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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 4868/2014

% ***Judgment dated 14.07.2015***

DIRECTOR GENERAL, C.C.R.U.M., MINISTRY
OF HEALTH, GOVT. OF INDIA ..... Petitioner
Through : Mr.A.K. Ojha, Adv.

versus

K.A.S. AZAMI ..... Respondent
Through : Ms.Harvinder Oberoi, Adv.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (*ORAL*)

1. Present petition has been filed by the petitioner under Articles 226/227 of the Constitution of India seeking a direction to quash/set aside the Order dated 20.12.2013 passed by the Principal Bench, Central Administrative Tribunal, New Delhi (hereinafter referred to as "the Tribunal") whereby the petitioner has been directed to pay pension to the respondent.
2. The necessary facts, to be noticed for disposal of the present writ petition, are that the petitioner (hereinafter referred to as "the Council) is a society registered under the Societies Registration Act XXI of 1860. Respondent herein joined the Council in the year 1975. He subscribed to Contributory Provident Fund Scheme (hereinafter referred to as "CPF") and was provided with CPF Account No.155.

3. Under Bye-laws No.31 and 32 Notified in the year 1978 a provision for Contributory Provident Fund and Pension, respectively, to be paid to the employees of the Council, were conceptualised. Bye-laws no.31 and 32 read as under:

> "***Contributory Provident Fund***
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> *31. Employees of the Central Council except those on deputation on Foreign Service shall be eligible to join the contributory Provident Fund of Council. The contributory Provident Fund (India) Rules, 1932 and amendment issued thereto by the Govt. from time to time shall mutatis mutandis apply to employees of the council.*
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> *32. The employees of the Central Council shall be entitled to pension from the funds of the Central Govt. From time to time as and when a pension fund is established."*

4. It is not in dispute that the employees of the petitioner were initially governed by CPF Scheme for providing pension.
5. On 23.5.1983 based on the scheme options were invited from the employees as to whether they would continue with the CPF Scheme or would opt for General Provident Fund Scheme (hereinafter referred to as "GPF") (pension scheme). In this regard, it would be relevant to note the contents of the letter dated 18.5.1983, addressed to the Registrar, Central Council of Indian Medicine; Director, Central Council of Homeopathy; Director, Central Council for Research and Homeopathy; and the Director, Central Council for Research in Unani Medicine. Relevant portion of the communication dated 18.5.1983 reads as under:

> "I am directed to convey the approval of the Govt. Of India to the introduction of Pension-cum-GPF-cum-Death-cum-Retirement Gratuity scheme including Family Pension Scheme to the employees of the (i) Central Council of Indian medicine, New Delhi, (ii) Central Council of Homeopathy, New Delhi, (iii) Central Council for Research in Homeopathy, New Delhi, and (IV) Central Council for Research in Unani Medicine, New Delhi with effect from the 1st April, 1983 as contained in the CCS (Pension) Rules, 1972, as amended from time to time, subject to the following terms and conditions:
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> (i) The scheme will be financed out of pension fund to be created from the funds already available with the Council Institutions on account of employees' contribution to CPF together with interest that may accrue on investment of such funds and other internal revenues of the Councils/Institutes and no additional grants for augmenting the Pension Fund will be released by the Govt. of India.
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> (ii) The existing employees who are presently governed by the C.P.F. Scheme, shall exercise their option within the specific period to be laid down by the Council for the pension scheme."

6. The respondent claims to have opted for GPF Scheme. However, the option of the respondent was rejected as being time barred. Representation made by the respondent for change from C.P.F. to Pension Scheme was also dismissed by the petitioner.
7. Aggrieved by the order passed by the petitioner rejecting the request of the respondent, the respondent filed O.A.No.18608/2008 followed by CP No.371/2009 on the basis of O.M. dated 18.12.1997. The said Original Application was decided by the Tribunal vide order dated 16.4.2009. Operative portion of the order dated 16.4.2009 reads as under:

"As the issue raised in these OAs are common with identical question of law, these OAs are being disposed of by this common order.

2. Applicants, who are admittedly appointee prior to 1983, are CPF pensioners. A scheme promulgated in 1983 sought option from the concerned to switch over to pension as per Bye-Law 32 of the respondents, which permits such an option to be exercised and conversion thereof.

3. The case of the applicants is that this option of 1983 has been reiterated by another option vide OM dated 18.12.1997. As the applicants have exercised this option to move from CPF to GPF Pension Scheme, the same having not been acceded to by the respondents, it is prayed that the applicants may be treated as pensioners and necessary consequential benefits be accorded.

4. On the other hand, learned counsel for respondents would contend that though there is no specific rebuttal to the averments regarding promulgation of option on 18.12.1997 but if the competent authority finds that the fresh option has been extended by the applicants, certainly the claim would be considered in accordance with rules.

5. In the light of above, these OAs are disposed of with a direction to the respondents that in the event the respondents on inquiry find another option to convert from CPF to GPF pension scheme is contained in the memorandum dated 18.12.1997, request of the applicants shall be considered for switching over from CPF to GPF pension scheme. In that event, all the consequential benefits shall be bestowed upon them within a period of three months from the date of receipt of a copy of this order. No costs.

