

(2025) 05 OHC CK 1228

In the Orissa High Court

Case No : Writ Petition (C) No. 7336 Of 2025

Baijayanti Mohanty

APPELLANT

Vs

Union Of India and Others Vs

RESPONDENT

Date of Decision : 08-05-2025

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2025) 05 OHC CK 1228

Hon'ble Judges : S.K. Sahoo, J;S.S. Mishra, J

Bench : Division Bench

Advocate : Adisha Mohanty, Pritish Mohapatra, Manisha Das, Sanghamitra Rajguru

Final Decision : Dismissed

Judgement

S.S. Mishra, J

1. The present Writ Petition is filed assailing the order dated 21.10.2024 passed by the learned Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.260/00294 of 2020, whereby the learned Tribunal has turned down the application filed by the Petitioner seeking the benefit of switching over from the Contributory Provident Fund (CPF) Scheme to the General Provident Fund (GPF)-cum-Pension Scheme due to delayed application.

Facts of the Case:

2. The Petitioner, joined as a Trained Graduate Teacher (TGT) in English in Kendriya Vidyalaya Sangathan (KVS) on 12.09.1985 and was initially posted at K.V. Malkapuram, Visakhapatnam, Andhra Pradesh. Upon joining, she was enrolled in the CPF Scheme, then applicable to KVS employees.

3. On 01.09.1988, the KVS issued an Office Memorandum (OM) inviting employees to exercise an option to switch from the CPF Scheme to the GPF-cum-Pension Scheme. The Petitioner continued in service till her superannuation on

31.10.2012 while serving at KV-II, Bhubaneswar.

4. More than six years after retirement, on 12.01.2019, she filed a RTI application seeking a copy of the said 1988 Office Memorandum. Over the next several months, she filed multiple RTI applications and grievances seeking records regarding her alleged option exercise and other related correspondence. It was informed to her by the KVS authorities that no such option form existed in her file, though secondary records indicated her knowledge and conduct consistent with remaining in the CPF Scheme.

5. Subsequently, on 16.07.2019, she submitted a representation to the Commissioner, KVS, which was followed by the present petitioner ventilating her grievance through Centralised Public Grievance Redressal and Monitoring System (CPGRAMS) (Website) and ultimately communication from KVS on 06.09.2019 and again on 02.01.2020, refusing the proposal of the petitioner for one time permission for change over from CPF to GPF pension scheme citing policy restrictions was issued. Eventually, she filed the O.A. before the CAT, Cuttack Bench in 2020, more than seven years after her retirement.

Submissions:

6. The Petitioner relied mainly on the decision rendered by the Hon'ble Central Administrative Tribunal, Madras Bench in Usha Rajagopalan vs. Kendriya Vidyalaya Sangathan (O.A. No.1248 of 2019), wherein the Tribunal directed the KVS to allow similarly placed applicants the benefit of the GPF-cum-Pension Scheme from the date of their appointments or deemed date of changeover, despite their initial CPF membership.

7. The opposite parties, on the other hand, contended that the Petitioner had ample opportunity during her service tenure to exercise her option and to raise objections, if any. They argued that the Petitioner had accepted CPF deductions throughout her service, received CPF statements, and filed income tax returns based on those contributions. They further contended that the O.A. was grossly delayed and barred by limitation.

Observations:

8. Upon perusal of the record and the submissions made, this Court finds that the Petitioner was admittedly in service during the issuance of the Office Memorandum dated 01.09.1988 and continued to serve for a further 24 years thereafter. Her contemporaries who exercised the option to switch to the GPF Scheme were allowed to do so, and the Petitioner never protested her continued coverage under the CPF Scheme during her entire service tenure or immediately after retirement.

9. The Petitioner's contention that she was unaware of the option or that her option form was not traced lacks credibility in light of her conduct she accepted CPF deductions, received and acted upon CPF account statements, and even acknowledged a revised CPF account number without protest.

The aforementioned aspects of the matter have been carefully dealt by learned Tribunal leading to the conclusion which is reflected in para 14 of the impugned order. For the convenience of ready reference, para 14 of the order is reproduced hereunder:-

"14. In the case in hand, admittedly, the OM of the KVS for submission of option came into effect vide OM dated 01.09.1988 and, at that time, applicant was continuing as TGT (English) in KVS at KV, Malkapuram, Visakhapatnam, A.P. but for the reasons best known the authority of the KV, Malkapuram, Visakhapatnam has not been made as one of the respondents in this OA. Be that as it may, she continued to discharge the duty as an employee of KVS, after issuance of the OM dated 01.09.1988, for a period of 24 years, i.e. till her retirement on 31.10.2012. Her counterpart employees availed the benefit of the OM dated 01.09.1988 cannot be disputed and the contention of the applicant was not aware about the same and therefore she did not avail the benefit is unbelievable. It is also an admitted fact that she did not take any step over a period of more than seven years from the date of her retirement. She was allotted a new CPF A/c number is not in dispute and she did not also question at the relevant time when new CPF number was allotted to her. It is the specific case of the respondents that at this distant point of time of 30 years, her option form is not traceable. Fact remains that she had never made any representation raising protest or objection for counting her under CPF scheme. Her contributions were regularly being deducted from her salary for years together and she was also aware of contribution made by her and on behalf of the authority and the annual amount sheet which the respondents used to supply regularly, while GPF statements were being issued to her counterpart employees, who had opted to switch over to GPF/Pension Scheme, and on the basis of statements applicant had submitted her income tax return for a long period. Similarly, the plea of the applicant that if no option is received by the cutoff date, the employees should be deemed to have come over the Pension Scheme is also not tenable in the eyes of law because she did not raise any such objection at the relevant point of time when she was not brought under the GPF Scheme while her counterpart employee were brought over under the Scheme on exercise of their option. This shows that this is an afterthought plea taken by the applicant taking the advantage of non-availability of her option after a period of more than 32 years. Law is well settled that one cannot take the advantage of his/her own wrong/jus ex injuria non oritur as held by the Hon'ble Apex Court in the case of Lily Thomas v. Union of India & Ors., AIR 2000 SC 1650. Further, law is also well settled that one cannot get the benefit in an indirect manner if he/she is not entitled to get the same directly as held by the Hon'ble Apex Court in the case of Supertech Ltd. Vs. Emerald Court Owner Resident Welfare Association and Ors, (2024) 1 SCC (L&S) 819. Had the applicant produced any such evidence that though she had opted to switch over to GPF/Pension Scheme, the same was not considered, the matter would have been different. The time passers coupled with the fact of allotment of new CPF A/c number, deduction of amount from her salary towards

