

Before Harsimran Singh Sethi, J.

KRISHNA DEVI—*Petitioner*

versus

STATE OF HARYANA—*Respondents*

CWP-9276-2015

February 26, 2019

CONSTITUTION OF INDIA—ARTICLES 226/227; HARYANA MUNICIPAL EMPLOYEES PENSION AND GENERAL PROVIDENT FUND RULES, 1993—RULE 2(1) (II) ; HARYANA MUNICIPAL CODE, 1930. ILLITERATE SWEEPER, CLASS-IV POST—DENIED PENSION—Option not given under 1993 RULES—RULES TO BE GOT NOTED TO EMPLOYEES. Illiterate persons working on Class—IV post as Sweeper not expected to be aware of notification. Requirement of opting for Rules would be fulfilled only if these are brought to the notice of the employees, especially Class—IV employees.

Held, Being an model employer, the Notification should have been got noted from the petitioner and other similarly situated persons seeking their options as to whether they want to opt for the same or not? There is no proof/document attached by the respondents that the 1993 Rules were got noted from the employees so as to invite their options. In the absence of the said facts, it can be safely presumed that the 1993Rules were not brought to the notice of the employees including petitioner to seek their options. They were merely published in the Government Gazette by the Government of Haryana. Hence, requirement of the Rule in respect of opting for these Rules will only be fulfilled, in case the same is brought to the notice of the employees, especially Class-IV employees, who are illiterate in majority of cases.

(Para 9)

Ashutosh Kaushik, Advocate
for the petitioner.

Safia Gupta, A.A.G., Haryana
for respondents No. 1 to 3.

Bikram Chaudhary, Advocate
for respondent No. 4.

HARSIMRAN SINGH SETHI, J.(Oral)

(1) In the present writ petition, the grievance which has been raised by the petitioner is that she has been denied the pension after her retirement in the year 2012.

(2) As per the facts stated in the writ petition, the petitioner, who is an illiterate lady, joined respondent No. 4-Municipal Council, Thanesar in the year 1977 as a Sweeper i.e. on a Class IV post. She kept on working till 31.5.2012, when she retired from service. After the retirement, the petitioner was expecting pensionary benefits but the same were not extended to her on the ground that she had not opted for the Haryana Municipal Employees Pension and General Provident Fund Rules, 1993 (hereinafter referred to as '1993 Rules'). The present writ petition has been filed by the petitioner claiming the pensionary benefits.

(3) After the notice of motion was issued, respondent No. 4 has filed the reply. In the reply, the stand taken by the respondents is that under the Haryana Municipal Employees Pension and General Provident Fund Rules, 1993, an employee was required to submit his/her option within the time frame as envisaged under the 1993 Rules. It has been mentioned in the reply that no option was given by the petitioner for opting the 1993 Rules for the grant of pension and, therefore, the petitioner, who already stood retire and has been paid the benefits under the Contributory Provident Fund Scheme as laid down in the Haryana Municipal Code, 1930, hence she cannot raise any grievance.

(4) No reply has been filed on behalf of respondents No. 1 to 3 despite numerous opportunities.

(5) I have heard learned counsel for the parties and have gone through the record with their able assistance.

(6) As per the averments made in the writ petition, the petitioner was working on a Class IV post as a Sweeper. She is an illiterate lady. She was in service when 1993 Rules were made operational. These Rules came into being w.e.f. 16.4.1992. As per Rule 2 (1) (ii), the 1993 Rules were to be applicable upon the employees, who were working on 16.4.1992 and opted for these Rules.

(7) Learned counsel for the petitioner states that these Rules were never got noted from a Class IV employee, who had no

knowledge about the same. No option was asked in writing from the petitioner and, therefore, under these circumstances, an illiterate lady failed to file the option as required under Rule 2 (1) (ii) of the 1993 Rules.

(8) On the other hand, the argument raised on behalf of respondent No. 4 is that there was no requirement to get noted the 1993 Rules from each and every employee and once the Notification was issued, it becomes the duty of an employee to submit the option, therefore, in the absence of any option given by the petitioner, 1993 Rules cannot be made applicable upon the petitioner and, therefore, the writ petition is liable to be dismissed.

(9) Once the Rules were notified by the respondents, it was incumbent upon the respondents to seek the option by bringing these Rules to the notice of the employees. The Notification was issued by the Government of Haryana. It is not the Notification which has been issued by the Municipal Councils. Once the Notification was forwarded by the Government of Haryana to the Municipal Councils, it should have been got noted from the employees working in the Municipal Councils, who were working on the said date i.e. 16.4.1992. It cannot be expected that an illiterate person, who is working on a Class IV post as a Sweeper, will be aware about the Notification, which has been issued by the Government of Haryana, which is in their favour. Being an model employer, the Notification should have been got noted from the petitioner and other similarly situated persons seeking their options as to whether they want to opt for the same or not? There is no proof/document attached by the respondents that the 1993 Rules were got noted from the employees so as to invite their options. In the absence of the said facts, it can be safely presumed that the 1993 Rules were not brought to the notice of the employees including petitioner to seek their options. They were merely published in the Government Gazette by the Government of Haryana. Hence, requirement of the Rule in respect of opting for these Rules will only be fulfilled, in case the same is brought to the notice of the employees, especially Class IV employees, who are illiterate in majority of cases.

