

Pepsu Road Tpt Corpn, Patiala vs Amandeep Singh & Ors on 3 January, 2017

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Bench: Ashok Bhushan, S.A. Bobde

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.3842 OF 2011

PEPSU ROAD TRANSPORT CORPORATION,
PATIALA

... APPELLANT

VERSUS

AMANDEEP SINGH & ORS.

... RESPONDENTS

J U D G M E N T

ASHOK BHUSHAN, J.

This appeal has been filed by PEPSU Road Transport Corporation, Patiala against the judgment and order of Punjab and Haryana High Court dated 1st December, 2006 by which judgment the Regular Second Appeal filed by the appellant has been dismissed affirming the judgments and orders of the Appellate Court and Trial Court. This appeal has arisen out of the original suit filed by the Balwant Singh the predecessor in interest of the respondents.

2. The brief facts of the case necessary to be noted for deciding the appeal are :

Balwant Singh, the plaintiff had been working as driver with PEPSU Road Transport Corporation. The statutory Regulation has been framed, namely, PEPSU Road Transport Corporation Employees/Pension Gratuity and General Provident Fund Regulations 1992 (hereinafter referred to as "Regulations 1992"), which came into force w.e.f. 15th January, 1992. The Regulations were made applicable to the

employees of the Corporation who were appointed on or after the date of issue of Regulations on whole-time and regular basis and those who were working immediately before the date of issue of Regulations and opt for these Regulations. The exercise of option for pension scheme was to be made within six months from the date of issue of Regulations. Those employees who opted for Regulations and had obtained advance from the Corporation out of the Contributory Provident Fund were required to refund the same within a period of six months. The plaintiff did not submit an option under the Regulations 1992 and attained the age of superannuation on 30th November, 2000. After retirement plaintiff was released the entire amount of Contributory Provident Fund(CPF) which was received by the plaintiff. Plaintiff filed Civil Suit No.1044 of 2003 for declaration to the effect that plaintiff is entitled for pension and commuted pensions and other benefits attached with the same alongwith interest @ 18% on the delayed payment. The plaintiff's case was that after retirement the defendant only released the contributed fund and has not released the full pension. The defendants filed written statement stating that plaintiff had never opted for pension as per Regulations 1992. Plaintiff had received all his dues and no dues against defendants is pending. Plaintiff had obtained loan of Rs.12,000/- from CPF out of which Rs. 4999/- is yet to be recovered. The Trial Court vide its judgment and order dated 26th March, 2005 decreed the suit declaring that plaintiff is entitled to pension, commuted pension and other benefits and defendants would issue demand notice to the plaintiff within one month as to how much amount of CPF should be paid by him(plaintiff) so as to avail the benefit of pension scheme. The Trial Court held that although the plaintiff was to give option as per Regulation 1992 and he had to deposit the amount of CPF but Pension cannot be declined on the technical ground that he had not refunded the loan amount.

3. The Corporation aggrieved by the judgment of the Trial Court filed an appeal being C.A.D. No.21 of 2005 which was dismissed by learned Additional District Judge, Bathinda vide judgment dated 29th August, 2005.

4. The Appellate Court took the view that it was obligatory on the part of the defendants to have led cogent reasons that the scheme under the Regulations 1992 was circulated between the employees of the Corporation and they were made to note the same so as to opt within specified period. It was further held that plaintiff had never opted out of the Regulations. With the above finding the appeal was dismissed by the Additional District Judge.

5. Aggrieved by the judgment of the Appellate Court, Regular Second Appeal was filed by the Corporation in the Punjab and Haryana High Court. The High Court also dismissed the appeal by observing that there is no evidence that pension scheme was circulated within the employees and got noted by them. Relying on judgment of Punjab and Haryana High Court, the appeal was dismissed.