CPF contribution, yearly statement, Pay slips etc. clearly establishes that the applicant remained in the CPF Scheme as per her wish and merely because the original documents relating to exercise to option was not produced that should not be a ground to ignore the ample materials cannot be a ground interfere in the matter at this belated stage.”

10. The Tribunal rightly distinguished the case of Usha Rajagopalan (supra) on facts, noting that the applicants therein acted promptly after retirement (within 1–2 years), whereas the present Petitioner approached the Tribunal after a lapse of more than seven years. The plea that the absence of the original option form entitles her to deemed switch-over is untenable in law, particularly when the available evidence overwhelmingly points to her conscious continuation under the CPF Scheme.

11. The petitioner approached the Tribunal hopelessly at a belated stage. She has approached the Tribunal after 24 years of the real cause of action arose and 7 years after her retirement. Therefore, the case of the petitioner is not only inordinately delayed, but also suffers with laches. In order to explain the sufficient cause for delay, the petitioner firstly, pleaded her ignorance and lack of knowledge regarding her rights. Secondly, she has contended that she could only approach the Court after the judgement of Hon’ble Madras High Court passed in W.P. No.19215 of 2015, in which the Hon’ble High Court upheld the order of Central Administrative Tribunal, Chennai in O.A. No.736 of 2013. Both the explanations are not acceptable inasmuch as during her service, all her colleagues have opted for the option as per 1988 OM, whereas, she has blissfully ignored the same. The learned Central Administrative Tribunal, Chennai in the aforementioned case on which the petitioner is placing reliance on i.e. O.A. No.736 of 2013, has pronounced the judgement on 02.06.2015 which eventually was upheld by the Hon’ble Madras High Court on 24.02.2017. However, the petitioner has approached the Tribunal after five years from the date of the order of the Tribunal and three years after the Hon’ble Madras High Court upheld the same. Therefore, both the explanation offered by the petitioner is fathomable so as to explain the laches and doesn’t inspire any confidence.

The Hon’ble Supreme Court in numerous cases has already settled the law in that regard.

The Hon’ble Supreme Court in Chennai Metropolitan Water Supply & Sewerage Board v. T.T. Murali Babu (2014) 4 SCC 108, held thus:

“16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation

to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant — a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.”

Similar views were reiterated by the Hon’ble Supreme Court in *Union of India v. N. Murugesan* (2022) 2 SCC 25, in which the Court held thus:-

“21. The word “laches” is derived from the French language meaning “remissness and slackness”. It thus involves unreasonable delay or negligence in pursuing a claim involving an equitable relief while causing prejudice to the other party. It is neglect on the part of a party to do an act which law requires while asserting a right, and therefore, must stand in the way of the party getting relief or remedy.

22. Two essential factors to be seen are the length of the delay and the nature of acts done during the interval. As stated, it would also involve acquiescence on the part of the party approaching the court apart from the change in position in the interregnum. Therefore, it would be unjustifiable for a Court of Equity to confer a remedy on a party who knocks its doors when his acts would indicate a waiver of such a right. By his conduct, he has put the other party in a particular position, and therefore, it would be unreasonable to facilitate a challenge before the court. Thus, a man responsible for his conduct on equity is not expected to be allowed to avail a remedy.”

In similar light, the Hon’ble Supreme Court in *Judgment of Mool Chandra v. Union of India & Another* (2025) 1 SCC 625 emphasized that any delay must be justified by “sufficient cause”, in the absence of such justification, the delay shall not be condoned. The Hon’ble Court held as follows:-

“...It is not the length of delay that would be required to be considered while examining the plea for condonation of delay, it is the cause for delay which has been propounded will have to be examined. If the cause for delay would fall within the four corners of “sufficient cause”, irrespective of the length of delay same deserves to be condoned. However, if the cause shown is insufficient, irrespective of the period of delay, same would not be condoned.”

In the present case, the Petitioner has failed to offer any convincing explanation or sufficient cause for the inordinate delay in asserting her rights. Her inaction for several years renders the plea barred both on grounds of limitation and equity being suffered by laches.

Moreover, the legal maxim “*Vigilantibus Non Dormientibus Jura Subveniunt*”- the law assists those who are vigilant and not those who sleep over their rights, aptly applies in the instant case. The Petitioner’s indolence and delay in asserting her

claim disentitle her from invoking the jurisdiction of this Court seeking quashment of learned Tribunal's well-reasoned order.

Conclusion:

12. In view of the discussions above, this Court finds no infirmity in the impugned order passed by the Central Administrative Tribunal, Cuttack Bench, in O.A. No. 260/00294 of 2020. Accordingly, the Writ Petition stands dismissed...

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