

(2021) 04 CAT CK 0044

In the Central Administrative Tribunal

Case No : Original Application No. 1286 Of 2020

AnisAhamed

APPELLANT

Vs

Commissioner Kendriya Vidyalaya Sangathan & Others

RESPONDENT

Date of Decision : 08-04-2021

Acts Referred:

Citation : (2021) 04 CAT CK 0044

Hon'ble Judges : L. Narasimha Reddy, J;Pradeep Kumar, Member (A)

Bench : Division Bench

Advocate : C. Bheemanna, U. N. Singh, Kapil Agnihotri

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J

1. The applicant joined the service of Kendriya Vidyalaya Sangathan (in short, KVS) as Trained Graduate Teacher on 29.08.1985, on being selected in the direct recruitment. Thereafter, he was selected as Post Graduate Teacher in Chemistry (in short, PGT - Chemistry) in the same organisation, on 28.08.1987, again, by way of direct recruitment. After serving the KVS for about 20 years, he applied for the post of Principal in the Govt. of NCT of Delhi. He was selected and appointed as Principal on 25.07.2007, and he retired on attaining the age of superannuation on 31.03.2019.

2. The applicant made a representation on 13.11.2018, stating that his claim for certain benefits was not being considered by KVS. O.A.No. 2349/2019 filed by him, in that behalf was disposed of by this Tribunal on 09.08.2019, directing the respondents to pass a speaking order on his representation. The applicant has also filed a contempt case, and in the meanwhile, the respondents passed an order dated 03.12.2019 rejecting the claim of the applicant. It was mentioned that the applicant is governed by the Contributory Provident Fund (in short, CPF) pension scheme and that the claim for GPF-cum-Pension Scheme cannot be accepted. Reference was made to the resolution passed by the Board of

Governors of KVS at its first meeting. Other relevant facts were also mentioned. This OA is filed challenging the order dated 03.12.2019, and for a direction to the respondents to extend him the benefit of GPF-cum-Pension Scheme to the applicant.

3. The applicant contends that for the employees who were appointed subsequent to 1.1.1986, the facility of GPF-cum-Pension Scheme is available. He submits that though he joined the KVS on 29.08.1985 as TGT, his selection/appointment as PGT on 28.08.1987 deserves to be treated as a fresh one, made subsequent to 01.01.1986 and thereby, he is entitled to be extended the benefit of GPF Pension Scheme.

4. The respondents filed a detailed counter affidavit stating that the applicant was governed by the CPF Pension Scheme since joined the KVS in 1985 and an option having been exercised by him, and that the same status continued till he left the KVS in the year 2007, when he joined the service in Delhi Administration. It is also stated that the applicant filed OA No. 3832/2015, seeking a direction to the KVS to transfer his contribution of CPF/GPF and the same was disposed of through a detailed order on 01.05.2017. They contend that after perusal of the record, the Tribunal came to the conclusion that the applicant is governed by the CPF so much so the contributions made by him, and the KVS were transferred, and that even in Delhi Administration, the CPF Scheme was being implemented for him. The respondents contend that the applicant cannot turn around and make a different claim.

5. We heard, Mr. C. Bheemanna, learned counsel for the applicant and Shri U. N. Singh and Shri Kapil Agnihotri, learned counsel for the respondents.

6. The service particulars of the applicant are not in dispute. Initially, he joined the KVS as TGT on 29.08.1985 and even while continuing in service, he came to be selected as PGT, by way of direct recruitment. There was no break in service. Twenty years thereafter, he moved to the service in GNCTD, and there he retired on 31.02.1990.

7. It is true that the employees who joined the KVS, subsequent to 01.01.1986 are governed by GPF. The applicant joined service in 1985. He never claimed that he joined the service of KVS afresh, on 28.08.1987 as PGT. Added to that, he did not exercise the option that was given after 01.01.1986. He continued to make contribution in the CPF and the KVS also was making its contribution.

8. When the applicant was about to retire from the service of GNCTD, he sensed some impediment in the release of pensionary benefits. For the 20 years of service rendered by him in the KVS, he was entitled to be extended certain benefits. The sanction of the retirement benefits by the GNCTD is dependent upon the nature of the benefits, that are transferred from KVS. Therefore, he filed OA No. 3832/2015 before this Tribunal, with the following prayers:-

"(i). To remit the Pro-rata Pensionary Benefits for all pending years i.e 22 years

for the period 29.08.1985 to 24.07.2007 for the petitioner has served in his tenure.

