

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4576 of 2018

1. Bir Mani Prasad Singh, son of Late Harihar Prasad Singh, resident of Flat No. C-309, Hope Mahendra Apartment, Chitragupta Nagar, Munna Chak, P.O. Lohiya Nagar, Kankarbagh, District Patna, presently posted on the post of Tgt (Works Experience) at Kendriya Vidyalaya Danapur Cantt, District Patna

2. Surendra Prasad Verma, son of Late Kameshwar Prasad Verma, resident of Vill. Chare, P.O. Abgil, P.S. Korma, District Sheikhpura, presently posted on the post of PRT at Kendriya Vidyalaya Danapur Cantt, District Patna

... .. Petitioner/s

Versus

1. The Union of India through the Chairman Kendriya vidyalaya Sanghathan, Headquarter, New Delhi, 18 Institutional Area, Saheed Jeet Singh Marg, New Delhi-16

2. The Vice Chairman Kendriya Vidyalaya Sanghathan, Headquarter, New Delhi, 18 Institutional Area, Saheed Jeet Singh Marg, New Delhi-16

3. The Commissioner, Kendriya Vidyalaya Sanghathan, Headquarter & Board of Governors, New Delhi, 18 Institutional Area, Saheed Jeet Singh Marg, New Delhi-16

4. The Addl. Commissioner (Admn.), Member Secretary, Kendriya Vidyalaya Sanghathan, Headquarter, New Delhi, 18 Institutional Area, Saheed Jeet Singh Marg, New Delhi-16

5. The Joint Commissioner (pers.), Kendriya Vidyalaya Sanghathan, Headquarter, New Delhi, 18 Institutional Area, Saheed Jeet Singh Marg, New Delhi-16

6. The Joint Commissioner (Finance), Kendriya Vidyalaya Sanghathan, Headquarter, New Delhi, 18 Institutional Area, Saheed Jeet Singh Marg, New Delhi-16

7. The Deputy Commissioner (Finance)/ Sr. Audit and Accounts Officer/ Sr. Accounts Officer/ Sr. Audit Officer, Kendriya Vidyalaya Sanghathan, Headquarter, New Delhi, 18 Institutional Area, Saheed Jeet Singh Marg, New Delhi-16

8. The Assistant Deputy Commissioner (Pers.), Kendriya Vidyalaya Sanghathan(Regional Office) Patna, P.O. Lohiya Nagar, Kankarbagh, District Patna

9. The Accounts Officer/ Superintendent of Accounts/ Senior Audit Officer, Kendriya Vidyalaya Sanghathan (Regional Office) Patna, P.O. Lohiya Nagar, Kankarbagh, District Patna

10. The Principal, Kendriya Vidyalaya, Danapur Cantt., P.O. Danapur Cantt., Distt, Patna 801503

11. The Joint Secretary(CVO & PG), Ministry of Human resources Development, Department of School Education and Literacy, Room No. 107, D Wing, Shashtri Bhawan, New Delhi-110001

12. The Under Secretary, Ministry of Human resources Development, Department of School Education and Literacy, Room No. 107, D Wing, Shashtri Bhawan, New Delhi-110001

13. The Under Secretary, Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioners Welfare, Govt. of India, 3rd floor, Lok Nayak Bhawan, Khan Market, New Delhi-110001



... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ashok Kumar Choudhary, Advocate
Mr. Anil Kumar Tiwary, Advocate
Mr. Akshansh Ankit, Advocate
For the K.V.S. : Mr. G.K. Agrawal & Mr. Kumar Ravish, Advocates
Mr. Kashyap Kaushal, Advocate
For the U.O.I. : Ms. Chhaya Mishra, CGC

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date : 05-04-2018

Six employees of Kendriya Vidyalaya Sangathan (hereinafter referred to as the Sangathan) decided to file OA 573 of 2013 before the Central Administrative Tribunal, Patna Bench, Patna. The prayer made before the Tribunal was to give a direction upon the respondent Sangathan to allow them to switch over from Contributory Provident Fund Scheme to General Provident Fund cum Pension Scheme.

2. The Tribunal after examining the factual position and the law dismissed the OA finding no merit in the same. The writ application, therefore, has been preferred before the High Court under Article 226 of the Constitution of India.

3. The Court notices that out of the six applicants before the Tribunal only two have approached the High Court. The reason we are informed is that three of the applicants were confronted with the option which they exercised to continue



with CPF Scheme and since the Sangathan somehow could not trace out the option of these two petitioners they felt emboldened enough to approach the High Court praying to make a distinction between other cases and their case probably fortified by the fact that the Sangathan somehow may not be in a position to produce the option, therefore, they can build up a case that they had not exercised option to continue with CPF Scheme and they are entitled to switch over to GPF cum Pension Scheme.

