
(2007) 12 RAJ CK 0036

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 1326 of 2007

Jaipur Vidhyut Vitran Nigam Ltd. and Another

APPELLANT

Vs

Mahaveer Prasad Jain

RESPONDENT

Date of Decision : 19-12-2007

Acts Referred:

Citation : (2008) 2 WLN 337

Hon'ble Judges : R.M. Lodha, J; Mohammad Rafiq, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.M. Lodha, J.—This appeal is directed against the order dt. 24.05.2007, whereby the Single Judge allowed the writ petition; quashed the orders dt. 13.01.2004 and 13.02.2004 and directed the present appellants (respondents therein) to consider the case of the petitioner for grant of pension as per the guidelines dt. 02.07.1991.

2. Two fold submission was made by the counsel for the appellants, namely:

(i) that paragraph 11 of the guidelines issued by the Government of Rajasthan (State Enterprises Department) dt. 02.07.1991 for absorption of employees of State Public Enterprises is applicable and not-paragraph 11(b) of the said guidelines; and

(ii) that having withdrawn the entire amount of CPF Scheme before his absorption in the Rajasthan State Electricity Board (Now Jaipur Vidhyut Vitran Nigam Limited), the respondent No. 1 was not entitled to the benefit of pension scheme under the said guidelines. In this connection, the counsel for the appellants relied upon two judgments of the Supreme Court; (i) Bank of India and Others Vs. O.P. Swarnakar etc., and K.V.S. and Others Vs. Jaspal Kaur and Another,

3. That there is mechanism for absorption of surplus employees of one State

Public Enterprise to other State Public Enterprise is not in dispute. By providing for mechanism for absorption of surplus employees of one state public enterprise to other state public enterprise, guidelines came to be issued by the Bureau of Public Enterprises, State Enterprises Department, Government of Rajasthan on 02.07.1991. Inter alia it provides that an appointment by way of absorption of surplus employees shall be deemed a direct recruitment; surplus employees on absorption shall be governed by the Rules of absorbing enterprises and the provision of CPF scheme or pension scheme, as the case may be, in the case of surplus employees. Paragraph 11 of the guidelines makes provision for the surplus employees who were covered under CPF Scheme. It provides thus:

11. In case the surplus employees were covered under CPF Scheme, on absorption:

(a) In an enterprise having CPF Scheme, the balance in the CPF account of the surplus employees shall be transferred to the absorbing enterprise. On absorption the surplus employees would be governed by CPF Scheme and rules of the absorbing enterprise.

(b) In an enterprise having pension scheme, the balance in CPF Account of surplus employees will be transferred to absorbing enterprise for credit to the CPF Account of the employees and the pension Fund in proportion of employees subscription and organisation's contribution respectively. The eligible period of service rendered in relieving enterprise would be considered as qualifying service under pension scheme of absorbing enterprise.

4. Paragraph 12 deals with the surplus employees covered by pension scheme which reads thus:

12. In the case of the surplus employees were covered by pension scheme, on absorption:

(a) In an enterprise having pension scheme the relieving enterprise would transfer the balance of GPF Account of the employee and his share in the Pension Fund of the relieving organization to the absorbing organization for credit to GPF Account and Pension Fund respectively.

(b) In an enterprise having CPF Scheme, the balance of GPF Account and share in pension Fund would be transferred to the absorbing enterprise for credit to the CPF Account. On absorption, the surplus employees would be governed by CPF Scheme and rules of the absorbing enterprise.

5. In view of the admitted fact that the present respondent (original petitioner) was not covered by Pension Scheme as an employee of the Rajasthan State Agro Industries Corporation Limited, para 12 of the guidelines has no application. Paragraph 12 of the guidelines governs surplus employees covered by a Pension Scheme. Since the respondent was covered under the CPF Scheme, his case for absorption is covered by paragraph 11. Thus, first contention of the counsel for the appellant has no merit and is rejected.

6. We now advert to the second contention. The counsel for the appellant informed us that the Rajasthan State Electricity Board (as it then was) had both the Central Provident Fund Scheme as well as Pension Scheme for its employees. According to the counsel the employees of the Board were given option to either opt for CPF Scheme or Pension Scheme. On the absorption of the original petitioner (respondent No. 1 herein), his CPF Account was closed and instead GPF Account was opened by the Board on 02.08.2001. Moreover he was asked to deposit employee's share of CPF amount which he did. A perusal of the paragraph 13 of the guidelines would show that it is in two parts. Clause (a) thereof applies where the employee was covered under CPF Scheme and absorbing enterprise also has CPF Scheme. Clause (a) provides that the balance in the CPF Account of surplus employee shall be transferred to the absorbing enterprise and on absorption the surplus employee would be governed by the CPF Scheme and the rules of absorbing enterprise while Clause (b) of Para 11 provides that where the absorbing enterprise is having CPF Scheme, the balance in the CPF account of the surplus employees shall be transferred to the absorbing enterprise for credit to the CPF Account of the employees and the Pension Fund in proportion of employees and the pension fund in proportion of the employees subscription and organisation's contribution respectively. It further provides that the eligible period of service rendered in relieving enterprise would be considered as qualifying service under pension scheme of absorbing enterprise. In view of the admitted fact that the CPF account of the present respondent was closed after he was absorbed in the RSEB and that he was called upon to deposit employees' share of CPF amount which he did, it is apparent that the present appellants accepted that the respondent would be governed by the pension scheme and that his case is covered by 11(b). In this view of the matter, the rejection of the petitioner's claim for pension was not legally proper. Merely because the respondent No. 1 had withdrawn the entire CPF amount prior to his absorption would not make any difference because the CPF account was closed by the Board on the employee's absorption.

