
(2006) 04 P&H CK 0065
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 12199 of 2003

Smt. Gobindi Devi

APPELLANT

Vs

Haryana Vidyut Prasaran Nigam Ltd. and Others

RESPONDENT

Date of Decision : 17-04-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227

Citation : (2006) 143 PLR 741

Hon'ble Judges : S.S. Nijjar, J;Ajai Lamba, J

Bench : Division Bench

Advocate : K.K. Dhingra, for the Appellant; Girish Agnihotri, for the Respondent

Judgement

S.S. Nijjar, J.—With the consent of the parties, the writ petition is taken up at motion stage for final disposal today itself.

2. The husband of the petitioner retired on 30.4.1999, after having served the Haryana Vidyut Prasaran Nigam Ltd. (hereinafter referred to as "the Nigam"), after rendering 26 years of continuous service. He was initially appointed in the year 1973-74 on work charge basis as a Class IV employee. He continued to work on work charge basis, without break even for a day till he was made regular in the year 1992. Thereafter, he continued to work as a regular employee till 30.4.1999. He passed away on 4.10.2000. After his retirement till his death, the husband of the petitioner had received only a sum of Rs. 16,541/- on account of Death-Cum-Retirement Gratuity. The sanction of the amount was communicated to the Administrative Officer of the Nigam by letter dated 29.9.2000 (Annexure R7). A copy of the communication had also been endorsed to the deceased with the observation that he should appear before the Accounting Officer to receive the payment. In the aforesaid communication, it was also commented that pension is not admissible to the deceased as his qualifying service was less than 10 years as required under the Rules. During his lifetime, the deceased had been pleading to the respondents for grant of pension. No action was taken by the respondents. After his death, the requests of the

petitioner have also fallen on deaf ears. She has, therefore, filed this writ petition under Articles 226/227 of the Constitution of India, seeking the issuance of a writ in the nature of Mandamus directing the respondents to grant family pension to the petitioner. The respondents have filed a written statement. It is stated that the respondents had circulated a Pension Scheme on 6.8.1993. The employees were to exercise the option for coming under the Scheme within a period of three months. Another opportunity was given to the employees. By Memo dated 9.8.1994, the employees were permitted to exercise option upto 9.11.1994. According to the respondents, the husband of the petitioner did not exercise the option during the period of service. The respondents have also taken a plea that the deceased was denied the pension as he had not deposited the EPF already drawn by him alongwith interest as per the instructions of the Nigam prior to his retirement. He had, therefore, failed to exercise the option to be governed under the Pension Scheme. The respondents rely on a Division Bench judgment of this Court rendered in the case of Tej Pal Singh v. State of Haryana C.W.P. No. 10083 of 2002, decided on 7.4.2003. The respondents also rely on an affidavit (Annexure R3) submitted by the deceased on 25.7.2000 in which he had stated that whilst in service, he had taken an advance from the Provident Fund Account No.HR/2213/5. He had further stated that after retirement, he was not in a position to repay the advance taken from the Provident Fund Account. He had also stated the gratuity may be released to him.

3. The petitioner has filed replication and stated that she is a widow and is an uneducated lady. She denies that the deceased had ever declined to accept the pension. In fact, during his life time, her husband was making best efforts for the release of the pension. The respondents did not give him the pension, rather released a small amount of Rs. 35,000/- in all for the period of service from 10.3.1992 to 30.4.1999. The entire service of her husband from 1973 onwards had been ignored by the respondents.

4. We have heard the learned Counsel for the parties at length and perused the paper-book.

5. Learned counsel for the petitioner submits that the matter is squarely covered by a Full Bench judgment of this Court rendered in the case of Kesar Chand v. State of Punjab 1988 (5) S.L.R. 25 and a Division Bench decision of this Court rendered in the case of Darshan Singh v. Chief Account Officer, HSEB, C.W.P. No. 2402 of 1997, decided on 27.8.1997.