4. Way back on 01.09.1988 a circular was issued by the authorities where opportunity was given to the employees of the Sangathan to change over from CPF Scheme to GPF cum Pension Scheme. The cut-off-date for exercising such option was fixed as 31.01.1989. In the present case, even though the respondent authorities have not been able to trace out the option of these two petitioners but it is not disputed that the two petitioners have continued to make contribution to the CPF Scheme right from the time they entered into service till date. When explanation was demanded by the Court as to why would an employee continue to make contributions for three decades to the CPF Scheme, which is deducted every month and is reflected in their pay slip when they were covered by the GPF cum



Pension Scheme, they are evasive and would like to wish away the hard fact facing them.

5. No doubt only in the year 2012 these petitioners and some other similarly situated employees started agitating their demand that they be allowed to switch over from CPF to GPF which was looked into and ignored for the reason that the deadline for such option expired way back on 31.01.1989.

6. The Court wanted to look into one of the representations which may have been filed by these petitioners before the authorities, which was said to be sometime in the year 2012 but their representation is not available on record but representation of one Amarendra Kumar Singh has been brought as Annexure-9 to the OA.

7. From the reading of the representation, it is evident that more or less every employee has gone by some kind of standard representation which was filed before the authorities and to use the expression “the cat is out of the bag” by reading the very first paragraph of the representation as to why many of the employees continued to make contribution to the CPF and chose not to switch over to GPF cum Pension Scheme. In the opening paragraph of the representation the statement reads as under :



“That it is respectfully submitted that both under the CPF and GPF-cum-Pension Scheme, the terminal benefits were equal at the time of appointment and entry into service. When the applicant and other similarly situate employees joined service, the retirement benefits admissible to identically placed employees of the Sangathan were almost equal. Only the mode of payment was different. Under the GPF-cum-Pension Scheme, a part of the Pension was commuted and paid in lump sum on retirement and the remaining commuted part was paid on monthly basis post retirement without any benefit of Dearness Allowance. Hence, there was no disparity in the terminal benefits admissible to similarly situate set of employees of the Sangathan. However, now the huge financial disparity created between two similarly situate set of employees has resulted in equals being treated unequally. The applicants governed by the CPF Scheme and other employees governed by the GPF-cum-Pension Scheme despite being similarly situate and being governed by the same service conditions have different retirement benefits.”

8. Way back in the year 1988, when the option for switching over was given, obviously, the employees in question did not see any benefit in switching over from CPF to GPF. They got wise only in the 21st century after the recommendation of the 5th and 6th Pay Revision. It is only then that the clamoring started



by some of the employees who have comfortably contributed to the CPF for the last three decades, uninterruptedly.

9. The question which arose is whether such employees who by their conduct of making contributions towards CPF month after month, decades after decades can be allowed to now plead that in terms of the scheme since there was a presumption integral to the Scheme which stated “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”.

10. Learned counsel for the petitioners puts much emphasis on the wording of the scheme. His contention is that they did not have to do anything. They would be deemed to have come over to the GPF cum Pension Scheme by deeming fiction and in absence of any evidence having been produced on behalf of the Sangathan it has to accrue to the benefit of these petitioners.

11. The argument, however, attractive, is required to be repelled because the conduct of these petitioners does not instill confidence in this Court to tilt in their favour because if these petitioners were serious in switching over to the GPF Scheme and if they had not opted for the CPF they would not



have made contribution for three decades when and all this while they are still in service. It is only when they are inching towards retirement that they suddenly realised that the GPF cum Pension Scheme is positively better bargaining than the CPF in which they have continued to contribute all these years.

12. Reliance has been placed on behalf of the petitioners on an Hon'ble Supreme Court decision rendered in the case of *Union of India and another Vs. SL Verma and others* reported in (2006) 12 SCC 53. Attention of the Court has been drawn to paragraph 7 of the said decision, which reads as under :

“7. The Central Government, in our opinion, proceeded on a basic misconception. By reason of the said office memorandum dated 1-5-1987 a legal fiction was created. Only when an employee consciously opted for to continue with the CPF Scheme, he would not become a member of the Pension Scheme. It is not disputed that the said respondents did not give their options by 30-9-1987. In that view of the matter Respondents 1 to 13 in view of the legal fiction created, became the members of the Pension Scheme. Once they became the members of the Pension Scheme, Regulation 16 of the Bureau of Indian Standards (Terms and Conditions of Service of Employees Regulations, 1988) had become ipso facto applicable in their case also. It may be that they had made an option to continue with the CPF Scheme at a later stage but if by reason of the legal fiction



