
(2003) 07 P&H CK 0045
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1490 of 2001

Ram Tirath

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 29-07-2003

Acts Referred:

Punjab Municipal Corporation Employees Pension and General Provident Fund Rules, 1994 — Rule 2(4)

Citation : (2004) 137 PLR 152

Hon'ble Judges : V.M. Jain, J; S.S. Saron, J

Bench : Division Bench

Advocate : Premjit Kalia, for the Appellant; Radhika Suri, Asstt. A.G. for Respondent Nos. 1 and 2 and R.S. Pal, for the Respondent

Final Decision : Allowed

Judgement

S.S. Saron, J.—The petitioner who retired from the service of Municipal Corporation, Amritsar (respondent No. 3) (Corporation-for short), in this petition under Articles 226/227 of the Constitution of India seeks a mandamus for directing the respondents to count the entire service rendered by him from his initial appointment with the Municipal Committee, Amritsar effect from December 1961 upto the date of his superannuation on 31.10.1999 with the Corporation as "qualifying service" for the purpose of pension instead of counting it from 1.8.1975 i.e., the date from which he was confirmed and provident fund deductions were made and also for disbursing the arrears due to him with 18% interest.

2. The petitioner was initially appointed as Oilman in the Department of Public Health in the Municipal Committee, Amritsar in December 1961. Later, the Municipal Committee was made into a Municipal Corporation in terms of the Punjab Municipal Corporation Act, 1976 (1976 Act - for short) which was published in Punjab Government Gazette Extraordinary Legislative Supplement Part-I dated 1.1.1977. The designation of Oilman was later on changed to

Assistant Tube-well Driver. The petitioner was promoted from Assistant Tube-well Driver to the post of Tube-well Driver. In the year 1985, the petitioner was posted and adjusted as Water Meter Repairer in the same grade by the Corporation vide its Resolution No. 591 dated 24.7.1985. The petitioner was contributing towards provident fund with effect from August, 1975. In fact, he had been pressing upon the Municipal Committee from his initial appointment that his contribution towards provident fund be deducted from his salary. However, the Municipal Committee did not do so and it is in the year 1975 that deduction were made as contribution of the petitioner towards provident fund. The State Government on 26.7.1994 published the rules known as the Punjab Municipal Corporation Employees Pension and General Provident Fund Rules, 1994 (for short - "the Pension Rules 1994") which came into force with effect from 1.4.1990. In terms of the said Pension Rules, an option was given to the employees who were in service of the Corporation (respondent No. 3) between 1.4.1990 to the date of enforcement either to opt for provident fund or for pension. In case an employee opted for pension he was required to refund the contribution made by the Municipal Corporation (respondent No. 3) alongwith interest. The petitioner exercised his option for pension and he deposited all arrears of provident fund from December 1961 to August 1975 including the interest thereon till the date of his retirement on 31.10.1999 as per the order dated 23.12.1998 passed by the Assistant Commissioner (T), Municipal Corporation, Amritsar (respondent No. 3). The petitioner, who has now on 31.10.1999 retired from service of the Municipal Corporation (respondent No. 3) on attaining the age of superannuation, claims that his "qualifying service" for pension is more than 33 years which is liable to be counted from December, 1961 and not from August 1975, as has been counted by the respondents. Hence, the present writ petition for the counting of his entire service for the purpose of pensionary benefits.

3. Notice in the case was issued and the Joint Secretary to Government of Punjab Department of Local Government filed reply on behalf of the State of Punjab (respondent No. 1) and the Director, Local Government (respondent No. 2). A separate reply in the form of the affidavit of the Commissioner, Municipal Corporation, Amritsar was filed on behalf of respondent No. 3. In the replies filed, the stand that has been taken is that when the petitioner was appointed in the Municipal service, there was no pension scheme in existence. The services of the municipal employees were covered by the Contributory Provident Fund Rules (CPF Rules - for short) as enunciated in Chapter XVI of the Punjab Municipal Account Code 1930 read with the Payment of Gratuity Act, 1972. It is on the demand of the employees, that the Department of Local Government notified the pension scheme in the official gazette on 29.7.1994 and in pursuance of which the Pension Rules 1994 came into force and were made applicable w.e.f. 1.4.1990. The Municipal Corporation, Amritsar (respondent No. 3) stated that the petitioner was appointed as per Committee's resolution No. 1051-Z-1053 dated 8.11.1960 as Oilman. His probation period was extended for one year vide

