(2009) 08 DEL CK 0261

In the Delhi High Court

Case No : Writ Petition (Civil) No. 20322 of 2005

Ms. Maya Devi APPELLANT

Vs

Government of NCT of Delhi and Others RESPONDENT

Date of Decision : 31-08-2009

Acts Referred:

Citation : (2009) 08 DEL CK 0261

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : Vipul Gupta, for the Appellant; Avnish Ahlawat and Latika Chaudhary, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Shali, J.—This is a writ petition filed by the petitioner praying for quashing of order dated 23rd July, 2005 issued by respondent No. 3 by virtue of which the petitioner''s case for being shifted from Contributory Provident Fund Scheme to Pension Scheme was rejected by the Deputy Director (Education), District North, Lucknow Road, Delhi. The petitioner has also prayed for issuance of an appropriate order for direction to consider the option of the petitioner for a change given on 8th February, 2000 for reverting to the Pension Scheme from Contributory Provident Fund.

2. That briefly stated, the facts leading to the filing of the present writ petition are that the petitioner joined as a TGT with respondent No. 4, DCM Girls Sr. Secondary School, Kishan Ganj, Delhi on 07.09.1972. The petitioner exercised her option to be governed by the Contributory Provident Fund Scheme on 07.10.1985. It is alleged by the petitioner that in the year 1987 a scheme was floated by the Government of India by virtue of which the persons who had opted for the Contributory Provident Fund Scheme were permitted to shift to the Pension Scheme. These instructions were issued vide Office Memorandum dated 1st May, 1987. The petitioner alleges that she had actually opted for the Contributory Provident Fund Scheme unknowingly and unmindful of the

consequences of continuing with the said Contributory Provident Fund Scheme as she was most of the time preoccupied with the teaching. It is alleged by the petitioner that she was so dedicated in the teaching assignment that she did not even get married and it was only on 8th February, 2000 that she made representation requesting the Principal of the respondent No. 4 school for permitting her to amend her earlier option and to switch over to Pension Scheme. This request of the petitioner is stated to have been dealt with by the respondent No. 4 school along with respondent No. 3/ Deputy Director (Education), District North, Lucknow Road, Delhi whereupon on consideration of the aforesaid Office Memorandum dated 1st May, 1987, the petitioner was required to refund the contribution of the employer which she had received towards the Contributory Provident Fund. It may be pertinent here to mention that the petitioner had superannuated, meanwhile, on 30th September, 2003. The petitioner as per the said requirements had also deposited a sum of Rs. 1,75,215/- on 7th July, 2004. After the deposit of the aforesaid amount, the petitioner had approached both respondent No. 3 as well as respondent No. 4 school for release of her pension, however all in vain and consequently she was constrained to file the present writ petition.

3. The respondents filed their counter affidavit and did not dispute the factum that the petitioner was employed with respondent No. 4 school or that she had originally exercised the option of being governed by the Contributory Provident Fund Scheme which she continued to avail till the time of her superannuation on 30th September, 2003.

4. It is further stated by the respondents No. 3 in the counter affidavit that in terms of the Office Memorandum dated 1st May, 1987, it was laid down that all CPF beneficiaries who were in service on 1st January, 1986 and who are still in service on the date of issue of these orders, i.e. 1st May, 1987, will be deemed to have come over to the Pension Scheme. It was further directed in the said OM that the option will have to be exercised and conveyed to the concerned Head of the Office by 30th September, 1987 in the form enclosed if the employees wish to continue under the Contributory Provident Fund Scheme and further if no option is received by the Head of the Office by the above date, the employees will be deemed to have come over to the Pension Scheme. It is the case of the respondents that letter dated 09.02.2004 by virtue of which the petitioner was asked to deposit the employer''s contribution in the Treasury was done under a mistaken belief as only one part of the OM was read by the concerned officer which laid down specifically that persons who were in service on 1st January, 1986 would be deemed to have reverted back to the Pension Scheme unless and until they specifically exercise the option to be governed by the Contributory Provident Fund Scheme.

5. It is the case of the respondents that the officer who asked the petitioner to deposit the employer''s contribution, in fact, read only the portion of automatic switch over of an employee from Contributory Provident Fund Scheme to the

Pension Scheme if nothing was heard from him and he did not exercise his option. This was done on a mistaken belief on account of the fact that there was an overriding clause attached to the said portion which specifically laid down that in the case of an employee exercising his option to be governed by the Contributory Provident Fund Scheme, there will be no automatic switch over from Contributory Provident Fund Scheme to the Pension Scheme. Accordingly, it is urged that since in the instant case the petitioner not only at the time of joining but even after issuance of OM dated 1st May, 1987 had exercised her option to be governed by the Contributory Provident Fund Scheme only, therefore there was no case for her having been deemed to have switched over from the Contributory Provident Fund Scheme to the Pension Scheme. In addition to this, it was only for the first time on 8th February, 2000 that the petitioner belatedly wanted to shift from Contributory Provident Fund Scheme to the Pension Scheme which fortified the stand of the respondents that she was aware that she was governed by the Contributory Provident Fund Scheme till the year 2000. On the basis of these averments, respondents No. 1 to 3 have contested the claim of the petitioner for being permitted to switch over from Contributory Provident Fund Scheme to the Pension Scheme.

