

(2014) 12 P&H CK 0013

High Court Of Punjab And Haryana At Chandigarh

Case No: Letters Patent Appeal No. 1097 of 2014 (O and M)

Som Singh

APPELLANT

Vs

State of Punjab and
Others

RESPONDENT

Date of Decision: Dec. 22, 2014

Citation: (2015) LabIC 2802

Hon'ble Judges: S.J. Vazifdar, Acting C.J ; Augustine George Masih, J

Bench: Division Bench

Advocate: S.K. Rattan, Advocate for the Appellant; Vinod S. Bhardwaj, Additional Adv.
General, Advocate for the Respondent;

Final Decision: Dismissed

Judgement

Augustine George Masih, J.

1. The appellant served as a P.T.I. with a qualifying service of 16 years with a privately aided BLD Janta Middle School, Jahidpur Kamlooh (Hoshiarpur), when he had to submit an application for being relieved from service on 18.10.1990 because of deteriorating health. The appellant was entitled to the refund of the contributory provident fund along with interest. On his application for the same having been accepted and he having been relieved from service, the said contributory fund along with interest was paid to him on 19.12.1995. The appellant opted for the Punjab Privately Managed Recognized Aided Schools Retirement Benefit Scheme, 1992 (for short, "me Pension Scheme") vide representation dated 12.08.1994. However, when the said representation was not decided, the appellant submitted further representations dated 02.11.1996 and 09.06.1998 (Annexures P-4 and P-5), followed by a legal notice dated 08.03.2010 (Annexure P-6). When in spite of all this, no decision was taken, he filed Civil Writ Petition No. 8439 of 2010 (Som Singh v. State of Punjab and others), which was disposed of on 10.05.2010 by this court with a direction to the respondents to consider the legal notice. The said legal notice was decided by the respondents, rejecting the claim of the appellant, holding him

ineligible for grant of pension vide order dated 31.08.2010, which was challenged by the appellant through the writ petition. On considering the claim of the appellant, the writ petition was dismissed by the learned single Judge vide judgment dated 11.04.2014, upholding the stand of the respondents that the appellant could not be granted pension as he had neither attained the age of 50 years nor had completed 25 years of qualifying service on the date when he had submitted his request for being relieved from service and, thus, being ineligible under the Pension Scheme, was dis-entitled to the benefit of same. The present appeal has been filed, challenging the decision of the learned single Judge.

2. The relevant Clauses 4, 5, 6(4), 8, 9 and 17, which are in issue in the present case, read as under:

"4. Exercise of Option:--The option under sub-clause II of the second proviso to sub-clause I of Clause III shall be exercised in triplicate in writing in form 2 so as to reach the District Education Officer as forwarded by the head of the concerned school with the approval by the Managing Committee within a period of four months from the date of publication of this scheme in the official gazette : Provided that:

(i) In the case an employee who, on the date of publication of this scheme was abroad or on leave, the option shall be exercised within a period of four months from the date taking the charge of his post;

(ii) where an employee is under suspension, on the date of publication of the scheme, the option shall be exercised Within a period of four months from the date of his joining the duty;

(iii) an option once exercised shall be final and if person fails to exercise his option for the scheme within a specified period referred to above, it shall be deemed that he has opted for the contributory provident fund benefit as envisaged in Rule 22 of Punjab Privately Managed Recognised Schools. Employees (Security of Service) Rules 1981 (hereinafter referred to the contributory provident fund).

(iv) an employee who dies on or after the fifth day of February, 1987 and who could not exercise his option, the legal heir of such employees who is entitled to receive retirement benefits under the scheme, shall exercised option, subject, to the condition that the legal heir shall have, to deposit the amount received by the deceased employee or by him, as case may be, under the contributory provident fund.

5. Benefits under the Scheme:--The following retirement benefits shall be granted under the Scheme, namely:

(a) Superannuation pension;

(b) Death-cum-retirement gratuity;

- (c) Family Pension;
- (d) Invalid pension;
- (e) Compensation pension;
- (f) Compassionate allowance; and
- (g) Retiring Pension."

6. Qualification Service: (1) The service of an employee shall not qualify for retirement benefits under this Scheme unless:

(i) to (iii) xx xx xx xx (2) and (3) xx xx xx xx

(4) In a case where the total qualifying service is less than ten years, no pension benefit shall be admissible.

Xx xx xx xx xx

7. xx xx xx xx

8. Entitlement for Pension: An employee shall be entitled for pension under the scheme only after he completes 10 years (twenty half years) qualifying service.

9. Superannuation Pension:--(1) An employee other than Class IV employee who opts for the Scheme, will be entitled to the superannuation pension from the date he retires after attaining the age of fifty eight years.

(2) In case of Class IV Employees, the date of retirement shall be the date on which he completes sixty years of his age.