6. Let a copy of this order be placed in all the respective files."

8. Since the order dated 16.4.2009 could not be complied with, the

respondent filed another O.A.No.3979/2010, which was decided on 18.5.2011. The operative portion of the order dated 18.5.2011reads as under:

> "2. At the outset, the respondents have produced a letter dated 10.05.2011. A perusal of the contents of the said letter reveals that the respondents are themselves in the process of constituting a Committee of six very senior officers to consider some what similar issue raised in the present O.A. The letter dated 10.05.2011 reads as under:
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> > "Director General, Central Council for Research in Unnani Medicine, New Delhi is pleased to constitute a Committee comprising of the following officers to look into the cases pertaining to request as some officers/other staff members of the Council for change from **CPF Scheme to GPF Pension Scheme**, who were not covered due to late submission of option/ Non-Option and other reason at the time of implementation of Pension Scheme in the Council. The Committee shall examine all such cases in the light of rules and other guidelines vis-a-vis facts of each case separately and suggest necessary action by the Council.
> >
> > 1. Dr.Mustaq Ahmad, Director CRIUM, Hyderabad.
> > 2. Dr.Khalid Mahmood Siddiqui, Asstt. Director (U), CCRUM Hqrs. New Delhi.
> > 3. Shri B.K. Das, Administrative Officer, CCRAS, New Delhi.
> > 4. Shri Dilwar Singh, Administrative Officer, A/c section CCRUM New Delhi.
> > 5. Shri Devanand, Jr. Administrative Officer, CCRUM Hqrs. New Delhi.
> > 6. Shri Mohammad Nasim, Convener, Administrative Officer, CCRUM Hqrs. New Delhi.

3. In view of the above said, the respondents are directed to take a decision in the matter within a period of four months based on the recommendations of the above said Committee and convey it to the applicant. In case the applicant is still aggrieved and his grievances are not redressed due to any reason, he would be at liberty to approach this Tribunal by way of fresh proceedings as per law."

9. On 20.4.2012 the petitioner rejected the case of the respondent for change from C.P.F. Scheme to Pension Scheme by passing a speaking order.

10. Aggrieved by the order passed by the petitioner, the respondent filed O.A.No.1979/2012. In the said O.A., the Tribunal, vide order dated 20.12.2013, set aside the Order dated 20.4.2012. Order dated 20.12.2013 reads as under:

"Heard.

2. Annexure A-1 stipulates the case of the applicant and several other employees as well. Apparently, the applicant did not join the scheme of pension-cum-GPF on 1.4.1983 as he wanted to continue in the CPF scheme. But in 1998, a fresh option was sought for on the basis of DOP&T OM No.4/1187-PIC-I dated 1.5.1987 to give another opportunity to the CPF beneficiaries to shift to Pension-cum-GPF Scheme. Apparently, on 8.1.98 the applicant had given an option. The Institute forwarded such option to the Government as well. But in view of the fact that the last date 15th January 1998 was fixed for consideration, an initial objection was raised then that transit time between the Institute and the Government exceeds 15th January and Government received it on 19th January only. At that point of time something else was added on the objection to the fact that DOPT OM dated 1.5.1987 was applicable to Central Government employees only and the Ministry's advice was conveyed to the respondents by letter No. D.15020/50/2011-RD dated 30.1.2012. A fresh option, the respondents say, now cannot be acted upon. Therefore, the only question is, whether pari

> material consideration should be given to applicant along with other Government employees. It is to be noted that the rules related to Institute stipulate that they will follow all government rules. Therefore, since it is fully controlled by the Government and rules of the Government have already been made applicable and since others in the Institute are being granted the same benefit, if it is not granted to the applicant, the constitutional provision of Article 14 will be violated.
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> 3. Therefore, Annexure A-1 related to the applicant is quashed. Respondents are directed to extent the same benefit to him within a period of three months from the date of receipt of a copy of this order. Original Application is allowed. No costs. "

11. Aggrieved by the order dated 20.12.2013 passed in O.A.1979/2012 the petitioner has filed the present writ petition challenging the order dated 20.12.2013 passed by the Tribunal.
12. Learned counsel for the petitioner has relied upon ***Indian Council of Agricultural Research v. Prem Dureja & Ors.***, reported at 2013 (2) All India Services Law Journal 183, in support of his contention that the communication of DOPT would not apply to the case of the petitioner on account of amended Rule 32.
13. It is further contended by learned counsel for the petitioner that since the respondent did not opt for the scheme at the relevant time he cannot be given benefit of the OM NO.4/1/87-PIC-I dated 1.5.1987. Counsel for the petitioner has also contended that in case the respondent is now granted benefit of OM NO.4/1/87-PIC-I dated 1.5.1987, once he had not opted for the Scheme within the prescribed period, the order would be against the Rules. Reliance is placed on ***State of Punjab and Others v. Renuka Singla and Others***, reported at (1994) 1 SCC 175.
14. Learned counsel for the respondent submits that while all the persons,

similarly placed as the respondent herein, have been granted benefit of the communication dated 8.5.1983, the respondent has been singled out despite approaching the Tribunal on three occasions. Learned counsel for the respondent has further submitted that in the order dated 18.5.2011 passed in O.A.3979/2010 the petitioner (respondent before the CAT) had taken a stand based on the letter dated 10.5.2011 that they are in the process of constituting a Committee of six very senior officers to consider somewhat similar issues raised in the present Original Application. Counsel for the respondent has additionally submitted before this Court that the Committee has furnished its report, a copy of which has been handed over in Court today, as per which the Committee has given the following recommendations:

