



WEB COPY



W.P.No.1949 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2024

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.No.1949 of 2021

P.Sundaramurthi

... Petitioner

-VS-

1. Central Administrative Tribunal,
Madras Bench,
Rep. by its Registrar,
High Court Campus,
High Court, Chennai-600 104.
2. Union of India,
Rep. by its Secretary,
Department of Atomic Energy,
Government of India, Mumbai.
3. Chairman,
AEC & Secretary DAE,
Anushakthi Bhavan, CSM Marg,
Mumbai-400 001.
4. Indira Gandhi Centre for Atomic Research,
Department of Atomic Energy,
Government of India, Kalpakkam.

... Respondents

Prayer: Writ Petition filed Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the concerned records from the 1st respondent Tribunal, quash the order of the 1st respondent Tribunal dated 23.09.2020 in O.A.No.1790 of 2017 and consequently, direct the Respondent Nos.2 to 4 to shift the petitioner from Contributory Provident Fund to General Provident Fund Scheme and pay



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pension from the date of his retirement, viz., 31.01.2008 and also pay arrears of pension.

For Petitioner : Mr.Balan Haridas

For R1 : Tribunal

For R2 to R4 : Mr.R.Subrmanian

ORDER

(By D.Krishnakumar,J.)

This Writ Petition has been filed, challenging the order dated 23.09.2020 of the Central Administrative Tribunal ('Tribunal') / 1st Respondent herein, by which the request of the petitioner to shift him from Contributory Provident Fund (CPF) to General Provident Fund (GPF) Scheme was negated. Aggrieved by the same, the petitioner is before this Court.

2. The case of the petitioner is that he had joined the 3rd Respondent as Helper 'B' on 22.01.1973 and while joining the service, pursuant to the option given to him to exercise either CPF or GPF, he had opted for CPF Scheme. The grievance of the petitioner is that though a Memorandum dated 23.07.1996 was said to be issued by the respondents, permitting employees to shift from CPF to GPF, it was not communicated to him. It is submitted by the petitioner that when another option was given to employees to exercise their option vice versa, namely, GPF to CPF, the petitioner made an application to consider his case to change from CPF to GPF, which was not accepted by the respondents, due to which, he had filed a case before the Central Administrative



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Tribunal in OA.No.212 of 2008 and the same was dismissed on 27.03.2008. The said order was upheld by this Court and also by the Supreme Court.

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3. It is further submitted by the petitioner that when co-employees preferred W.P.No.21569 of 2013 with the similar request, this Court, vide order dated 03.11.2014, directed the respondents to consider their case and pass orders in accordance with law and citing the said judgment, the petitioner made a representation dated 13.01.2016 to the respondents to re-consider his case for pension and filed one more application in O.A.No.604 of 2017 before CAT, wherein the Tribunal passed an order to consider his representation. However, the representation of the petitioner was rejected by the respondents on 03.07.2017, against which, yet another *lis* was initiated before the CAT in O.A.No.1790 of 2017 and the order of dismissal of O.A.No.1790 of 2017 is impugned in this Writ Petition.

4. Learned counsel for the petitioner has stoutly argued that in the light of the judgment of the Division Bench of this Court in the case of **M.Venkatesan and others vs. Union of India and another [W.P.No.21569 of 2013] decided on 03.11.2014**, holding that the petitioners therein were entitled to the relief of exercising their option, the petitioner seeks similar empathetic consideration insofar as his case is concerned.



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5. Learned counsel for the Respondents 2 to 4 opposed to the maintainability of this Writ Petition, stating that the petitioner, having filed application for the same cause of action and obtained adverse orders from the Supreme Court, cannot be permitted to re-agitate the same issue by filing one more round of litigation and therefore, it is prayed that the Writ Petition is liable to be dismissed.

6. Heard the learned counsel on either side and perused the material documents available on record.

7. The preliminary objection raised by the respondents 2 to 4 is that when the petitioner already exhausted his remedy upto the Apex Court, he cannot attempt to unsettle the settled issue without substantiating his case and by merely quoting a judgment of the Supreme Court as well as this Court passed in similarly situated persons and the said act will amount to opening a Pandora box. It is the stand of the petitioner that when the Supreme Court directed the similarly placed persons in **M.Venkatesan and others vs. Union of India and another** (supra) to approach the High Court and this Court also rendered a positive judgment in favour of the similarly placed persons for conversion of their option from CPF to GPF as well, it cannot be said that the application is hit by delay and laches.



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8. On the whole, we are of the view that since the petitioner had already exhausted his remedy before the Tribunal, the petitioner could not have knocked at the doors of the Tribunal once again by filing an application on the same cause of action, which was decided on merits, as the remedy lies to the petitioner to file a Review Application instead of filing second Writ Petition, unless the petitioner is able to establish the change in the cause of action and such other grievance. Hence, the present Writ Petition cannot be entertained and the same is liable to be dismissed.

9. At this juncture, learned counsel for the petitioner seeks liberty to the petitioner to file a Review Application, by excluding the period as adumbrated under Sections 5 and 14 of the Limitation Act, 1963.

10. In fine, finding substance in the argument advanced by the learned counsel for the respondents 2 to 4, this Writ Petition is dismissed as devoid of merits,

D.KRISHNAKUMAR,J.,

AND

K.KUMARESH BABU,J.,

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with liberty to the petitioner to file a Review Application, as prayed for before the appropriate forum in the manner known to law. No costs.

[D.K.K., J.,]

[K.B., J]



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Index: Yes / No

Internet: Yes / No

Speaking Order/Non Speaking Order
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