7. We may turn to the two decisions cited by the counsel for the appellants.

8. In so far as the decision of the Supreme Court in the case of Bank of India is concerned, it related to a question as to whether an employee who opts for voluntary retirement pursuant to or in furtherance of a Scheme floated by the nationalized banks and the State Bank of India would be precluded from withdrawing the said offer. We are afraid, the issue before us is entirely different and has no connection with the issue involved in the case of Bank of India.

9. The facts in the case of KVS (supra) are also entirely different and so also the controversy raised therein. That was a case where the employee who has primary school teacher in Kendriya Vidyalaya Sangathan was holding CPF account. An option was given to the KVS employees to switch over to GPF Scheme from the CPF Scheme. The employees in that case appears to have exercised the option to continue in the CPF Scheme. It appears that later on she

requested for change of scheme from CPF to GPF. Her request was not accepted as she had opted for CPF Scheme. The employee challenged the decision of KVS by moving the Central Administrative Tribunal which held that she was entitled to claim benefit of GPF cum Pension Scheme. The reason for this decision by the Central Administrative Tribunal was that KVS failed to show the primary evidence that the employee had opted for CPF Scheme. The Supreme Court held in paragraphs 5, 6 and 7 of the report thus:

5. In this context it is to be noted that the Tribunal itself noted that in the Pass Book name of the applicant appears at No. 1889 and the signatures of the Principal of KVS is indicated. It indicates her appointment in KVS from July 1978 to May 1992 in Delhi, from May 1992 to April 2003 at Baddowal, from April 2003 to April 2004 at Halwara and thereafter again at KVS Baddowal. It shows her Account No. 1889. A copy of the Income tax return having deductions from pay and allowance for depositing in the CPF confirm this fact. The secondary pieces of evidence go to show that deductions were being made on regular basis from pay and allowances. This according to CAT was not sufficient to show that she had exercised her option.

6. It is to be noted that in the allotment of revised CPF number in the letter of KVS No. 16-2/CO/89-90/CPF/KVS/PF dated 06.03.1989, name of respondent No. 1 appears at Serial No. 8 and the revised CPF No. is shown as 1889 in place of the earlier CPF so. CEC 2685. This change has not been denied by respondent No. 1. Additionally, again in letter No. 16-2/CO/89-90/CPF/KVS/PF dated 06.07.1989 the name of respondent No. 1 appears at serial No. 8 and again existing CPF No. CEC 2685 has been indicated. This letter is significant because there is a note in the service book of the concerned employee in respect of allotted CPF A/C under intimation to them. KVS letter No. 16-2/C.O/ 89-90/CPF/KVS/PF dated 15.07.89 with reference to the earlier letter of 06.07.89 intimated the employees about the change. Again in this letter the name of respondent No. 1 appears at serial No. 8. Most vital document in this controversy is respondent No. 1's letter dated 15th March, 1997. In this she has categorically stated that she was contributing towards CPF and her account No. is JRC 1889. This was addressed to the Accounts Officer. This document clearly establishes that respondent No. 1 was aware of the change in account number and she herself referred to account number. Her feigned ignorance about the change is absolutely hollow because she herself knows about the changed number.

7. The last pay certificate issued to the respondent No. 1 when she handed over charge on 23.05.1992 clearly indicates that CPF subscription of Rs. 130/- was being deducted and that she had opted for the pay of CPF Scheme and rate of subscription is Rs. 130/- for a month and allotment of CPF account No. 1889 was being transferred. On the face of these documents the CAT and the High Court should not have held that option was not exercised by the respondent No. 1. Pursuant to this Court's order the original service book of respondent No. 1 was produced. Even on 10.06.2005 in the last pay certificate it has been stated that

she had opted for the CPF Scheme. Similar is the position in the last pay certificate dated 19.04.2003 and the last pay certificate of 18.01.1982. All these documents establish that respondent No. 1 had exercised the option for the CPF Scheme. Merely because the original documents relating to exercise of option was not produced that should not be a ground to ignore the ample materials produced to show exercise of the option. CAT and the High Court were not justified in taking a different view.

10. It would be, thus, seen that the Supreme Court found that the employee was well aware that her original CPF account was changed to revised CPF account in the year 1989. It was found to be established that the employee had exercised the option for the CPF Scheme. The material was found sufficient to establish that the employee had exercised option of CPF Scheme and she was not entitled to any relief. The judgment of the Supreme Court in KVS cannot be applied to the present fact situation.

11. In the circumstances, the consideration of the matter by the Single Judge does not call for any interference.

12. It is clarified that the original petitioner (respondent herein) shall have to comply with the directive issued by the Single Judge in paragraph 11 of the impugned order.

13. The special appeal is dismissed in limine.