(2021) 03 DEL CK 0144

In the Delhi High Court

Case No : Civil Writ Petition No. 7712, 9851 Of 2020, Civil Miscellaneous No. 25450, 31432 Of 2020

Kendriya Vidyalaya Sangathan APPELLANT

Vs

Manju Sahgel RESPONDENT

Date of Decision : 15-03-2021

Acts Referred:

Citation : (2021) 03 DEL CK 0144

Hon'ble Judges : Rajiv Sahai Endlaw, J;Amit Bansal, J

Bench : Division Bench

Advocate : U.N.Singh, A.K.Trivedi

Final Decision : Allowed

Judgement

Amit Bansal, J

1. Both the present writ petitions raise similar questions of fact and law and are therefore being disposed of together by this common judgment. The petitions assail orders passed by the Central Administrative Tribunal (CAT), Principal Bench, New Delhi.

2. Writ Petition (Civil) 7712/2020 impugns the order dated 26th September, 2019 in OA No. 2743/2018; and Writ Petition (Civil) 9851/2020 impugns the order dated 28th February 2020 in OA No. 1398/2019. Vide both the impugned orders, the CAT allowed the OA filed by the respondents herein and have directed that the benefit of the GPF cum pension scheme be extended to them. Respondents were directed to refund the employers' contribution along with interest and any other funds received by them under Contributory Provident Fund (CPF) scheme, which are to be refunded as per the scheme of the respondent organization.

Brief facts in W.P. (C) 7712/2020

3. Respondent joined Kendriya Vidayalaya Sangathan (KVS) as Primary Teacher

on 19th March, 1979. Subsequently, respondent was appointed to the post of Post Graduate Teacher (PGT) on direct recruitment basis on 5th January, 1986 and thereafter, as Principal on direct recruitment basis on 1st July, 2002. The respondent retired on attainting age of superannuation as the Principal on 30th November, 2007. Thereafter, on 26th June, 2018 the respondent submitted a representation dated 26th June, 2017 for converting the respondent from CPF scheme to GPF cum pension scheme. The relief not being granted, the respondent filed OA No. 2742/2018 before the CAT, which was allowed by the CAT vide the impugned order dated 26th September, 2019.

Brief facts in W.P. (C) 9851/2020

4. The respondent joined KVS as PGT on 20th October, 1983. Subsequently, the respondent was appointed to the post of Principal on direct recruitment basis on 15th July, 2002. The respondent retired as Principal on attaining the age of superannuation on 31st March, 2008. Thereafter on 1st May, 2017, the respondent submitted a representation for converting the respondent from CPF scheme to GPF cum pension scheme. The said relief not being granted, the respondent filed OA No.1398/2019 before the CAT and the same was allowed by the CAT vide impugned order dated 20th February, 2020.

5. It was the case of the respondents before the CAT that the pension scheme was implemented by the petitioner with effect from 1st January, 1986 and after the said date all appointees were deemed to be in the GPF cum pension scheme and since they were appointed as PGT/Principal on direct recruitment basis after the said date, they were covered under the GPF cum pension scheme. The respondents relied upon orders passed by the CAT in cases of other employees of the petitioners seeking similar relief. The case before the CAT was contested by the petitioner, KVS by filing a counter affidavit. It was contended that the petition was highly belated and that the respondents throughout their employment were issued documents as per the CPF scheme indicating regular deduction towards contribution to CPF, based on which the respondents have filed income-tax returns from time to time.

6. Vide the impugned orders, the CAT was pleased to hold that since the appointment of respondents as PGT/Principal was on direct recruitment basis after the cut-off date, they will be governed by GPF cum pension scheme. Reliance was placed on previous decisions of the CAT in the case of O.A. No. 457/2011 Sh. Jhonson P. Jhon vs. Assistant Commissioner KVS decided vide order dated 22.03.2012 by the CAT Ernakulam Bench, which was upheld by the Hon'ble High Court of Kerala vide order dated 13.08.2013 in OP (CAT) No. 597/2013, The Deputy Commissioner KVS vs. Jhonson P. Jhon; as well as order dated 19.09.2016 in OA No. 3112/2013 Hoshiar Singh vs. Union of India by the CAT Principal Bench, wherein the CAT had distinguished the decision of the Hon'ble Supreme Court in KVS and Others vs. Jaspal Kaur and another (2007) 6 SCC 13, and granted relief to the applicants therein on the basis that the applicants were appointed to the post of Principal in the year 2002 on direct

recruitment basis and at that time GPF cum pension scheme was automatically applicable to all direct recruitees of various posts in KVS. Accordingly, on the basis of the decision of the CAT in Hoshiar Singh case (supra) as well as other orders passed by the CAT in case of identically placed persons, the CAT was pleased to allow the OA and KVS was directed to extend the benefit of GPF cum pension scheme to the respondents keeping in view their appointment as PGT/ Principal was on direct recruitment basis and after the cut-off date. It was further directed that amount already paid to the respondents will be adjusted.

7. The present petitions have been filed by the petitioner, KVS impugning the aforesaid orders of the CAT. It was submitted on behalf of the petitioner that the representation to convert from CPF to GPF cum pension scheme was made by the respondents for the first time much after their retirement. It was further contended that every year documents were issued to the respondents as per the CPF scheme indicating regular deduction towards contribution to CPF, based on which the respondents have filed income-tax returns from time to time, which demonstrate that the respondents have opted for CPF scheme and not GPF cum pension scheme. Therefore, the respondents were fully aware that they were under the CPF scheme and never objected to the same during the tenure of their service. Reliance was placed on the judgment of the Hon'ble Supreme Court in Jaspal Kaur case (supra) wherein it was held that merely because original documents relating to exercise of option was not produced should not be a ground to ignore other materials to show that the employee had exercised the option. The petitioner sought to distinguish the order of the CAT in Hoshiar Singh case (supra) on the ground that the employees had approached the CAT before their retirement whereas in the present cases the respondents had approached the CAT much after their retirement. It was also stated that the fact that respondents were appointed as Principal on later dates on direct recruitment basis would be irrelevant as their initial appointment was prior to 1st January, 1986.

