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W.P.No.4103 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.4103 of 2021

V.Thanikachalam

...

Petitioner

versus

1.Union of India,
Represented by the Secretary to the Government,
Ministry of Education,
(Department of Higher Education),
Shastri Bhavan,
New Delhi -110 001.

2.The National Institute of Technical
Teachers Training and Research,
Taramani, Chennai - 600 113.
Represented by its Chairman.

3.The Director and Member Secretary,
National Institute of Technical
Teachers Training and Research,
Taramani, Chennai - 600 113. ...

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings of the 3rd respondent in Ref:Estt/VT/Pension/20-21 dated 24.11.2020 quash the same and direct the respondents to grant the petitioner benefits under the General Provident Fund-cum-Pension-cum Gratuity Scheme with interest from 01.10.2011.



For Petitioner : M/s.V.S.Manimekalai

For Respondent No.1 : Mr.S.Janarthanam
Standing Panel Counsel

For Respondent Nos.2 & 3 : Mr.A.R.L.Sundaresan
Additional Solicitor General of India
for Mr.R.D.Ashok Kumar

ORDER

Heard M/s.V.S.Manimekalai, learned counsel for the petitioner and Mr.S.Janarthanam, learned Standing Panel Counsel for the 1st respondent and Mr.A.R.L.Sundaresan, learned Additional Solicitor General of India for the respondents 2 and 3 and perused the materials available on record.

2. The petitioner has joined the National Institute of Technical Teachers' Training Institute [NITTTR], Taramani, in Civil Engineering on 31.03.1976 and in the year 1978, he was relieved from NITTTR and joined the Regional Engineering College, Trichy, as an Assistant Professor in Civil Engineering. The petitioner again joined the NITTTR as Assistant Professor on 01.03.1979. After joining as Assistant Professor, he submitted a Letter dated 14.03.1979, subscribing to Contributory Provident Fund (CPF) from



the month of March 1979. Based on the written request made by the petitioner, he was placed under CPF Scheme. The petitioner was appointed as a Program Executive on 22.09.1989 and he was governed by CPF-G cum Gratuity Scheme. However, the petitioner later joined as a Professor in the Corresponding course with a different scale of pay.

3. On 12.08.2011, the petitioner submitted an application for re-employment and also seeking permission to opt for GPF Scheme. However his application was rejected on 05.11.2011 and he retired on 30.11.2011. On 05.03.2012, the petitioner filed an Appeal before the 1st respondent. However, the 1st respondent directed the petitioner to file an appeal before the Board of Governors. Accordingly, he filed an appeal before the Board of Governors but no order has been passed. Hence, the petitioner filed W.P.No.34617 of 2012 seeking a writ of mandamus to dispose his appeal. Consequent to the direction given by this Court, his representation was considered but rejected on 24.11.2020 by the 2nd respondent.



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4. M/s.V.S.Manimekalai, learned counsel for the petitioner submitted that similarly placed persons like the petitioner are given the benefit of General Provident Fund Scheme [GPF] but the petitioner was not allowed to switch over to GPF-cum-Pension-cum-Gratuity Scheme. It is further submitted that the petitioner was not aware of the rejection of his earlier request dated 24.11.2020 and he came to know the rejection order only consequent to his RTI application. The petitioner's appointment in the year 1995 is a new appointment with new scale of pay and hence his earlier option in favour of CPF ought not to have been treated as his option in the new appointment also.

5. Mr.A.R.L.Sundaresan, learned Additional Solicitor General of India for the respondents 2 and 3 submitted that the Ministry of Personnel and Training *vide* Office Memorandum in OM.No.F.3(1)-Pension Unit/85, dated 06.06.1985 called for the Central Government Employees, who were in service as on 31.03.1985 to exercise their option and to opt for either the CPF Scheme or the Pension Scheme.



6. It is made clear in the Office Memorandum dated 06.06.1985 that the option should be exercised within a period of 6 months from the date of the said Office Memorandum and on failure to exercise the option would be presumed as an option to continue under the CPF Scheme. Since the petitioner did not exercise the option and stick to his earlier option on continuing the CPF Scheme, he is not entitled to conversion once again to GPF especially after getting the settlement done as per the CPF Scheme.

7. The petitioner who had initial appointment as Lecturer in the NITTTR had sent his request to admit him under CPF contribution from the month of May 1979 and to deposit the amount in his Old Account No.CPF G-41. However, on 06.06.1985, the Ministry of Personnel and Training had issued a Circular by giving option to those Government servants, who were in service as on 31.03.1985 and all those who retired from service on or after that date would be covered under the pensionary scheme. The maximum time for exercising the option was fixed at 6 months from the date of issue of the Official Memorandum i.e. 06.06.1985.