6. Learned counsel for the respondents, however, submits that the matter is squarely covered by a Division Bench judgment of this Court rendered in the case of Executive Engineer, PSEB and Ors. v. Teja Singh, (2000) 10 SCC 15, . Learned counsel also submits that the deceased himself having given the affidavit, the petitioner cannot now be permitted to claim pension. The Circulars dated 6.8.1993 and 9.8.1994 were well known to all the employees. The deceased not having exercised the option, cannot be granted the benefit of the pension scheme.

7. We have considered the submissions made by the learned Counsel for the parties. We are of the opinion that the matter is squarely covered by the judgment of the Full Bench of this Court in the case of Kesar Chand (supra). The service rendered by the deceased on work charge basis prior to regularisation has to be added on to the regular service from the date the services of the deceased were ordered to be regularised in the year 1992. The action of the respondents in denying the pension to the petitioner is clearly illegal and not sustainable in law. In the case of Kesar Chand (supra), the Full Bench while dealing with the similar controversy, has held as under:

Once the services of a work-charged employee have been regularised, there appears to be hardly any logic to deprive him of the pensionary benefits as are available to other public servants under Rule 3.17 of the Rules. Equal protection of laws must mean the protection of equal laws for all persons similarly situated. Article 14 strikes at arbitrariness because a provision which is arbitrary involves the negation of equality. Even the temporary or officiating service under the State Government has to be reckoned for determining the qualifying service. It looks to be illogical that the period of service spent by an employee in a work charged establishment before his regularisation has not been taken into consideration for determining his qualifying service. The classification which is sought to be made among Government servants who are eligible for pension and those who started as work-charged employees and their service regularised subsequently, and the other is not based on any intelligible criteria and, therefore, is not sustainable at law. After the services of a work-charged employee have been regularised, he is a public servant like any other servant. To deprive him of the pension is not only unjust and inequitable but is hit by the vice of arbitrariness and for these reasons the provisions of Sub-rule (ii) of Rule 3.17 of the Rules have to be struck down being violative of Article 14 of the Constitution.

8. The aforesaid observations leave no manner of doubt that the deceased was entitled to pension. We are also not impressed by the submission of the learned Counsel for the respondents that the deceased not having exercised the option, is not entitled to the benefit of the pension scheme. Except for the bald assertion that the deceased must have been aware about the circulars, no material has been placed on record to show that the Circulars were ever brought to the notice of the deceased. A Division Bench of this Court, of which one of us (S.S. Nijjar, J.) was member, considered similar circumstances in the case of Ram Dia and Ors. v. Uttar Haryana Bijli Vitran Nigam Ltd. and Ors. 2005(4) R.S.J. 689. In the aforesaid case, the Division Bench rejected the claim of the respondents with regard to non-exercise of option. In the present case, the affidavit given by the deceased cannot be said to mean that the deceased had given up his right to pension. He had merely stated that he had taken some loan which may be adjusted from the EPF. This apart, the widow has categorically stated in the replication that she is ready and willing to deposit the remaining amount of EPF along-with the permissible interest. Pensionary benefits are not to be denied to employees

of statutory Corporations on technicalities. If such an interpretation is allowed, it would defeat the very purpose of introducing the Pension Scheme.

9. In view of the above, we allow the writ petition and direct the respondents to release the pensionary benefits to the widow by taking into account the entire service rendered by the deceased on work charge basis together with the service rendered by him on regular basis from 1992 onwards till his retirement. The respondents shall be entitled to deduct the amount due on account of EPF or in the alternative, the petitioner shall deposit the Provident Fund Contribution as stated in her replication together with the amount that may be legally chargeable for interest on the amount. The respondents are directed to notify the petitioner the amount which is required to be deposited within a period of seven days from today. Thereafter, the petitioner shall deposit the required amount within a period of one month. The pensionary benefits will be released to the petitioner within a period of three months from today. No costs.