(10) In some what similar circumstances, the State of Haryana had issued Instructions with regard to the grant of benefit of computing work charge service as a qualifying service for the grant of pensionary benefits. The said Instructions were issued on 06.08.1993 and the employees were requested to apply for the benefit of the said Instructions by giving their details of the services, which they have

rendered on work charge basis. The employees, who could not opt for the said benefit, were not allowed the same, which action was challenged before this Court. Division Bench of this Court after hearing the parties came to the conclusion that till the Instructions issued by the Department are not got noticed in writing from the employees, it cannot be said that the same were brought to the notice of the concerned employees for exercising their option. If there is no option sought in writing, this Court held that it can be inferred that the employees had no knowledge about the same and, therefore, directed the State to allow the employees to exercise option for granting the benefit of computing their work charge service towards the pensionary benefits.

(11) Dakshin Haryana Bijli Vitran Nigam Limited and others had filed a Special Leave Petition before Hon'ble the Supreme Court, which was converted into Civil Appeal No. 4903 of 2009 and the same was decided by Hon'ble the Supreme Court on 30.07.2009, wherein the judgment of the Division Bench was upheld and it was held that once there is no record showing that the Instructions issued by the Government were brought to the notice of the concerned employees in writing, it can be very well inferred that the employees do not have the knowledge of the same and in the absence of the knowledge, non-exercise of the option cannot be treated to their disadvantage. The relevant paragraph(s) of the said judgment is as under :-

“12. The Division Bench of the Punjab and Haryana High Court, after hearing the learned counsel for the parties at length, came to the definite conclusion that the appellants had failed to produce any record showing that the instructions dated 6.8.1993 and 9.8.1994 were actually got noted in writing from the respondent. The High Court further observed that in the absence of any such material, it can well be inferred that the respondent had no knowledge about the options called by the appellants vide circulars dated 6.8.1993 and 9.8.1994. The High Court also observed that it would be unreasonable to deny pensionary benefits to the respondent despite the said circulars issued by the appellants. The High Court allowed the writ petition filed by the respondent and directed the appellants to permit the respondent to exercise his option in accordance with the circulars dated 6.8.1993 and 9.8.1994 within a period of one month from the date of receipt of a certified copy of the order and thereafter give him the consequential benefits subject to his fulfilling the conditions of eligibility for being

governed under the pension scheme. The appellants aggrieved by the said judgment of the Punjab and Haryana High Court have approached this court.

13. The appellants submitted that the respondent did not comply with the instructions dated 6.8.1993 and 9.8.1994 within the prescribed period and as such was not entitled for benefits in terms of these circulars.

14. The High Court in its impugned judgment had categorically observed that the appellants had failed to produce any record showing that the instructions dated 6.8.1993 and 9.8.1994 were actually got noted in writing from the respondent. The appellants had also failed to produce such material from which it can be inferred that the respondent had any knowledge about the options called by the appellants vide instructions dated 6.8.1993 and 9.8.1994. The High Court also observed that in this view of the matter it would be unreasonable to deny pensionary benefits to the respondent and the similarly placed respondents.

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26. In view of the law as has been articulated in a large number of cases where this court has observed that any discriminatory action on the part of the Government would be liable to be struck down. Hence, in this case, it would be totally unreasonable and irrational to deny the respondent the pensionary benefits under the scheme particularly when the appellants have failed to produce any record showing that the instructions dated 6.8.1993 and 9.8.1994 were actually got noted in writing by the respondent. In the absence of any such material it can well be inferred that the respondent had no knowledge about the options called by the appellants.

27. In our considered opinion, the view taken by the Division Bench of the High Court in the impugned judgment is indeed a rational, just and fair view and no interference is called for.

(12) Case of the petitioner is covered by the above said judgment as nothing has been produced by the respondents to show that the 1993 Rules were brought to the notice of the concerned employees, who were working in the Municipal Councils in writing or even

otherwise or the same were put on the notice board inviting options from the interested employees. In the absence of the same, especially in the case of the petitioner, who is an illiterate lady, it cannot be said that she had the knowledge about the existence of the 1993 Rules so as to exercise the option and, therefore, another chance needs to be given to her to submit her option apply for 1993 Rules.

(13) In view of the above, the present writ petition is allowed. Petitioner's option for opting Rules 1993 will be taken by the respondents and her case for granting the pension will be considered by them. Calculation of the pensionary benefits, for which the petitioner is entitled for, shall be calculated and shall be released to her within a period of two months thereafter. Whatever the benefits which the petitioner had got at the time of the retirement under the Contributory Provident Fund Scheme as envisaged under Haryana Municipal Code 1930 shall be adjusted by the respondents.

(14) In the circumstances, the petitioner will not be entitled for any interest on the payments which she will received upon her option to be given now in respect of the 1993 Rules.

(15) The writ petition is allowed in the above terms.

(Shubhreet Kaur)