



\$~38

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 10.04.2024***+ **W.P.(C) 5238/2024 & CM APPL. 21459-61/2024 .****UNION OF INDIA & ORS.****..... Petitioners****Through: Mr. S.N.Verma, Advocate.****versus****NAMRATA SEMWAL****..... Respondent****Through: Mr.Vedansh Anand, Advocate.****CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE RAJNISH BHATNAGAR****REKHA PALLI, J (ORAL)**

1. The present writ petition under Article 226 and 227 of the Constitution of India seeks to assail the order dated 07.08.2023 passed by the learned Central Administrative Tribunal in O.A.2448/2018. Vide the impugned order, the learned Tribunal has allowed the original application filed by the respondent by directing the petitioners to consider the respondent's case for conversion from Contributory Provident Fund Scheme ('CPF') to General Provident Fund (Pension) Scheme ('GPF') and extend the same benefit to her as granted by the Jaipur Bench of the learned Tribunal in O.A 153/2019 and other connected applications titled ***Mrs. Gurmail Kaur and Ors. Vs. The Commissioner, Kendriya Vidyalaya Sangathan and Anr.***



2. The brief factual matrix as emerging from the record may be first noted. The respondent joined the petitioner no.3/School on 16.08.1984 as a Trained Graduate Teacher (TGT) and on 24.02.1985, submitted her option for being covered under the CPF Pension Scheme. On 01.09.1988, the Government of India issued an OM directing that all serving employees would henceforth be deemed to be covered under the GPF (Pension) Scheme, unless they submitted a specific option to continue to be governed by the CPF Scheme. It is the respondent's case that as she was desirous of being covered under the GPF Scheme, she did not submit any option for being covered by the CPF scheme.

3. It is the respondent's further case that even after the issuance of the OM dated 01.09.1988 and despite she having not submitted any option to be covered by the CPF Scheme, the petitioners continued to make deductions towards the provident fund from her salary. Consequently, she made representations to the petitioners in 1993 and in 1994 again, addressed a representation to the Principal of the School requesting them to include her under the GPF (Pension) scheme in terms of the O.M. dated 01.09.1988. As these representations remained undecided, the respondent submitted further representations in 2015 and 2016. It is only on 08.06.2018 that she was informed about the rejection of her request for being covered by the GPF (Pension) Scheme. Being aggrieved, the respondent approached the learned Tribunal by way of the aforesaid OA, which has been allowed vide the impugned order by relying on the decision in *Mrs. Gurmail Kaur (supra)*.



4. Before us, the sole submission of learned counsel for the petitioners is that the impugned order is perverse as the learned Tribunal has failed to appreciate that merely because the option submitted by the respondent in response to OM dated 01.09.1988 is not traceable, it could not be presumed that she had not submitted such option. He contends that the respondent was all along aware that even after 01.09.1988, deductions were being made from her salary towards the CPF Scheme and therefore, it has to be presumed that she had submitted option to be governed by CPF Scheme.

5. In support of his plea, Mr.Verma relies on the decision of the Apex Court in ***KVS & Ors. Vs. Jaspal Kaur and Ors. (Civil Appeal No. 2876/2007)*** and contends that when other contemporary documents showing deduction towards CPF Scheme are available, the mere non-availability of the option submitted by the respondent after 30 years would be immaterial. He contends that since regular deduction were being drawn, a presumption has to be drawn against the respondent that she had after 01.09.1988, submitted her option for being covered by the CPF Scheme. He, therefore, prays that the impugned order be set aside.

6. In order to appreciate the submissions of learned counsel for the petitioners, we may begin by noting the relevant extracts of the impugned order which read as under:

*“1.3 The applicant was posted to KV Bulandshahar on promotion as Post Graduate Teacher (PGT) on 05.10.1993. The applicant, who never gave any option to continue under CPF Scheme, understood that she was deemed to have been covered under the Pension Scheme, but when the applicant realized that her provident fund was*



*still being shown as CPF, she made a representation in the year 1993 to the KVS through the Principal to convert her CPF to GPF (Pension). In the year 1994, she made yet another representation in this regard, but the Principal concerned refused to accept the same.*

*1.4 The applicant came to know that KVS had permitted conversion from CPF to GPF (Pension) in the case of Mr. Johnson P. John in compliance of directions of the Hon'ble Kerala High Court. Hence, she preferred a representation dated 16.06.2015 through Principal requesting KVS to consider her case as well for conversion to GPF (Pension) followed by reminders dated 23.08.2016, 05.09.2017 and 10.05.2018 but none of her representations received any response from KVS.*

*1.5 The act of the respondents in not converting the CPF of the applicant to GPF (Pension) is violative of para 3 of OM dated 01.09.1988 whereby it has been clearly provided (that all those who did not opt for continuation under CPF would be deemed to have been transferred to GPF (Pension) Scheme.*

