

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

Writ Petition No.13585 of 2013

Order: *(per V.Ramasubramanian, J.)*

The petitioner whose claim to come under the General Provident Fund (GPF) cum Pension Scheme from the Contributory Provident Fund (CPF) Scheme was negated by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad, has come up with the present writ petition.

2. Heard the petitioner appearing in person and Mr. P. Harinatha Gupta, learned Standing Counsel appearing for the respondents.

3. The petitioner was appointed in the National Institute of Rural Development, which is the 3rd respondent herein, initially on contract basis as Assistant Director on 19.03.1984. He was placed under the CPF Scheme. Subsequently, his contractual appointment was regularised with effect from 17-3-1985, vide office order dated 07-11-1985. He was placed on probation for a period of 2 years and the probation was declared on 19.03.1986 by office order dated 25.11.1986.

4. With effect from 19-3-1990 the petitioner was promoted as Assistant Director (Senior Scale). Later he was granted higher designation as Associate Professor with effect from 01-10-1997 and as Professor with effect from 01-10-2005.

5. By an office order bearing No.54, dated 01-5-1985, all the employees of the 3rd respondent-Institute were given an option to switch over from CPF Scheme to GPF cum Pension Scheme. The options were directed to be exercised on or before 30.06.1985.

6. It appears that the petitioner did not exercise any option. Therefore, his contribution during the years 1985-86 and 1987-88 continued to be maintained in the GPF Ledger under Account No.229. But the petitioner took a stand (along with a few others) that they did not receive any specific instruction to submit an option, after the regularisation of his services. This request was placed in the 3rd meeting of the Committee on Administration held in September, 1987. The Committee accepted the request for the continuance of the petitioner under CPF Scheme and this was approved in the 60th Executive Council Meeting held on 29-10-1987. As a follow-up, the contributions made by him as well as 2 others were transferred to CPF Ledger Account from the year 1988-89 onwards with effect from 01-4-1988.

7. Pursuant to the recommendations of the 4th Pay Commission, the Government of India issued an Office Memorandum dated 01-5-1987 stipulating that all CPF beneficiaries who were under the scheme prior to 01-01-1986 should be deemed to have come under GPF cum Pension Scheme, unless they specifically opt to continue under the CPF Scheme. The National Institute of Rural Development, which is a Society incorporated under the Societies Act and which is an autonomous body, adopted

this Circular and gave a 2nd chance to all employees under Office Order No.332, dated 11-8-1987, to join the GPF cum Pension Scheme. According to the respondents, the writ petitioner submitted a specific option to continue under the CPF Scheme. According to the respondents, the note submitted to the Accounts Officer on 27-7-1989 shows the name of the petitioner along with other employees who opted to continue under the CPF Scheme. A final list of employees who opted out of the GPF cum Pension Scheme is said to have been widely circulated on all the Notice Boards of the Institute vide Circular dated 19-11-1990. It is also claimed by the respondents that the writ petitioner even took a 1st advance of Rs.12,000/- from the CPF Account in February, 1992.

8. In the year 2000, the petitioner along with 5 others filed a writ petition in W.P.No.16131 of 2000, seeking a direction to permit him to switch over to the GPF cum Pension Scheme. The said writ petition was transferred to the Central Administrative Tribunal and numbered as T.A.14 of 2011. But it appears that the petitioner withdrew from the said transferred application and filed a fresh application before the Central Administrative Tribunal in O.A.No.606 of 2011. But this application was dismissed by the Central Administrative Tribunal, on the short ground (1) that the petitioner did not exercise his option to switch over to the GPF cum Pension Scheme and (2) that even as per the sworn affidavit filed in W.P.No.16131 of 2000, which got transferred and numbered as T.A.14 of 2011, the petitioner exercised an option to continue in the CPF Scheme and also withdrew the writ petition. It is against the

said order of the Tribunal that the petitioner has come up with the present writ petition.

9. The first contention of the petitioner appearing in person is that the Tribunal ought not to have rejected his case on the basis of the averments contained in W.P.No.16131 of 2000, transferred as T.A.No.14 of 2011, filed by him along with few others. The contention of the petitioner is that he filed a Miscellaneous Application in M.A.No.295 of 2011 seeking to withdraw the transferred application, for a different reason. The reasons stated by the petitioner in the affidavit in support of M.A.No.295 of 2011 for withdrawing from T.A.No.14 of 2011, are as follows:

“.....I submit that myself along with other applications filed the above W.P. on the premise that my case is also similar to that of the other applicants. That is the reason I joined along with them.

I submit that since my case is factually different on certain lines with regard to option concerning continuance of GPF on pension scheme. Further on my application the respondent Department actively considering my grievance in the above T.A. I may be permitted to withdraw from the above proceedings, enabling me to pursue the same the respondents seeking liberty to pursue my case with the respondents. Hence, this petition.

