



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

**RSA-3878-2013 (O&M)
Reserved On: 11.09.2025
Date of decision: 11.11.2025**

Food Corporation of India and OthersAppellants

Vs.

Jaswant Lal (through LRs)Respondent

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Anurag Jain, Advocate with
Ms. Smiksha Hans, Advocate,
Ms. Chahat, Advocate
for the appellants.

Mr. Sanjeev Sharma, Advocate
for the respondent.

SUDEEPTI SHARMA J. (Oral)

1. The present regular second appeal is preferred against judgment and decree dated 07.04.2012 passed by Civil Judge (Jr. Division), Patiala whereby, the civil suit filed by the respondent was decreed in his favour and judgment and decree dated 10.04.2013 passed by learned Additional District Judge (Fast Track Court), Patiala whereby, the appeal filed by the appellants was dismissed.

2. Brief facts of the case are that respondent joined service of appellant-Corporation as Sweeper on 16.09.1967 (Ex.P-14). Thereafter, he was promoted as Dusting Operator. In the year 1971, he was promoted as Stitcher and on 11.01.1990 he was promoted as Picker under IDA pattern. He submitted representation for grant of stagnation increment w.e.f. 01.04.1980 on the post of Stitcher and w.e.f.



01.04.1989 on the post of Picker. Employees Pension Scheme (EPS) was introduced by Central Government in the year 1996. The said scheme was made mandatory as per circulation No.24 of 1996, however, constitutional validity of scheme and circular was challenged in various Courts.

3. Issue regarding validity of EPS remained sub-judice and Hon'ble The Supreme Court finally upheld the Scheme in ***OTIS Elevator employees Unions & Ors v/s UOI 2003(4) SCT 935***. Thereafter, the respondent submitted his option under EPS alongwith duly filled proforma on 21.04.2004 (Ex.P-17). He filled up proforma under EPS (Ex.P-18) dated 21.04.2004. The same was forwarded by Assistant Manager (Admin.) to Deputy Manager. On 27.01.2005 (Ex.P-20) Assistant Manager wrote to Deputy manager to settle the case of respondent regarding pension under EPS. On 26.05.2006 (Ex.P-5), request of plaintiff for grant of pension was declined. On 22.11.2006 (Ex.P-3) increment was granted to respondent w.e.f. 1989, instead of 1980 when it was due. On 19.12.2006 (Ex.P-4) pay of respondent was fixed but without grant of increment which was due in 1980. On 22.02.2007, he filed civil suit challenging both the orders dated 26.05.2006 and 22.11.2006 besides claiming interest on delayed payment of gratuity and leave encashment.

4. The civil suit filed by the respondent was decreed in his favour vide judgment and decree dated 07.04.2012 passed by Civil Judge (Jr. Division), Patiala and appeal filed by the appellants was dismissed vide judgment and decree dated 10.04.2013 passed by learned Additional District Judge (Fast Track Court), Patiala. Hence, the present regular second appeal.

**SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES**

5. Learned counsel for the appellants contends that suit filed by the respondent was barred by limitation, since, respondent retired on 30.09.2002, whereas, the suit was filed on 20.02.2007.

6. He further contends that respondent opted for pension two years after retirement, therefore, would not be entitled to pensionary benefits. He further submits that both the Courts have returned the concurrent finding that though respondent did not apply for grant of pension during his employment nor was he a member of Employees Pension Fund as per provisions of Employees Pension Scheme, 1995 and had also received the payment of Provident Fund immediately on retirement, but at the same time observed that pension being a benevolence scheme, the same ought to be granted to the respondent.

7. He further submits that with respect to stagnation increment, reliance placed by respondent on Regulation 87 of FCI Staff Regulation (Staff) 1971 is misplaced since respondent never drew maximum of pay scale, coupled with fact that basis of claim was never pleaded nor any evidence was led about the applicability of Regulation 87. Policy dated 01.04.1989 for grant of stagnation increment was wrongly not considered on the basis of which respondent as per his request has at earlier point of time taken the benefit.

8. *Per contra*, learned counsel for the respondent contends that:-

- i) It is settled law that delay cannot be held out against the employee in pension matters if the employer has not brought pension scheme to employee's notice and sought his option after getting the



scheme noted from the employee concerned. Rather, here the scheme was compulsory and FCI ought to have brought it to the notice of respondent.

ii) Both the learned courts below have decreed the suit of the respondent by recording concurrent finding on facts and law and reliance has also rightly been placed on Clause-87 of the Food Corporation of India, Staff Regulations, 1971, which provide that an employee under IDA pattern would be entitled to one additional increment on completion of every two years of service and the clause has been made applicable to all post up to the pay scale of Rs.5,900 – 6,700/-. Case of the respondent was thus covered under this clause.

iii) It is not in dispute that the EPS of 1986 remained under challenge and its validity was upheld by the Hon'ble Supreme Court of India in the year 2004 and during pendency of the matter before the Hon'ble Apex Court, the respondent had demitted office on 30.09.2002 on attaining age of superannuation and immediately upon settlement of the legal issue, the respondent had applied for becoming member of the EPS, 1995 on 21.04.2004 and his request along with duly filled form was duly forwarded by the Assistant Manager, vide Ex.P-17. Therefore, there is no delay in the claim of the respondent more particularly when his application/option form was duly accepted and forwarded.

iv) Thus all the three reliefs claimed by the respondent; firstly with regard to grant of pension; secondly, with respect to grant of stagnation increments; and thirdly, with regard to interest on



delayed payment of retiral dues have rightly been decreed by both the learned courts below and family of a poor Class-IV employee, who has unfortunately expired during pendency of the present case, is being harassed by this unwarranted litigation.

v) Suit of the respondent has been rightly decreed by both the learned courts below and there is neither any illegality nor any perversity in the finding recorded by the learned courts below and it is an equally well settled proposition of law that scope of interference in Regular Second Appeal is very limited, particularly when there is concurrent finding of fact and no substantial question of law arises.