(3) Pension shall be commuted at the rate of fifty per cent of the average pay of the last ten months. The admissibility of full pension shall be on completing thirty three years qualifying service. In case the qualifying service for pension is less than thirty three years, the pension shall first be commuted at the rate of fifty per cent of average pay of 1st ten months and then it will be proportionately reduced. If the pension so commuted falls short of rupees 375, the same shall be raised to rupees 375 in all cases.

10 to 16. xx xx xx xx

17. Retiring Pension:--

(1) A retiring, pension and retirement gratuity shall be granted to an employee who retires voluntarily or is retired compulsorily according to the length of qualifying service, as provided in the succeeding sub-clauses:

(2) The concerned managing committee shall, if it is of the opinion that it is in public interest to do so by recording the reason in writing, have the right by giving an employee prior notice, in writing of not less than three months to retire that

employee on the date on which he completes twenty-five years of qualifying service or any other date thereafter to be specified in the notice or on the date on which he attains fifty years of age:

Provided that where three months notice is not given or notice for a period less than three months is given, the employee shall be entitled to claim a sum equivalent to the amount of pay and allowance at the same rate at which he was drawing immediately before the date of retirement, for the period of three months or as the case may be, for the period by which such notice falls short of three months.

(3) An employee may, after giving at least three months notice in writing to the Managing Committee, retire from service or on the date on which he completes 25 yrs. of qualifying service or attains 50 yrs. of age or any date thereafter to be specified in the notice:

Provided that no employee under suspension shall retire from service except with the specific approval of the managing committee."

3. Counsel for the appellant submits that there is no distinction between qualifying service rendered by an employee, which comes to an end because of retirement or resignation. Terms "retirement" and "resignation" stand on the same footing and if he fulfills the minimum qualifying service, entitling him to the pension under the Rules, regulations or Scheme enacted/framed by the competent authority, he would be entitled to the grant of pension. In support of this contention, he has relied upon the judgment of the Delhi High Court in [Jagpal Singh Vs. Delhi Transport Corporation,](#) wherein it has been held that retirement and resignation stand on the same footing and an employee is entitled to the prorated pension on completion of the qualifying period of service although they may not have completed the required qualifying service.

4. This issue, with regard to the effect of resignation on the claim of an employee for the grant of pension under the Pension Scheme, is not required to be gone into in the present case as he does not fulfill the other qualifications and terms and conditions as specified under the Pension Scheme for the grant of pension as is being discussed hereinafter. We, therefore, leave the question open with regard to the effect of resignation on under the Pension Scheme for decision in an appropriate case.

5. Counsel for the appellant has, with reference to Clause 6(4) along with Clause 8 of the Pension Scheme, submitted that the appellant having since completed and had more than 10 years of qualifying service to his credit, was entitled to the benefit of the scheme and consequently pension as well. Submission has been made that Clauses 6(4) and 8 are to be read independently and Clause 17 has no application to the case of an employee who had completed 10 years of qualifying service. He states that as per the admitted facts, the appellant had completed 16 years of qualifying service with the Managing Committee and, therefore, is entitled to the

benefit of the Pension Scheme. His further submission is that Clause 17 deals with Retiring Pension and sub-clause (1) deals with granting an employee pension who is either retired voluntarily or compulsorily. Sub-clauses (2) and (3) only apply to an employee who is retired compulsorily by the Management.

6. This contention of the counsel for the appellant cannot be accepted, when seen in the context of the provisions of the Pension Scheme, according to which, Clauses 6(4), 8 and 17 have to be read in conjunction with each other. An employee to be eligible for grant of any benefit under the Pension Scheme has to fulfill all the requirements specified thereunder.

7. Under Clause 4" of the Scheme, if an employee appointed to an aided post on or before 5th day of February, 1987 and having retired on or after the 5th day of February, 1987 but before 16th day of January, 1991, could opt for the benefit, thereunder within a period of four months from the date of publication of the scheme. Clause 5 provided for benefits under the Pension Scheme. Qualifying service was provided under Clause 6. According to sub-clause (4) thereof, if an employee had total qualifying service of less than 10 years, no pension benefits would be admissible. Clause 8 deals with entitlement for pension, according to which an employee was entitled to pension under the scheme only if he completes 10 years qualifying service. Clause 9 deals with superannuation pension and Clause 17 deals with retiring pension. Further as per sub-clause (1), the retiring pension and retirement gratuity shall be granted to an employee, who retires voluntarily or is retired compulsorily according to the length of qualifying service as provided in succeeding sub-clauses. Sub-clause (2) deals with a situation where the Managing Committee decides in public interest by recording reasons in writing by giving prior notice of not less than three months to retire that employee on the date on which he completes 25 years of qualifying service or any other dates thereafter to be specified in the notice on which he attains 50 years of age. As per sub-clause (3) of this Clause, an employee also could, after giving atleast three months notice in writing to the Managing Committee, retire from service on the date on which he completes 25 years of qualifying service or attains 50 years of age or any date thereafter to be specified in the notice.

8. Clauses 5, 6(4), 8, 9 and 17 have to be read in conjunction with each other and an employee has to be eligible for the grant of benefit under the Pension Scheme as laid down thereunder.