6. Aggrieved by the above judgment, Corporation has come up in this appeal.

7. Learned counsel for the Corporation in support of the appeal contended that the view taken by the courts below that notice for inviting options have to be personally served to the employees is erroneous. It is submitted that Regulations being statutory in nature, it was obligatory for the employees to opt for pension scheme within six months from the date of issue of the Regulations failing which they will deem to have opted and continued with the CPF. The Regulations having sent to be put on the notice board in the Head Office and all Depots and large number of employees submitted their options, plaintiff cannot complain that he was not personally served the notice. It was further submitted that he had not refunded the loan even after his retirement. He was not entitled for pension in any manner. The plaintiff had received the entire CPF amount after his retirement without any protest. He cannot claim pension. Learned counsel for the respondents refuting the submission of the learned counsel for the appellant contended that the courts below had taken correct view of the matter that the plaintiff having not been served the notice inviting option personally, the plaintiff's rights to receive pension cannot be denied. It is submitted that had plaintiff aware of that he had to deposit outstanding amount of loan to avail the pension, he would have definitely deposited the outstanding amount of loan and in any view of the matter the appellant could have deducted the outstanding amount from his retiral benefits before finalizing the pension. Learned counsel for the respondents has placed reliance on various judgments of this Court. While considering the submissions in detail we will refer the same.

8. We have considered the submissions of the parties and perused the records.

9. The employees of the Corporation were governed by the Contributory Provident Fund Scheme prior to the enforcement of the Regulations 1992 w.e.f. 15th June, 1992. The pension scheme was introduced w.e.f. 15th June, 1992. Counter-affidavit has been filed in this appeal by Respondent No.1. Copy of the PEPSU Road Transport Corporation Employees/Pension Gratuity and General Provident Fund Regulations 1992 has been brought on record as Annexure R-3 by the respondents themselves. A perusal of Annexure R-3 indicates that the Regulations have been sent by the Corporation to the following :

“The General Manager, PEPSU Road Transport Corporation, Patiala, Patiala-II, Bhatinda-I, Bhatinda-II, Faridkot, Budhlada, Barnala, Sangrur, Kapurthala, Ludhiana & Chandigarh.”

10. Further the Regulations were also endorsed and copy of it forwarded to several authorities for information and necessary action. Apart from various officers of the Corporation, it was also forwarded to the following:

“8. Ad/Officer, Notice Board in the Head Office & in Depots.

9. CAO/FA, CAE, Dy.C.F. & A and all other Officers in H.O.”

11. Regulation 3 deals with application as follows:

“Regulation-3: Application These Regulations shall apply to the employees of the PEPSU Road Transport Corporation who:

were/are appointed on or after the date of issue of Regulations on whole- time and regular basis, and were working immediately before the date of issue of Regulations and opt for these Regulations.

These Regulations shall not apply to the employees who: Opt out of these Regulations.

On deputation with the Corporation.

are paid out of contingencies.

Are work charged employees.

Are employed on contract basis, except when the contract provides otherwise.

Are re-employed after superannuation.

Are specifically excluded wholly or partially from the operation of these regulations and Opt for the P.R.T.C. Employees Pension/Gratuity and Regulations General Provident Fund, 1992 but failed to refund the amount of advance taken out of the Employees share of the Contributory Provident Fund along with interest thereon within the stipulated period.”

12. Regulation 4 deals with the exercise of option which is to the following effect:

“4. Exercise of Option:- The option under clause (ii) of the Sub-Rule (1) of Regulation shall be exercised in duplicate in writing in Form No.1 so as to reach the Managing Director as forwarded by General Manager in case of depots and Administrative Officer in the case of headquarters with his countersignature within a period of six months from the date of issue of these Regulations.

Provided that:

(i) in the case of an employee, who on the date of issue these regulations abroad or leave, the option shall be exercised within a period of six months from the date of taking the charge of his post.

(ii) Where an employee is under suspension, on the date of issue of these regulations, the option shall be exercised within a period of six months from the date of his joining the duty:

(iii) An option once exercised shall be final provide the concerned employee deposit the Corporation's share of C.P. Fund received by him in advance if any, within, a period of six months from the date of issue of regulations and if a person fails to exercise his option under the said regulations within the specified period referred to above, it shall be deemed that he has opted to continue for the existing Contributory Provident Fund benefit.

(iv) An employee who dies on or after the date of issue these Regulations and who could not exercise his option the legal heir of such employee, who have entitled to receive retirement benefits under the said regulations, shall exercise option subject to the condition that the legal heir shall have to deposit the amount of Corporation's share of C.P. Fund received by the deceased employee or by him, as the case may be, within a period of six months.

(v) The employees recruited after the introduction of said Pension Regulations will be covered under these regulations.

