

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.25354 of 2015

R.Renukadevi

.. Petitioner

Vs.

1.The Commissioner,
Kendriya Vidyalaya Sangathan,
Head Quarters, 18 Institutional Area,
Shahid Jeetsingh Marg,
New Delhi - 110 016.

(R1 cause title amended as per order
dated 18.01.2016 by STJ & GCJ
in WPMP.No.1198 of 2016 in
W.P.No.25354/15)

2.The Deputy Commissioner,
Kendriya Vidyalaya Sangathan,
Chennai Region, IIT Campus,
Chennai - 600 036.

3.The Principal,
Kendriya Vidyalaya
Ashok Nagar,
Chennai - 600 083.

4.Registrar,
Central Administrative Tribunal,
Chennai Bench,
Chennai - 600 104.

.. Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the order in O.A.No.1166 of 2013 dated 02.06.2015 passed by the Hon'ble 4th respondent Tribunal and quash the same as illegal and direct the 1st and 2nd respondents 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 the petitioner	:	Mr.R.Arumugam
For the Respondents 1 to 3	:	Mr.M.Vaidyanathan
For the Respondent - 4	:	Tribunal

ORDER

(Order of the court was delivered by Justice V.PARTHIBAN)

The writ petition is filed against the order passed by the Central Administrative Tribunal, Madras Bench in O.A.No.1166 of 2013 dismissing the application filed by the petitioner vide order dated 02.06.2015.

2. The petitioner herein, who was an employee of Kendriya Vidyalaya approached the learned Tribunal with the following prayer:-

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/Budge/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. According to the petitioner, at the time of joining in the Kendriya Vidyalaya Sangathan (KVS), there was no pension scheme for KVS employees. Subsequently, after 4th pay commission, pension scheme was introduced vide office memorandum dated 01.09.1988. As per which employees joining service in the Sangathan on or after 01.01.1986 shall be governed only by the G.P.F Scheme and will have no option for the C.P.F scheme. However for all CPF beneficiaries, who were in service on 01.01.1986 and who are still in service on the date of issue of these orders will be deemed to have come over to the pension scheme. By virtue of the deeming clause, the petitioner was under the impression that she had been brought into the pension scheme. Therefore, she claims for payment of pension under the pension scheme which was denied to her, which action of the management was questioned by the petitioner.

4. Before the learned Tribunal, on behalf of the KVS, it was contended that an option was given to KVS employees to switch over from Central Provident Fund Scheme (CPF) to pension scheme in 1988. But, the petitioner continued to be in the CPF scheme and never objected to the same. She continued in the CPF scheme without demur and she cannot seek for pension under the pension scheme as she had not exercised any option after introduction of pension scheme in the year 1988 .

5. After taking note of the rival submissions, the learned Tribunal dismissed the application on the ground that the petitioner continued till the date of retirement with the CPF scheme and her case was distinguishable from the case covered by the judgment relied upon by her. For the solitary reason, the learned Tribunal dismissed the claim of the petitioner.

6. Heard Mr.R.Arumugam, learned counsel appearing for the petitioner and Mr.M.Vaidyanathan, learned counsel appearing for the caves.

7. According to the counsel for the petitioner, there was no question of exercise of any option to come under the Pension scheme as after the introduction of the pension scheme in the year 1988, she is deemed to have come under the scheme enabling her to get pension. On the other hand, only an employee who wanted remain with the CPF scheme, has to specifically exercise option immediate to the memo. In the instant case, no such option was exercised, admittedly, by the petitioner for remaining with CPF scheme. Therefore, by virtue of deeming clause in the office memorandum dated 01.09.1988, the petitioner is deemed to have brought under the pension scheme no matter whether any option was exercised by her towards pension scheme.

8. 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.

9. Further, the Delhi High Court in "Smt.Shashi Kiran and others versus Union of India and others" etc., reported in 2016 SCC OnLine Del4819" has dealt with the issue in extenso and finally held that even if an option exercised by the employees, they would still be entitled to request for change of option to pension scheme in view of subsequent developments and change in socio and economic scenario.

10. Even going to the extent of holding that she had exercised her option in favour of Central Provident Fund Scheme, such exercise of option was not valid and subsisting in view of subsequent social and economic development. It is also to be seen from the decision of the Delhi High Court that

several employees have been allowed to switch over from CPF to pension scheme even after the exercise of option originally in favour of the CPF scheme. Such being the case, singling out a few employees in some departments on an erroneous understanding of the office memorandum dated 01.09.1988, would be per se discriminatory and hence consequentially impermissible.