8. Counsel for the respondents has placed reliance on the OM dated 1st September, 1988 issued by the petitioner, KVS, which dealt with change over of KVS employees from CPF to Pension Scheme. The relevant portion of the said OM is produced hereinafter:

"3. All CPF beneficiaries, who were in service on 01.01.1986 and who are still in service on the date of issue of these orders shall be deemed to have come over to the GPF cum pension scheme.

3.2 The employees of the category mentioned above will, however, have an option to continue under the scheme, if they so desire. The option will have to be exercised and conveyed to the concerned head of the office/ Principal by 31.01.1989, in duplicate in the form enclosed (one form may be sent to this office while the other kept with personal records of the employee concerned) if the employees wish to continue under the CPF scheme and if no option is received by the Head of Office/Principal by the above date and in this office through them by 28.02.1989 the employees will be deemed to have come over to the Pension Scheme. The head of the office/Principals are to forward in one lot options exercised by the employees for retention of CPF scheme received by them, to reach sangathan's office latest by 28.02.1989. Where no option to continue under the CPF Scheme is received by them from any, nil report be sent by due date viz. 28.02.1989."

9. On behalf of the respondents, it was contended that since, the respondents did not exercise the option to continue under the CPF scheme, therefore they were deemed to have come under the GPF cum pension scheme with effect from 1st January, 1986. Various other similarly placed employees of the petitioner approached the CAT and were ordered to be shifted to the pension scheme. It was further stated that pension is a recurring cause of action and, therefore, law of limitation is not attracted, reliance being placed on the decision of the Hon'ble Supreme Court in UOI & others vs. Tarsem Singh (2008) 8 SCC 648. Reliance was also placed on the following judgments of Division Benches of this Court, wherein it was held that employees of KVS should be given benefit of the Pension Scheme

? Kendriya Vidyalaya Sangathan & Another vs. V.D. Pandey 2019 SCC Online Del 11655

? Kendriya Vidyalaya Sangathan vs. Dr. V D Arya in W.P. (C) 6193/2021, Delhi High Court.

10. Petitioner KVS has placed on record documents evidencing regular deduction towards CPF with management contribution, such as annual statements issued to the respondents in each year; Form-16 issued to the respondents from time to time duly mentioning the CPF deduction made. All these documents clearly indicate that the respondents were well aware that they were part of the CPF scheme and not GPF cum pension scheme.

Similar documents were relied upon by the Hon'ble Supreme Court in the decision in Jaspal Kaur case (supra) to come to the conclusion that in light of these documents, it was not possible to contend that the employees had not opted to remain under the CPF scheme.

11. As regards the contention of the respondents, that upon their selection as PGT/Principal their service began as new entrant and therefore they would be entitled to be part of the GPF cum pension scheme, the same cannot be accepted as the respondents had joined the employment of the petitioner KVS as teachers well before the cut-off date and the said employment continued without any break of service. Further, if the said contention of the respondents is to be accepted then the Respondents would not have fulfilled the minimum length of service required for receiving pension. Therefore, this contention of the Respondents is self-destructive. It may also be relevant to mention here that the respondents superannuated from service and accepted their retirement dues under the CPF without any protest or demur. It is almost after 10 years that they

made a representation for the first time for converting them from CPF to GPF cum pension scheme. The said request not having been considered favourably, the respondents chose to file OAs before the CAT.

12. As regards the reliance placed by the counsel for the respondents on the judgment of this Court in V.D. Pandey case (supra), the same would not be applicable to the facts of the present case as in the said case the representation was made by the employees before their retirement, whereas in the present case the representation was made long after their retirement. Similarly, in the judgment of this Court Dr. V.D. Arya case (supra) the employees had made a representation to KVS prior to their retirement and therefore, the said judgment will have no application in the present case. Similarly, in Hoshiar Singh case (supra), the employees had approached the CAT before their retirement.

13. The present case is squarely covered by the judgment of the Hon'ble Supreme Court in Jaspal Kaur case (supra), which was in the context of KVS teachers like the Respondents herein. In the said case also, KVS could not produce the original option form exercised by the employee. However, placing reliance on secondary documents, that clearly establish that the employee was aware that deductions towards CPF subscriptions were being made, the Hon'ble Supreme Court held that such secondary documents clearly establish that the employees had exercised option under CPF scheme and accordingly, set aside the judgment of the CAT and the High Court. Reliance may also be placed on the judgment of the Division Bench of this Hon'ble Court in Delhi Transport Corporation Vs. Madhu Bhushan Anand and other connected petitions, 172 (2010) DLT 668 wherein the Court was seized of the similar issue in the context of employees of DTC who wanted to shift from CPF scheme to the GPF cum pension scheme. In the said case also, the employees made representations for shifting from CPF to GPF cum pension scheme much after they had taken voluntary retirement (VRS) and upon being unsuccessful approached the CAT. Distinguishing the judgment of the Hon'ble Supreme Court in Tarsem Singh case (supra), the Division Bench held that the case of the employees would be barred under the law of limitation as they had received their full dues as per the CPF scheme upon their retirement and if they had any grievance they could have filed legal proceedings within three years of having received their dues. Accordingly, claim of the employees was rejected on the ground of limitation as well as delay and laches. The dicta of the said judgement is squarely applicable in the present case.

14. Accordingly, the present writ petitions are allowed and the impugned orders of the CAT are set aside.