9. A perusal of Clause 6(4) and Clause 8 would indicate that an employee shall be entitled to pension under the scheme after completing 10 years of qualifying service or more. These Clauses deal with the qualifying service and the minimum length of such service respectively, which an employee has to put in for being entitled to pension under the Scheme. However, for an employee to be eligible for grant of any specified pension and or any other benefit(s) under the Scheme, the requirement as provided thereunder for that claim has to be fulfilled independently.

10. The appellant admittedly is claiming benefit of Clause 17 of the Scheme, which deals with retiring pension. This Clause deals with an employee who is qualified for being retired voluntarily or compulsorily and for being eligible and entitled for the grant of retiring pension and retirement gratuity. Clause 17(1) deals with both categories of employees as this sub-clause refers to employees who retire voluntarily or compulsorily. Both these terms are qualified with the words "according to length of qualifying service" and after this, there is a coma followed by the words "as provided in the succeeding sub-clauses". Use of the word "or" in between "retires voluntarily" and "is retired compulsorily" also shows that the words and terms following these are common to them and apply to them equally. The icing is the use of "as referred to above". There is, thus, no escape from the conclusion that the length of qualifying service in sub-clauses i.e. (2) and (3) would apply to both the categories of employees. Thereunder, minimum length of qualifying service is provided. As per Clause 17(2) and (3) such, an employee should have completed not less than 25 years of qualifying service or attained 50 years of age on the date he intends to retire voluntarily or is compulsorily retired by the Managing Committee. Unless the employee fulfills the requirements of the qualifications as laid down in the terms of the Scheme, he cannot be held to be eligible for the benefit under the Scheme. In case of compulsory voluntary retirement, qualifying service has been specified and on fulfillment of the same, an employee can be said to be retired in accordance with the Scheme. The yardsticks and the criteria, therefore, as laid down under the Scheme, are required to be fulfilled for entitlement of the benefit of the Scheme.

11. Entitlement and eligibility are two distinct conditions as may be enumerated and laid down under the Scheme, which an employee is to fulfill for being qualified to the grant of benefit under the Scheme. Lack of any of these would render him ineligible and unqualified for the grant of that benefit. An employee, thus, will be eligible and entitled for the grant of the benefit of the Scheme, if he fulfills the conditions enumerated therein. Merely because an employee had completed 10 years of qualifying service, which entitles him to pension under the Scheme, would not make him eligible for the grant of pension because of his lack of qualifications. An employee is, thus, not only required to be entitled for pension but has to be eligible as well under the applicable provisions of the Scheme for grant of pension.

12. Now coming to the case of the appellant, although he had completed 16 years of qualifying service, yet he does not fulfill the qualifications for grant of retiring pension as provided under Clause 17 of the Pension Scheme under which he is claiming the benefit. The date of birth of the appellant is 15.05.1941 and he was relieved from service on 18.10.1990. He, therefore, was not of 50 years of age on the date of submission of his application, on which date itself he was relieved from service. He also does not fulfill the requirement of 25 years of qualifying service on the date of his acceptance of request for being relieved from service. The appellant, thus, has neither been compulsorily retired nor could he be said to have been

voluntarily retired as per Clause 17, which would have entitled him to the benefit of the scheme on being qualified as per the same for grant of pension.

13. An argument has been raised that Clauses 6(4) and 8 of the Pension Scheme are, thus, rendered superfluous as it prescribes 10 years of qualifying service for admissibility and entitlement for pension. This submission of the counsel is answered in cases of employees who may retire and/or claim retirement benefits under the Scheme as provided under Clause 5 such as Superannuation Pension (Clause 9), Family Pension (Clause 13), Invalid Pension (Clause 15), Compassionate Allowance (Clause 16) and Compensation Pension (Clause 18). While claiming these benefits, the requirement would be 10 years of qualifying service as provided under Clauses 6 and 8.

14. Another reason which disentitles the appellant to the benefit of the Pension Scheme is that he had not opted for grant of benefit under the Pension Scheme within a period of four months as required under Clause 3(i)(b) and proviso thereto. Proviso (ii) requires option to be given within a period of four months of the date of publication of the scheme. Admittedly, the appellant opted for the scheme vide representation dated 12.08.1994, which is much beyond the period prescribed for opting as date of publication of the scheme is 10.02.1992 and he could have opted on or before 09.06.1992. Hon"ble Supreme Court in [PEPSU Road Transport Corporation, Patiala Vs. Mangal Singh and Others,](#), while dealing with the similar Pension Scheme with similar facts and circumstances held that if an employee fails to exercise an option within the period prescribed from the date of issue of the Regulations then on failure on the part of the employee to opt for the Pension Scheme will disentitle him from claiming any benefit under the Pension Scheme. It will not be out of way to mention here that the appellant had also accepted the payment of the Contributory Provident Fund on 19.12.1995 along with interest from the date it become due till the date of payment from the respondents without any protest. In view of the above discussion, we do not find any merit in the present appeal and, thus, dismiss the same.