

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10838 OF 2013

Shri K.V. Kumaran .. Petitioner
Vs.
The State of Maharashtra and ors. .. Respondents

Mr.N.V.Bandiwadekar, for the Petitioner
Mr.Bhushan Kakade, AGP for Respondents No. 1 & 2.

**CORAM : SHANTANU.S.KEMKAR &
M.S.KARNIK, JJ.
DATE : 16th AUGUST, 2016**

P.C. :

Heard parties through their Counsel.

2. Through this Petition under Articles 226 & 227 of the Constitution of India, the petitioner has challenged the order dated 10/10/2013 – Exhibit 'DD' passed by the respondent No.2 refusing the petitioner to exercise option to switch over from the “contributory provident fund” to “Retirement Pension and Death-cum-Retirement Gratuity Scheme” on the ground that the petitioner did not submit the application in the prescribed form.

3. On notice of this Petition being issued, the respondents have filed reply and additional reply. In the reply and additional reply, the stand taken by the State is that the petitioner did not submit the option before the cut-of date. The relevant paragraph of the reply filed by the respondents – State read thus :

“7. It appears that pursuant to the letter dated 26/09/2009 addressed by respondent No.2 to the petitioner (Exhibit -R, at page 60), the petitioner deposited total amount received by him towards C.PF. amounting to Rs.1,02,906.65 with Reserve Bank of India. However, as the petitioner did not exercise the option for G.PF. as per Government Resolution dated 30/09/1985 and also did not exercise the option for changing C.PF. to G.PF. as per Government Resolution dated 10/09/1996 within the time stipulated in the said two Government Resolutions, the petitioner is not entitled for G.PF. and other pensionary benefits. I also say that the amount of Rs.1,02,906.65 deposited by the petitioner with Reserve Bank of India will be refunded to the petitioner.”

4. Learned Counsel for the petitioner submits that in a similar circumstances, various other employees of the same college have been extended the benefit of change of option even though they also initially had applied with contributory provident fund. According to the petitioner, in fact the petitioner applied for change of option well within time on

18/02/1993 and therefore, this ground of the respondent – State is not correct. The petitioner could not get the benefit as in the meantime, the petitioner was retired and therefore, he was not called upon to submit the option in prescribed form whereas other employees were in service and thus, they were given that opportunity to submit the option in prescribed form.

5. Be that as it may, we find, reason assigned for rejecting the petitioner's claim is only that the petitioner did not submit the application in prescribed form. This in our considered view is a very technical reason given by the State to deny the benefit of option. If the petitioner did not submit the application in the prescribed form, he could have been asked to submit the same in the prescribed form. The denial of benefit of change of option on such technical ground cannot be sustained.

6. As a result, we set aside the impugned order and direct the State to provide the petitioner a prescribed form for change of option within 2 weeks from the date of the receipt of

the copy of this order. On the receipt of the same, the petitioner shall fill up the form and submit the same before respondent No.2 within 2 weeks from the date of its receipt. On receipt of the prescribed form, the respondent No.2 shall pass appropriate order in regard to the relief claimed by the petitioner for change of option from the contributory provident fund to Retirement Pension and Death-cum-Retirement Gratuity Scheme within 2 weeks.

7. Petition stands disposed of in the aforesaid terms.

(M.S.KARNIK, J.)

(SHANTANU.S.KEMKAR, J.)