(2021) 03 CAT CK 0021

In the Central Administrative Tribunal

Case No : Original Application No. 854, 912 Of 2020

Raminder Loth & Others APPELLANT

Vs

Union Of India & Others RESPONDENT

Date of Decision : 02-03-2021

Acts Referred:
Central Civil Services (Pension) Rules, 1972 — Rule 49

Citation : (2021) 03 CAT CK 0021

Hon'ble Judges : Aradhana Johri, Member (A)

Bench : Single Bench

Advocate : Yogesh Sharma, S. Rajappa, Ranjan Tyagi

Final Decision : Allowed

Judgement

Aradhana Johri, Member (A)

1. As the issue involved in the aforesaid OAs are based on common question of law and facts, the said OAs, with the consent of the parties, have been heard together and are being disposed of by this common order. For adjudication the OAs, the brief facts are as under :-

2. In OA No. 854/2020 - the applicant, Raminder Loth, was appointed as Primary Teacher with respondent Nos. 2-4, on 04.09.1984. She was later appointed as Post Graduate Teacher (PGT) on 26.08.1987 on direct recruitment basis. Later she was further promoted as Vice Principal and retired on the same post on 31.01.2020. Till then she continued under the CPF Scheme.

3. This OA has been filed, stating that the applicant was appointed as PGT after 01.01.1986, at which time there was no CPF Scheme available. Therefore, she can only be covered under the GPF-cum-Pension Scheme. She has also impugned the order by which her case for conversion of CPF to GPF was rejected on 04.06.2019.

4. It is the contention of the applicant that her appointment as PGT on

26.08.1987 was on direct recruitment basis, therefore, her date of appointment is after 01.01.1986 when the CPF Scheme ceased to exist and all fresh appointees were covered under the GPF-cum-Pension Scheme. She has cited several rulings, both of the Tribunal and of the Hon?ble High Court, in support of her contention.

5. The respondents have denied the claims of the applicant. They have stated that even after her appointment as PGT in 1987, she continued under CPF Scheme till her retirement. Hence, she cannot now claim that she is not covered under CPF Scheme but under GPF-cum-Pension Scheme. They have also stated that she made a conscious decision on her own volition to exercise an option for CPF Scheme when she joined the service of Kendriya Vidyalaya Sangathan (KVS) and now she cannot claim GPF. They have also cited certain cases in support of their contention.

6. Heard Shri Yogesh Sharma, learned counsel for the applicant and Shri S. Rajappa, learned counsel for the respondents.

7. The main issue here is whether an option exercised by the applicant, when she was appointed as Primary Teacher in 1984, continues after her appointment as PGT in 1987 on direct recruitment basis. It is to be considered whether appointment on direct recruitment basis is to be treated as a fresh appointment. The applicant has cited the following cases, stating that they relate to persons, who were appointed in identical circumstances and have been granted pension:-

S.

No.

Name of

Applicant

OA No.

Date of

Decision

1.

Hoshiar Singh

2112/2013

19.09.2016

2.

BC Tyagi

2073/2014

8.11.2016

3.

Vijay Kumar

Malik

4592/2015

15.5.2017

4.

DK Gupta

4579/2015

6.12.2017

5.

RP Sharma

2544/2018

11.7.18

6.

AK Shukla

4300/2017

6.12.2017

7.

GS Verma

4593/2015

15.5.2017

8.

Kusum Lata

4675/2015

3.7.2017

9.

SK Verma

3951/2015

15.05.2017

10.

PRL Gupta

2318/2015

18.05.2017

11.

Ranjan Kishore

3100/2015

15.05.2017

12.

Gl Bankar

1077/2018

19.03.2018

13.

Kamlesh

Mishra

1155/2018

20.03.2018

14.

Kamla Urpati

1717/2018

02.05.2018

The applicability of these cases has not been contradicted by the respondents, who have simply said in the reply on 24.08.2020, that they need time to consider each case on merit and hence, no statement regarding finality of the judgment can be made.

8. Applicant has also cited the case of Madal Lal Paneri Vs. Union of India & Ors.,OA No. 2619/2019, which was decided on 28.02.2020. In the said case, while allowing the OA, this Tribunal has made the following observations:-

"12. It is not in dispute that OA No. 4592/2015 titled Vijay Kumar Malik vs. Union of India & Ors with a batch of seven other OAs came before this Tribunal for final adjudication. These OAs were taken up for hearing on 15.05.2017, the learned counsel for the applicants and respondents were ad idem that the issues raised in these OAs are squarely covered by the Decision of this Tribunal in Hoshiar

Singh (supra) and as such they could be disposed of accordingly. It was further submitted that the KVS has already implemented the order of this Tribunal in Hoshiar Singh (supra)

In view of the aforesaid facts and circumstances of the case, it is evident that the claim of the identically placed persons have been adjudicated not once by the Division Bench of this Tribunal in the case of Hoshiar Singh (supra) but same has been repeatedly followed in a catena of cases and this fact has been admittedly brought to the notice of this Tribunal, at the end the respondents as well as can be noticed from the judgment dated 15.05.2017 in the case of Vijay Kumar Malik (supra). However, it is surprising how the respondents in place of extending the benefits of the Judgment of Hoshiar Singh (supra) at their own to the similarly placed present applicants also, have compelled them to approach this Tribunal by way of the present OAs.

13. With regard to limitation, it would be clear from the aforesaid that issue is no more res integra in view of the judgement of this Tribunal in the case of Hoshiar Singh (supra).

14. In view of the above, I am of the considered view that issue involved in the present OAs has been decided by the court of competent jurisdiction and same has attained finality in as much as the judgment(s) have been implemented but the respondents are not extending the benefit thereof to similarly situated persons who are being compelled to approach the Tribunal or Court for the similar relief. Such approach of the respondents has been deprecated by the Hon'ble High Court and the Apex Court in various cases.