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8. In fact, the Board of Governors had approved the said Circular to be adopted for implementation in the Institute on the terms and conditions set out therein. One of the important terms of the above Circular is failure of the Officer to exercise an option within the prescribed time limit of 6 months and failure to exercise the option will be presumed to be an option to continue in the existing CPF Scheme. Admittedly, the petitioner did not exercise any option to switch over from the CPF to the Pension Scheme.

9. The petitioner got appointment on 21.02.1995 to the post of Professor in Correspondence Course. It is claimed by the petitioner that the said appointment is a new appointment with new scale of pay and hence the petitioner ought to have been given an opportunity to exercise his option to switch over to GPF Scheme once again. In fact, the petitioner had sent a request on 19.07.1999 to be placed under GPF Pension scheme. But the said request was rejected stating that the petitioner had already exercised option and it had attained finality. Though the petitioner claims that the said order of rejection was not served upon him, the files of the 2nd respondent would show that the petitioner had acknowledged the same on 28.02.2020 by



affixing his signature. Thereafter, the petitioner had not chosen to challenge the said order.

10. The petitioner had sent a letter on 12.04.2010 requesting the 2nd respondent to contribute and credit the difference between 10% of the revised pay and 10% of the old pay for a period from 01.01.2006 to 31.08.2009 in his account. The same was also sanctioned on 10.05.2010 and credited in his account. After the petitioner got retired on 30.11.2011 due to superannuation, he even received the accrued amount in his CPF towards full settlement and received a cheque dated 08.11.2011 for Rs.34,01,635/-. Yet another payment of Rs.15,74,898/- was also made towards his account and the petitioner had accepted the same.

11. Now the petitioner turns around and claims that he should be allowed to be considered under GPF Scheme or Pension Scheme. The same was rejected by the 2nd respondent for the following reasons:-

“The proposal to consider and seek approval to extend all benefits under GPF-cum-Pension Scheme with regard to Dr. V. Thanikachalam along with an order dated 29-01-2020 from the



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Hon ble High Court in the WP.34617 of 2012 were placed before the Finance Committee meeting held on 29-10-2020. The extract of the Resolution from the Minutes of the Meeting is given below:

The Committee went through the proposal in-depth and in accordance with the documents, the similar request dated 19-07-1999 from the above Professors were discussed in the 39th Finance Committee held on 27-12-1999 and their request has not been accepted by the then Committee indicating reason as per the Sl.No.3.6 contained in the O.M. No.4/1/1987. PIC-I dated 1st May 1987 as “option once exercised shall be final”. The matter was again brought to the notice of FC on 29-10-2020. The FC after detailed deliberation advised the Director, NITTTR to issue the following speaking order:

It is brought to the notice of FC/BOG, that Dr.V.Thanikachalam and Dr.D.Brahadeeswarn, former Professors of NITTTR Chennai have specifically opted for Contributory Provident Fund (CPF) in the year 1999. Therefore, the provisions of MOF OM No No.4/1/1987, PIC-I dated 1st May 1987 that all those employees who were in service as on 1.1.1986 and those who did not opt for GPF shall be deemed to have been opted for GPF is not applicable to aforesaid Professors as both of them have specifically opted for CPF and that their similar request dated 19.7.1999 was also discussed in 39th FC of NITTTR Chennai



held on 27.12.1999 and was not agreed to. Hence their post option for coming over to GPF is not agreed to.”

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12. When opportunity was available to the petitioner at the first instance consequent to the Official Memorandum dated 06.06.1985 issued by the Ministry of Personnel and Training, the same was not utilised by the petitioner. Subsequently, after he joined as a Professor in the Corresponding Course, he submitted a renewal request in the year 1999 and the same was rejected and the rejection order was also communicated to the petitioner. The petitioner did not choose to challenge the same as well. The petitioner got tempted once again on the verge of his retirement and he tried to switch over to GPF Scheme. In fact, on 27.12.1999, it is confirmed by the 2nd respondent that the petitioner and another staff alone had opted to continue the CPF Scheme without utilising the option given through the Circular of the Central Government. So the petitioner has made a conscious choice of continuing with the CPF Scheme.

13. M/s.V.S.Manimekalai, learned counsel for the petitioner submitted that even those employees who omitted to exercise GPF option



can be considered in the event of the refund of the amount received by them already. Attention was drawn to the judgment of the High Court of Punjab and Haryana made in *Moti Ram Vs. Union of India* reported in **2013(1) I.L.R 313**.