*3.2 In the case of **KVS & Ors. v Jaspal Kaur A Ors.** [Civil Appeal No. 2876 of 2007], it was observed by the Hon'ble Apex Court that merely because the original documents relating to exercise of the option were not produced that should not be a ground to ignore the other ample materials which signify the exercise of option by the applicant. Further, as per the order of the decision of a coordinate Bench of this Tribunal, in the case of **Smt. Shashi Gupta, PRT KVS** (O.A. 924/2016 decided on dated 16.10.2018), the case of the applicant therein that she be deemed to be covered under GPF cum-Pension Scheme has already been dismissed in view of the other corroborating evidence in form of monthly deductions for CPF. The applicant was given certain documents evidencing regular deduction towards contribution to CPF; Management Contribution made through Pay bills .and Annual Statements issued to the applicant each year; Form 16 issued to applicant to file Income Tax Return from time to time duly mentioning the*



*CPF deduction made, based on which the applicant had filed the Income Tax Return from time to time.*

*6.1 Having gone through the decision of the Jaipur Bench of this Tribunal in Mrs. Gurmail Kaur & Ors. (supra) relied upon by the learned counsel for the applicant, it is noticed that on identical issue as involved in the present case and all the citations relied upon by the respective parties including various other decisions on the subject, have elaborately been considered and dealt with therein. The aforesaid OAs had been decided by a common order dated 26.04.2022 with the following observations:-*

*"31. I am of the considered view that once issue has been considered and the same has been allowed by the Hon'ble High Courts after considering the various judgments of Hon'ble Supreme Court, including in the case of Jaspal Kaur (supra) and objection of limitation and law thereon, the judgments of the Hon'ble High Courts would be binding and not the judgment(s) of the Single Bench and/or the Division Bench of this Tribunal on the same issue. Accordingly, I am of the considered opinion that the applicants are entitled for conversion from C.P.F. to G.P.F and the applicants' claim is not barred by limitation, delay and laches."*

*6.2 During the course of arguments, learned counsel for the respondents argued that the aforesaid order has since been challenged by the respondents before the Hon'ble High Court of Judicature for Rajasthan at Jaipur by filing a writ petition and the same pending adjudication. However, he has neither been able to provide the number of the said writ petition nor the date of listing of the said Writ Petition nor has he been able to apprise this Tribunal whether the Hon'ble High Court stayed the aforesaid order.*

*6.3 In the conspectus of the facts and circumstances brought out above, I am of the considered opinion that the present OA is squarely covered by the directions of this Tribunal contained in case of **Mrs. Gurmail Kaur & Ors.**(supra). Accordingly, the present OA is allowed and*



*the respondents are directed to consider the case of the applicant keeping in view the observations, as noted above, for conversion from CPF to GPF (Pension) Scheme as per rules and extend the same benefit to her as has been extended to the applicants in the case of **Mrs. Gurmail Kaur & Ors.**(supra). It is further directed that claim of the applicant shall not be rejected on the ground of limitation, delay and latches.”*

7. From the aforesaid extracts of the impugned order, it clearly emerges that on the one hand, there is no option of the respondent for being covered under the CPF Scheme after 01.09.1988 available and on the other hand, there are representations made by her right from 1993 requesting the petitioners to include her name under the GPF (Pension) Scheme. Even though, learned counsel for the petitioners is correct in urging that as held in **Jaspal Kaur (supra)** , the mere absence of the option form on the record may not always be fatal, as an inference can also be drawn from the contemporary documents including payslips, the fact remains that the respondent had all along been representing for including her name under the GPF (Pension) Scheme as per OM dated 01.09.1988. In the light of this distinguishing factors, where representations were being all along made by the respondent for being included under the GPF (Pension) Scheme, the ratio of the decision in **Jaspal Kaur (supra)** would not be applicable to the present case. There is absolutely no explanation by the petitioners as to why those representations submitted in 1993 and 1994 were not rejected if any such option to be governed by the CPF Scheme was available in the records of the petitioners.

8. Furthermore, as was the position before the learned Tribunal,



the petitioners have not been able to inform us as to whether the decision of the Jaipur Bench in *Mrs. Gurmail Kaur (supra)* which has been relied upon by the learned Tribunal was ever assailed. We may also note that the petitioners have not seriously disputed that the case of the respondent is not covered by the decision in *Mrs. Gurmail Kaur (supra)*. In these circumstances, we find no reason to interfere with the impugned order whereunder, the petitioners have been directed to extend the benefits of the decision in *Mrs. Gurmail Kaur (supra)* to the respondent.

9. For the aforesaid reasons, we find no infirmity with the impugned order. The writ petition, along with all pending applications, is, accordingly, dismissed.

**(REKHA PALLI)**  
**JUDGE**

**(RAJNISH BHATNAGAR)**  
**JUDGE**

**APRIL 10, 2024/ib**