



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-30179-2024
Date of Decision: February 04, 2025

Shanti Devi and anotherPetitioners

Versus

The State of Punjab and others Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MR. JUSTICE ALOK JAIN

Present: Mr. Prince Goyal, Advocate for the petitioners.

Mr. R.S. Pandher, Sr. DAG, Punjab.

LISA GILL, J.

1. Prayer in this writ petition is for setting aside Rule 1(3) of Punjab Municipal Employees Pension and General Provident Fund Rules, 1994 (for short – ‘1994 Rules’) to the extent that cut off date for grant of pension to the employees who retired before 01.04.1990 is discriminatory. Petitioners also seek quashing of order dated 14.08.2024 (Annexure P7) whereby claim of petitioners for family pension has been rejected.
2. Learned counsel for petitioners submits that Krishan Lal @ Kishan Lal i.e. husband of petitioner No. 1 and father of petitioner No. 2 was

appointed as Clerk with Department of Local Bodies, Punjab in 1938 on regular basis. He performed his duties with honesty and dedication without any complaint or inquiry being initiated against him. He was promoted to the post of Sanitary Daroga on 16.07.1948. He retired in the year 1977 on attaining the age of superannuation and unfortunately passed away on 29.04.1982 leaving behind his widow - petitioner No. 1 aged 92 years, son – petitioner No. 2 aged 53 years, and two daughters who are not arrayed as parties to this petition. At the time of retirement, there was no provision of pension being paid to the employee. Case set up by petitioners is that as per 1994 Rules, provision of pension was made available for employees who were either working or had retired after 01.04.1990. Petitioner No. 1, it is stated, submitted representation dated 16.04.2024 claiming benefit of family pension. When no action was taken thereon, CWP-11766-2024 was filed, which was disposed of on 20.05.2024 with a direction to respondent to decide representation dated 16.04.2024 within three months by passing speaking order. Resultantly, order dated 14.08.2024 was passed by Executive Officer, Nagar Council, Sri Mukhtar Sahib (Annexure P7) whereby claim of petitioners for family pension was declined while observing that pension is not to be released to the employees who retired before 01.04.1990. Aggrieved therefrom, present writ petition has been filed.

3. Learned counsel for petitioners vehemently argues that cut off date prescribed in Rule 3 of 1994 Rules is illegal, arbitrary and wholly discriminatory, rendering unequal treatment of a homogeneous lot of employees. Rule 3 of 1994 Rules reads as under: -

“(3) They shall apply to the employees of the Corporations, -

(i) who are appointed on or after the first day of April, 1990 on whole time regular basis, and

(ii) who were working immediately, before the first day of April, 1990 on whole time regular basis and opt for these rules:

Provided that the employees who were working immediately before the first day of April, 1990 and who retired during the period between the first day of April, 1990 and the date of publication of these rules in the Official Gazette, shall have the option to opt for these rules within a period of four months from the date of publication of these rules, subject to the condition that they shall have to refund the Corporation's contribution towards their Contributory Provident Fund including interest thereon received by them together with simple interest on the whole amount at the rate of ten per cent per annum from the date of withdrawal to the date of repayment.”

4. It is submitted that employees, who have retired prior to 01.04.1990, are being put to prejudice without any rationale or legitimate cause and class within a class is being created, which is violative of Article 14 of Constitution of India.

5. Learned counsel for petitioners has placed reliance upon judgment of Hon’ble the Supreme Court in **D.S. Nakara versus Union of India 1983 (1) SCC 305**. It is, thus, prayed that this writ petition be allowed as prayed for.

6. Learned counsel for the State (on advance notice), opposes the petition while submitting that impugned order 14.08.2024 has been correctly passed. Dismissal of this petition is sought.

7. We have heard learned counsel for parties and have perused the file with their able assistance.

8. It is an admitted case of petitioners that Krishan Lal @ Kishan Lal i.e. husband and father of petitioners No. 1 and 2 respectively, had retired in the year 1977 on attaining the age of superannuation. Concededly, he was not serving on a pensionable post. Retiral benefits as may have been due at that point of time would necessarily have been received by him. Till his death on 29.04.1982, employee Krishan Lal, did not raise any claim towards pension. Subsequently too, no claim towards pension was raised by the widow. For the first time, claim was raised on the basis of provisions of 1994 Rules and that too at a very belated stage. After passing of speaking order dated 14.08.2024, present writ petition has been filed challenging rejection as well as cut off date prescribed in the rules promulgated way back in 1994. Claim raised by petitioner is definitely hit by delay and laches. Submission of representation at such belated stage, passing of order dated 14.08.2024 in compliance of order dated 20.05.2024 in CWP-11766-2024 cannot come to aid of the appellant in extending the period qua cause of action as such. Argument raised on behalf of petitioners that right to pension is a recurring cause of action, therefore, claim cannot be hit by delay and laches is devoid of any merit, hence rejected. Petitioners have failed to prove any vested right which they or the employee had towards pension at the relevant point of time.

9. Furthermore, argument that cut off date prescribed in 1994 Rules is illegal or arbitrary is also devoid of any merit. It is relevant to refer to judgment of Hon'ble the Supreme Court in **State of Punjab and others versus Amarnath Goyal and others 2005(6) SCC 754** whereby

consideration was in respect to validity of cut off date had been prescribed in respect to availability of increased quantum of gratuity to the employees. It was held by Hon'ble the Supreme Court that such a cut off date is valid and cannot be termed discriminatory or arbitrary. While referring to the heavy reliance placed by writ petitioners therein on the judgment of Hon'ble the Supreme Court in **D.S. Nakara's** case (supra), it was observed in **Amarth Goyal's** case (supra) as under:

“We are afraid that the refrain of D.S. Nakara (supra) had been played too often to retain its initial charm, which has been worn thin by subsequent dicta.”

10. It was noted that subsequent judgments by Hon'ble the Supreme Court had considerably watered down the rigid view taken in **D.S. Nakara's** case (supra). Reference was made to its judgment in **Tamil Nadu Electricity Board vs. R. Veeraswamy and others 1999 (3) SCC 414**. Gainful reference can also be made to its judgment in **Government of Andhra Pradesh & ors. Versus N. Subbarayudu & ors. 2008 (14) SCC 702**, wherein it was held that cut off date cannot be dubbed as arbitrary even if no particular reason is given, until and unless cut off date leads to some blatantly capricious or outrageous result. Full Bench of this High Court in **CWP-17310-2015 (Shamsher Singh and others versus State of Haryana and others)** decided on 19.07.2024 has also held that a different treatment to retired and in service employees cannot be termed arbitrary. Learned counsel for petitioners is unable to point out any blatantly capricious or outrageous result of prescription of cut off date, which warrants interference by this Court.

11. In the given facts and circumstances, we do not find any ground whatsoever to interfere in the matter or set aside order dated 14.08.2024.
12. Writ petition is, accordingly, dismissed with no order as to costs.

(LISA GILL)
JUDGE

(ALOK JAIN)
JUDGE

February 04, 2025
Rts

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