6. The petitioner had filed her rejoinder affidavit and controverted the pleas raised by respondents No. 1 to 3 in the counter affidavit. No separate counter affidavit has been filed on behalf of respondent No. 4.

7. I have heard the learned Counsel for the parties and perused the record. The short question which arises for consideration in the instant case is as to whether the petitioner can be permitted to switch over from the Contributory Provident Fund Scheme to the Pension Scheme. The Government of India on 1st May, 1987 issued a notification and gave an option to the employees to take the advantage of the Pension Scheme by observing that all the employees at a given point of time, i.e. on 01.05.1987, will be deemed to have switched over from Contributory Provident Fund Scheme to the Pension Scheme automatically unless and until they specifically exercise their option to be governed by the Contributory Provident Fund Scheme. The case of the petitioner is that the petitioner may have signed some document mistakenly exercising her option to be continued to be governed by the Contributory Provident Fund Scheme, but that was totally unintentional. The petitioner admittedly in the instant case has exercised an option in the year 1987 also after issuance of OM dated 1st May, 1987 that she would like to be governed by the Contributory Provident Fund Scheme and therefore there could not be an automatic switch over from Contributory Provident Fund Scheme to Pension Scheme in the case of the petitioner. It is only in February, 2000 for the first time that she had expressed her desire when she was on the verge of the retirement that she would like to switch over from Contributory Provident Fund Scheme to the Pension Scheme. This clearly fortifies the fact that the petitioner was aware of the fact that she was being governed by the Contributory Provident Fund Scheme as she had exercised an option in this regard. Therefore in the case of the petitioner, there

was no automatic switch over from Contributory Provident Fund Scheme to the Pension Scheme as was envisaged in the OM.

5. The plea of the petitioner that her case was examined and she was asked to deposit the employer''s contribution in the Treasury which she did and thereby the petitioner was estopped from resiling from the said benefit being given to the petitioner does not seem to be convincing. There is no estoppel against law. The respondents have specifically stated in the counter affidavit that the letter by virtue of which the petitioner was asked to deposit the employer''s contribution was issued under a mistaken belief by reading only a portion of the OM dated 1st May, 1987 which specifically laid down that there will be automatic switch over from Contributory Provident Fund Scheme to the Pension Scheme and without taking into consideration that this was subject to the fact that if an employee had specifically exercised his option to be governed by the Contributory Provident Fund Scheme, then there will be no question of automatic switch over and in the instant case admittedly the petitioner had applied in the year 1987 that she would like to be governed by Contributory Provident Fund Scheme and she got her contribution deducted till the age of her superannuation which was on 30th September, 2003. The petitioner being a Teacher, an educated person, was aware of her rights. It was too late for her to urge for the first time in the year 2000 when she was on the verge of her retirement to say that she was not made aware of the OM dated 1st May, 1987 so as to enable her to exercise her option that she would like to be governed by the Contributory Provident Fund Scheme or by the Pension Scheme. This only seems to be an afterthought on the part of the petitioner as it seems that wisdom has dawned upon the petitioner only on the eve of her retirement. It seems to be that it is at that point of time the petitioner must have calculated the benefit of her Contributory Provident Fund Scheme or the Pension Scheme and may have felt that the Pension Scheme is more beneficial and therefore she has tried to set up this case for switch over from Contributory Provident Fund Scheme to the Pension Scheme.

6. For the reasons mentioned above, I am of the considered opinion that not only the petitioner having chosen to be governed by the Contributory Provident Fund Scheme in pursuance to the OM dated 1st May, 1987, she was estopped from contending that she be permitted to change over from Contributory Provident Fund Scheme to the Pension Scheme but also by her conduct for all practical purposes she had been governed by the Contributory Provident Fund Scheme till the time of her retirement, and therefore the mere fact that she under the mistaken belief and was asked to deposit the employer''s contribution with the Treasury does not confer any right on her to change over from Contributory Provident Fund Scheme to the Pension Scheme. The petitioner is accordingly to be refunded that amount of Rs. 1,75,215/- which she deposited on 07.07.2004. There is absolutely no dispute that since the petitioner had deposited Rs. 1,75,215/- on 07.07.2004 with respondent No. 3, the said respondent is under an obligation to pay the interest on the said amount, I accordingly direct respondent No. 3 to refund the said amount of Rs. 1,75,215/- within a period of

six weeks from today along with an interest calculated @ of 8% from the date of her deposit till the time it is actually returned.

7. With these directions, the writ petition is dismissed.

No order as to costs.