$~42

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

Date of decision: 27.09.2019

\+ W.P.(C) 10527/2019 & CM APPL. Nos. 43570-71/2019

KENDRIYA VIDYALAYA SANGATHAN AND ANR. ..... Petitioners

Through: Mr. Rashmi Bansal, Adv.

versus

SH. V. D. PANDEY ..... Respondent

Through: Mr. R.V. Sinha, Mr. A.S. Singh & Mr. Amit Sinha, Advs.

CORAM:
HON'BLE MR. JUSTICE G.S. SISTANI
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

G.S.SISTANI, J. (ORAL)

The respondent approached the Central Administrative Tribunal (CAT) by filing O.A. No. 1999/2014. The O.A. was allowed by order dated 04.04.2019, which has led to the filing of the present writ petition.

2. Notice to show-cause as to why this petition be not admitted.

3. Mr. R.V. Sinha, learned counsel for the respondent appears on advance copy and accepts notice.

4. With the consent of the parties, we set down the writ petition for final hearing and disposal today itself.

5. Some facts which are required to be noticed are as under : The respondent joined the services of Kendriya Vidyalaya Sangathan ('KVS' for short) in the year 1981 as Trained Graduate Teacher (TGT). In the year 1985 he was promoted to Post Graduate Teacher (PGT); in the year 2006 he was promoted to Vice Principal ; and thereafter to Principal in the year 2011. The respondent superannuated on 30.06.2014.

6. It is not in dispute that prior to his retirement, he had made a representation on 22.11.2013 stating that he was entitled to be extended the benefit under the GPF-cum-Pension Scheme but that he was shown as a CPF Scheme beneficiary, though he had not exercised the option at all. The representation was replied to on 11.03.2014 and the respondent was informed that he was liable to be continued under the CPF scheme since deductions were being effected continuously towards subscription to CPF. In this backdrop, the O.A. was filed before the Tribunal.

7. Learned counsel for the petitioners submits that the order of the Tribunal is bad in law since the Tribunal has failed to take into consideration a series of documents which were placed on record to show that the respondent had opted for the CPF Scheme, although, counsel fairly admits that there is no communication addressed by the respondent which is available in the record of the petitioners to show that the respondent categorically made this choice. The stand of the petitioners which was before the Tribunal and before this court, is that having regard to the fact that the respondent accepted the CPF Scheme throughout the tenure of his employment, he must be deemed to have opted for it. The petitioner relied

upon various communications exchanged between the parties in this regard, including the number provided to the respondent under the CPF Scheme. She also places reliance on a decision rendered by the Apex Court in the case ***K.V.S. & Ors. vs. Jaspal Kaur & Ors.*** dated 06.06.2007 in Civil Appeal No. 2876/2007.

8. Mr. Sinha, learned counsel for the respondent has opposed this petition and submits that there is no infirmity in the order passed by the Tribunal. He relies upon the admission made by the petitioners *vide* communication dated 14.09.2010. He further submits that in a large number of matters, it has been repeatedly held that those persons who specifically opt for the CPF Scheme would be covered under the said scheme; and all other persons would automatically be covered under the GPF scheme.

9. We have heard learned counsel for the parties and considered their rival submissions.

10. Counsel for the petitioners has placed reliance on various documents which she has annexed alongwith the writ petition. The first document dated 05.03.1987 relied upon by counsel for the petitioners is an application for Temporary Advance From Contributory Provident Fund. This document bears CPF No. being JRC-2157. The second document relied upon is communication dated 25.04.1989. Reliance is also placed on an order dated 29.04.1989, which is a Proforma for Sanction of Advance From Provident Fund. In this document also, the account number *i.e.* JRC-2157 is reflected. Attention of this court is also drawn to communication dated 24.08.1995 wherein the respondent had sought issuance of a Salary Certificate and balance in CPF account for the year 1994-95. The certificate was issued

pursuant thereto on 25.08.1995, wherein the balance in the CPF account was shown as Rs.30,000/-. She submits that in this document, a revised CPF account number is being reflected *i.e.* CPF A/c No. 3705, which would only have been issued to him at his request. The petitioner also contends that the Last Pay Certificate and annual statement placed on record also show that before his retirement, the CPF A/c No. reflected as 3705.

