241 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-15810-2023
Date of decision: 03.12.2025

Jaswant Singh ....Petitioner

Versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Harish Sharma, Advocate
for the petitioner.

Mr. Vikas Sonak, AAG, Punjab.

Mr. Harpreet Singh Gharuan, Advocate
for respondent No.4.

HARPREET SINGH BRAR, J. (ORAL)

1. The present civil writ petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing the order dated 22.02.2022 (Annexure P-11), whereby, respondent No.4 declined to accept the claim of the petitioner for pension scheme and grant him the consequential pension and other retiral dues on his retirement.

2. Learned counsel for the petitioner *inter alia* contends that the petitioner served as non-provincialized employee in the Zone C of Municipal Corporation, Ludhiana as Oil Man and retired on 31.12.2019 after availing the extension of service of two years. During the service of the petitioner, the Government of Punjab issued a notification on 29.07.1994 in which the Punjab Municipal Corporation Employees Pension and General Provident Fund Rules,

1994 (in short 'Rules of 1994') were published. The said rules are fully applicable in the case of the petitioner. The Rules of 1994 provided that employees shall have to opt for the said rule within a period of four months from the date of publication of the said Rule subject to the condition that they shall have to refund the Corporation Contribution towards the Contributory Provident Fund including interest received by them with simple interest on the whole amount @10 % per annum from the date of the withdrawal to the date of return. He relies upon the notification (Annexure P-1) and submits that the notification was made applicable to provincialized employees of the Corporation and it was stipulated that in case of employees who are members of the non-provincialized services of the Corporation, they shall come into force from such date as the concerned Corporation may determine by a resolution passed in this behalf. He further emphasized on the fact that no such resolution was passed, as such, the petitioner was obligated to give option only after a resolution in terms of the notification was passed. Thereafter, the representative of the Union of temporary employees for their regularisation and regarding pension scheme was taken up with the concerned quarters and respondent No.3 issued instructions on 14.11.2011 by granting one time relaxation to exercise option regarding pension scheme upto 31.12.2011. The petitioner in terms of the notification has exercised this option. The petitioner accordingly exercised the option within the stipulated period which is accepted and he was issued GPF Account No.5072 and a contribution to existing CPF account was stopped and petitioner started contributed to the GPF account from his salary. However, after the retirement of the petitioner, he was not given pension. The case of the petitioner is squarely covered by the judgment of this Court in CWP No.15266 of 2014 titled as '*Raman Kapoor Vs. State of Punjab and others*' decided on 11.07.2016 (Annexure P-3) which was further upheld by the LPA No.2099 of 2016 titled as '*State of Punjab and others Vs. Raman Kapoor and another*' decided on 20.07.2018. An identical controversy was considered by this Court in CWP No.18381 of 2003 titled as '*Davinder Singh and others Vs. State of Punjab and another*' decided on 19.04.2010 (Annexure P-5) which was upheld by the Division Bench of this Court in LPA No.1192 of 2010 titled as '*Municipal Corporation, Ludhiana Vs. Davinder Singh and others*' decided on 21.05.2014 (Annexure P-6) and by the Hon'ble Apex Court in Special Leave to Appeal (C) No.7745-7747 of 2015 titled as '*Municipal Corporation Ludhiana Vs. Davinder Singh and others*' decided on 25.10.2017 (Annexure P-7). As such, the issue involved in the present controversy is no longer *res integra* and the claim of the petitioner has been rejected by impugned order dated 22.02.2022 (Annexure P-11).

3. Per contra, learned counsel for respondent No.4 submits that the case of the petitioner is not covered by the judgment cited by learned counsel for the petitioner. The petitioner has not submitted his option as required under proviso appended to Rule 1 (3) of the Rules of 1994 rather the petitioner has submitted his written option on the form prescribed in the Rules of 1994 and voluntary opted to remain out of the Rules of 1994. As such, reliance placed by the petitioner on the cited judgments is totally misplaced.

4. The learned State counsel refers to Annexure R-1 attached with the written statement filed on behalf of respondents No.1 to 3 and submits that the

petitioner on 14.09.1994 has not opted for the Rules of 1994 and further, the petitioner has not filed any replication. Further, the petitioner at the time of the retirement has raised no objection and accepted his retiral dues.

5. Having heard learned counsel for the parties and after perusal of the record, it transpires that notification (Annexure P-1) vide which the Rules of 1994 were implemented clearly stipulates that these Rules shall come into force with effect from 01.04.1990 in case of the employees who are members of the provincialized service of the Corporation and for non-provincialized service of the Corporation, Rules of 1994 shall come into force from such date as the concerned Corporation may determine by a resolution passed in this behalf. The respondents are not in a position to controvert the specific arguments raised by counsel for the petitioner in this regard and also not able to place on record any resolution vide which the Rules of 1994 were made applicable. The petitioner has further taken a specific ground in para 6 of the writ petition that after a one time relaxation was given by the Government of Punjab, and letter was circulated by respondent No.3 on 11.11.2011 (Annexure P-2), the petitioner was issued a GPF account No.5072 and he started contributed to above GPF account from his salary and stopped his contribution to the existing CPF account. In response thereof, the respondents have submitted that no option was invited from the employees who failed to exercise their option in the year 1994 nor any order was passed to accept these options. The subordinate officials of their own erroneously and illegally acted on the second option submitted on his own by the petitioner. However, after receipt of the letter from the Government of Punjab, the irregularity was corrected by

erring official and Contributory Provident Fund account of the petitioner was made operational. The exact stand taken by the respondents in the present writ petition was also taken in ***Raman Kumar's case (supra)*** and the Coordinate Bench of this Court has rejected the same and the following was observed:-

