(2016) 01 KAR CK 0040

In the Karnataka High Court

Case No : W.P. No. 41602/2014 (S-CAT)

B.T. Chidananda Murthy APPELLANT

Vs

Central Council for Research in Yoga and Naturopathy (CCRYN) and Others RESPONDENT

Date of Decision : 05-01-2016

Acts Referred:

Citation : (2016) 3 AirKarR 403 : (2016) 2 KantLJ 285

Hon'ble Judges : Mohan M. Shantana Goudar and K.N. Phaneendra, JJ.

Bench : Division Bench

Advocate : P.K. Vijay, Advocate, for the Appellant; S. Prakash Shetty, Addl. CGSC, for the Respondent

Final Decision : Dismissed

Judgement

Mohan M. Shantana Goudar, J.—1. The order dated 11.3.2014 passed by the Central Administrative Tribunal (for short hereinafter referred to as ''Tribunal''), Bengaluru Bench, Bengaluru, in OA No. 500/2013 is called in question in this Writ Petition.

2. By the said impugned order, the Tribunal has concluded that the petitioner is not entitled to the benefit flowing under Old Pension Rules, which are applicable to the employees who were appointed on or prior to 31.12.2003.

3. The petitioner was appointed for the post of Director, National Institute of Naturopathy, Pune on 6.12.1999 and joined for duties in the said organization on 3.1.2000. The National Institution for Naturopathy, Pune, is an autonomous Institution, governed by the Central Government. While in service as a Director of National Institution for Naturopathy, Pune, he applied for the post of Director, Central Council for Research in Yoga and Naturopathy, New Delhi on 12.07.2003. He was selected to the said post on 27.11.2003. A letter was sent by the petitioner accepting the offer of appointment on 28.11.2003. The petitioner tendered Technical resignation to the post of Director, National Institution for

Naturopathy, Pune, and requested the Central Council for Research in Yoga and Naturopathy, New Delhi for permitting him to report for duty as Director on 5.1.2004 by submitting a letter on 26.12.2003. The said letter discloses that the petitioner voluntarily prayed for permission to join for duties as a Director of Central Council for Research in Yoga and Naturopathy. Petitioner joined for duties as a Director of Central Council for Research in Yoga and Naturopathy, New Delhi on 5.1.2004. These facts are not in dispute.

It is also not in dispute that the National Institution for Naturopathy, Pune, is an autonomous Institution and the employees therein are governed by the Central Provident Fund Scheme. The petitioner who was an employee of the said institution was not covered under Central Civil Service (Pension) Rules, 1972. Though the petitioner was asked to join duties as a Director of Central Council for Research in Yoga and Naturopathy, by 31.12.2003, the petitioner himself represented on 26.12.2003 that he would be joining the duties on 5.1.2004 as a Director due to his personal and domestic problems. Accordingly, he joined for duties as Director of Central Council for Research in Yoga and Naturopathy on 5.1.2004 in the afternoon. In the meanwhile, i.e., on 13.11.2003, Government of India issued an order communicating the decision to introduce New Pension Scheme based on definite contribution for newly recruited in the central service on or after 1.1.2004. The Old Pension Scheme would not be applicable to such employees who are appointed and joined for duties on or after 1.1.2004. The New Pension Scheme is applicable to the new entrants and to all the autonomous bodies and to various departments recruited on or after 1.1.2004. The Ministry of Finance issued a further Official Memorandum dated 15.3.2004 wherein it is specified that irrespective of any factor, the applicability of existing Pension Scheme or New Pension Scheme to the new entrants will be determined solely with reference to their date of joining. Hence, it is amply clear that the employees who have joined for duties on or after 1.1.2004 either to the Central Government Post or to the post of autonomous body will be compulsorily covered by New Pension Scheme.

