

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.12.2020

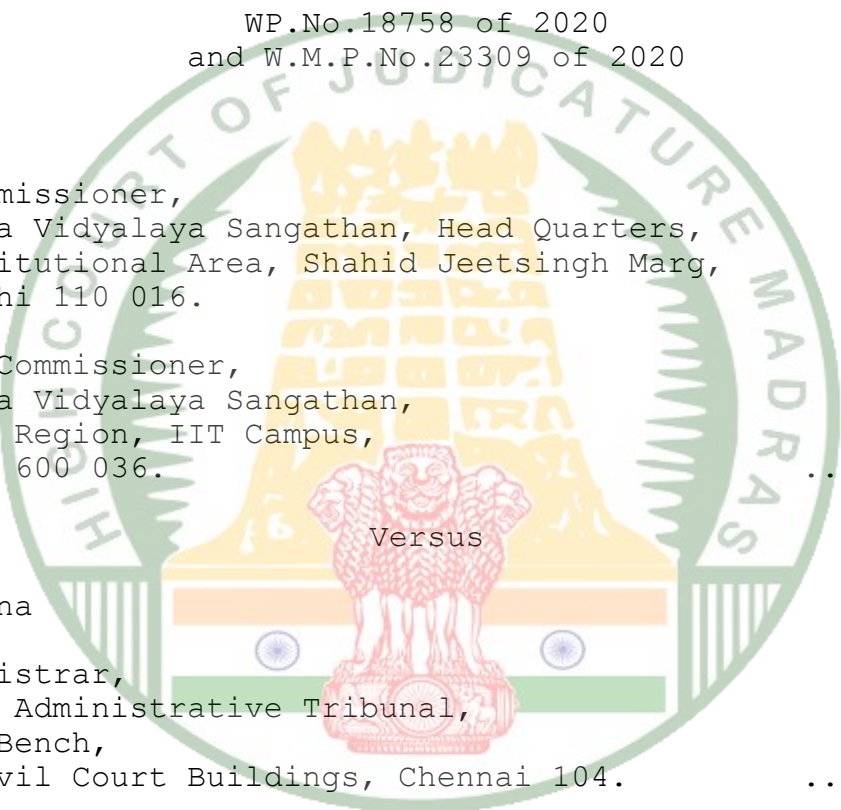
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THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

WP.No.18758 of 2020
and W.M.P.No.23309 of 2020

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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. ..Petitioners
- Versus
1. R.Shobana
2. The Registrar,
Central Administrative Tribunal,
Madras Bench,
City Civil Court Buildings, 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 (Central Administrative Tribunal, Madras Bench) culminating in the impugned order dated 03.06.2020 in O.A.No.1668/2019 and quash the same.

For Petitioner : Mr.M.Vaidyanathan
For RR 1 : Mr.Arumugam for R1

ORDER

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

The official respondents in O.A.No.1668 of 2019, are the petitioners. The 1st respondent, along with similarly placed persons, had filed O.A.Nos.1248, 702, 1076, 1139, 1140, 1249, 1384, 1141, 1668 of 2019 and O.A.NO.1 of 2020, praying for quashment of the proceedings dated 25.08.1987, with a consequential direction to extend the benefits under GPS (Pension) Scheme on the basis of the Memorandum of the 2nd respondent therein, Office Memorandum dated 22.11.1995, etc., The Tribunal, vide common order dated 03.06.2020, has disposed of the said Original Applications with the following directions and it is relevant to extract paragraph nos.22 and 23 of the same:

