

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 24.10.2017

Delivered on: 24.02.2017

Coram

The Honourable **Mr.Justice K.K.SASIDHARAN**

and

The Honourable **Mr.Justice V.PARTHIBAN**

W.P.No.19215 of 2015
and M.P.No.1 of 2015 & WMP 1197 of 2016

N.Subramanian

.. Petitioner

versus

- 1 The Commissioner,
Kendriya Vidyalaya Sangathan Head Quarters
18 Institutional Area Shahid Jeetsingh Marg
New Delhi-110 016.
 - 2 The Deputy Commissioner
Kendriya Vidyalaya Sangathan Chennai Region
IIT Campus Chennai-600 036.
 - 3 The Principal
KV.No.II AFS Tamabaram Chennai-600 073.
 - 4 Registrar
Central Administrative Tribunal Chennai
Bench Chennai-600 104.
- .. Respondents

Prayer: This Writ Petition is filed under Article 227 of the Constitution of India, for the issuance of Writ of Certiorarified

Mandamus, to call for the records relating to the order in O.A.No.736/2013 dated 2.6.2015 passed by the Honourable 4th Respondent Tribunal and quash the same as illegal and direct the 1st and 2nd respondent to extend the pension benefits to the petitioner in terms of 1st respondents policy bearing Office Memorandum No. F.No. 152-1/79-80/KVS/ Budget/Part-II dated 01.09.1988.

For Petitioners : Mr. R.Arumugam

For Respondents: Mr.M.Vaidyanathan for R1toR3

ORDER

V.PARTHIBAN, J.

This Writ Petition has been filed against the order passed by the learned Central Administrative Tribunal (in short, 'the Tribunal'), Madras in O.A.No.736 of 2013 along with two other O.As, dismissing the original application filed by the petitioner herein.

2. The writ petitioner herein, has approached the learned Tribunal, seeking the following relief:

"For a direction to the 1st and 2nd respondents to consider the representation dated 02.07.2013 of the applicant in terms of the 1st

respondent's OM in F.No.152-1/79-80/KVS/Budget/Part-II dated 01.09.1988 and further direct the 1st and 2nd respondents to declare that the applicant deemed to have come under the GPF (Pension Scheme) in terms of the Policy communicated under O.M. in F.No.152-1/79-80/KVS/Budget/Part-II dated 01.09.1988 w.e.f. 01.02.1989"

3. The petitioner joined service in Kendriya Vidyalaya Sangathan (hereinafter referred to as 'KVS') on 5.8.1977 as a Primary Teacher on regular basis and became member of Contributory Provident Fund Scheme (in short, 'CPF Scheme') as per the then existing policy of KVS. For the first time, the Government of India introduced General Provident Fund (Pension) Scheme (in short, 'GPF Scheme') on 1.9.1988 purported to be in furtherance of recommendation of IV Central Pay Commission. As per GPF Scheme, the employees who did not exercise their option by 31.1.1996 would automatically get shifted to new GPF Scheme and only employees who want remain with CPF Scheme, they were required to exercise their option. This factual position has not been disputed.

4. It appears that for some reasons, the petitioner remain continued in CPF Scheme as contribution was deducted from his salary towards Provident Fund. However, periodically the petitioner has been representing to the competent authority for conversion of his option to GPF Scheme. Number of representations have been addressed which were filed in the typed set of documents. In spite of such representations, there was no action was forth coming in that regard. In the meanwhile, the petitioner retired from service on attaining the age of superannuation. It appears that on retirement, Provident Fund due to the petitioner had also been settled. However, the representations of the applicant have not been considered positively with reference to the instructions issued under GPF Scheme, which prompted the petitioner to approach the Tribunal seeking the aforesaid relief.

5. On behalf of KVS, it was contended before the Tribunal that by the very conduct of the petitioner having continued with CPF Scheme till his date of retirement, is deemed to have been exercised his option to remain with CPF Scheme. Therefore, he is not entitled to conversion from CPF Scheme to GPF Scheme.

6. It was also contended on behalf of KVS that the very representations made by the petitioner on 9.3.2012 would demonstrate the fact that the petitioner had originally opted to remain in CPF Scheme and subsequently, wanted to change his option. This submission was refuted by the petitioner that by oversight, it was mentioned as if he had opted to remain in CPF Scheme, but the fact remained that all his representations were seeking only conversion from CPF Scheme to GPF Scheme and therefore, by virtue of deeming provision provided in the Pension Scheme, he was deemed to have come over to the Pension Scheme in the absence of specific option exercised by him.

7. After taking note of the legal and factual submissions, the learned Tribunal dismissed the Original Application filed by the petitioner on the ground that the enrollment under CPF Scheme continued to the date of the petitioner's retirement and final settlements having been made under the CPF Scheme, the petitioner cannot be allowed to re-assail from that position. The Tribunal also relied on the order passed by the Hon'ble Supreme Court in the matter of "***KVS versus Jaspal Kaur and others***" and said that the very conduct of the petitioner which

demonstrated that he remained with CPF Scheme, he would not be entitled to convert the option to GPF Scheme. In that view of the matter, the Tribunal dismissed O.A. As against the order of the Tribunal, the present Writ Petition has been filed by the petitioner.