created, they became members of the Pension Scheme, the question of their reverting to the CPF would not arise. Respondent 14 has correctly arrived at a conclusion that an anomaly would be created and in fact the said purported option on the part of Respondents 1 to 13 was illegal when a request was made by Respondent 14 to the Union of India for grant of approval so that all those employees shall come within the purview of the pension Scheme. In our opinion, the Ministry of Finance proceeded on a wrong premise that the Pension Scheme was not in existence and it was a new one. Two legal fictions, as noticed hereinbefore, were created, one by reason of the memorandum, and another by reason of the acceptance of the recommendations of the Fourth Central pay Commission with effect from 1-1-1986. In terms of such legal fictions, it will bear repetition to state, Respondents 1 to 13 would be deemed to have switched over to the Pension Scheme, which a fortiori would mean that they no longer remained in the CPF scheme.”

13. No doubt the legal fiction should accrue to the benefit of an employee because of the manner in which the scheme had been formulated but the factual matrix in the present case is otherwise. If these petitioners had not exercised their option to continue with the CPF, the Government would not continue to deduct contribution of these petitioners under the CPF head which is reflected in their salary slip month by month



for almost three decades. There would have been surely a huge hue and cry raised by such employees. If deductions and contributions were not credited into GPF cum Pension Scheme and the salary slip still showed deductions and contributions towards CPF Scheme for 30 years which is a long time for any employee to realise that he has been consistently and persistently making contributions to CPF and not to GPF. Contributions and deductions in the CPF head from these employees is an indication that the option had been exercised by them to continue with the CPF and failure on the part of Sangathan to produce the option exercised by these two petitioners unfortunately cannot accrue in their favour, especially when the option related to the year 1988 and when 30 years have gone past. There is a limit as to maintenance of certain records and the petitioners cannot draw advantage of the same.

14. Counsel representing the Sangathan, on the other hand, submits that the conduct of these petitioners itself is an indication that they wanted to stick with the CPF Scheme and they have made constant contributions for decades after decades and this fact was known to them all along. There is neither an element of surprise nor deduction is made without their knowledge. Now the whole game is to somehow derive benefit



of pension after they are reaching their age of superannuation, by jugglery with facts and law.

15. Attention of this Court had been drawn to a similar matter which travelled before the Hon'ble Apex Court and similar kind of plea was taken that no option was produced before the Courts to show that they had opted for the CPF Scheme, therefore, by deeming fiction they will be treated to have switched over to the GPF cum Pension Scheme. The Hon'ble Apex Court negated such argument in the case of ***KVS and others Vs. Jaspal Kaur and another*** reported in **(2007) 6 SCC 13**. The Hon'ble Supreme Court after considering the factual position as well as taking note of the GPF Scheme concluded in paragraph 7 of the said decision, which reads as under :

“7. The last pay certificate issued to Respondent 1 when she handed over charge on 23-5-1992 clearly indicates that CPF subscription of Rs 130 was being deducted and that she had opted for the pay of CPF Scheme and rate of subscription is Rs 130 for a month and allotment of CPF Account No. 1889 was being transferred. On the face of these documents CAT and the High Court should not have held that option was not exercised by Respondent 1. Pursuant to this Court's order the original service-book of Respondent 1 was produced. Even on 10-6-2005 in the last pay certificate it has been



stated that she had opted for the CPF Scheme. Similar is the position in the last pay certificate dated 19-4-2003 and the last pay certificate of 18-1-1982. All these documents establish that Respondent 1 had exercised the option for the CPF Scheme. Merely because the original document relating to exercise of option was not produced that should not be a ground to ignore the ample materials produced to show exercise of the option. CAT and the High Court were not justified in taking a different view.”

16. Taking cue from the ratio of the decision in the case of Jaspal Kaur (supra) this Court can safely infer that no employee will continue to make contribution to CPF Scheme for more than three decades without any murmur or protest and if at all any kind of representation came to be filed, it was only done in the 21st century sometime in the year 2012.

17. Such kind of wagering is not permissible before a Court of law. The Court will stand for enforcement of legal right of a citizen and not for derivative kind of interpretation which may be given under the scheme whatever be their conduct.

18. With due respect to learned counsel the judgment and decision rendered in the case of S.L. Verma and others (supra) is distinguishable in the glaring facts of the present case, and, therefore, these petitioners cannot derive advantage if they



have continued to make contribution of CPF virtually all their life in service.

19. In the given facts, we are not inclined to interfere with the order of the Central Administrative Tribunal, Patna Bench, Patna rendered vide its order dated 09.03.2017 in OA 573 of 2013.

20. The writ application stands dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Rajesh/-

AFR/NAFR	AFR
CAV DATE	NA
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