

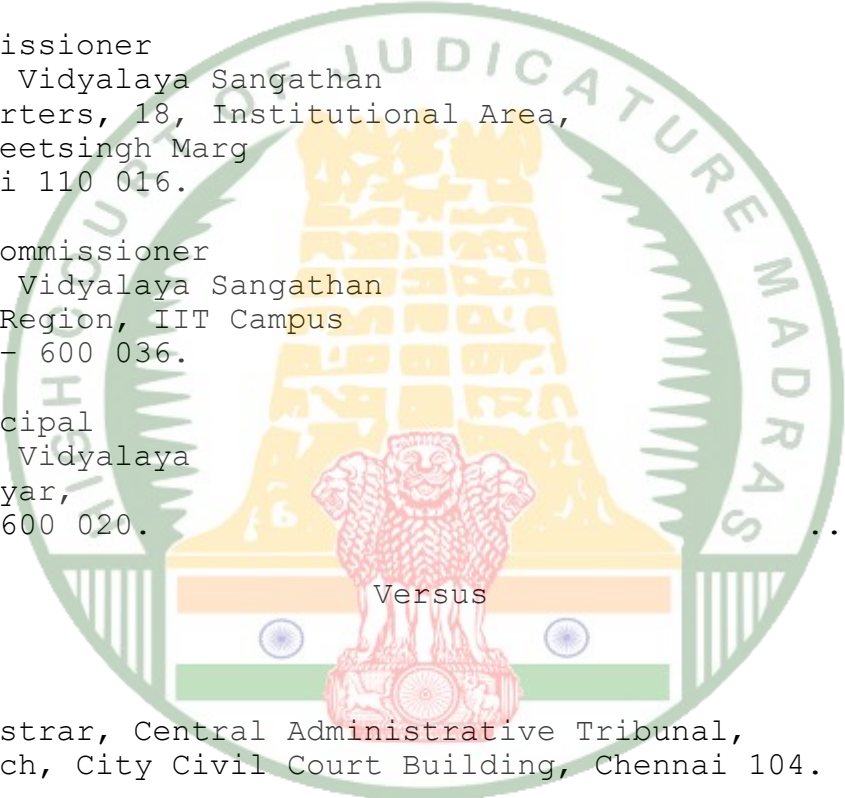
IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MRS. JUSTICE R.HEMALATHA

WP.No.17165/2020 & WMP.No.21966/2020

- 
- 1.The Commissioner
Kendriya Vidyalaya Sangathan
Head Quarters, 18, Institutional Area,
Shahid Jeetsingh Marg
New Delhi 110 016.
- 2.Deputy Commissioner
Kendriya Vidyalaya Sangathan
Chennai Region, IIT Campus
Chennai - 600 036.
- 3.The Principal
Kendriya Vidyalaya
CLRI, Adyar,
Chennai 600 020.
- ..Petitioners
- Versus
- 1.R.Amutha
- 2.The Registrar, Central Administrative Tribunal,
Madras Bench, City Civil Court Building, Chennai 104.
- ..Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records of the 2nd respondent [Hon'ble Central Administrative Tribunal, Madras Bench] culminating in the impugned order dated 02.04.2019 in OA.No.422 of 2018 and quash the same.

For Petitioners : Mr.M.Vaidyanathan

For Respondent : Mr.R.Arumugam

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

- (1) By consent, the writ petition is taken up for final disposal and is disposed of by this order.
- (2) Mr. R. Arumugam, learned counsel accepts notice on behalf of the sole respondent/Original Applicant.
- (3) The official respondents in OA.No.422 of 2018 on the file of the Central Administrative Tribunal, Madras Bench [in short 'the Tribunal'], are the petitioners herein.
- (4) The respondent herein filed OA.No.422 of 2018 praying for the relief of calling for the records relating to the 1st respondent vide Impugned Memorandum dated 08.03.2018, with a consequential declaration that the respondent/Original Applicant deemed to have come under the GPF [Pension Scheme] in terms of the Policy dated 01.09.1988 with effect from 01.02.1989 and consequently, extend the benefits of GPC [Pension Scheme] to the applicant/respondent herein. The said Original Application, after contest, came to be allowed along with similar applications filed in OA.Nos.1282, 925 and 683 of 2018 filed by Tvl.G.Sekhar Reddy, M.Sakthivel and Tmt.G.Ramani.
- (5) Mr. M. Vaidyanathan, learned counsel for the petitioners/official respondents in the Original Application, has invited the attention of this Court to the Office Memorandum of the 1st respondent dated 01.09.1988 and would submit that as per Paragraph 2, the persons who are joining the service in Kendriya Vidyalaya Sangathan [in short KVS] on or after 01.01.1986, shall be governed only by General Provident Fund Scheme and they have no option for the CPF Scheme. However for all CPF beneficiaries, who were in service on 01.01.1986, the decision taken shall be implemented in the manner herein after indicated and in terms of Paragraph 3.2, they are having an option to continue under the CPF Scheme, if they so desire and it has to be exercised and conveyed to the Principal/concerned Head of Office by 31.01.1989, in duplicate and if no option is received by the Head of Office / Principal by the above said date and in their office through them by 28.02.1989, the employees deemed to have come over to the Pension scheme.
- (6) The primordial submission made by the learned counsel for the petitioners that despite the fact that the respondent/Original Applicant did not exercise the option, the fact remains that till her retirement, she has continued to make contribution to the CPF scheme and since she has belatedly approached the