14. But the fact of the said case is completely different from the facts of the case on hand. In the said case, an option has been given to those employees who had been appointed prior to 01.01.2004 to switch over to GPF Scheme. The benefit was implemented by many of the persons who had retired from service before 01.01.2004 and hence it was held that all those who were not in service at the time when the Rule came into force are entitled to the pension benefit. But in the case on hand, the petitioner had retired only on 30.11.2011 and till such date, the petitioner was consciously continuing in the GPF Scheme.

15. Mr.A.R.L.Sundaresan, learned Additional Solicitor General of India for the respondents 2 and 3 has relied on the judgment of the Hon'ble Supreme Court held in *C.Jacob Vs. Director of Geology and Mining* reported in **(2008) 10 SCC 115** and submitted that no fresh cause of action



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would arise when Courts direct the Authorities to consider the stale or dead claims, which is otherwise barred by limitation. In the instant case, the petitioner who omitted to challenge the rejection order of the year 2000, cannot try to give life to his inaction by way of filing a fresh Writ Petition and by getting an order to consider his representation.

16. It is worthwhile to extract the relevant portion of the above judgment, as under:-

“9. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly, they assume that a mere direction to consider and dispose of the representation does not involve any “decision” on rights and obligations of parties. Little do they realise the consequences of such a direction to “consider”. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to “consider”. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the



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representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.

10. Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.

11. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do so may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor



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amount to some kind of “acknowledgment of a jural relationship” to give rise to a fresh cause of action.”

17. It is further submitted that a claim seeking GPF cannot be made after retirement and after getting all benefits under CPF Scheme, without any protest. Allowing to opt for GPF Scheme once again, in such case it would amount to giving double benefits. Reliance was placed on the judgment of the Hon'ble Supreme Court in **PEPSU Road Transport Corporation Vs. Amandeep Singh** reported in (2017) 2 SCC 766 wherein it is held as under:-

“25. In view of the above, it is well settled that the notice inviting option need not to be personally served to the employees unless the Regulation or any instruction so provides. The 1992 Regulations which are being considered in the present case had already been interpreted in PEPSU RTC vs. Mangal Singh [(2011) 11 SCC 702] as noticed above. This Court having already held that the 1992 Regulations do not contemplate any personal service of notice to the employees the finding in the judgment of the courts below holding otherwise for decreeing the suit of the plaintiff are unsustainable. From the facts of the present case, it is clear that although the Regulations were in force from 1992, the plaintiff retired on 30-11-2011 and after retirement received CPF benefits without any protest and at no point of time before



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*retirement he has raised any grievance. The benefit which was available to him under CPF Scheme was received by the plaintiff, he cannot be allowed to have another benefit flowing from the pension scheme which he never opted. Extending benefit of the pension scheme to the plaintiff shall be extending double benefits- CPF benefit as well as pension scheme which was never contemplated by the Regulations. In any view of the matter, the issue in the present case is covered by the judgment in **PEPSU Road Transport Corporation vs. Mangal Singh [(2011) 11 SCC 702]** and we do not propose to take any different view in the matter.”*

18. In the instant case also, the petitioner knowingly continued under the CPF Scheme and he also received the benefits under the CPF Scheme without any protest. So once again he cannot try to get another benefit under the Pension Scheme.

19. In similar lines, it is held by the Hon'ble Supreme Court in ***Rajasthan Agriculture University Vs. State of Rajasthan*** reported in **2014 (1) LLN 30 SC** that when an employee has clearly opted for CPF scheme, the said option cannot be changed to GPF after his retirement. In fact, in the



said case, the order of the High Court allowing such benefit was found to be not correct.

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20. The claim of the petitioner is also affected due to delay, laches and acquiescence. If such repeated options are allowed to be enjoyed that would cause uncertainty and undue advantage, as this would give double benefits to a person who had already enjoyed the benefits accrued under the CPF Scheme. The petitioner willingly failed to make use of the opportunity given to him. As an afterthought he had chosen to file this Writ Petition challenging the impugned order dated 24.11.2020. I do not find any merits to consider the prayer of the petitioner favourably.

In the result, this Writ Petition is **dismissed**. No costs.

12.03.2024

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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To
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- 1.The Secretary to the Government,
Union of India,
Ministry of Education,
(Department of Higher Education),
Shastri Bhavan,
New Delhi -110 001.
- 2.The National Institute of Technical
Teachers Training and Research,
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Represented by its Chairman.
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R.N.MANJULA, J.

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