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

+ W.P.(C) 8151/2016

% ***Judgment dated 16th September, 2016***

NATIONAL COUNCIL OF EDUCATIONAL

RESEARCH & TRAINING Petitioner

Through : Mr.R.K. Singh, Adv.

versus

KRISHAN MURARI GUPTA

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S. MEHTA

G.S.SISTANI, J (ORAL)

CM APPL. 33722/2016

1. Exemption allowed subject to all just exceptions.
2. Application stands disposed of.

W.P.(C) 8151/2016

3. Present writ petition has been filed by the petitioner under Articles 226 and 227 of the Constitution of India against the order dated 3.6.2016 passed by Central Administrative Tribunal (hereinafter referred to as '*the Tribunal*') by which OA No.119/2014 filed by the respondent herein was allowed and the petitioner herein was directed to extend all the benefits of GPF-cum-pension Scheme to the respondent after making necessary deductions.
4. The necessary facts, which are required to be noticed for disposal of this writ petition, are that on 27.9.1977 the respondent was appointed as

a Lecturer with the petitioner herein. On 1.5.1987, the Government of India had issued an Office Memorandum giving an opportunity to the Government employees for switching over to the GPF Scheme from the CPF Scheme. The cut-off date for exercising this option was 30.9.1987. It was also specifically provided that in case any employee did not exercise his option at all, he would be deemed to have opted for the GPF Scheme and if one wanted to continue under the CPF Scheme, he or she would have to specifically opt for the CPF Scheme.

5. It is the case of the petitioner that the respondent specifically opted for the CPF Scheme on 24.9.1987. In the year 1992, the respondent was promoted as a Reader under the CAS Scheme. In the year 2002, the petitioner published an advertisement for direct recruitment of Professors. The respondent along with other internal candidates applied for the selection. Pursuant to his screening along with other external and internal candidates, the petitioner was appointed to the post of 'Professor in Education' vide order dated 24.1.2003. At that stage, the respondent made a representation to the petitioner for exercising his option under the GPF Scheme, as he was given fresh appointment in the year 2003. The respondent also brought to the notice of the petitioner that identically placed persons being, Ms.Pushpa Lata Varma and Mrs.M. Chandra, had been granted this benefit of GPF Scheme. The petitioner rejected the request of the respondent, which has led to the filing of OA 119/2014. The said OA was allowed by the Tribunal vide the impugned order dated 3.6.2016, which led to the filing of the present writ petition.
6. Mr.Singh, learned counsel for the petitioners, submits that the Tribunal has failed to take into account that the respondent in fact continued to remain an employee of the petitioner having been appointed as a

Lecturer in the year 1977. Counsel further submits that the terms of appointment of the respondent remained unchanged and, thus, the respondent having exercised his option of CPF Scheme under the OM dated 01.05.1987, he cannot change his option on the plea that he has been given fresh appointment in the year 2003. Counsel also submits that the premise for making this submission is that the petitioner cannot be treated as a fresh employee.

7. We have heard learned counsel for the petitioner and also examined the impugned order passed by the Tribunal. The facts of the case are not in dispute that in the year 1977 the petitioner was appointed as a Lecturer. In the year 1987, an Office Memorandum was issued by the Government for switching over to the GPF Scheme from the CPF Scheme. The said OM also allowed employees to continue under the CPF Scheme by specifically opting for it and the cut off date for exercising this option was 30.9.1987. Accordingly, the respondent specifically opted for the CPF Scheme. In the year 1992, the respondent was promoted as Reader. Pursuant to the advertisement published in the year 2002 for appointment to the post of Professor, direct recruit, the petitioner was appointed as Professor in Education vide order dated 24.1.2003. At that stage, the respondent made a representation for exercising his option under the GPF Scheme being a fresh appointee. The said request was rejected by the petitioner.
8. It may be noticed that the Tribunal, while allowing the OA, has placed reliance on a decision rendered in the case of **A.P. Verma v. NCERT**, WP.(C)8489/2011, and **A.K. Sacheti v. NCERT**, W.P.(C)8491/2011. The said writ petitions were allowed by a Division Bench of this Court after examining the provisions of the Pension Scheme and the fact that the petitioner herein had acceded to an identical request of one, Sh.M.