13. A perusal of the Regulations indicates that the Regulations are applicable to the following two categories of employees i.e. :

Who were/are appointed on or after the date of issue of Regulations on whole-time and regular basis, and Who were working immediately before the date of issue of Regulations and opt for these Regulations.

14. The applicability of Regulations to the employees who were working immediately before the date of issue of Regulations i.e. 15th June, 1992 was dependent on the opting for Regulations within a period of six months from the date of issue of Regulations as provided under Regulation 4.

15. Further as per Regulation 4 (iii) if an option is not exercised within a period of six months from the date of issue of Regulations, it shall be deemed that the employee has to continue with the existing Contributory Provident Fund benefit, thus in the event of non-exercise of option within the period prescribed, the employee is deemed to continue in the existing CPF benefit. The deeming clause has been incorporated in the statutory provisions for achieving a purpose i.e. those who do not opt within six months new scheme, they shall continue in the existing CPF benefit. There are no exceptions engrafted in the deeming provisions and the deeming is a legal fiction which embraces all the employees who do not opt for new pension scheme. The suit filed by the plaintiff had been decreed mainly on the ground that notice inviting option has not been personally served on the plaintiff. Whether notice is required to be personally served to an employee before the period of six months as provided in Regulation 4 may start running is the question to be answered. A plain reading of the Regulations does not indicate that period of six months which is provided for submitting an option is dependent on personal service of notice. Although, as noticed above the Regulation has been forwarded on 15th June, 1992 itself to the General Manager of all the Depots and other places and the letter dated 15th June, 1992 further contemplates putting on the notice board in the Head Office and the Depots, the Corporation has thus taken care of circulation of

Regulation to all concerned including the Head Office and all the Depots.

16. Learned counsel for the respondents has placed reliance on judgment of this Court in *Dakshin Haryana Bijli Vitran Nigam and others vs. Bachan Singh*, (2009) 14 SCC 793. In the above case a Circular was issued by the Dakshin Haryana Bijli Vitran Nigam for grant of benefit of work-charge service towards pensionary benefits dated 6th August, 1993 which also provided for option in paragraph 5 of the judgment. The Circular has been extracted which is to the following effect:

“5. The appellants had issued instructions dated 6.8.1993 for the grant of benefit of work-charge service towards pensionary benefits. The said letter of 6.8.1993 is reproduced as under:-

“From : The Additional Secretary, Haryana State Electricity Board (HSEB), Panchkula Memo No. Ch.9/Pen/G-G-43(93) Dated 6.8.93 Sub: Amendment in the Punjab CSR Vol.II-Adoption of State Govt. Notification The Haryana State Electricity Board in its meeting held on 23.6.1993 has approved the adoption of Haryana Govt. Notification No.1/2 (55)-88-2 FR-II dated 4.2.92 (copy enclosed for ready reference) with regard to the counting of service rendered by the workers in the work charged capacity towards pensionary benefit scheme. 2. However, most of the Board’s workcharged employees are members of Employees Provident Fund (EPF). As such, the pensionary benefit would be subject to the following conditions:- i) On regularization from workcharged to regular employee, the employee has to submit an option within a period of 3 months from the date of regularization or from the date of issue of this circular, whichever is later as to whether he/she intends to count the period of workcharged service rendered by him/her towards pensionary benefits or intends to continue to be a member of EPF. The option is required to be furnished in writing to his drawing & Disbursing Officer who will authenticate and record its entry in the service book of the employee and also paste the same in the service book so as to form a permanent record for future reference. The Drawing & 4 Disbursing Officer will also inform about his/her option to the appointing authority immediately. ii) The option once exercised will be final and not to be allowed to be changed in any circumstances. In case option is not given within the stipulated period of three months, it will be presumed that he/she intends to continue to be a member of EPF. iii) In case, he/she opts for pensionary benefits, he/she has to refund the entire amount of employee’s contribution along with interest thereon, towards their EPF in lumpsum for crediting to the Board’s account, Employee’s contribution alongwith interest is to be deposited with the Board for crediting to his/her GPF account. 3. Similarly, the above benefit will also be available to the pensioners/recipients of family pension of the Board on the same terms and conditions with the exception that they will have to deposit the amount contributed by the Board as Employee’s contribution towards EPF alongwith interest thereon, in lumpsum. The pensioners/recipients of family pension will have to give an Affidavit to the fact that he/she will not claim any interest on the arrear of pensionary benefits which become payable due to adoption of the State Govt. circular. The pensioners/recipient of

