(2016) 08 P&H CK 0306

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 16032 of 2016

Mrs. Kamaljit Hunjan APPELLANT

Vs

Commissioner, Kendriya Vidyalaya Sangathan, New Delhi RESPONDENT

Date of Decision : 09-08-2016

Acts Referred:
Administrative Tribunals Act, 1985 — Section 21

Citation : (2017) 2 RSJ 219 : (2017) 1 SCT 373

Hon'ble Judges : Ajay Kumar Mittal and Ramendra Jain, JJ.

Bench : Division Bench

Advocate : Arun Sharma, Advocate, for the Petitioner

Final Decision : Disposed Off

Judgement

Ajay Kumar Mittal, J. - By way of instant petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of mandamus directing the respondents to convert her Contributory Provident Fund (CPF) into General Provident Fund (GPF) account under the memorandum dated 1.5.1987 (Annexure P-3) issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioners'' Welfare Office promulgated vide Kendriya Vidyalaya Sangathan (KVS), New Delhi memorandum dated 1.9.1988 permitting its employees to change over from the CPF to GPF Scheme.

2. A few facts necessary for adjudication of the instant writ petition as narrated therein may be noticed. The petitioner is working as a Primary Teacher in KVS, Sector 31, Chandigarh since June 25, 2014. She is on the rolls of KVS as a Permanent Primary Teacher since August 22, 1984 and was governed by CPF. Under the authority of Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioners'' Welfare Office memorandum dated 1.5.1987 (Annexure P-3), the KVS vide its office memorandum dated 1.9.1988 permitted its employees to change over from CPF to GPF. Further, in the 51st Meeting of the Board of Governors of the KVS, held on 31.5.1988, it was

approved that the KVS will implement mutatis mutandis the decision taken by the Government of India on the implementation of the Fourth Pay Commission for the employees to change over from CPF to GPF Scheme which is clear from Page IV, Part II of Fourth Edition of Accounts Code (Annexure P-4). In this way, all the CPF beneficiaries who were in service on 1.1.1986 and were still in service on 1.9.1988 were deemed to have come under the GPF Scheme unless an option to retain their CPF Scheme was received by the Head of the Office/Principal by 28.2.1989. Since the petitioner never exercised the option to retain CPF Scheme, she should have automatically been shifted from CPF to GPF Scheme by the KVS. The petitioner had joined KV, Baddowal on 18.1.1992 and then KV No.2, Ferozepur Cantt. on 22.12.1992 on transfer, yet her previous KV, Gangtok had not despatched her service book and personal file to her new school on her transfer in January, 1992. After numerous reminders and intervention of KVS, New Delhi vide its letter dated 18.7.1996 (Annexure P-5), her service book and personal file were received by KV No.2, Ferozepur Cantt. in October, 1996, after a gap of five years. In 1994-95, during her tenure in KV No.2, Ferozepur Cantt., the petitioner was asked to get her CPF Account changed into GPF Account. Accordingly, the petitioner requested the Principal for conversion of her CPF Account into GPF Account, but no action was taken on the ground that her service book and personal file had not been received from KV, Gangtok after her transfer. The petitioner vide letter dated 4.3.2004 (Annexure P-6) requested to the Assistant Commissioner, KVS Regional Office, Jammu Region, Jammu for conversion of her CPF Account into GPF Account through KV No.4, Mamun Cantt. letter dated 9.3.2004 (Annexure P-7). The said request was rejected by the KVS, Jammu vide letter dated 19/25.3.2004 (Annexure P-8). Again the petitioner vide application dated 7.12.2009 (Annexure P-9) made a request to respondent No.1 for converting her CPF Account into GPF Account through KV No.3, BRD, Air Force Station, Chandigarh letter dated 9.12.2009, but to no effect. As per medical record (Annexure P-10), the petitioner was suffering from Ovarian Cancer which was got detected in its advanced stage in August 2012 and she had to undergo six cycles of chemotherapy. At present, she is undergoing chemotherapy treatment since 21.10.2015. The petitioner again made a request vide application dated 12.10.2015 (Annexure P-11) to respondent No.1 for conversion of her CPF Account into GPF Account through KV, Sector 31, Chandigarh letter dated 14.10.2015 (Annexure P- 12), but all in vain. Accordingly, the petitioner served a legal notice dated 11.1.2016 (Annexure P-13) upon respondents No.1 and 2 for conversion of her CPF Account into GPF Account. However, no response was received from them. Thereafter, the petitioner filed OA No. 060/00172/2016 on 24/28.2.2016 (Annexure P-1) before the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (in short "the Tribunal"). The Tribunal vide order dated 29.2.2016 (Annexure P-1/A) dismissed the said OA in limine being time barred. However, the petitioner received the reply dated 2.3.2016 (Annexure P-2) to the legal notice. Hence, the present writ petition.