11. In the above circumstances, the learned Tribunal has not appreciated the claim of the petitioner in proper perspective with reference to the above said office memorandum and decisions cited on behalf of the petitioner. The learned Tribunal was misguided by the fact that the petitioner continued to remain under CPF scheme without due appreciation of the fact that all employees, on introduction of the pension scheme in 1988, deemed to have come under pension scheme. Merely because the petitioner continued to contribute to the CPF scheme, her right to get pensionary benefits under the pension scheme cannot stand negated, as the right which falls for consideration before us is the constitutional right to equal treatment, as envisaged under Article 14 of the Constitution of India.

12. In these circumstances, we are unable to accept the decision of the learned Tribunal which is impugned in the writ petition, as the Tribunal erred in dismissing the application. In the circumstances, this Court has no other option except to set aside the order passed by the learned Tribunal.

13. Accordingly, the order passed by the Tribunal in O.A.No.1166 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 allowed on the above terms. No costs. Consequently, connected MPs are closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

1.The Commissioner,
Kendriya Vidyalaya Sangathan,
Head Quarters, 18 Institutional Area,
Shahid Jeetsingh Marg,
New Delhi - 110 016.

2.The Deputy Commissioner,
Kendriya Vidyalaya Santhathan,
Chennai Region, IIT Campus,
Chennai.

3.The Principal,
Kendriya Vidyalaya
Ashok Nagar,
Chennai - 600 083.

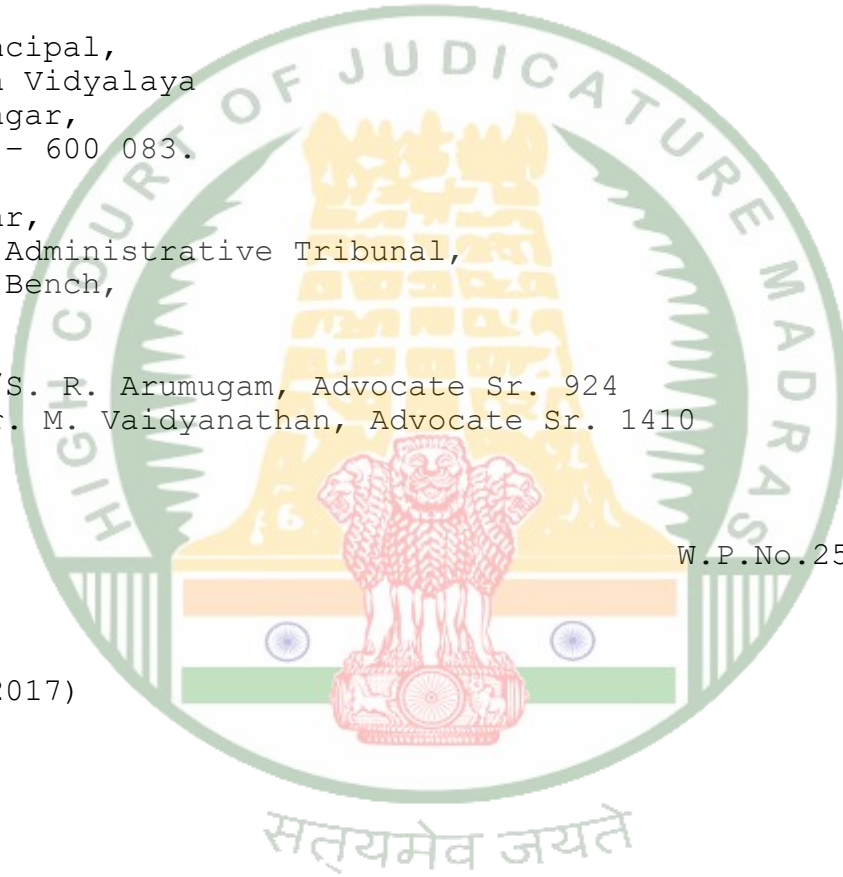
4.Registrar,
Central Administrative Tribunal,
Chennai Bench,
Chennai.

+1cc to M/S. R. Arumugam, Advocate Sr. 924

+1cc to Mr. M. Vaidyanathan, Advocate Sr. 1410

W.P.No.25354 of 2015

RR(CO)
VR(15/03/2017)



WEB COPY