family pension will submit their option within 3 months from the date of issue of this circular, for availing pensionary benefits, to the Head of the office last attended. The option once exercised will be final. In case, option is not given within the stipulated period of 3 months, it will be presumed that he/she intends to continue to be a member of EPF. 4. These instructions may please be got noted from all the employees and acknowledge and receipt of the letter. Sd/- Under Secretary (PW) For Additional Secretary, HSEB, Panchkula”

17. The period for option was further extended. Certain circulars were further issued on 9th August, 1994. The respondent in the above case contended that he had no knowledge about the instructions, hence he could not exercise his option for grant of pensionary benefits within the prescribed time-limit. The writ petition filed by the respondent was allowed by the Punjab and Haryana High Court by recording a finding that appellant 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 said finding has been recorded in paragraph 13 is to the following effect:

“13. 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.”

18. Ultimately, this Court dismissed the appeal relying on the finding of the High Court that the appellant had failed to produce any record showing that the instructions were actually got noted in writing from the respondent.

19. The above case was decided on the strength of specific instructions contained in Circulars dated 6.8.1993 and 9.8.1994. Both the above instructions contained following as one of the clauses: “These instructions may please be got noted from all the employees and acknowledge and receipt of the letter.” Thus, noting by the employees and acknowledge and receipt was a condition incorporated in the instructions itself and due to breach of the said instructions benefit was given to the respondent in the said case. The above case has no application in the facts of the present case where the Regulations do not contain any such requirement of personal service of notice whereas Annexure R-3 indicates that Corporation on the same day by letter dated 15th June, 1992 has circulated Regulations to all the General Managers with endorsement to be put it on the Notice Board. The Corporation had taken due care to inform all its Headquarters and Depots and all concerned about the Regulations.

20. The above judgment in Dakshin Haryana Bijli Vitran Nigam came for consideration before this Court in PEPSU Road Transport Corporation, Patiala vs. Mangal Singh and others, (2011) 11 SCC

702, in which same Regulations 1992 applicable to the PEPSU Road Transport Corporation came for consideration. In which case facts of one of the cases being Civil Writ Petition No.14562 of 2004 titled as Jagjit Singh v. PEPSU RTC were similar to the present case where respondent did not submit an option within time and after retirement filed a suit for declaration. Facts were noticed in paragraph 13 to 18 to the following effect:

“13. In Civil Appeal No. 3846 of 2010- PEPSU Road Transport Corporation and Another v. Jagroop Singh (hereinafter referred to as “Jagroop’s appeal”), the respondent had served the Corporation as a driver and was subscriber of C.P.F. and gratuity. Subsequently, on 15.06.1992, the Corporation introduced the Pension Scheme for its employees and also made the Regulations in order to regulate the said scheme.

14. The Pension Scheme in terms of Regulation 4 of the Regulations envisages the condition for exercise of the option on or before 15.12.1992, by an employee in order to avail the pensionary benefits under the scheme.

Subsequently, the Corporation had also extended this period by three months. It is not in dispute that the respondent had not exercised any option for availing the benefits under the pension scheme.

15. On 30.11.2000, the 8 respondent took pre-mature voluntary retirement. On 08.06.2001, the respondent received all the retrial benefits under the C.P.F Scheme and gratuity without any objection or protest. However, 01.06.2002, after nearly 10years from his retirement, the respondent filed a suit for declaration for the entitlement to pension and other benefits in the Court of Civil Judge Senior Division, Bathinda.

16. The learned Civil Judge had passed the judgment and decree dated 01.03.2006 in favor of the respondent on the ground that the respondent was never informed about the option available under the Regulations and he came to know about this Scheme only at the time of his retirement. The learned Civil Judge further directed the Corporation to release pensionary benefit to the respondent along with interest @9% per annum till the date of realization.