9. Learned counsel for the respondent further relies on the following judgments to contend that pension is not a charity or bounty, employees are entitled to receive pension as a matter of right :-

- i) ***State of Uttar Pradesh and others Vs. Dinesh Kumar Sharma and others; 2025(186) FLR 209***
- ii) ***Gurdev Singh Vs. HVPNL and others; 2006(4) S.C.T. 809***
- iii) ***Ram Kumar and others Vs. Uttar Haryana Bijli Vitran Nigam Ltd. and others; 2006(3) S.C.T. 628***
- iv) ***Rattan Chand Vs. Punjab State Electricity Board and others; 2011(1) S.C.T. 833***
- v) ***Ex-Sepoy Dhian Singh Vs. Union of India and Others; 2010(4) SLR 170***
- vi) ***Ex-Recruit Jagjit Singh Vs. Union of India and Others; 2006(3) S.C.T. 669***



10. I have heard learned counsel for the parties and perused the whole record with their able assistance.

11. Admittedly, respondent retired from service on 30.9.2002 and his retirement order is Ex.P-16. Though he claimed to be member of Employees Pension Scheme, 1995 of appellant, whereas, appellant denied the same. Respondent placed on record order dated 26.05.2006 (Ex.P-5), declining the plea of respondent for grant of pension on the ground that he was not member of Annual Pension Scheme, 1995. He has himself produced the copy of letter dated 21.04.2004 of District Manager, forwarding the form of Employees Pension Scheme, 1995 of respondent for taking further action by Manager (CPF) of appellant-Corporation. Therefore, Ex.P-17 shows that respondent opted for Pension Scheme and policy of appellant for grant of pension after his retirement . The application was forwarded on 21.04.2004, whereas, respondent retired on 30.09.2002.

12. There is nothing on record to show that appellants brought to the notice of respondent option in New Employees Pension Scheme, 1995, despite which respondent failed to exercise his option for Pension Scheme. Respondent as per record had applied for grant of pension and his application was forwarded on 21.04.2004. So far as, the limitation is concerned, this is a recurring cause of action. Further Employees Pension Scheme remained under challenge and its validity was upheld by Hon'ble The Supreme Court of India in the year 2004 and in 2004 itself respondent applied for becoming member of EPS on 21.04.2004, therefore, there is no delay.



13. Now, coming to the judgments referred to by the learned counsel for the respondent:-

i) Hon'ble The Supreme Court of India in ***State of Uttar Pradesh and others Vs. Dinesh Kumar Sharma and others; 2025(186) FLR 209*** held that pension is not a charity or bounty; employees are entitled to receive pension as a matter of right. Pension claims, even if delayed, can be considered with arrears restricted to three years prior to filing the writ petition. Further that pension claims are recurring benefits, and delay in approaching the court does not extinguish entitlement. Arrears of pension can be restricted to three years prior to the date of filing the writ petition.

ii) This Court in ***Gurdev Singh Vs. HVPNL and others; 2006(4) S.C.T. 809*** held that the circular asking for options of the employees for pension must be shown to be got noted under receipt by them to stretch the plea that the one opted to continue with the previous EPF Scheme only. In the absence of any such record, the employee is deemed to have opted for pension. If some part of EPF was required to be deposited back by him, that can be adjusted with interest from his arrears becoming due on refixation and computation of his retiral benefits taking his entire service as qualifying service.

iii) This Court in ***Ram Kumar and others Vs. Uttar Haryana Bijli Vitran Nigam Ltd. and others; 2006(3) S.C.T. 628*** held that notice of instructions as to option to pension to the employee is must. In the absence of any material as to, notice to the employee, his claim to change of option to pension cannot be declined, subject however, he



will have to deposit back the employer's contribution towards EPF with interest.

iv) This Court in ***Rattan Chand Vs. Punjab State Electricity Board and others; 2011(1) S.C.T. 833*** held that limitation in impugned action resulting in reduction of petitioner's monthly pension gives petitioners a recurring cause of action.

v) This Court in ***Ex-Sepoy Dhian Singh Vs. Union of India and Others; 2010(4) SLR 170*** held that the cause of action relating to grant of pension is recurring, right accrues periodically, the question of limitation will not arise, writ petition cannot be dismissed for such a claim on the ground of delay.

vi) This Court in ***Ex-Recruit Jagjit Singh Vs. Union of India and Others; 2006(3) S.C.T. 669*** held that the right to receive pension of any kind is a recurring cause of action and it accrues every month, the writ petition involving such a claim cannot be dismissed merely on the ground of delay and laches.

14. As per law laid down by Hon'ble The Supreme Court of India as referred to above, the civil suit filed by the respondent is rightly decreed in his favour and appeal filed by the appellants has rightly been dismissed.

15. In view of above discussion and law laid down by Hon'ble The Supreme Court of India and this Hon'ble Court, judgment and decree dated 07.04.2012 passed by Civil Judge (Jr. Division), Patiala and judgment and decree dated 10.04.2013 passed by Additional District Judge (Fast Track Court), Patiala are upheld.



16. Accordingly, the present regular second appeal is dismissed.

11.11.2025

(SUDEEPTI SHARMA)

Sahil

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No