> "**RECOMMENDATIONS:**
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> - On the basis of the facts as discussed above, it is recommended that Council should admit all such employees who are presently governed under CPF scheme to GPF cum DCR Pension Scheme for the following reasons
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>   1. None of these employees have given option for their continuation under CPF scheme after the IV Pay Commission recommendations to this effect were accepted by Govt. of India vide memorandum dated 1st May, 1987.
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>   2. Bye law 32 of CCRUM in 1978 when the Council came into existence clearly stipulated that employees of the Council shall be entitled to pension from the funds of CCRUM as per rules made by Govt. of India from time to time as and when the pension fund is established.
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>   3. Council cannot resort to discrimination between its employees as the Council has allowed switching over

from CPF to GPF cum DCR Pension Scheme in respect of Dr.P.V. Goud, Dr.S. Kareemullah and Mr.Naveen Chand Sharma who had initially exercised their option in favour of CPF scheme but subsequently some time in 1984 or later they have changed their options in favour of GpF cum DCR Pension Scheme, although in terms of Council's letter dated 18.12.1997, that options exercised after 31.08.1983 were not entertain-able. Change of option in respect of others after this date i.e. 31.08.1983 was not accepted by the Council.

4. Mr.Harbansh Singh and Mr.Ravi Ahuja had revised their options in 1988 i.e. 10 years before the Council's letter inviting revised options latest by 15.01.1998.

5. Sustenance of these employees and their family members after the retirement is directly linked with the grant of pension.

6. Pension being a vital aspect of social security and that right to receive it constitutes a right to life which should not be taken away for no valid reasons."

15. It is, thus, contended that despite three orders having been passed by the Tribunal in favour of the respondent and the recommendation of the Committee constituted by the petitioner itself, the petitioner cannot take a stand of not providing benefit to the respondent, which has been allowed to all the similarly situated employees of the petitioner.

16. We have heard learned counsel for the parties and considered their rival submissions. This is the fourth round of litigation, which an ex-employee of the Council, who is now a senior citizen of the age of 67 years, is facing. It is on the basis of the OM NO.4/1/87-PIC-I dated 1.5.1987 of the Government of India, which introduced an option to the employees to give an option for change from the CPF Scheme to the Pension Scheme.

OM NO.4/1/87-PIC-I dated 1.5.1987 reads as under:

> "The undersigned is directed to state that the Central Government employees who are governed by the Contributory Provident Fund Scheme (CPF Scheme) have been given repeated options in the past to come over to the Pension Scheme. The last such option was given in the Department of Personnel and Training O.M. No.F3(I)-Pension unit/85 dated the 6th June, 1985. However, some Central Government employees still continue under the CPF scheme. The Fourth Central Pay Commission has now recommended that all CPF beneficiaries in service on January 1, 1986, should be deemed to have come over to the Pension Scheme on that date unless they specifically opt out to continue under the CPF Scheme."

17. A reading of the aforestated OM would show that this OM was introduced based on the recommendations of the Fourth Central Pay Commission and was made applicable to all the CPF Beneficiaries in service. Reading of the OM would show that this OM was applicable to the petitioner herein and its employees.
18. Thus if subsequently the Rule has been amended, the same would have no application on the right of the respondent as he had exercised his right much prior to the rule having been amended. The Court can also not lose track of the fact that it is only the respondent, who has been singled out as admittedly all similarly situated persons have been allowed to opt for the GPF scheme. The Court can also not ignore the report of the Committee which was formed by the petitioners as is evident from reading of the order of the CAT dated 18.5.2011, as detailed in para 8 above. The report has in clear terms recommended the case of the respondent with detailed reasons.
19. The judgments sought to be relied upon by counsel for the petitioners is in

our view not applicable to the facts of the present case.

20. The Order of the CAT would show that there is no dispute that the respondent had exercised his option in favour of the GPF scheme within the time allowed but by the time the communication could reach the Ministry from the petitioner, the period had come to an end. This, by itself, having regard to the totality of the matter and further taking into consideration that request of all the employees of the petitioner except the respondent herein has been accepted and also taking into consideration the recommendation of the petitioner, we find no merit in the present writ petition and the same is accordingly dismissed. The order dated 20.12.2013 passed by the Tribunal shall be implemented by the petitioner positively within a period of two months from today.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

JULY 14, 2015
msr