resolution No. 279 dated 16.6.1970 and he was confirmed by the date of Administrator's order dated 2.4.1975. The petitioner, it is stated, was confirmed on regular basis from 1.8.1975. On confirmation the contributory Provident Fund CPF rules and the Payment of Gratuity Act, 1972 applied to him. Accordingly his provident fund deductions from his pay were started from the said date of confirmation. It is stated that the provident fund deductions from 1961 to July 1975 were deposited in the pension fund which was contrary to the provisions of Pension Rules 1994 which were in force from 1.4.1990. There was no provision in the Pension Rules, which were in force from 1.4.1990. There was no provision in the Pension Rules, 1994 which required the deposit of contribution for the non contributory period from December, 1961 to August 1975. The orders of the Assistant Commissioner (T) were violative of the Pension Rules 1994 and accordingly the amount deposited by the petitioner for the period from December 1961 to July 1975 was refunded. Annexure R1 has been placed on record to clarify this position. It is further stated that Rules 1 and 5 of the Pension Rules 1994 make it amply clear that the service qualifying for pension starts from the day an employee opting for the said rules started contributory towards pension fund and any period not covered by the CPF Rules and Pension Rules 1994 is not to count for pension. Therefore, it is prayed that the writ petition be dismissed.

4. It is not in dispute that the petitioner joined the Municipal Committee, Amritsar as Oilman on 8.11.1960 and he was confirmed by Administrator's order dated 2.4.1975 from 1.8.1975 and provident fund deductions were made from his pay from August 1975 till he came under the pension fund in terms of the Pension Rules 1994, which came into force with effect from 1.4.1990.

5. The learned counsel for the petitioner has contended the entire service rendered by the petitioner from the date of his initial appointment since December 1961 to the date of retirement on 31.10.1999 is liable to be counted for the purpose of pensionary benefits in terms of the definition of qualifying service as given in Rule 2(k) of the Pension Rules, 1994.

6. In response, learned counsel for the respondents has contended that the period from 1.8.1975 when the petitioner was confirmed on regular basis and started making contributions towards the contributory provident fund to the date of retirement is only to be counted for the purposes of pensionary benefits. It is stated that pension scheme is already under heavy financial constraints and if non contributory period of contributory fund from December 1961 to 30.7.1975, as demanded by the petitioner, is counted towards qualifying service, the pension scheme will not survive and, therefore, the petitioner is not entitled to any relief.

7. In order to appreciate the respective contentions of the parties, it is appropriate to note the provisions of Rules 1, 3, 4 and 5 being the relevant provisions of the Pension Rules 1994. The same read 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 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 Corporation.

(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 xx xx xx

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

(a) opt out of these rules;

(b) are members of All India Service or the Punjab Civil Service;

(c) are paid out of contingencies;

(d) are work-chared 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;

3. Exercise of option.- (1) The option under Clause (ii) of Sub-rule (3) of Rule 1 to elect to be governed by these rules, shall be exercised in the Form appended to these rules so as to reach the competent authority within a period of four months from the date of publication of these rules in the Official Gazette:

Provided that,-

(a) in the case of an employee who on the date of publication of these rules was on leave, the option shall be exercised within a period of four months from the date of joining his duty after returning from leave;

(b) where an employee is under suspension on that date, the option shall be exercised within a period of four months from the date he joins his duty; and

(c) in case of an employee, who dies without exercising his option within the stipulated period, he shall be deemed to have opted for these rules.

(2) The employees, who opt for these rules, shall, cease to avail the benefit of

Contributory Provident Fund and the employees who opt out of these rules, shall continue to avail the benefit of Contributory Provident Fund.

4. Establishment of Fund- (1) For the purpose of payment of pension, there shall be established a Fund to be known as Pension Fund (hereinafter referred to as the Fund).

(2) In the case of employees who are members of a provincialised service, the Fund shall be established by the Director, and in the case of employees who are members of a non-provincialised service, the Fund shall be established by the Commissioner.

5. Transfer of amount to the Fund- (1) The share of money contributed by the Corporation alongwith interest accrued thereon standing in the Contributory Provident Fund account to the credit of an employee of a Corporation, who opts for these rules or who is governed by these rules, shall stand transferred to the Fund to the extent it was contributed by the Corporation during the period of service of the employee alongwith any loss caused to the contribution either by the Corporation or by the employee through withdrawal during the tenure of service of the employee or due to any other reason which shall be made good by the Corporation or the employee, as the case may be, by paying the amount alongwith interest due for that period to the Fund.

(2) The Corporation shall make monthly contribution towards the Fund at the rate of ten percent of the basic pay of the employees. The rate of monthly contribution shall be subject to any change which may be made by the government from time to time.

(3) The amount of the Fund shall be kept in any branch of the State Bank of India or the State bank of Patiala or the Punjab State Co-operative Bank and where there is no branch of either of these banks, it may be kept with any other Scheduled Bank.