17. Being aggrieved by the judgment and decree dated 01.03.2006, the Corporation filed a Regular Second Appeal in the Court of District Judge, Bathinda, the same was allowed vide Judgment and order dated 27.04.2006 on the ground that respondent is estopped from claiming any pensionary benefit by his act of receiving all the retrial benefits under the C.P.F. Scheme at the time of his retirement and failing to exercise the option in terms 9 of Regulation 4 of the Regulations in order to avail the benefits under the pension scheme.

18. Aggrieved by this order of the Additional District Judge dated 27.04.2006, the respondent filed a Regular Second Appeal in the High Court, the same was allowed vide order and judgment dated 23.12.2008. The High Court has followed its earlier Judgment in Civil Writ Petition No. 14562 of 2004 titled as ‘Jagjit Singh v. Managing Director, Pepsu Road Transport Corporation and another’

dated 03.12.2008, wherein, the appeal was allowed on the ground that the pension scheme was never circulated nor was informed to the employees of the Corporation and mere non-refund of the loan taken from the C.P.F. account would not disentitle the employee from claiming pension under the scheme.”

21. This Court considered the Regulations and held that it is not necessary to the Corporation to give an individual notice to the respondents for exercising of option. Judgment of Dakshin Haryana Bijli Vitran Nigam was noticed and distinguished. It is useful to mention here paragraphs 53 and 54 and 56 which are relevant and extracted as follows:

“53. The learned counsel for the respondents in support of their contention for want of knowledge of the Pension Scheme due to 35 non-service of individual notices relied on the decision of this Court in Dakshin Haryana Bijli Vitran Nigam v. Bachan Singh, (2009) 14 SCC 793. The said decision is clearly distinguishable on facts. In that case, the appellant, Haryana State Electricity Board, had issued instructions dated 23.06.1993 and circular dated 09.08.1994 in order to provide an option to the employees for pensionary benefits in lieu of their work charged service with an express condition of noting of instructions from all the employees and acknowledging the receipt of the letter. In these appeals, before us, there is no such condition of noting from the employees or serving individual notices in the Pension Scheme or Regulations. Therefore, in our opinion, Bachan Singh decision will not assist the respondents.

54. In our view, in the facts and circumstances of the present case and in view of absence of such condition in the scheme, it is not necessary for the Corporation to give an individual notice to respondents for exercising of option for pension Scheme and also for asking respondent to refund the employers contribution of C.P.F. at each stage. Furthermore, when notice or knowledge 36 of the Pension Scheme can be reasonably inferred or gathered from the conduct of the respondents in their ordinary course of business and from surrounding circumstances, then, it will constitute a sufficient notice in the eye of law.

56. The Regulation 4 (iii) of the Regulations is a deeming provision to the effect: firstly, if an employee fails to exercise his option within a period of 6 months from the date of issue of these Regulations and;

secondly, even on exercise of option, if an employee fails to refund the amount of advance taken from employers contribution of the C.P.F. within 6 months from the date of issue of these Regulations, then it shall be deemed that employee has opted to continue for the existing C.P.F. benefit. Therefore, the failure on the part of the respondents to opt for the Pension Scheme and refund the advance taken from the employer’s contribution of C.P.F. will disentitle them from 38 claiming any benefit under the Pension Scheme. Therefore, we cannot sustain the Judgment and order passed by the High Court.” This Court in the above case set aside the judgment and orders passed by the High Court and allowed the appeals.

22. In another subsequent judgment in Rajasthan Rajya Vidyut Vitran Nigam Limited vs. Dwarka Prasad Koolwal and others, (2015) 12 SCC 51, both Dakshin Haryana Bijli Vitran Nigam and PEPSU Road Transport Corporation vs. Mangal Singh came to be considered. The question as to whether the notice inviting option to be served personally to the employees for option was also considered by this Court. After noticing the aforesaid cases it was laid down in paragraphs 42 to 46:

“42. Ultimately the issue boils down to the overall assessment of the awareness level of the employees of the RSEB based on the available data. Based on the facts presented before us, on a composite consideration of the facts and taking a pragmatic view of the situation, a reasonable and legitimate inference can be drawn that the respondents were aware of the notices issued for the exercise of the switch-over option but they chose not to exercise that option either for personal reasons or perhaps because it did not suit them. The position changed in the second half of 1997, by which time it was too late for them to do a rethink.