> "*Admittedly, the petitioner retired as Executive Officer from Improvement Trust, Kapurthala, on 31.1.2009. It is also admitted that the pension rules were made applicable to the employees of the Local Government. It is not denied that a meeting was held on 31.10.2011 and a letter (Annexure-P-1) was circulated to the different departments including the Department of Local Self Government, whereby it was decided that those employees who could not opt for the pension scheme, can adopt the same till 31.12.2011. Undisputedly, before the said date, the petitioner exercised the said option, vide Annexure-P-2. The problem put forward by the State is that the Pension Rules, 1994, were not amended, which is mandatory for implementing Annexure-P-1. The financial constraints of the State in releasing the funds has also been revealed.*
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> *I am of the view that it is a job of the Government to amend the rules and implement the decision and if they sit back and do not work on it, they are to blame themselves. It is nothing, but a willful neglect on the part of the State in not amending the pension rules. Otherwise, there is no legal bar on the Government to amend the said Rules. As per the letter (Annexure-P-1), the petitioner had opted for pension rules. The constraints of the funds is no ground to withhold the pension. It being so, the petitioner is held entitled to the pension as per the option exercised by him, on the payment of amount of contributory provident fund plus interest. Accordingly, the present writ petition is allowed. The State is directed to take necessary steps regarding the release of the pension on the payment of amount by the*

petitioner and release the same within three months from the date of receipt of copy of this order/payment of contribution, whichever is later. It is made clear that it is for the State to make the necessary amendments in the Pension Rules of 1994 and take other necessary steps regarding release of the funds. However, the petitioner shall be entitled to interest at the rate of 9% per annum for the delayed payment of pension."

6. Further, the Single Bench of this Court in ***Davinder Singh's case (supra)*** has dealt with the similar controversy including the ground of delay and the same was upheld by the Division Bench of this Court which reiterated the arguments raised by counsel for the petitioner including that of delay. The Single Bench of this Court has observed as under:-

"4. The counsel for the State and of Municipal Corporation would join Issue that there had been no specific instructions requiring the claim to be noted from each and every employee. The scheme merely provided for an exercise of an option within a period of four months from the date of notification and admittedly, the petitioners had not exercised the option within that period. Learned counsel appearing for the Corporation relies on a judgment of the Hon'ble Supreme Court in ***Union of India and others Vs. M.K.Sarkar*** *(2010) 2 Supreme Court Cases 59 to support his contention. In this case, the Hon'ble Supreme Court, while rejecting a claim for pension of persons who did not exercise the option within a specified time, dealt with the situation of the claim by persons who are making that option 22 years after retirement. The Hon'ble Court also considered the effect of permitting persons to secure double benefits of both provident fund scheme as well as pension scheme and found that such situation would be unjust and impermissible.*

5. In my view, Hon'ble Supreme Court in ***Union of India and others Vs. M.K.Sarkar(supra)*** *was not laying down a general proposition that if an option is not exercised within a particular time, it could not be done at all. The case must be rooted on the specific facts of an extra-ordinary delay of 22 years and the possible claim of double benefit which the petitioners therein had claimed. In this case all but out of the petitioners were still in service at the time when the writ petitions were filed. Learned counsel for the petitioner also points out that this petitioner himself joined along with others who filed CWP No.71868 of 2002 when they were all in service when this Hon'ble Court had merely directed the respondents to pass a speaking order. By that time when the present writ petition was filed, one of them had been superannuated. The ends of justice would be best to meet to ensure that no double benefit obtains to the petitioners. The petitioners shall refund the amounts that have received from contributory provident fund with simple interest at the rate of 9% p.a., when the respondents admit the petitioners to the pension scheme. They shall also give undertaking that they will make any contribution that the scheme stipulates as payale towards the employee's contribution. The amount shall be calculated by the respondents and informed to the petitioners giving a period not less than four weeks for making the payment and on such payment, the petitioner shall be entitled to the payment of pension arrears. The arrears of pension shall be made with simple interest at the rate of 9% per annum."*

7. In view of the above discussion, the present civil writ petition is allowed and the petitioner is directed to refund the amount that has been received from Contributory Provident Fund with simple interest @ 9% per

annum. The respondent-Corporation is directed to calculate the admissible benefits in terms of the Rules of 1994 and release the payment of pension along with arrears with simple interest @ 9% per annum from the due date till its actual realization within a period of four months from the date of receipt of certified copy of this order.

(HARPREET SINGH BRAR)
JUDGE

03.12.2025
Neha

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