

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate side

PRESENT:

HON'BLE JUSTICE MADHURESH PRASAD
AND
HON'BLE JUSTICE SUPRATIM BHATTACHARYA

W.P.C.T. 72 of 2024

Shri Syam Prasanna Ghosh
Vs.
Union of India & Ors.

For the Petitioner	:	Ms. Manika Roy, Ms. Ankita Chowdhury, Mr. Atanu Sur
For the U.O.I./ Respondent Nos.1 and 2	:	Mr. Amitabha Nayak, Mr. Subrata Santra
For Respondent Nos.4 & 5	:	Mr. Sauvik Nandy, Sr. Adv., Mr. Ujjwal Kanti Jana
Heard on	:	07.11.2024, 21.11.2024 & 05.12.2024
Judgment on	:	10.12.2024.

MADHURESH PRASAD, J.:-

1. The petitioner was serving as Chief Accountant and Finance Officer in a State Government undertaking, namely, the Great Eastern Hotel. He joined the Board of Practical Training (BDPT)

under the Central Government on 01.03.1988. The admitted position is that having served in the BOPT for more than two decades thereafter he retired on 31.01.2010. The petitioner, one decade thereafter in the year 2020, filed a writ petition claiming the benefit of switching over to the GPF scheme instead of the CPF scheme to which he was a member while serving the State Government undertaking, and thereafter BDPT till the date of his retirement in the year 2010.

2. The first writ petition filed by the petitioner was numbered as W.P.A. 1658 of 2020. The same was disposed of on 29.04.2022, directing the respondent no.2 therein to decide the issue regarding the petitioner's claim to receive benefits under the GPF scheme.
3. The authorities have thereafter passed a reasoned order rejecting the petitioner's claim on 17.08.2022. The rejection was again assailed by the petitioner by invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India. This second writ petition filed by the writ petitioner was numbered as W.P.A. 23505 of 2022. On 05.12.2022, the second writ petition was also disposed of in view of the fact that the petitioner's employer BOPT, though an autonomous organization, but had been brought within the purview of the Central Administrative Tribunal by a notification issued under Section 14 of the Administrative Tribunals Act. The Writ Court, therefore, considered it appropriate

that the petitioner should first avail the remedy before the Central Administrative Tribunal. The petitioner thereafter approached the Central Administrative Tribunal by filing an Original Application. The Original Application filed by the petitioner was numbered as 00002 of 2023 and was disposed of by an order dated 20.09.2023, holding the reasoned order to be justified. The Tribunal did not find any infirmity in the fact that the authorities did not accede to the petitioner's request for extending benefits under the GPF Scheme. The Original Application was dismissed.

4. It is the specific case of the petitioner that several submissions made in the course of hearing before the Tribunal as well as the written arguments submitted by the petitioner was not considered by the Tribunal. The petitioner, in the circumstances, filed a Review Application bearing No. RA 350/33/2023. The application for review of the order passed by the CAT in the OA has been disposed of on 28.02.2024.
5. The rejection is broadly on the ground that the application for review is not maintainable since it does not fall within the scope of review jurisdiction. It is in these circumstances that the petitioner is before this Court challenging the two orders, one being passed in OA No. 00002 of 2023 and the other being passed in RA No. 350/33/2023.
6. The entire issue which has been raised by the petitioner is relying on an office memorandum issued by the Ministry of

Personal/Grievance and Pensions, Government of India on 01.05.1987. A bare perusal of the office memorandum reveals that the same has been issued in view of the recommendations made by the 4th Central Pay Commission (CPC) that all CPF beneficiaries in service on 01.01.1986 should be deemed to have come over to the pension scheme on that date unless any one specifically opts not to continue under the CPF scheme. Based on this recommendation, the office memorandum has been issued, which is applicable to all civilian Central Government Employees who are subscribing to Contributory Provident Fund under the CPF Rules subject to the exclusion of certain class of employees specified in Clause 6.1 of the office memorandum. Clause 3.2 of the office memorandum reveals the purpose and intent of the same and is considered appropriate to reproduce herein :-

“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 by 30.09.1987 in the form enclosed if the employees wish to continue under the CPF Scheme. If no option is received by the Head of Office by the above date the employees will be deemed to have come over to Pension Scheme.”

7. This scheme, however, is circumscribed by a cut off date specified in Clause 3 of the office memorandum which reads as follows:

“3. All CPF beneficiaries, who were in service on 1.1.1986 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.”