It is therefore prayed that the Hon'ble Tribunal may be pleased to permit me to withdraw the above T.A. to pursue my case with the respondents and pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.....”

10. Therefore, the contention of the petitioner is that the withdrawal of T.A.No.14 of 2011 cannot be held against him, in view of what was stated by him in the affidavit in support of the application for withdrawal.

11. But the above contention of the petitioner cannot be accepted for two reasons. The first one is that M.A.No.295 of 2011 seeking permission to withdraw T.A.No.14 of 2011 appears to have

been filed on 27-04-2011 and the petitioner was permitted to withdraw from T.A.No.14 of 2011, by an order dated 28-04-2011 passed by the Central Administrative Tribunal. Within a few days thereafter, the order dated 11-05-2011 rejecting his claim for switching over from CPF scheme to GPF scheme was rejected. The order of rejection dated 11-05-2011 shows that his representation was dated 09-07-2010. In other words, even while pursuing a remedy before the Tribunal in T.A.No.14 of 2011, the petitioner pursued a remedy before the authorities which the authorities were not competent to decide in view of Section 19 (4) of the Administrative Tribunal Act, 1985.

12. The second reason as to why the above contention of the petitioner cannot be accepted is that the pleading made in W.P.No.16131 of 2000 was not withdrawn by him. The affidavit sworn to by the 5th petitioner in W.P.No.16131 of 2000, for and on behalf of the writ petitioners including the present petitioner herein, was extracted by the Central Administrative Tribunal in the order impugned in this writ petition, to show that factually he never opted to switch over to the GPF scheme. This pleading in paragraph 3 of the affidavit in support of W.P.No.16131 of 2000 was not withdrawn by him. The withdrawal of one of the six writ petitioners from the writ petition for the purpose of pursuing a remedy before the departmental authority, cannot be equated to the withdrawal of a pleading specifically made in the writ petition. As rightly pointed out by the Central Administrative Tribunal, there was a specific pleading in paragraph 3 of the affidavit in support of the W.P.No.16131 of

2000 that some of the employees opted out of the GPF scheme with a view to come out of the institute for better prospects. The petitioner herein neither disowned such a pleading nor withdrew such a pleading, but chose to withdraw from the writ petition only for the purpose of pursuing the remedy before the department. Hence, the fact of the matter is that the petitioner never opted to switch over to GPF scheme and hence, he is today estopped from seeking this benefit.

13. In the written submissions filed after the conclusion of the arguments in the above writ petition, the petitioner has claimed that the pleading in paragraph 3 of the affidavit in support of W.P.No. 16131 of 2000, escaped his attention and that due to oversight he did not notice the same when he signed the papers in the advocate's office in a hurry in 2000.

14. Assuming for a moment that at the time when the writ petition was filed in the year 2000 the petitioner did not notice it, there was nothing that prevented him from retracting from the same, at least at the time when he filed M.A.No.295 of 2011 for withdrawal. Therefore, the petitioner cannot escape the consequences of his pleading.

15. The next contention of the petitioner is that he was kept in the dark about the regularisation of his services, with effect from the date of his appointment. According to the petitioner, he came to know about the regularisation of his services only in the year 2010 when he made an application under the Right to Information Act, 2005. According to the petitioner, the factum of the regularisation

was not incorporated in the service register and that the respondent abruptly converted his GPF into CPF and he was asked to sign an option form, after the cut off date.

16. But we are surprised that such a pleading has been made by the petitioner after such a long distance of time. Even admittedly, the petitioner was appointed on 19-03-1984 and gained promotion to the posts of Senior Assistant Director, Selection Grade Assistant Director (now Associate Professor) and Professor and Head, respectively in the year 1990, 1997 and 2005. In his Original Application O.A.No.606 of 2011 filed by the A.P. Administrative Tribunal, the petitioner specifically stated in para-4 (1) as follows:

“..... the applicant became a regular employee of the respondent institution in the very first year of completion of service..”

17. After having stated as above in his Original Application, it is not known how the petitioner claims to have become aware of his regularisation only through a RTI query in the year 2010. More over in para 4 (iii) of his Original Application the petitioner claimed that his monthly contributions were kept in the GPF ledger during the years 1985-86 to 1987-86 and that during the year 1988-89 he learnt that his monthly subscriptions were shifted to CPF. In paragraph 4 (iv), the petitioner further pleaded as follows:

“.....The applicant was under bonafide impression that he was under contract appointment and his contract service would be reviewed after serving 5 years as was done in respect of his seniors for the purpose of regularisation of service and then would be governed by GPF-cum-Pension Scheme. On enquiry with his senior colleagues, the applicant learnt that their services were regularized and they were going to be awarded higher post under the proposed CAS system.....”

