the employer's share of CPF of Rs.16,21,000/- is still with the respondent-Corporation. Respondent-Corporation cannot be permitted to act in violation of Articles 14 and 16 of the Constitution of India. Being a model employer, it is the duty of the Corporation to treat every employee in the same manner.

14. The decision of the petitioner giving second option is fully conscious decision. No prejudice would be caused to the respondent-Corporation in accepting the change of option of the petitioner as the Pension and Gratuity Scheme is in the nature of a beneficial legislation. If the benefit on account of a beneficial legislation has been afforded to one set of employees, the same cannot be withheld from the other set of similarly situated employees even though they had exercised their option earlier. The intention of the Corporation was, therefore, to maximize the number of beneficiaries of the pension and gratuity scheme. In the face of the subsequent office memorandum dated 27.06.1997 issued for affording another opportunity to the remaining employees in order to benefit them, the objection raised in relation to

giving the option after a stipulated period of three months in the case of the petitioner was a misplaced one and has to be rejected.

15. No benefit of the judgment in *Sohan Lal's* case (supra) can be given to the respondents as the facts of that case are distinguishable from the facts of the present case. In the said case, loan was pending against the employees, therefore, they were denied the benefit of PEPSU Road Transport Corporation Employees Pension/Gratuity and General Provident Fund Regulations, 1992.

16. In view of the foregoing reasons, the present petition is allowed and impugned order dated 05.12.2017 (Annexure P-8) passed by respondent No.2, is set aside. Respondent-Corporation is directed to grant pensionary benefits to the petitioner under the Pension and Gratuity Scheme and necessary calculations of the amount of pensionary benefits, after adjusting the amount paid to him, if any, under contributory provident fund and amount of Rs.16,21,697/- as employer's share lying with the Corporation, be made and released, within a period of 04 months from the date of receipt of certified copy of this order.

12.03.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether Reportable

:

Yes/No