8. The perusal of Rule 1(3), shows that the Pension Rules 1994 apply to the employees of the Corporation who were working immediately before 1.4.1990 on whole time regular basis and who opt for the said Pension Rules 1994. The exercise of option is to be done in accordance with Rule 3, which provides that option under Rule 1(3)(ii) to elect to be governed by the Pension Rules, shall be exercised in the Form appended to the Pension Rules 1994 so as to reach the competent authority within a period of four months from the date of publication of the said Pension Rules 1994 in the official gazette. Rule 4 provides for the establishment of fund known as Pension Fund. Rule 5 provides for the transfer of amount to the fund. It is not the case of the respondents, that the petitioner did not opt for the Pension Rules. Besides Rule 1(4) provides for the categories of employees who are not entitled for the benefit of pension under the Pension Rules 1994. The petitioner is not one who comes under any of the excluded category provided under Rule 1(4). The case of the respondents as has already been noticed, is that the period prior to the confirmation of the petitioner in

service is not to be counted towards "qualifying service" for the purpose of pension. The period from the date of confirmation of the petitioner and the date from which he started making contributions towards the contributory provident fund is to be taken into account for determining the qualifying service for the purpose of pensionary benefits.

9. The question, therefore, that is to be seen is, as to what is "qualifying service". Rule 2(k) of the Pension Rules, 1994 defines "qualifying service" and reads as under;

2. Definitions.- In these rules, unless there is anything repugnant in the subject or context.

(k) "Qualifying service" means the service, rendered under a Corporation for which an employee is paid from the Corporation fund and shall include any service rendered under the Government of Punjab, any Improvement Trust, a Committee or any other Public Sector Undertaking immediately before joining the service;

10. "Qualifying Service" has thus been defined in terms of Rule 2(k) and it provides that.- (1) the service, rendered by an employee is under a Corporation, (2) for which an employee is paid from the Corporation Fund, and (3) includes service rendered under the Government of Punjab, Improvement Trust, a Committee or any other public sector undertaking before joining the service. "Service" has been defined in Rule 2(1) to mean the service rendered under the control of a Corporation. A reading of the above definition of "Qualifying service" does not anywhere indicate that "Qualifying service" is to be counted from the date of confirmation of an employee or from the date he makes contributions or deductions are made towards Contributory Provident Fund, which is the case set up by the respondents. Rather it is the service rendered under the control of a Corporation, which means a Corporation constituted under the 1976 Act as defined in Rule 2(d) of the Pension Rules 1994, i.e, the Municipal Corporation Amritsar (respondent No. 3) in the present case, and for which the employee is paid from the Corporation Fund. The petitioner after the Municipal Committee, Amritsar became a Corporation, is rendering service under the control of the Municipal Corporation.

11. It is not in dispute that for the service rendered, the petitioner has been paid from the Corporation Fund. The petitioner, at the time of his retirement, was also receiving his salary from the Municipal Corporation (respondent No. 3) funds. Rule 2(e) of the Pension Rules 1994 defines "Corporation Fund" to mean the fund constituted u/s 76 of the 1976 Act. Section 76 of the 1976 Act provides for constitution of Corporation fund. The same reads as under:-

76. Constitution of Corporation Fund.- (1) Save as otherwise provided in this Act,-

(a) all funds which immediately before the Constitution of a City vested in any local authority of the City or any part thereof;

- (b) all money received by or on behalf of the Corporation under the provisions of this Act or of any law for the time being in force, or under any contract;
- (c) all proceeds of the disposal of property by, or on behalf of the Corporation;
- (d) all rents accruing from any property of the Corporation;
- (e) all moneys raised by any tax, rate or cess levied for the purposes of this Act;
- (f) All fees collected and all fines levied under this Act or under any rule, regulation or bye-law made thereunder;
- (g) all moneys received by or on behalf of the Corporation from the Government or any individual or association of individuals by way of grant or gift of deposit;
- (h) all interests and profits arising from any investment of or from any transaction in connection with, any money belonging to the Corporation, including loans advanced under this Act;
- (i) all moneys received by or on behalf of the Corporation from any other source whatsoever;

(2) The Corporation Fund shall be held by the Corporation in trust for the purposes of this Act subject to the provisions herein contained.

