(2012) 02 P&H CK 0306

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1977 of 2001

Radha Alias Aparna APPELLANT

Vs

Punjab State and others RESPONDENT

Date of Decision : 29-02-2012

Acts Referred:

Citation : (2012) 167 PLR 35 : (2013) 2 SLJ 100

Hon'ble Judges : Surya Kant, J

Bench : Single Bench

Advocate : D.D. Bansal, for the Appellant; Ritu Punj, A.A.G., Punjab, for the State, for the Respondent

Final Decision : Allowed

Judgement

Surya Kant, J.—This Regular Second Appeal is directed against judgment and decree dated 12.2.2001, passed by the learned Additional District Judge, Bathinda, whereby judgment and decree dated 3.11.1999, passed by the Additional Civil Judge (Senior Division), Talwandi Sabo, dismissing the suit for declaration and mandatory injunction filed by the appellant, has been upheld. Both the courts below have held that the appellant is not entitled to pensionary benefits in lieu of services rendered by her deceased husband-Late Ram Harakh. The husband of the appellant was working as a Mali against a Government aided post in S.S.N. Arya High School, Raman Mandi, and he retired from service on 31.10.1988. The retiree unfortunately passed away on 4.4.1993. The 1st Appellate Court has noticed the fact that the ''pension Scheme'' for the employees of the Privately Managed Government Aided Schools was notified on 10.2.1992 and was published in the Government Gazette on 12.2.1992. The Scheme was made applicable with effect from 5.2.1987 and claus (iv) of the Scheme reads as under:-

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 employee who is entitled to receive retirement benefits under the Scheme shall exercise option, subject to the condition that legal heir shall have to deposit the amount received by the deceased employee or by him as the case may be under the Contributory Provident Fund.

2. The courts below have turned down the appellant''s claim on the plea that the deceased employee did not opt for the ''pension Scheme'' during his life time. The aforesaid reason is discernible from the following paragraph of the judgment under challenge passed by the 1st Appellate Court :-

Admittedly the deceased and the plaintiff had not withdrawn any amount from the contributory Provident Fund of the deceased and that amount is lying deposited in the bank. The learned counsel for the plaintiff-appellant has argued that Ram Harakh died after 5th day of February, 1987 and therefore, under this clause his legal heirs are entitled to opt for the pensionary benefits and they are ready to deposit 50% share of the provident fund with the Govt. I am not inclined to accept this argument, because under this clause the legal heirs of those retired employees are competent to give option for the pensionary benefits, who have died on or after 5th of February, 1987, but before 10.2.11992 when the scheme was published of the retired employee is alive, then under clause 3(i) of the Notification he was required to give an option. Clause 3(i) says that this scheme shall apply to all the employees except those, who did not opt in terms of clause iv subject to the condition that the managing committee of the private managed Recognized aided School executes an agreement in form I duly supported by resolution of the managing committee to abide by the provisions of this scheme and instructions issued by the Department from time to time and this scheme shall apply to, who :-

(a) are appointed to the aided posts on or after the fifth day of February, 1987; and (b) were working on aided posts immediately before the fifth day of February, 1987 and continue to work as such after that time -

Provided that the employees who were appointed to the aided posts :-

(i) before the fifth day of February, 1987 and who have attained or will attain the age of superannuation on or after that date; and (ii) on or after the fifth day of February, 1987 but before the 16th day of January, 1991; shall have the right to opt within a period of four months from the date of publication of this scheme to be or not to be governed by the provisions of the scheme.

3. The courts below have further held that since the deceased employee was very much alive on 10.2.1992 but failed to exercise the option, hence the appellant is not entitled to claim pension in lieu of the service rendered by her deceased husband.

4. I have heard learned counsel for the parties and gone through the records.

5. In my considered view, the courts below have committed a patent error of law in overlooking the fact that the deceased employee stood retired from service with effect from 31.10.1988 and had no access to the record of the school where

a copy of the pension Scheme might have been sent/circulated. No evidence whatsoever has been led by the respondents to establish that the deceased employee was ever asked to exercise the option or that he took a conscious decision for not opting for the ''pension Scheme''.

6. Similarly, the withdrawal of Contributory Provident Fund amount could not be taken as a circumstance adverse to the appellant''s claim for the simple reason that the said amount was withdrawn when the ''pension Scheme'' was nowhere in sight. The Scheme was admittedly notified on 12.2.1992 but with retrospective effect. Since the deceased husband of the appellant had retired from service much after the cut-off date prescribed in the Scheme, the courts below ought to have directed the respondents to give an opportunity to the appellant to exercise the option on behalf of the deceased employee. The appellant or her deceased husband could exercise the option within a period of four months countable from the date the Scheme was brought to the notice of the deceased employee or the appellant. In the absence of an iota of evidence in this regard, the courts below were not justified in drawing an adverse inference against the appellant. The appropriate course would have been to permit the appellant to exercise an option for the pension Scheme and direct her to refund the entire amount of Contributory Provident Fund along with statutory interest and then to grant her pension/family pension in lieu of the service rendered by the deceased employee.

7. For the reasons afore-stated, the appeal is allowed, the impugned judgments and decree passed by the courts below are set aside and the suit filed by the appellant for mandatory injunction is decreed with a direction that the appellant shall be given an option to opt for the ''pension Scheme'' within a period of 4 months of receipt of certified copy of this order and in the event of her acceptance of the said Scheme, she shall be required to deposit the entire amount of Contributory Provident Fund along with statutory interest accrued thereupon till date and on deposit thereof, the respondents shall be required to release the ''pension'' and ''family pension'' to the deceased husband and the appellant, respectively, along with the consequential arrears within a period of two months from the date of deposit. The appellant shall also be at liberty to give an undertaking that the Contributory Provident Fund amount which she is liable to deposit may be deducted/adjusted against the arrears of Pension/Family Pension admissible to her in terms of the directions given hereinabove. No costs.