22. We had heard both sides and perused the decisions produced in support of the applicant's case. It is seen that a similar matter came up before this Bench in V.Thyagarajan V. Union of India & Others (OA 1094/2015) and it was decided in favour of the applicant holding that when the applicant was appointed directly, only GPF Pension Scheme was available and hence he is entitled to get the benefit of the said Scheme. Similarly, in Johnson P John V. Deputy Commissioner, KVS and 2 others (OA 457/11), the Ernakulam Bench had considered the same matter and allowed the OA. The Hon'ble High Court of Kerala in OP(CAT)597/13(z) dated 13.08.2013 had confirmed the said order and it has become final. The applicants OA Nos.1076/19, 1139/19, 1140/19, 1249/19, 1141/19 and 1/2020 are employees who had not given any option to continue in the CPF Scheme. As per the scheme, employees who had not given option to continue in CPF, will be deemed to have come under the GPF (Pension) Scheme from the date of introduction. They mainly rely on the decision of the Hon'ble High Court of Madras in K.Subramanian V. Commissioner (reported in 2017 STPL 9496 Madras). According to them, they are also similarly placed persons as the applicant in that case and they are also entitled to get the benefit of GPF (Pension) Scheme. We find no reason to deny the benefit given in the above case to the applicants herein.

23. The applicants in these cases are also similarly placed and there is no reason to deny the said benefit to the applicants herein. Hence we dispose off these Oas with the following directions. No costs:

1. The respondents are directed to grant the benefits of GPF (Pension) Scheme to the applicants

tin the above Oas w.e.f the date of appointment to their respective posts for from dates on deemed coming over to the GPF Scheme.

2. The applicants are directed to refund the amount received from CPF, if any, at the time of their retirement without any interest. It is also made clear that the applicants are also not entitled to get any interest on the pension accrued from KVS.

3. The respondents are directed to complete the exercise of implementing the above order within period of six months from the date of receipt of a copy of this order.

The official respondents challenging the legality of the said order has filed this Writ Petition.

2. Facts leading to the present round of litigation have been narrated in detail and in extenso in the impugned common order and hence there is no necessity to restate the same.

3. The learned counsel appearing for the petitioners would submit that in the light of the decision rendered by the Hon'ble Supreme Court of India in Civil Appeal No.2876 of 2007 (KVS and Others Vs. Jaspal kaur and Others), the present writ petition may be allowed.

4. Per contra, Mr.Arumugam, learned counsel appearing for the 1st respondent would submit that similar orders, put to challenge in W.P.No.17165/2020, came to be decided in favour of the respondent/original applicant and the Tribunal, even in the present impugned common order in paragraph no.22, had supposed to rely upon the similar orders and decide the same in favour of the original applicant and as such, the present Writ petition lacks merits and prays for dismissal of the same.

5. This Court has considered the rival submissions and also perused the materials placed before it.

6. It is relevant to extract Paragraph no.3.2 of the Office Memorandum of Kendriya Vidyalaya Sangathan, in F.No.152-1/79-80/KVS/Budget/Part.II, dated 01.09.1988:

'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.''

7. The petitioners/official respondents did not produce any material to show that the respondents herein had exercised option, in the light of the above cited decision relied on by the learned counsel appearing for the petitioners. The above cited decision of the Hon'ble Supreme Court of India in Civil Appeal No.2876 of 2007 (KVS and Others Vs. Jaspal kaur and Others), have no application to the case on hand for the reason that there the option was exercised, but in the case on hand, no material has been produced to show that the respondent/original applicant had exercised the said option. Once option is not exercised in terms of paragraph no.3.2 of the Kendriya Vidyalaya Sangathan, dated 01.09.1988, the respondent is deemed to have come under GPF Pension scheme and the Tribunal has rightly taken note of the said aspect and rightly reached the conclusion to give a disposal of the original applications with certain directions. It is also fairly brought to the knowledge of this Court by the learned counsel appearing for the petitioner that challenge made to the similar orders have also ended in dismissal in W.P.No.17165 of 2020.

8. In the light of the aforesaid facts and circumstances, this Court is of the considered view that there is no merit in this Writ Petition. In the result, the Writ Petition is dismissed, confirming the order dated 03.06.2020 in O.A.No.1668/2019 and the petitioners are granted six months time from the date of receipt of a copy of this order / uploading of the order in the website, to comply with the directions issued by the Tribunal in the impugned order, as confirmed in this Writ Petition. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

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

+1CC to Mr.R.Arumugam, Advocate, SR41516

WP.No.18758/2020

CO (BS)
BDL/11/01/2021



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