Tribunal, she was guilty of delay and laches. It is the further submission of the learned counsel for the petitioners that the Tribunal went by the fact of the orders dated 24.02.2017 and 23.08.2018 passed in WP.Nos.19215 of 2015 and 16467 of 2017, overlooking the fact that the relief can be denied even on the ground of delay and laches and insofar as the orders passed in the writ petitions are concerned, the same is to be complied with on pain of contempt and as such, it cannot be cited as a precedent to grant the relief in favor of the respondent/Original Applicant and prays for setting aside the order.

- (7) Mr. R. Arumugam, learned counsel appearing for the respondent/Original Applicant would submit that it is an admitted case of the writ petitioners that the respondent/Original Applicant did not exercise the option in terms of Paragraph No.3.2 and in that event, she would be automatically governed by GPF scheme and the Tribunal has rightly taken note of the same and granted relief and hence, prays for dismissal of this writ petition.
- (8) In response to the said submission, the learned counsel for the petitioners has drawn the attention of this Court to the decision of the Hon'ble Supreme Court of India reported in 2007 [6] SCC 13 [Kendriya Vidyalaya Sangathan Vs. Jaspal Kaur and another] and in similar facts and circumstances, the Civil Appeal filed by the Kendriya Vidyalaya Sangathan came to be allowed and hence, prays for interference.
- (9) This Court has considered the rival submissions and also perused the materials placed before it.
- (10) A perusal of the materials placed, especially the Reply Affidavit filed by the 2nd respondent therein / 2nd petitioner herein would disclose that the respondent herein / Original Applicant did not exercise the option to come from CPF to GPF and in that event, paragraph 3.2 of the Office Memorandum would squarely come into operation. It is relevant to extract paragraph 3.2 of the Office Memorandum dated 01.09.1988 in No.152-1/79-80/KVS/Budget/Part-II:-

''3.2 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 31.01.1989, 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. If no option is received by the Head of Office / Principal by the above date and in this office through them by 28.02.1989, the employees will be deemed to have come over to the Pension Scheme. The Head of Office / Principal 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., 28.02.1989.'

(11) Once the respondent / Original Applicant did not exercise the option in terms of the above said paragraph, she would automatically come under GPF and the respondent / Original Applicant did not sleep over for her rights for the reason that immediately after retirement, she approached the Tribunal by filing the above said Original Application. Insofar as the reliance placed by the learned counsel for the petitioners of the decision of the Hon'ble Supreme Court of India reported in 2007 [6] SCC 13 [cited supra] is concerned, the facts of the case would disclose the respondent therein/employee had exercised the option to continue in CPF Scheme. However, in the case on hand, admittedly, the respondent herein / Original Applicant did not exercise the said option and as such, paragraph 3.2 of the above cited Office Memorandum dated 01.09.1988 would definitely come to the aid of the respondent / Original Applicant. The Tribunal apart from the said aspect, has also taken note of the challenge made to the similar orders by the petitioners herein in WP.Nos.19215 of 2015 and 16467 of 2017, which came to be dismissed vide orders dated 24.02.2017 and 23.08.2018 respectively. In the considered opinion of the Court, the Tribunal has rightly reached the conclusion to grant the relief to the respondent / Original Applicant and in the absence of any infirmity or error apparent on the face of the record, this Court would not normally exercise the powers of judicial review in respect of the orders passed by the Tribunal. It is fairly brought to the knowledge of this Court by the learned counsel for the petitioners that SLP [D] No.10965 of 2018 referred in paragraph No.6 of the impugned order came to be dismissed on the ground of delay.

12. In the result, the writ petition stands dismissed and the petitioners / official respondents are directed to comply with the impugned order passed by the Tribunal, as confirmed in this writ petition and convert the respondent herein / Original Applicant as

pensioner under the GPF scheme and pay her, the pensionary benefits within a period of six months from the date of receipt of a copy of this order/uploading of the order in the website. It is made clear that whatever amount received by the 1st respondent herein / Original Applicant, under CPF scheme, the same have to be refunded as expeditiously as possible.'

13)The writ petition stands disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

***para-12 deleted and incorporated vide order of this court, dated 07/01/2021 and made in WP.No.17165 of 2020**

-s/d-

Assistant Registrar(Lok Adalat)

dt 20/01/2021

//True Copy//

Sub Assistant Registrar

AP

To

1.The Registrar,
Central Administrative Tribunal,
Madras Bench,
City Civil Court Building,
Chennai 104.

To be incorporated in the
place of order despatched on
06/01/2021

+lcc to Mr.M.Vaidhiyanathan, Advocate, SR.NO.39276

+lcc to Mr.R.Arumugam, Advocate, SR.NO.*1747

WEB COPY

WP.No.17165/2020

MJB (CO)
KKV/29/12/2020
aa20/01/2021