Chandra. Paragraphs 10 to 14 of **A.P. Verma** (supra) and **A.K. Sacheti** (supra) read as under:

“10. In the present case, it is observed that the said Ms M.Chandra had opted for the CPF scheme in her erstwhile organization as well as in 1991 when she was absorbed in the services of the respondent NCERT. This is evident from the document appended at page 188 of the present petition. In this regard the respondent after obtaining the approval of the Ministry of Human Resource Development vide letter No.F.1-47/2006-Sch.4 dated 09.04.2007 on the representation of the said Ms. Chandra permitted her to exercise the option to switch over from CPF to GPF/Pension scheme on two earlier occasions. It is also observed that in the case of the said Ms Pushplata Verma, the incumbent was also governed by the CPF scheme while in her erstwhile department and had been permitted by the appointment letter issued to her to get the benefit of pension-cum-gratuity as per the rules of the Council.

11. In the present case, it is observed that in the backdrop of the aforesaid facts, deeming the petitioners be governed by CPF scheme even when it was not in vogue and presuming service conditions of their last service to be applicable upon them, has resulted in a wholly anomalous situation.

12. In view of the fact that the respondent NCERT has permitted similarly placed appointees to switch over to the GPF scheme after being selected through the same recruitment process, a legitimate expectation is raised in favour of the petitioners to be treated in a similar manner. The expectation is further accentuated when the said appointees were permitted to derive the benefit of GPF scheme despite having exercised the option of CPF scheme even after they were absorbed in the service of the respondent NCERT.

13. Therefore, when similarly placed employees of the respondent have been extended the benefit, it would be unreasonable and improper to deny to the petitioners the benefit of the GPF/Pension scheme merely because they were earlier engaged in the service of the respondent NCERT. In this behalf we must observe that the petitioners had been put on probation for a period of two years subsequent upon their appointment to the relevant post in PSSCIVE, Bhopal. The Tribunal failed to appreciate that it is settled law that once a person is appointed to a substantive post through direct recruitment in an open selection after competing with internal and external candidates the appointment on the said post is a fresh appointment. Therefore, in our opinion, the petitioners have been subjected to hostile discrimination, although they were appointed by the same recruitment procedure as others, only because they were working with one of the establishments of the respondent earlier. In our view the same constitutes unequal treatment amongst equals and is violative of Article 14 of the Constitution of India.

14. We, accordingly, allow the writ petitions and set aside the order of the Tribunal. Consequently, the respondents are directed to extend all the benefits of the GPF/Pension Scheme after making necessary deductions to both the petitioners. No costs.”

9. The foregoing observations made in **A.P. Verma** (supra) and **A.K. Sacheti** (supra) are fully applicable to the facts of the present case.
10. We may note that no doubt the petitioner was initially appointed as a Lecturer but he was appointed as a Professor in the year 2003 pursuant to the advertisement published by the petitioner for direct recruitment of Professors and he was termed as fresh appointee.
11. We are unable to accept the arguments of the learned counsel for the petitioner that petitioner was not a fresh appointee for the reasons that not only a fresh letter of appointment was given to the petitioner, but he

was also put on probation for a period of two years. In case, the submission, sought to be made by learned counsel for the petitioner was the understanding of the petitioner itself, then the respondent would not have been put on probation and a fresh letter of appointment would not have been issued to him.

12. We may note that not only persons identically placed as the respondent herein have been allowed to exercise a fresh option but since the petitioner was previously under the employment of the petitioner that he has been denied of the choice. Being appointed as Professor, Direct Recruit, we are of the view that the respondent could have exercised his option at this stage.
13. We are unable to take a different view than the view taken by the other Division Bench of this Court in *A.P. Verma* (supra) and *A.K. Sacheti* (supra). Resultantly, we find no merit in this writ petition and the same is dismissed.

CM APPL. 33721/2016

14. Application stands disposed of in view of the order passed in the writ petition.

G.S.SISTANI, J

I.S. MEHTA, J

SEPTEMBER 16, 2016

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