

Sham Dass Sharma and Others Vs State of Punjab and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Sept. 1, 1994

Acts Referred: Constitution of India, 1950 " Article 226, 227

Punjab Municipal Corporation Employees Pension and General Provident Fund Rules, 1994 " Rule 3

Citation: (1995) 109 PLR 82

Hon'ble Judges: R.S. Mongia, J; Jawahar Lal Gupta, J

Bench: Division Bench

Advocate: R.S. Bindra and Anita Garg, for the Appellant; Nemo, for the Respondent

Judgement

J.L. Gupta, J.

The 24 petitioners herein were the employees of the Municipal Corporation, Amritsar. They retired from the service of the

Corporation on different dates from November 30, 1979 to June 30, 1992. They pray for a direction to the respondents to grant them pension

without reference to their date of retirement and that no interest should be claimed from them on the amount of refund which they have to make to

the Corporation.....

2. Hitherto, the employees of the Corporation were governed by a Scheme of Contributory Provident Fund. There were persistent demands

for grant of pension. As a result, in December 1989, the Punjab Government decided to introduce a Pension Scheme for the Municipal

employees"" who retire after April 1, 1990."" A copy of the news item that appeared in the Daily Tribune dated December 17, 1989 has been

produced as Annexure P-4 with the Writ petition. After further deliberations and consideration of the matter, the Government finally published the

Rules called ""The Punjab Municipal Corporation Employees Pension and General Provident Fund Rules, 1994." These rules were published in the

Punjab Government Gazette of July 29, 1994.

3. Mr. R.S. Bindra, learned counsel for the petitioners has submitted that every municipal employee is entitled to the grant of pension irrespective

of his date of retirement and that the provision in the rules for refund of ""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 10% per annum from the date of

withdrawal to the date of repayment," is unjust and unfair.

4. For a proper consideration of the submission, it is apt to notice the provisions contained in Rule 1. It provides as under:-

1. Short title, commencement and application -(1) These rules may be called the Punjab Municipal Corporation Employees Pension and General

Provident Fund Rules, 1994.

(2) They shall be deemed to have come into force on and with effect from the first day of April 1990 in the case of employees who are members

of the provincialised service of a Corporation, and in the case of employees who are members of a non-provincialised Service of a Corporation,

they shall come into force from such date, as the concerned Corporation may, determine, by a resolution passed in this behalf.

(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 percent per annum from the date of withdrawal to the date of repayment.

(4) They shall not apply to the employees, who-

a) Opt out of these rules :

b) are members of All India Service or Punjab Civil Service.

c) are paid out of contingencies ;

d) are work-charged employees;

e) are employed after superannuation;

f) are employed on contract basis, except when the contract provides otherwise; and

g) are specifically excluded wholly or partly from the operation of these rules.

5. A perusal of the provision contained in Clause (2) shows that in respect of the employees who are members of the provincialised Service of a

Corporation, the rules are deemed to have come into force on and with effect from April 1, 1990. With regard to the other employees who are

members of the non-provincialised services of the Corporations, the respective corporations in the State are entitled to determine the date with

effect from which the rules shall be enforced. Clause (3) of the Rules specifies the categories of employees to whom these rules shall apply. First

category is of persons who were appointed in the service of the corporation on or after April 1, 1990 on whole time regular basis; and are

continuing in the service. The second category consists of persons who had been appointed immediately before April 1, 1990 on whole time

regular basis and are still in the service of the Corporation. This category of employees has the right to opt for these rules and in case, they do so,

they will be entitled to the grant of pension in accordance with the provisions contained in these rules. The third category is contemplated under the

Proviso to the Rules. This consists of such employees as were in the service of the Corporation immediately before April 1, 1990 and July 29,

1994 i.e. the date on which the Rules were published in the Gazette. They also have the right to exercise an option with regard to the application of

these rules within a period of four months from the date of the publication of the rules. In case, they opt to be governed by the rules, they shall have

to refund the Corporation's contribution towards their contributory provident fund including interest thereon if they have already withdrawn the

amount alongwith interest on the whole amount at the rate of 10% per annum from the date of withdrawal to the date of repayment. Clause (4)

enumerates the categories of employees who will not be entitled to the benefits under these rules.

6. There is no specific averment in the petition as to whether or not the petitioners were members of provincialised service of the Corporation. Be

that as it may, the two questions that have been raised are:-

(i) Are all the employees, irrespective of their date of retirement, entitled to the grant of pension?

(ii) Is the provisions for refund alongwith simple interest at the rate of 10% per annum unjust and unfair ?

7. The conditions of service of an employee are determined by the contract of employment and/or the rules governing the matter. Till recently, the

employees were only entitled to the grant of contributory provident fund. In the year 1989, it was decided by the Government to grant pension to

the employees of the Corporation with effect from April 1, 1990. This assurance has been granted statutory recognition through the rules. Even

though these rules have been published in the year 1994, these have been enforced with effect from the agreed date viz. April 1, 1990. By virtue of

Clause (3), all the employees who have joined service on or after April 1, 1990 or who were in the regular service of the Corporation prior to April

1, 1990 and have opted for these rules, are entitled to the grant of pension. The date viz. April 1, 1990, has, thus, not been taken out of the

"hat". It has a historical basis. This was the date which had been accepted by the Government in December 1989. Consequently, the provision for

enforcing the rule with effect from April 1, 1990, cannot be said to be arbitrary.

8. The grant of pension like any other benefit to the employees has financial implications. It creates a burden on the employer. For obvious

reasons, the employer has the right to assess the position regarding its resources. If after the consideration of the matter, it finds that funds are

available for the grant of certain benefits, it can grant such benefits as are found to be just and reasonable. It is a question of policy which has to be

decided by the employer. In the present case, no material whatsoever has been placed on the record to show that the decision taken by the

respondents is unjust or unfair. On the other hand, a perusal of the petition shows that a number of employees had retired many years back. To

illustrate, petitioner No. 1 had retired on November 30, 1979. Similarly petitioner No. 2 had retired on April 1, 1981. The claim for the grant of

pension by such employees after the lapse of so many years, is apparently unreasonable.

9. In view of the above, we are unable to accept the contention raised on behalf of the petitioners that all the employees were entitled to the grant

of pension irrespective of their dates of retirement. We hold that the action of the respondents in the circumstances of this case, is just and

reasonable.

10. The second grievance made by the petitioners is that they should not be called upon to pay any interest on the amount which they have to

refund. To illustrate, an employee who had retired on April 2, 1990 is entitled to opt for the grant of pension. Admittedly, on the date of retirement

he was entitled to withdraw the amount of contributory provident fund lying in his account. Having withdrawn it, he has utilised that amount for a

period of more than four years. In spite of that, it is prayed that he should not be called upon to pay interest on that amount. It is not unknown that

the employees on retirement invest their savings in Fixed Deposits etc. These deposits normally earn an interest which is well above 10% per

annum. The rule requires the person to refund the amount alongwith simple interest at the rate of 10%. This is absolutely just and fair.

11. Consequently, we answer both the questions in the negative. We find no merit in this petition. It is dismissed in limine; However, there will be

no order as to costs.