

(2009) 11 P&H CK 0186
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 868 of 2009

Dharam Pal Deshwal

APPELLANT

Vs

Chaudhary Charan Singh Haryana Agricultural University,
Hisar and Another

RESPONDENT

Date of Decision : 04-11-2009

Acts Referred:

Citation : (2011) 1 ILR (P&H) 739

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Satish Kumar Mittal, J.—The petitioner, who has retired as Clerk from the services of Chaudhary Charan Singh Haryana Agricultural University, Hisar (respondent No. 1 herein), on 30th November, 2008 on attaining the age of superannuation, has filed the instant petition challenging the order dated 3rd January, 2009 (Annexure P-14), passed by respondent No. 2, whereby the prayer of the petitioner for change of option from CPF to Pension Scheme has been rejected.

2. Briefly, the facts of the case are that when the petitioner was working as Clerk in the respondent University, he was placed under suspension on 18th February, 1993, on contemplation of a departmental proceeding against him, for certain mis-conduct. On 8th November, 1993, the petitioner was served with a charge sheet, to which he submitted reply, but his explanation was not accepted and a departmental enquiry was ordered. Ultimately,--vide order dated 30th September, 1994, the petitioner was awarded the punishment of removal from service. Aggrieved against the said order, the petitioner filed statutory appeal, which was dismissed by the appellate Authority on 19th April, 1995.

3. The petitioner challenged the order of his removal from service as well as the order of the Appellate Authority by tiling a civil suit. The court of Civil Judge

(Junior Division), Sirsa,--vide its judgment and decree, dated 7th March, 2002, partly decreed the suit. The order of removal of the petitioner from service was declared as illegal, null and void, he was ordered to be re-instated, but without back wages. Against the said judgment and decree, the petitioner as well as the respondent University filed separate appeals. The court of Additional District Judge, Sirsa,--vide its judgment, dated 10th January, 2006 (Annexure P-1) accepted the appeal filed by the petitioner and dismissed the appeal of the respondent University. The judgment and decree of the trial court was modified and the petitioner was held to be entitled for full back wages, including subsistence allowance, arrears of salary and all other consequential service benefits from the date of his dismissal to the date of his re-instatement. The said judgment and decree became final, and vide order, dated 21st March, 2006 (Annexure P-2), the petitioner was re-instated in service.

4. At the time, when the petitioner was under suspension, the respondent University introduced the Pension Scheme, vide notification, dated 9th April, 1993, with retrospective effect from 1st January, 1992. All the employees of the respondent University, who were in service on 1st January, 1992 or retired after 1st January, 1992, were given an opportunity to change their option from CPF to Pension Scheme. It is the case of the respondent University that, vide his option, dated 5th August, 1993, the petitioner had opted to continue with the CPF Scheme. On 30th September, 1994, the petitioner was removed from service.

5. It is admitted position that subsequently, the respondent University, vide circular, dated 10th April 1996 (Annexure P-3) gave another opportunity to its employees to change their option from CPF to Pension Scheme. At that time, the petitioner was under removal from service, therefore, he could not have opt for the same. However, some of the employees, who had earlier opted for the CPF, changed their option to Pension Scheme. Further, vide notification, dated 26th February, 1999 (Annexure P-4), the respondent University gave one more chance to its employees to change their option from CPF to Pension Scheme. At that time also, the petitioner was under removal from service and he could not change his option. Thereafter, vide circular, dated 18th April, 2001 (Annexure P-5), similar offer was again given by the respondent University to its employees. At that time too, the petitioner was not in service and he could not opt for the Pension Scheme. However, it is undisputed position that in view of these subsequent opportunities, many employees of the respondent University have changed their option from CPF to Pension Scheme.

6. Immediately after his re-instatement on 23rd March, 2006 in compliance with the judgment and decree of the civil court, the petitioner submitted an application on 12th April, 2006 (Annexure P-6) for change of his option from CPF to Pension Scheme. Respondent No. 2, vide his order, dated 6th May, 2006 (Annexure P-7), without disclosing any reason, rejected the prayer of the petitioner for change of option. The petitioner challenged the said order by filing C WP No. 16418 of 2006. During the pendency of the said writ petition, the

petitioner had retired from service on 30th November, 2008, on attaining the age of superannuation. Thereafter, vide order, dated 1st December, 2008 (Annexure P-12), the said petition was disposed of by this Court with liberty to the petitioner to make a detailed representation to the respondents and the respondents were directed to consider that representation by passing a speaking order within a period of 30 days from the date of receipt of the representation. Pursuant to this order, the petitioner submitted representation, dated 5th December, 2008 (Annexure P-13), which has been rejected by respondent No. 2, vide order, dated 3rd January, 2009 (Annexure P-14), on the ground that since the petitioner could not opt for change of option in time, when the opportunity was granted, therefore, now at this stage, he cannot be permitted to change the option. Hence, this writ petition.