43. One of the contentions urged by the respondents as writ petitioners in the High Court was that each employee should have been individually served with each notice inviting the switch-over option. That contention was accepted by the High Court by relying upon Dakshin Haryana Bijli Vitran Nigam and Others v. Bachan Singh¹ but was not directly canvassed before us.

In any event the decision relied upon by the High Court was considered and distinguished in PEPSU Road Transport Corporation, Patiala v. Mangal Singh and Others. The contention in this regard is a bit collateral, and it is this: the switch-over option form was required to be filled up by each employee clearly indicating the option exercised – either to continue with the CPF Scheme or to switch to the Pension and GPF Regulations. This could be done only if the option form was made available to each employee.

44. In Dakshin Haryana Bijli Vitran Nigam the instructions relating to the exercise of the switch-over option specifically mentioned that: (SCC p.797, para5) “(4) These instructions may please be got noted from all the employees and acknowledge the receipt of the letter.” The appellants therein were unable to show that the instructions were actually got noted in writing by the respondent. It is under these circumstances that it was inferred that the respondent had no knowledge about the options called by the appellants. Consequently, the denial of pension benefits to the respondent was held bad.

45. In PEPSU RTC v. Mangal Singh the decision rendered in Dakshin Haryana Bijli Vitran Nigam was distinguished on facts since in the PEPSU appeal there was no condition of noting from the employees or serving individual notices in the Pension Scheme or Regulations. This Court went on to say:

(PEPSU RTC case, SCC p.723, para54) “54. Furthermore, when notice or knowledge of the Pension Scheme can be reasonably inferred or gathered from the conduct of the respondents in their ordinary course of business and from surrounding

circumstances, then, it will constitute a sufficient notice in the eye of the law.”

46. The fact situation in the present appeals is somewhat similar. In this context, we may infer that under such circumstances, it was equally the responsibility of the respondents to collect the option forms from the concerned authority, fill them up and submit them to the competent authority. It is too much to expect that even though it was not necessary for each individual employee to be served with each notice, yet there was a duty cast on the RSEB to ensure that each employee is furnished a copy of the option form. If such a contention is accepted, it will amount to circuitously accepting that, though the employees need not individually be served the notices, yet they would have to be individually served with a copy of the option form.”

23. In view of the above, it is well settled that the notice inviting option need not to be personally served to the employees unless the Regulation or any instruction so provides. The Regulations 1992 which are being considered in the present case had already been interpreted in PEPSU Road Transport Corporation vs. Mangal Singh as noticed above. This Court having already held that Regulations 1992 do not contemplate any personal service of notice to employees the finding in the judgment of the courts below holding otherwise for decreeing the suit of the plaintiff are unsustainable. From the facts of the present case it is clear that although Regulations were in force from 1992, plaintiff retired on 30th November, 2011 and after retirement received CPF benefits without any protest and at no point of time before retirement he has raised any grievance. The benefit which was available to him under CPF scheme was received by the plaintiff, he cannot be allowed to another benefit flowing from the pension scheme which he never opted. Extending benefit of the pension scheme to the plaintiff shall be extending double benefits- CPF benefit as well as pension scheme which was never contemplated by the Regulations. In any view of the matter, the issue in the present case is covered by the judgment in PEPSU Road Transport Corporation vs. Mangal Singh (supra) and we do not propose to take any different view in the matter. Learned counsel for the respondents has also contended that in so far as the outstanding amount of CPF is concerned the said amount could have been deducted by virtue of Regulation 24 and which amount is to be adjusted against death- cum-retirement gratuity. In the present case the plaintiff having not opted for pension scheme, the requirement from refunding the advance taken from CPF within six months is not attracted. More so, in the present case as has been stated by the appellant in the written statement in the suit even after retirement an amount of Rs.4999/- was due from the advance taken by the respondents from his CPF amount.

24. In view of the foregoing, we are of view that the judgments of the courts below are unsustainable. The suit of the plaintiff deserved to be dismissed. In the result the appeal is allowed. The judgments of the High Court as well as First Appellate Court and Trial Court are set aside and the suit of the plaintiff stands dismissed. The parties shall bear their own costs.

.....J. (S.A. BOBDE)J. (ASHOK BHUSHAN) NEW DELHI, JANUARY 03, 2017.