

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Writ Petition No.11209 of 2009 (O&M)
Date of decision:15.12.2011

Jaswant Singh Chaudhary son of Shri Badlu Ram, resident of House
No.472-R, Model Town, Panipat.

...Petitioner

versus

Haryana Vidhyut Parsharan Nigam Limited, through its Managing
Director, Shakti Bhawan, Sector 6, Panchkula and others.

....Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Jagbir Malik, Advocate, for the petitioner.

Mr.Mohnish Sharma, Advocate, for Mr. Narinder
Hooda, Advocate, for respondents 1 to 3.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

1. The petitioner, who had been working with the respondents had, during his service sought for switch over from EPF to GPF scheme, but final decision had not been taken by the Management till his retirement at the time claiming his retirement benefits. He has therefore filed a writ petition seeking for allowing the benefit to shift from EPF to GPF scheme and to grant all retiral benefits with interest at 18% from the date of his retirement.

2. It is not denied that at the time when he joined the service in the year 1968, there was no provision for either of the schemes and when the EPF scheme had been introduced in the year 1978, he had opted to be governed by the EPF scheme. He had been originally employed in the Thermal Division of the respondent and later transferred to Operation Wing. It appears that there had been a scheme for GPF as well, introduced in the year 1984 and the petitioner was required to exercise the option and inform the establishment within a particular time. It is contended by the petitioner that all the divisional heads had been informed that persons opting for conversions from contributing to EPF to GPF scheme must do so within 7 days after the receiving of the letter. It is an admitted case that the petitioner had not exercised the option within the period, but he had made the option through a communication dated 30.04.1987. This was not immediately acted upon and the intra-departmental proceedings governing the period from 1993 show out that the petitioner's application was under consideration and the Electricity Board itself was entertaining claims for such conversion even in the year 1993. Even when he was in service, the petitioner along with others had filed CWP No.1305 of 1998 for a direction that the switch over from EPF to GPF scheme must be accepted. It is represented that the said writ petition is still pending.

3. However, when the petitioner had caused a fresh representation to be made on 13.09.2002 even during the pendency of the writ petition, on the eve of his retirement, it appears that there was a halting response from the Electricity Board that it would be possible for them to favourably consider his request, if he would withdraw the writ petition in which he was a party. The petitioner had moved an application before the Court where the said writ petition was pending and withdrew himself from prosecution of the case by a deletion of his name. When the petitioner was renewing his request, it fell to be decided against the petitioner which gives the cause of action for the petitioner to maintain the petition. The case of the petitioner is resisted by the Nigam on the ground, inter alia, that he had received at his retirement all the accumulations of the Employees Provident Fund and he shall not be permitted to prosecute a claim seeking for a switch over after such a length of time. It is also the contention of the respondents that there was never any official communication to the petitioner that his case would be considered favourably if the writ petition had been withdrawn. It is the further contention that it will be not feasible to allow for such a switch over that would cast a huge financial responsibility to a tune of Rs.55 lakhs plus, assuming that the petitioner would have a longevity of life for a further period of 15 years.

4. The petitioner again has responded to these averments of the respondents and has brought out also several file notings where

all the higher officials of the Electricity Board had at all times recommended the admission of the petitioner to the GPF scheme and that the petitioner's case merited acceptance. The petitioner also brings out references of other persons, who, like him had not exercised the option within the period, which was initially set out, but, on their representations, they had been allowed for a switch over from the EPF to GPF scheme. The petitioner would also contend that the respondents' action cannot be found discriminatory to plead a case of financial implication when such a benefit had been given to some other employees as well.

5. It is clearly brought out from the official file notings which are extracted in the writ petition itself and the opinions obtained from their own legal advisers as to how the petitioner's case required a consideration for a switch over. If there had been a failure to take a decision before the superannuation of the petitioner, he could not be stated to be at fault. Even the plea by the respondents that the petitioner had received accumulated provident fund amount cannot be seen like he was waiving his right since at that time, CWP No.1305 of 1998 was very much pending, where he had asked for a direction for a switch over along with several other employees. If the case has to be therefore seen from the context of the petitioner's entitlement, there are no legal impediment to allow to the petitioner to such a right and it was not as if the claim was being made for the first time only through the writ petition. The petitioner's case was

under active consideration for all the period from the year 1987 itself. If the respondents have allowed the matter to be linger on without a final and effective decision, I shall not allow the respondents' own lapse to prevail against a consideration on the ground of higher financial implication to deny to the petitioner what he was otherwise entitled. This direction is only just, considering the fact that the respondents have themselves allowed for the application of GPF scheme for certain other employees, namely, S.C.Jain, J.R. Rawat and who like the petitioner had been similarly placed and who had the benefit of such a switch over.

6. There can surely not be a double benefit to a person, who had availed of the amount at the time of his superannuation. It is contended by the petitioner that the entire amount that was credited to his account towards provident fund has not been withdrawn and the respondents are entitled to make an adjustment at that time of final reckoning by passing an appropriate order admitting the petitioner to the entitlement under the GPF scheme, if there is any contribution to be made for obtaining such a benefit of the contributions that he was bound to make from the time when the scheme was in operation shall also be calculated and informed to the petitioner and the said amount shall, at the option of the respondents be adjusted against the petitioner's entitlement or the petitioner could be directed to make the payment within a period not exceeding 8 weeks before releasing the benefit under the GPF scheme. The

past arrears shall be worked out at the rate of 6% simple interest from the date of his retirement for the amounts that respectively fell due.

7. The writ petition is allowed on the above terms.

**(K. KANNAN)
JUDGE**

15.12.2011
sanjeev