7. In the written statement, filed by the respondents, it has been stated that when the Pension Scheme was introduced in the respondent University,--vide notification, dated 9th April, 1993, an opportunity was given to the employees of the respondent University to opt either for the CPF Scheme or for Pension Scheme. The petitioner,--vide his option, dated 5th August, 1993, in writing, opted to continue to be governed by the CPF Scheme, and subsequent to that, when opportunities were provided to all the employees of the respondent University, the petitioner did not opt for Pension Scheme. Therefore, once the option given by the petitioner became final, he cannot be permitted to change his option. It is further stated that now, the time for changing option even under the subsequent circulars has expired, therefore, at this belated stage, the petitioner cannot be permitted to change his option, as it will result into grave financial implications.

8. I have heard Learned Counsel for the parties.

9. The material facts, as stated above, have not been controverted by either of the parties. Learned Counsel for the petitioner argued that since the petitioner was out of service from 30th September, 1994 to 21 st March, 2006, therefore, he could not apply for change of option, when the respondent University issued three circulars on 10th April, 1996, 26th February, 1999 and 18th April, 2001, whereby opportunities were given to the employees to change their option from CPF to Pension Scheme. He submitted that removal of the petitioner from service for the aforesaid period was held to be illegal, null and void by the Civil Court. Therefore, the petitioner was not at fault for not exercising his option under the aforesaid three circulars at the relevant time. As soon as he was re-instated, immediately thereafter, he moved application to change his option from CPF to Pension Scheme. But his prayer has been illegally and arbitrarily rejected by the respondents, without any justification.

10. On the other hand, Learned Counsel for the respondents argued that under the circulars, dated 10th April, 1996, 26th February, 1999 and 18th April, 2001, specific time was provided to the employees for submitting their options. Since the petitioner did not apply for the same within that time, therefore, now at the

belated stage, he cannot be permitted to change his option. He submitted that even during the period, he remained under removal from service, he could have exercised his option. It is further submitted that after the retirement of the petitioner, all the retiral benefits, including the CPF amount, have been deposited in the account of the petitioner. Therefore, at this belated stage, he cannot be permitted to change his option. In support of his submissions, Learned Counsel has relied upon decision of this Court in *Dr. S.B. Kalidhar versus The Board of Management, Chaudhary Charan Singh Haryana Agricultural University, Hisar and others* (CWP No. 2314 of 2008, decided on 22nd April, 2009), wherein it was held that once the employee does not opt for the change of his option, in spite of the opportunity provided to him, lateron he cannot be permitted to change his option.

11. After considering the submissions made by Learned Counsel for the parties, I am of the opinion that this petition deserves to be allowed. It is the admitted position that from 30th September, 1994 to 21 st March, 2006, the petitioner remained out of job. The Civil Court has set aside the order of his removal being illegal and void ab initio, and he was ordered to be re-instated in service with full back wages. In pursuance of the judgment and decree of the Civil Court, the petitioner was re-instated in service. During the time, the petitioner was out of job, three circulars were issued by the respondent University, providing fresh opportunities to its employees to change their option form CPF to Pension Scheme. Concededly, two of the employees have availed the said opportunities and changed their option from CPF to Pension Scheme. The petitioner, being not in service at that time, was not in a position to avail those three opportunities. He was not at fault. It is because of his illegal removal by the respondents that he could not avail those opportunities. For that illegal act of the respondent University, the petitioner cannot be penalised and the respondents cannot be permitted to say that the petitioner did not avail the opportunity to change his option under the aforesaid three circulars. It is a fact that within one month of his re-instatement, the petitioner made representation to the respondent University, praying for change of his option from CPF to Pension Scheme. The rejection of that prayer by the respondent University is illegal, arbitrary and discriminatory. There is no justification for denying the said prayer of the petitioner on the ground that the time given in those circulars has expired. As far as the petitioner is concerned, he was not given any opportunity to change his option under those circulars, as at that time, he being a dismissed employee, could not have change his option, under those circulars. Therefore, immediately on re-instatement, the petitioner was to be afforded an opportunity to change his option under those circulars, which has not been afforded and on the other hand, the prayer made by the petitioner for change of option has been declined. Merely because the change of option by the petitioner will result into some financial implications, the petitioner cannot be deprived of the said benefit. Firstly, the respondents have illegally and arbitrarily terminated the services of the petitioner and subsequently, when he was re-instated by the Civil Court, they have illegally

and arbitrarily denied the due opportunity to the petitioner to change his option and get the benefit of Pension Scheme, being a retired employee. The judgment in Dr. S.B. Kalidhar's case (supra), relied upon by Learned Counsel for the respondents, is entirely distinguishable from the facts of the instant case. In that case, in spite of three opportunities provided to the petitioner under the aforesaid three circulars, the employee did not opt for the Pension Scheme, but after his retirement, he made a representation that he was not aware of one of the circulars, therefore, he should be permitted to change his option. While coming to the conclusion that in spite of the wide circulation of those circulars, the petitioner in that case consciously did not opt for the Pension Scheme, his claim was rejected. Therefore, the said case has no relevancy with the facts and circumstances of the instant case.

12. In view of the above, this writ petition is allowed with costs and the impugned order, dated 3rd January, 2009 (Annexure P-14) is hereby set aside. The respondents are directed to accept the prayer of the petitioner for change of option from CPF to Pension Scheme and to release the pensionary benefits in accordance with law. The amount of CPF deposited/ paid to the petitioner will be adjusted by the respondent University.

13. The costs are assessed at Rs. 10,000/- .