3. After hearing learned counsel for the petitioner, we do not find any merit in the writ petition.

4. The petitioner made a request for conversion of her CPF Account into GPF Account vide application dated 4.3.2004 (Annexure P-6). The said application was rejected and she was conveyed vide letter dated 19/25.3.2004 (Annexure P-8). After a gap of five years and nine months, she moved another application dated 7.12.2009 (Annexure P-9), but got no response. The petitioner again made request vide application dated 12.10.2015 (Annexure P-11) after a period of six years from the application dated 7.12.2009 (Annexure P-9) which also remained unattended. Lastly, she served a legal notice dated 11.1.2016 (Annexure P-13) which was duly replied on 2.3.2016 (Annexure P-2) after the dismissal of the OA. The Tribunal noticed that the application of the petitioner for conversion of CPF Account into GPF Account was rejected vide letter dated 19/25.3.2004 (Annexure P-8) and the OA could be filed within a period of one year, i.e. upto 25.3.2005. The said OA was filed on 24.2.2016, i.e. after a delay of almost 11 years. Further, the Tribunal recorded that the petitioner made another request vide application dated 7.12.2009 (Annexure P-9) after rejection of her first request on 19/25.3.2004 (Annexure P-8). In this way, she took up the matter with respondents No.1 and 2 after five years nine months of the rejection of her request. Even she filed the OA after almost a period of six years from the application dated 7.12.2009 (Annexure P-9). Accordingly, the Tribunal rejected the OA of the petitioner on the ground of limitation/delay. The relevant findings recorded by the Tribunal read thus :-

4. Request of the applicant for converting her CPF account into GPF Scheme was rejected by the respondents vide letter of March 2004 (Annexure A-6). Limitation period to file the O.A. to challenge the said order was one year and, therefore, the O.A. could be filed upto 25.03.2005. However, the O.A. has been filed on 24.02.2016 i.e. after delay of almost 11 years after the expiry of limitation period of one year. Not even application for condonation of delay in filing the O.A. has been filed. Even otherwise, such long and inordinate delay of 10 years 11 months in filing the O.A. cannot be condoned. The applicant has alleged that she suffered from ovarian cancel in August 2012 for which major operation was done on 07.11.2012 and she had six chemotherapy cycles from 11.08.2012 to 24.12.2012 and the disease relapsed in March 2014 when she again underwent six cycles of chemotherapy from 14.03.2014 to 09.08.2014 and now the disease has again relapsed for which she is undergoing chemotherapy from 21.10.2015. However, these averments do not make out any case for condoning the long and inordinate delay in filing the O.A. The disease for the first time struck the applicant in August 2012 i.e. more than 7 years after the expiry of limitation period of one year in March, 2005. Consequently, the said disease cannot be canvassed to condone the long and inordinate delay which had already occurred even before the applicant was afflicted with the disease.

5. Counsel for the applicant contended that the applicant has been constantly

pursuing her request with the respondents. This contention is also not tenable because as per averments of the applicant, she made representation/formal request dated 07.12.2009 (Annexure A-7) after her request was rejected in March 2004. Thus, for the first time, she took up the matter, with the respondents after 5 years 9 months of the rejection of her request. The applicant again went into deep slumber and woke up by making representation/application dated 12.10.2015 (Annexure A-9), again after almost 6 years from representation dated 07.12.2009. Thus, it cannot be said that the applicant has been constantly pursuing the matter with the respondents. Moreover, mere filing of representation or application does not extend the period of limitation nor fresh limitation period commences on making representation or applicant.

6. For the reasons aforesaid, we find that the instant O.A. is hopelessly barred by limitation. There is also no formal application for condoning the long and inordinate delay in filing the O.A. We refuse to entertain the O.A. which has been filed almost 12 years after the request of the applicant was rejected in March 2004 vide letter (Annexure A-6). Accordingly, the O.A. is dismissed in limine."

5. There is a delay in approaching the Tribunal and, therefore, the petitioner would not be entitled to any relief. Learned counsel for the petitioner could not furnish any satisfactory explanation for not approaching the Tribunal in time except to urge that she had been pursuing her request with the respondents and also sent a legal notice dated 11.1.2016 (Annexure P-13) but that by itself could not be a ground to entertain the petition by the Tribunal at the belated stage. In view of the above, there is no illegality or perversity in the order passed by the Tribunal.

6. Accordingly the present petition is dismissed.