11. We have carefully examined the documents on which strong reliance has been placed by the petitioner. The first document which has been relied upon pertains to the year 1987, where no doubt, the respondent has shown his CPF account number. The second document which is relied upon is communication dated 25.04.1989; however, in this document, there is neither any account number nor any mention of the CPF Scheme. The only nomenclature reflected here is 'Provident Fund'. The subsequent order dated 29.04.1989 reflects the account number as JRC-2157; and there is no doubt that vide communication dated 24.08.1995, the respondent had sought issuance of Salary Certificate and balance in the CPF account. The Salary Certificate dated 25.08.1995 and Last Pay Certificate dated 07.04.2003 issued pursuant to the request also reflect the CPF number and the petitioner's counsel is correct that a new CPF number was allotted.

12. However, we are of the view that all these documents would not change either the legal position or the factual position which is reflected in the records of the petitioner itself. We deem it appropriate to reproduce communication dated 14.09.2010 issued by the petitioner herein in this regard:

"F: 2717/233/2010/KARANJA/Admn/367

To,
The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
IIT, Powaim Regional Office,
Mumbai – 76

Sub: ***<u>Change of CPF Scheme to GPF Cum Pension Secheme – reg</u>***

Sir,

With reference to the above cited subject, I am sending herewith an application along with copy of BOG meeting held on 31.5.1988 submitted by Shri. V.D. Pandey, Vice Principal of this Vidyalaya.

As per his application following observations are hereby forwarded for your kind perusal and further necessary action:

1. *he never applied/opted for continuing CPF which is also verified from his record held in the Vidyalaya.*
2. *he is deemed to come over pension scheme as not opted for continuing CPF by 30.09.1987.*
3. *Presently he is kept in CPF scheme by KVS without any consent or reason.*
4. *he requests to be treated for GPF cum-pension scheme.*

Thanking you,
With regards,
(Dr. I.P. Singh)
Principal.

Encl as above."

13. This communication clearly brings on record that the respondent never applied or opted for continuing under the CPF Scheme. It is not unusual that persons who are in service give very little attention to post-retirement matters till the age of superannuation. Any communications pertaining to the years 1984-85 would have little value considering the communication dated 14.09.2010 and the communication addressed by the respondent to the petitioner prior to his retirement in the year 2013; and moreover it is relevant to note that the GPF Scheme came into force only in the year 1988. It is not in dispute as per the scheme, all employees are to be considered under the GPF Scheme unless an employee specifically opts for the CPF Scheme. The Office Memorandum dated 01.09.1988 in this regard reads as under :

> *"The employees of the category mentioned above will, however, have an option to continue under the CPF Scheme, if they so desire. The option will have to be exercised and conveyed to the concerned Head of office/Principal by 31.1.1989 in duplicate, in the form enclosed (one form may be sent to this office while the other kept with personal records of the employee concerned) if the employees wish to continue under the CPF Scheme. <u>If no option is received by the Head of Office/Principal by the above date and in this office through them by 28-2-1989 the employees will be deemed to have come over to the Pension Scheme.</u> The Head of Office/Principals are to forward in one lot options exercised by employees for retention of CPF Scheme received by them, to reach Sangathan's Office latest by 28-02-1989. Where no option to continue under the CPF Scheme is received by them from any, a nil report be sent by due date viz. 28-2-1989."*

14. In view of the aforesaid Office Memorandum dated 01.09.1988, we find that there is no infirmity in the view taken by the Tribunal. In the above backdrop, the judgments relied upon would not apply to the facts of the present case as in the said case, the appellant had opted for the CPF scheme. There is therefore no merit in the writ petition; and the same is accordingly dismissed.

15. We are informed by counsel for the petitioner that the respondent has filed a contempt petition. Counsel for the respondent submits that the respondent will not press the contempt petition for one month.

16. The present petition is dismissed.

G.S.SISTANI, J.

ANUP JAIRAM BHAMBHANI, J.

SEPTEMBER 27, 2019/*uj*