18. The plea of ignorance raised by the petitioner also goes contrary to some of his other pleadings. Towards the end of para 4 (iv) of his Original Application the petitioner pleaded that he signed the option form in O.O.332 dated 11-08-1987 under a bonafide impression that he was continuing on contract basis. But in para 4 (v) of his Original Application before the Tribunal, the petitioner claimed that the 3rd respondent transferred him to CPF unilaterally, by simply writing an endorsement in the GPF ledger 1986-89 forcibly from 01-04-1988 even without any intimation to him. What is stated in the last portion of para 4 (iv) of his Original Application runs contrary to what is stated in the first part of para-4 (v). In any case, the fact that he was aware of the transfer to CPF is borne out by the averments in para 4 (v), where the petitioner has stated as follows:

“.....the applicant was reeling under frustration for almost an year at that time due to leaving his previous regular job and joining in the humiliating contract nature of present appointment and at his plight of not having Ph.D. to hope for award of CAS in the institute, which was newly introduced in that year, on the pattern of UGC.....”

Therefore, it is not a case where the petitioner was completely in the dark about everything.

19. In any case, the petitioner has admitted in para 4 (v) of his Original Application that at least he was served an year wise statement in 1991. Therefore, he could have sought judicial redressal of his grievances immediately. But he only kept on making representations. Therefore, the contention that everything happened behind his back, cannot be believed.

20. The next contention of the petitioner is that the stand of the department is contrary to para 52 (b) (2) of the bye laws of the

Society viz., NIRD. As per this bye-law, an employee in the service of the institute at the time of commencement of the bye-laws and holding a post mentioned in bye-law 3 (a) on contract pending review and appointment on a regular basis under bye-law No.12 or holding any post on contract under service bye-law 2 (2) shall continue to be governed by the Contributory Provident Fund scheme. When he is appointed to that post or any other post on a regular basis, he shall have the option to select either.

21. But the above para 52 (b) (2) of the bye-laws do not advance the cause of the petitioner, especially after the employees were called upon to exercise option. Once it is admitted that options were called for, the petitioner cannot fall back upon a deeming fiction.

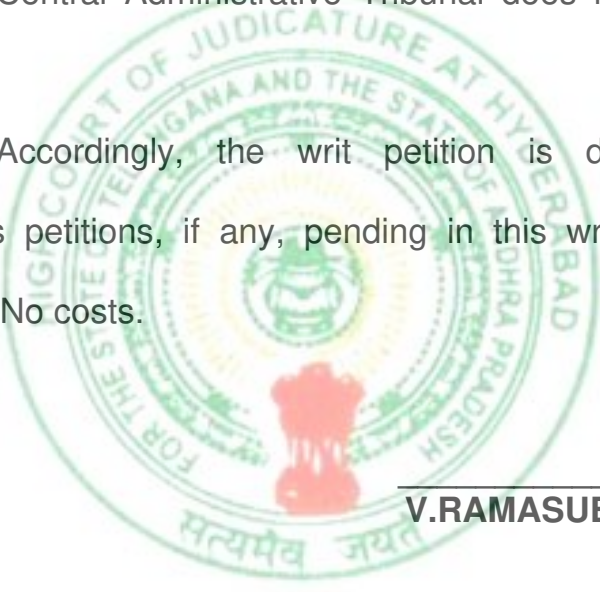
22. It is next contended by the petitioner that the decision taken by the Executive Council on 29-10-1987 was without jurisdiction and without the sanctity of the Government of India office memorandum dated 01-05-1987. In para 3.2 of the office memorandum dated 01-05-1987 of the Government of India, it is stated that the employees of the category indicated therein viz., CPF beneficiaries, will have an option to continue under the CPF scheme and that the option will have to be exercised and conveyed to the concerned Head Office by 30-09-1987.

23. But a careful look at the office memorandum dated 01-05-1987 which show that the same applies primarily to Central Government employees. Unfortunately, the petitioner was not a Central Government employee. He was an employee of a Society

incorporated under the Societies Registration Act, as an autonomous body, controlled by the Central Government. Therefore, the office memorandum may not, *per se*, apply to the petitioner.

24. Again and again, the petitioner reiterated that the factum of regularisation of his services was not known to him. But if it is truly so, the petitioner should be deemed to have slept over all kinds of rights from 1984 including the right to switch over to GPF-cum-Pension scheme. Therefore, we are of the considered view that the order of the Central Administrative Tribunal does not call for any interference.

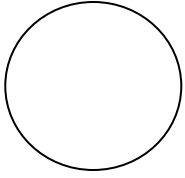
24. Accordingly, the writ petition is dismissed. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.



V.RAMASUBRAMANIAN, J

G.SHYAM PRASAD, J

Date: 16-12-2016
Ak/Ksn



**HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD**



Writ Petition No.13585 of 2013

(per VRS, J.)

December, 2016.
(Ksn)