12. Therefore, the requirement of "Qualifying Service" in terms of Rule 2(k) of the Pension Rules, 1994 is that the service rendered by the employee is paid from the Corporation funds, which indeed is not in dispute in the case in hand as establishment charges of the Municipal Corporation, Amritsar (respondent No. 3) are met from the said Corporation Fund. As already noticed, "qualifying service" also includes services rendered under a Committee. As to what is a "committee", it is appropriate to note that Section 2(25-a) of the 1976 Act defines "Municipality" to mean an institution of self government constituted under Article 243-O of the Constitution of India. Section 2(25-b) of the 1976 Act defines "Municipal area" to mean the territorial area of a Municipality as may be notified by the government. The Municipal Corporation Amritsar (respondent No. 3) before it became a Corporation was a Municipal Committee under the Punjab Municipal Act, 1911 (1911 Act - for short). "Committee" has been defined in Section 3(4) of the 1911 Act to mean a Municipal Council or Nagar Panchayat, as the case may be, constituted u/s 12 of the 1911 Act. The said definition of "Committee" is as it has been defined after amendment of the 1911 Act by Act No. 11 of 1994. Before the amendment, "Committee" was defined to mean a municipal committee established by or under the 1911 Act. A co-joint reading of the aforesaid provisions goes to show that service rendered under a municipal committee would count towards "qualifying service" as defined in Rule 2(k) of the Pension Rules 1994. Therefore, the service rendered by the petitioner from December 1961 with Municipal Committee, Amritsar till 1.8.1975 (i.e. the date from which the qualifying service is counted for pension) is also liable to be counted and taken into account for the purpose of "qualifying service" towards

pension. The provisions for Rule 1(3)(ii) is that the same shall apply to employees of the committee, who are appointed on or after the first day of April 1990 on whole time regular basis and who were working immediately before 1.4.1990 on whole time I regular basis and opt for the said rules. The petitioner was confirmed in service with effect from 1.8.1975 and was thus evidently a confirmed regular employee of the Municipal Corporation, Armitsar (respondent No. 3) and before it that of the Municipal Committee. In this manner, the petitioner is entitled to the application of the Pension Rules 1994, which, in fact, have been applied by the respondents but the requisite period of "qualifying service" from December 1961 to 31.7.1975 has not been taken into consideration for the purpose of grant of pensionary benefits.

13. A Division Bench of this Court in the case of *Kasturi Lal Khmana and Ors. v. State of Punjab and Ors.*, Civil Writ Petition No. 5661 of 1999, decided on 30.4.2000, considered the question of grant of pension to the employees of the Municipal Corporation, Jalandhar. The grievance of the employees in the said case who were employees of the Municipal Corporation, Jalandhar was that the service rendered by them was not taken into account in toto i.e. from the dates of initial appointments for the purposes of calculating their "qualifying service." The State of Punjab and the Municipal Corporation, Jalandhar in the said case declined the entitlement of the employees to count the initial service till deposits towards Contributory Funds were made towards pension by stating that as per the Pension Rules framed in 1994, the services rendered by the employees from the date they were admitted to Contributory Provident Fund is to be taken into consideration for determination of Pension etc. This Court negated the stand of the respondents in the said case and held that the plea of the respondents No. 1 and 2 therein was based on a misconceived assumption. The said writ petition was allowed and the respondents therein were directed to re-count the qualifying service of the employees therein by taking into consideration the total service rendered by those employees from the dates of their initial appointments. It was also held that the amount of contribution of Provident Fund which the employees were required to deposit may be adjusted from out of the amount which they may be found entitled to get as a result of recalculation of the retiral benefits payable to them.

14. Civil Appeal No. 1069 of 2001 against the order dated 30.4.2000 passed by this Court in *Kasturi Lal Khurana's* case (supra) was dismissed by the Hon'ble Supreme Court on 6.3.2002 and the following order was passed.

"We do not think it is a fit case for our interference under Article 136 of the Constitution of India. The appeal is dismissed accordingly.

15. Keeping in view the above facts and circumstances, it is evident that the stand of the respondents that the qualifying service of the petitioner is to be counted from the date of confirmation of the petitioner or from the date he started making contributions to the C.P. Fund is absolutely misconceived and baseless. The same is not supported by the Pension Rules 1994 applicable in

respect of the petitioner.

16. Another aspect that may be noticed is that the date of confirmation, from which in the present case deductions have been made towards Contributory Fund, is not liable to be taken as the basis of counting "qualifying service" as confirmation, as is well known, is one of the inglorious uncertainty of government service which is neither dependent on the efficiency of the incumbent nor on the availability of substantive vacancies. Therefore, confirmation in service in a local authority being on the same footing and dependent neither on availability of the post nor on efficiency, is not liable to be taken as the starting point of "qualifying service" towards pension specifically when the Rule 2(k) of the Pension Rules, 1994 does not provide for the same.

17. For the reasons stated above, the petition is allowed and the period of service rendered by the petitioner from December, 1961 to the date of his retirement on 31.10.1999 has to be counted as "qualifying service rendered by him for the purpose of Pension Rules, 1994. Besides, as directed in Kasturi Lal Khurana's case (supra), the amount of contribution of provident fund, which the petitioner was required to deposit, may be adjusted from out of the amount which he may be found entitled to get as a result of re-calculation of the retiral benefits payable to him. The arrears found due to the petitioner shall be paid to him but without interest, as none was ordered in Kasturi Lal Khurana's case (supra). No costs.