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(2012) 08 P&H CK 0211

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 21401 of 2010

Satpal Yadav — APPELLANT

Vs

Union of India and others — RESPONDENT

Date of Decision: Aug. 8, 2012

Citation: (2012) 135 FLR 1082 : (2013) 1 LLJ 381 : (2012) 168 PLR 402 : (2013) 1 SCT 133

Hon'ble Judges: Augustine George Masih, J

Bench: Single Bench

Advocate: S.N. Yadav, for the Appellant; J.S. Cooner, for the Respondent

Final Decision: Allowed

Judgement

Augustine George Masih, J.

Petitioner has approached this Court with a grievance that the pensionary benefits, which he is entitled to under the Employees Provident Fund Organization Employees Pension Scheme (hereinafter referred to as ''Employees Pension Scheme''), which came into effect from 01.04.1993 (Annexure R-11), have not been granted to him by taking an objection that he had not completed 10 years of physical service w.e.f. 01.06.2002 vide impugned reply dated 02.06.2010 (Annexure P-5). Counsel for the petitioner contends that the petitioner was appointed on daily wage basis as a Clerk with the Golden Lion PH and HP Area Canteen, Jhajjar (A private regimental organization) on 16.09.1989. From time to time, his services were extended on contract basis till his services were regularized on 01.06.2001. He was dismissed from service vide order dated 31.03.2004 which he challenged before the Central Administrative Tribunal, Chandigarh Bench, Chandigarh vide O.A. No. 1090/HR/2005 successfully. The said order of dismissal from service was set aside by the Tribunal vide order dated 19.09.2007, according to which, the petitioner was held not entitled to the back wages but his services were directed to be counted for all purposes including seniority and pay fixation etc. During the said period, the petitioner was taken back in service and retired on attaining the age of superannuation on 31.10.2008. The order passed by the Central Administrative Tribunal dated

19.09.2007 was challenged by the petitioner by filing CWP No. 9832 of 2008, which was dismissed by this Court vide order dated 10.02.2010. He contends that in the light of the fact that the petitioner was serving the respondents all through from 16.09.1989 till the date of his superannuation i.e. 31.10.2008, he had completed more than 10 years of service with the respondents. He contends that the stand of the respondents rejecting the claim of the petitioner that he has not completed 10 years of physical service, cannot sustain. Referring to the Employees Pension Scheme, counsel contends that as per clause 5 and 7 of the said scheme, a member to be entitled for pension has to complete a minimum of 10 years of service on the date of attaining the age of 58 years. Since the petitioner had completed the said period, he was entitled to the claim, as made by him in the present writ petition.

2. On the other hand, counsel for the respondents states that the service of the petitioner was regularized w.e.f. 01.06.2001 and the contribution was deducted from the salary of the petitioner w.e.f. 01.06.2002 and from the date of deduction of the amount till the dale of his superannuation, since the petitioner has not completed 10 years of service, he is not entitled to the benefit of the Employees Pension Scheme.

3. Counsel for the petitioner, at this stage, submits that the petitioner is ready and willing to deposit the deductions which the respondents were to make from his salary from the date of inception of the scheme i.e. 01.04.1993 along with the interest as provided under the scheme.

4. I have considered the submissions made by the counsel for the parties and with their assistance, have gone through the records of the case.

5. As per the Employees Pension Scheme, the said scheme was made applicable on 16.11.1995 retrospectively w.e.f. 01.04.1993. According to the said scheme, a person to be entitled to the grant of pension as per clause 5 and 7, should have minimum service of 10 years on attaining the age of superannuation i.e. 58 years. The nature of appointment and service with the respondents has not been specifically mentioned therein. What is mentioned therein is that a member to be entitled for pension should have rendered minimum service of 10 years, which the petitioner has completed while serving the respondents. The objection, which has been raised with regard to the entitlement of the petitioner, is that he has not completed 10 years of physical service w.e.f. 01.06.2002 i.e. the date on which the deductions from his pay were made.

6. A perusal of the scheme does not indicate that it is the responsibility of the employee to make the deductions or authorize deductions from the salary. This responsibility is upon the employer. As per clause 4 under the heading ''Contribution'', it is specifically mentioned that the employee is not required to contribute separately under the Employees'' Pension Scheme, 1995. Employer share of Provident Fund contribution at the rate of 8.33 percent is diverted to Pension

Fund every month. Since the petitioner fulfills the requirement for being eligible under the Employees Pension Scheme as regards the length of service is concerned, the only bitch, which would remain for release of pension to the petitioner, is the employee''s contribution to the scheme w.e.f. 01.04.1993, the date of inception of the scheme.

7. In the light of the statement made by the counsel for the petitioner that the petitioner is ready and willing to deposit the share of the employee under the scheme along with interest, the impediment, as far as the claim of the petitioner is concerned, stands taken care of. Respondent No. 3 is directed to calculate the share of the petitioner along with interest from 01.04.1993 to 01.06.2002 and intimate the petitioner about the amount, which he is required to deposit, within a period of one month. The amount, so specified and calculated by respondent No. 3, shall be deposited by the petitioner within a period of two months from the date of receipt of such communication. Respondent No. 3 shall add-up its own contribution along with interest and deposit the same with the competent authority within a period of two months thereafter under the Employees Pension Scheme as applicable to the employees of respondent No. 3. The pension of the petitioner be released to him by the competent authority under the Employees Pension Scheme, within a further period of two months.

Writ petition is allowed in the above terms.