There cannot be any dispute that in case if the employee entered Central Government service or the service of the autonomous body set up by the Central Government prior to 31.12.2003 and who are governed by Old Pension Scheme formed in the Central Civil Service (Pension) Rules, 1972, will continue to be governed by the Old Pension Scheme. However, the employees who have entered into service on or before 31.12.2003, and who are governed by the Central Provident Fund scheme or any other Pension Scheme of Central or State Government other than the Pension Scheme in Civil Service (Pension) Rules, 1972, cannot be allowed to join Old Pension Scheme after 1.1.2004 under Central Civil Service (Pension) Rules, 1972, because the entry into the said scheme was seized with effect from 31.12.2003 and no new entry can be allowed in the old Pension Scheme under the above rules.

It is not in dispute in this case that the petitioner though was an employee of autonomous Institution owned by the Central Government, was not governed by old Pension Scheme under the Central Civil Service (Pension) Rules, 1972. It is also not in dispute that the petitioner was governed by Central Provident Fund (CPF) scheme, which is other than the Pension Scheme under Central Civil Service (Pension) Rules, 1972. In view of the above, it is clear that the petitioner herein is not entitled for the benefit of the old Pension Scheme as claimed by him. Since he had joined duties on 5.1.2004, he is governed by the new Pension Scheme which came into effect from 1.1.2004.

4. In this regard, Reference may be made to the Official Memorandum dated 26.7.2005 issued by the Department of Pensioners Welfare, relating to counting of past service and submission of technical resignation on or after 1.1.2004 by the employees governed by Central Civil Service (Pension) Rules, 1972. The relevant portion i.e., para 2 of Official Memorandum dated 27.6.2005 reads thus:

"(i) All the employees who entered the Central Government service or in the service of an Autonomous Body set up by Central Government (satisfying the conditions laid down I para-4 of O.M. dated 29.8.1984), on or before 31.12.2003 and who were governed by old pension scheme under the Central Civil Services (Pension) Rules, 1972, will continue to be governed by the same pension scheme and same rules, for the purpose of counting of their past service under the said rules or under the provisions of the DP & AR''s O.M. No. 28/10/84-PU dated 29.8.1984, as amended from time to time, if such employees submit technical resignation on or after 1.1.2004, to take up new appointment in another Ministry or Department of the Government of India or an Autonomous Body set up by the Central Government, in which the pension scheme under Central Civil Services (Pension) Rules, 1972 already exists for the employees who entered into service on or before 31.12.2003.

(ii). The employees who entered into service on or before 31.12.2003 and who were governed by CPF scheme or any pension scheme of Central or State Government, other than the pension scheme under Central Civil Services (Pension) Rules, 1972 on submission of technical resignation to take up new appointment on or after 1.1.2004, cannot be allowed to join the old pension scheme under Central Civil Services (Pension) Rules, 1972 because entry to the said scheme ceased w.e.f. 31.12.2003 and no new entry can be allowed in the pension scheme under above Rules. However, such employees can seek pensionary/terminal benefits, from the previous organization/Department, if admissible under the rules of that organization/Department, for the period of service rendered under that organization/Department."

(Emphasis supplied)

The reading of the said Official Memorandum makes it abundantly clear that the employee who is governed by Central Provident Fund Scheme, on submission of technical resignation to take up new appointment on or after 1.1.2004 cannot be allowed to join the old Pension Scheme under the Central Civil Service (Pension)

Rules, 1972, because the entry into the said scheme seized with effect from 31.12.2003. Since the petitioner was neither covered by Central Civil Service (Pension) Rules, 1972 in the previous organization nor did he join the new organization when the old pension rules were in force, he is not entitled for the benefit flowing from the Old Pension Scheme.

5. It is relevant to note at this stage, the petitioner being the Director, Head of the Department i.e., Central Council for Research in Yoga and Naturopathy, got the General Provident Fund deducted without any valid reasons and without any supporting rule. He was not supposed to deduct the Provident Fund inasmuch as the General Provident Fund would be limited only to the employees who have joined the Institution before 1.1.2004. It appears that the petitioner being the Head of the Department, had intentionally contributed subscription towards General Provident Fund account in order to get the benefit of old pension scheme. The Audit Report dated 22.11.2012 also suggested that the applicant has mis-used his official status in that regard.

6. Be that as it may, having regard to afore mentioned impugned order passed by the Central Administrative Tribunal is just and proper and no interference is called for and the petition deserves to be dismissed.

Accordingly, dismissed.