8. A bare perusal of these relevant provisions of the office memorandum dated 15.06.1987, extracted herein shows that all the Central Government employees who were in service on 01.01.1986 and continued to be in service up until 01.05.1987, were required to exercise an option by the cutoff date (30.09.1987) on the prescribed proforma to continue under the CPF scheme. In absence of exercise of such options, they were deemed to have come over to the pension scheme. The respondents in the reasoned order passed by them on 17.08.2022, have taken a ground for rejecting the petitioner's claim that since he was not in service in between 01.01.1986 to 01.05.1987 in the Central Government, the scheme of the Central Government was not applicable to the petitioner. Thus, he was not in a position to claim any benefit of a scheme issued by the Central Government.
9. The learned Counsel for the petitioner, however, submits relying on a single bench Judgment of the Delhi High Court in the case of ***University of Delhi Vs. Santosh Kaur Sangari & Ors.*** that since the petitioner, now is a Central Government employee, he cannot be deprived the benefits of the office memorandum dated 01.05.1987.

10. It is submitted by the learned Counsel that bare perusal of the office memorandum makes the object of the scheme obvious that it contemplates switching over to the GPF scheme of the Central Government Employees unless they opt not to do so. The reasoned order depriving the petitioner of such benefits, although he is a Central Government employee, therefore is unsustainable in the eyes of law.
11. The learned Counsel for the BOPT as well as the UOI have unanimously opposed the relief claimed in the writ petition. It is their specific case relying upon the office memorandum as well as the speaking order passed by the authority on 17.08.2022 that the scope and application of the office memorandum is explicit from bare perusal of the same and therefore, a claim by an employee who is not an employee of the Central Government in between 01.01.1986 and 01.05.1987, would not be tenable under the scheme/office memorandum. It is also submitted that the petitioner continued to avail the benefits of the CPF scheme from 01.03.1988 till the date he retired in year 2010. Learned Counsel for the petitioner submitted that he had been making representations since while he was in service. Thus, an admitted position emerges that having retired in the year 2010, for the first time the petitioner has approached the Writ Court raising a claim for the benefit of the GPF scheme under the office memorandum

dated 01.05.1987, in the year 2020, i.e. about a decade after he had retired.

12. As regards, the Judgment of a single Judge of the Delhi High Court cited by the learned Counsel for the petitioner, it is submitted that the same has been rendered in facts and circumstances which are distinguishable from the facts and circumstances of the present case. In that case which is being relied upon, the professors of the university who are petitioners before the Hon'ble Supreme Court, had been extended the benefits in terms of the Government of India office memorandum dated 01.05.1987. In the present case, there is no such fact or claim that prior to joining the BOPT on 01.03.1988, the petitioner was extended the benefits of the Government of India scheme. The Judgment of the Hon'ble Apex Court, therefore, is clearly distinguishable on facts, the present petitioner during the relevant period (01.01.1986 to 01.05.1987) was serving under the State Government of West Bengal. There is thus no occasion for the petitioner to claim parity with the petitioners of W.P.(C) No. 2740 of 2004 where the petitioner were employees of the Delhi University to which the benefits of the Central Government scheme as contained in office memorandum dated 01.05.1987 has been duly extended by a notification.

13. Having heard the parties we observe that the scheme contained in the Office Memorandum dated 1st May, 1987 is relied upon by the petitioner to claim the relief of switching over from the Contributory Pension Fund scheme to the General Provident Fund scheme. It is not in dispute that the same is circumscribed by a cut off date 1st January, 1986 to 1st May, 1987. It is also not in dispute that during this period the petitioner was serving in a State Government Undertaking under the Government of West Bengal. He was not an employee of the Central Government during the relevant period. Clause 3 of the Office Memorandum dated 1st May, 1987, extracted above is also not denied or disputed by the petitioner.
14. A bare perusal of the scheme contained in Office Memorandum, including paragraph 3 extracted above leaves no room for doubt that the scheme for switching over to the G.P.F. scheme was available to all C.P.F. beneficiaries but only those who are in services as early as 1st January, 1986, and up to the date of issuance of the Office Memorandum dated 1st May, 1987. We are informed that the scheme under the Office Memorandum was subsequently extended to future date/s.
15. We are of the opinion that even if such fact is to be accepted, the same would not give rise to any claim in favour of the petitioner for being allowed to switch over to the scheme. Our such

conclusion is based on a plain reading of the Office Memorandum which contemplates the C.P.F. beneficiary to be “who were in service on 1st January, 1986 and....”. The petitioner does not claim to be in service on 1st January, 1986.