8. The learned counsel appearing for both parties reiterated their submissions put forth before the Tribunal.

9. Shri M.Vaidyanathan, learned counsel appearing for KVS strenuously contended that the representation submitted by the petitioner on 9.3.2013 to the competent authority clearly spells out that he opted to remain in CPF Scheme and once such option is exercised, the petitioner should not be allowed to resile from that option. However, the learned counsel was unable to produce any document in support of his contention that there was indeed option exercised by the petitioner to remain in CPF Scheme. In the absence of of any such document, this Court cannot conclude that the petitioner had exercised his option to remain in CPF Scheme. On the other hand, there were several representations addressed by the petitioner to the competent

authority over a period of time, starting from 1991 till 2013. It is also a fact that by representation dated 7.4.2013, which was addressed to the Commissioner KVS, New Delhi, he specifically denied the fact that he had exercised any option in favour of CPF Scheme and he also stated that by oversight, he had mentioned in his representation dated 9.3.2012 as if he had opted to remain in CPF Scheme. Therefore, in the absence of any option exercised by the petitioner in favour of CPF Scheme, it has to be construed that the petitioner is deemed to have come over to GPF Scheme.

10. As regards the contention of Shri M.Vaidyanathan, learned counsel appearing for KVS, that the petitioner did not pursue the matter till date of his retirement and therefore, he is estopped from switching over from one Scheme to the other. Even in the absence of any proof in support of the option in favour of CPF Scheme, but the very conduct of the petitioner should be construed against him and he cannot be allowed to convert his option to GPF Scheme. In support of his contention, he cited a decision of the Hon'ble Supreme Court reported in 2007 STPL (Service) 82 SC "***KVS versus Jaspal Kaur and***

others)". However, in that case, it was factually demonstrated that the employee therein had opted to the CPF Scheme and therefore, the judgment of the Hon'ble Supreme Court was rendered in that context. As regard the case on hand is concerned, it is not unequivocally demonstrated by the Management of KVS that indeed an option was exercised by the petitioner in favour of CPF Scheme. On the other hand, several representations were addressed by the petitioner to the Government authority, seeking for conversion from CPF Scheme to GPF Scheme, though the petitioner was not legally required to make such representations because of deeming clause.

11. As regards the legal position, the issue has been covered by the decisions of the Hon'ble Supreme Court and the High Court of Delhi. In fact, the same Tribunal in similar applications, had allowed the claims of the employees therein, declaring that they were deemed to be pensioners under pension scheme. In fact, this Court has dismissed the batch of writ petitions in WP 28092 to 28094 of 2015 etc., filed by the Union of India, wherein, the Tribunal allowed the similar claims. In fact, in those cases, option had been exercised by the employees

in favour of CPF scheme, but in spite of the same, applications were filed and allowed by the Tribunal and the writ petitions filed against those orders by the Union of India, came to be dismissed this Court vide order dated 05.01.2007, with the following observation in para 13 and 14:

"13. From the above, it could be seen that even the employees who have originally opted to remain in CPF Scheme and switched over to Pension Scheme because the same was being more beneficial to them, the Court has held that non-grant of better benefits by way of pension and denying the same to one set of employees per se discriminatory notwithstanding the option exercised by the employees to remain in CPF scheme which was given during the extended period of time, are entitled to seek pension under the Pension Scheme. The Delhi High Court has adverted to several decisions of the Hon'ble Supreme Court and other High Courts and passed a detailed judgment in a batch of appeals.

The issues raised before the Delhi High Court were identical and the Court has answered the issues in favour of the employees.

14. This Court, after hearing the arguments on either side, gave its anxious consideration

with reference to the pleadings and the decisions of the Hon'ble Supreme Court and the decision of the Delhi High Court. The natural conclusion emanated from our anxious consideration will only lead to hold that the respondent employees despite their option to remain in CPF Scheme which was given during the extended period of time, are entitled to seek pension under the Pension Scheme. Firstly, the said option given during the time of extended period has no sanctity in law. Secondly, such option given by the employees cannot be held against them in view of the fact that several similarly placed employees of the Central Government were allowed to switch over to the CPF Scheme, meaning that no seriousness attached to the cut of date prescribed originally by the Official Memorandum dated 1.5.1987. If these employees were denied pension in the facts and circumstances, it would certainly amount to discrimination, which *per se* constitutionally impermissible. Moreover, the decision of the Delhi High Court cited *supra* and the contentions which were extracted above, would unequivocally supported the claim of the respondent employees notwithstanding the fact that whether they exercised their option or not.

12. From the above, it could be seen that the law is very settled that in the absence of specific option exercised by the employee towards CPF Scheme, the employee was deemed to have come over to GPF scheme. Therefore, the order passed by the Tribunal dismissing the application is incorrect and cannot be sustained in law.

13. Accordingly, the order passed by the Tribunal in O.A.No.736 of 2013, dated 2.6.2015 is set aside and the prayer sought for by the petitioner therein, is granted. The Official respondents are directed to convert the petitioner as pensioner under GPF Scheme forthwith, calculate and pay the revised pension including the arrears for which, he became eligible by such conversion. At the same time, the petitioner is also directed to refund the amount received by him towards CPF Scheme with 9% p.a. interest from the date when he received till the date of payment. It is also made clear that arrears of pension payable to the petitioner under GPF Scheme may be adjusted towards refund of the P.F. amounts received by the petitioner with interest. In the event of not realizing the entire amount, the remaining portion amount may be refunded by the petitioner.

The Writ Petition is disposed of on the above terms. No costs. Consequently, connected MPs are closed.

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(K.K.S.,J.) (V.P.N.,J.)
24-02-2017

Index: Yes/No
Internet: Yes/No

To

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