(ii). To transfer of service and the CPF Account No.2766 to the present authority i.e. with Respondent no.6;

(iii). To count past service rendered in Respondent no.3 by the petitioner;

(iv). To handover the cheque in favour of the petitioner."

9. The Tribunal examined the issue at length and took note of the fact that the CPF on the one hand and GPF on the other hand are in operation in KVS. As regards the case of the applicant, the following observations were made:-

"8. There is no dispute with regard to the fact that the period of service rendered by the applicant in KVS is to be counted for grant of pensionary benefits and that the liability accruing on account of it, is to be shared between KVS and the Directorate of Education, Govt. of NCT of Delhi on pro-rata basis, vis-a-vis, the periods of service rendered by the applicant in these two organizations. Both the organisations, i.e., KVS and the Directorate of Education, have agreed to do so. From the records, it is quite clear that the Directorate of Education, Govt. of NCT of Delhi has only intimated the name of authority (PAO-II, R. K. Puram, New Delhi) to whom the pro-rata contribution from KVS is required to be remitted in respect of the applicant, but no intimation has been sent by the Directorate of Education, Govt. of NCT of Delhi as to the monthly quantum of such contribution.

9. The other issue contended by KVS is that neither the applicant nor respondent No.6 has intimated to it about the CPF account number of the applicant. In this regard, it is to be noted that the applicant was assigned a CPF account while he was in the service of KVS. Needless to say that the same CPF account would hold good even for the service rendered by the applicant under respondent No.6 and the same must be available in the records of KVS. Be that as it may, the applicant has also indicated in the body of the O.A. that his CPF account number is 2766. It would be appropriate that applicant informs his CPF account number to both KVS and Directorate of Education, Govt. of NCT of Delhi once again. After the applicant has joined under respondent No.6, his contribution as well as equal contribution from respondent No.6, his contribution as well as equal contribution from respondent No.6 is being regularly credited to his CPF account. Learned counsel for the applicant and learned counsel for respondent Nos.1 & 6 confirm it.

10. In terms of the directions of the Tribunal dated 01.02.2017, learned counsel for respondent Nos.2 to 5 & 7 produced a photocopy of KVS Form CAM-47 CPF Ledger Card of the applicant. This Ledger Card indicates that monthly contributions of KVS and that of the applicant to the CPF account of the applicant have been regularly credited. I also take note of the fact that the CPF accounts of all Central Government employees are maintained by the Central Provident Fund Commissioner. As a matter of fact, an employer, not crediting such contributions to the CPF account of the concerned employee, would be liable for legal

prosecution under the Employees' Provident Funds & Miscellaneous Provisions Act, 1952, and thus no employer could ever dare acting against such a statutory requirement. The monthly contributions credited to employee's account can, now-a-days, be viewed by the concerned employee online."

A perusal of paras, 9 & 10 clearly discloses a definite finding was given that the applicant was covered by the CPF, and the contributions were being made by the employer and the employee without any interruption. It was further observed that the occasion to release the CPF, payable to the applicant for the service rendered by him in KVS would arise only when he retires. As regards the other benefits such as leave encashment, a direction was issued to the KVS to release all dues in regard, to the service of the applicant at GNCTD.

10. Apart from that, what becomes clear from the above is that

- (a) the applicant was governed by the CPF without interruption;
- (b) a specific direction was issued to the KVS, to transfer the amount referable to CPF at the time of retirement,
- (c) even in the Delhi Administration the applicant was governed by CPF.

In case the applicant had any reservation or grievance about these findings, he was expected to pursue the remedies. In fact, the relief granted in the OA fitted into the prayer therein. Except that little ambiguity or uncertainty which the applicant entertained was removed, the relief was granted as prayed for.

11. What the applicant pleaded in OA No.2349/2019 was totally opposed to his plea and order passed in OA No.3832/2015. The only direction issued in that OA was for disposal of the representation.

12. In the impugned order, the respondents dealt with the issue at length, and in a way implemented the order in O.A.3832/2015. The applicant is not able to point out any legal defects in the same. He applicant cannot have the luxury of changing the stands to derive as much as benefit, as possible.

13. We do not find any merit in the OA. It is accordingly dismissed. There shall be no order as to costs.