16. It is his specific claim that he has joined the BOPT on 1st March, 1988, more than two years after the cut off date fixed in the Office Memorandum, under which he is claiming benefits. The petitioner, therefore has no enforceable claim whatsoever for which the Tribunal/this Court should exercise its powers.
17. The issue of the claim being belated is also required to be considered for the reason that from the time line noted above it is more than obvious that after joining the BOPT under the Central Government on 1st March, 1988 till his retirement on 31st January, 2010 the petitioner did not avail any remedy in law before any forum. In respect of the claim raised in the present case arising out of O.A. No. 00002 of 2023.
18. The plea of the petitioner that he had filed representations also does not come to the aid of the petitioner as regards the issue of the petitioner’s claim being belated as noted above even after retiring in 2010. The petitioner has waited for another 10 years before approaching the Central Administrative Tribunal by filing writ petition bearing W.P.A. No. 1658 of 2020. The reasoned order

passed in compliance of the direction passed in the said writ proceedings, is again subject matter of the present writ proceedings.

19. It is by now a well settled law that a claim which is otherwise barred by delay and laches cannot be resuscitated by filing of representations. In this connection we may refer to decision of the Apex Court in the case of **Surjeet Singh Sahni -Vs.- State of Uttar Pradesh and Others** reported in **(2022) 15 SCC 536**. The relevant extracts of the judgment are delineated below:

“8. As observed by this Court in a catena of decisions, mere representation does not extend the period of limitation and the aggrieved person has to approach the Court expeditiously and within a reasonable time. If it is found that the writ petitioner is guilty of delay and laches, the High Court should dismiss it at the threshold and ought not to dispose of the writ petition by relegating the writ petitioner to file a representation and/or directing the authority to decide the representation, once it is found that the original writ petitioner is guilty of delay and laches. Such order shall not give an opportunity to the petitioner to thereafter contend that rejection of the representation subsequently has given a fresh cause of action.”

20. The fact that the petitioner has not raised the issue sought to be raised by way of the present proceedings before the Tribunal for

more than a decade while in service under the Union Government and for even 10 years thereafter depicts the conduct of the petitioner to be an indolent litigant and such delay of more than two decades cannot be lightly brushed aside. Thus, on the ground of delay also, the claim being barred by limitation under the Act the petitioner would not be entitled to any relief. This inordinate delay would also be a relevant factor to be considered by this Court exercising discretionary jurisdiction under Article 226 of the Constitution of India, governed by the principle of delay and latches. Having considered the matter with this perspective we find that the inordinate delay is also not supported by any valid reason, based on which the petitioner may overcome the hurdle of delay and latches.

21. The judgment cited by the petitioner, though a judgment of a Single Bench of the Delhi High Court and not binding on this Division Bench as a precedent, we are venturing to examine the same. Before the Delhi High Court the petitioner therein was raising the same claim for grant of the same benefit based on the same office memorandum dated 1st May, 1987, as has been done by the present writ petitioner. However, there is a significant distinguishing feature between the two claims. Before the Delhi High Court the petitioner's serving the Delhi University were made beneficiaries of the office memorandum dated 1st May, 1987 by a

notification issued in this regard. In the present case, however, the scheme was never extended to the Government of West Bengal or its undertaking/s. The petitioner at that time of coming into force of the scheme (1st January, 1986) was not in the service of the Central Government, nor the benefits of the scheme were extended to his employer (Government of West Bengal undertaking). We, therefore, find that no benefit whatsoever can be claimed by the petitioner by relying upon decision of the Delhi High Court in the case of **Dr. Santosh Kaur Sangari** (*supra*).

22. We are, therefore, of the considered view that the Tribunal has rightly refused the relief prayed for by the petitioner relying upon the Office Memorandum dated 1st May, 1987. We, therefore, find no reason to interfere with the decision of the Tribunal either in the original application arising out of Transfer Application No. 00002 of 2023 or the order dated 28th February, 2024 passed in the review application arising from the decision in T.A. No. 00002 of 2023 dated 20th September, 2023.
23. The writ petition, therefore, stands dismissed.

I agree.

(Supratim Bhattacharya, J.)

(Madhuresh Prasad, J.)