15. In view of the facts and circumstances and the law as discussed above, I am of the considered view that aforesaid OAs deserved to be allowed.

16. Accordingly, the OAs are allowed with the following order(s)/ direction (s):-

a) The impugned orders are set aside.

b) The respondents are directed to extend the benefits of GPF-Pension-Scheme to the applicants in the aforesaid OAs keeping in view their appointment as Principal under the respondents on Direct Recruitment basis.

c) Adjustment of account/ amount shall also take place viz-a-viz the amounts, if already paid to the applicants.

d) The aforesaid exercise shall be completed by the respondents as expeditiously as possible and in any case in not more than 3 months from the date of receipt of a certified copy of this order."

9. In the case of Hoshiyar Singh vs. Union of India, OA No. 3112/2013, on 09.09.2016, this Tribunal had dealt with the issue of a KVS Teacher being appointed to a higher post by way of an open advertisement and held that the benefits of Pension Scheme will be applicable to such an appointee. The relevant paras of the said order are reproduced as under:-

"6. We have considered the arguments put-forth by the learned counsel for the parties and have also gone through the pleadings and the documents annexed thereto. Admittedly, the applicant was appointed as a Principal in KVS on 14.08.2002 by way of an open advertisement. Although his initial appointment letter as Principal dated 14.08.2002 (Annexure A-7) stated that his appointment is on deputation basis but later in terms of the decision taken by the KVS in November, 2004, all such appointees of the year 2002 were reverted but the reversion order was withdrawn vide KVS circular dated 19.09.2007 (Annexure A-8) and consequently vide KVS office order dated 26.09.2007 (Annexure A-9), the applicant's service as Principal was regularized with effect from the date when he was appointed as Principal on deputation basis, i.e., 14.08.2002. Taking all these developments into consideration, we are of the view that for all practical purposes, the applicant's appointment as Principal on 14.08.2002 shall have to be construed as a fresh appointment on direct recruitment basis.

7. For all the direct recruits in KVS at various levels in the year 2002 the GPF-cum-Pension Scheme was automatically applicable. Therefore, we hold that the GPF-cum-Pension Scheme is applicable to the applicant from 14.8.2002 and till the date of his retirement on 31.08.2014. The applicant has already put in more than 12 years regular service as Principal and hence he is entitled for pension as per Rule 49 of CCS (Pension) Rules, 1972 having completed more than 10 years of qualifying service.

8. The ratio laid down by the Hon'ble Apex Court in the case of Jaspal Kaur (supra) on which the learned counsel for the respondents laid tremendous amount of emphasis, simply does not apply to the case of the applicant for two reasons. Firstly, the Hon'ble Apex Court in that case had perused the original service book of Jaspal Kaur and had found that even on 10.06.2005 in the Last Pay Certificate, it was stated that she had opted for the CPF Scheme. Based on the said observation, the Hon'ble Apex Court held that merely because the original documents relating to exercise to option was not produced that should not be a ground to ignore the ample materials produced to show exercise of the option. Secondly, as held by us, the applicant was appointed as Principal in the year 2002 on direct recruitment basis and at that time the GPF-cum-Pension Scheme was automatically applicable to all direct recruits to various posts in KVS. The other judgments quoted by the learned counsel for the respondents do not have any bearing to this case.

9. On the issue of limitation, raised by the learned counsel for the respondents, suffice to say that the applicant has represented to the respondents regarding this issue way back on 18.01.2012 and 18.04.2012 much before his superannuation on 31.08.2014 and more so the issue involved is recurring in nature. We, therefore, hold that the limitation will not come in the way of the applicant. This Tribunal has also granted identical prayer to the applicants in OA No.1437/2009 vide order dated 12.04.2010 in the case of Amit Mukherjee & Ors. (supra) and the said order had already been implemented by the respondents.

10. In view of the discussions in the foregoing paras and for the reasons given therein, the OA is allowed. The respondents are directed to extend the benefits of the Pension Scheme to the applicant considering his appointment as Principal on direct recruitment basis w.e.f. 14.08.2002. This shall be done within a period of three months from the date of receipt of a certified copy of this order. It is also made clear that the applicant shall not be entitled to any interest on the arrears of the pension payable to him."

10. Applicant has also filed the judgment of Madras Bench of the Tribunal in OA No. 1248/2019 (Smt. Usha Rajagopalan vs. KVS & Anr.), the circumstances of which are identical to the present case. This order of the Tribunal was upheld by the Madras High Court in the case of Commissioner KVS & Anr. vs. R. Shobana & Anr.) in which OA No. 1248/2019 was also considered along with others. All these orders have already been implemented which should have given quietus to this issue.

11. From these various rulings, it emerges that this issue has already been adjudicated, in that an employees of KVS, who was initially appointed on a lower post but was selected through open market on direct recruitment basis on a higher post, will be treated as appointed from the date of the fresh appointment, and if that date falls after the cut off date for the introduction of the GPF-cum-Pension Scheme, he will be eligible for the same.

12. Learned counsel for the respondents have relied on several rulings. They have cited the case of Hon?ble Supreme Court in KVS & Ors. vs. Jaspal Kaur & Ors., Civil Appeal No.2876/2007) decided on 06.06.2007. However, the facts of the present case are quite different, wherein the appointment of the applicant is being treated from the date of direct recruitment to the higher post at which point of time, the Pension Scheme was clearly applicable.

13. The respondents have also cited the following cases :-

(i) Ram Prit Thakur vs. Kendriya Vidyalaya Sangathan & Ors., OA No. 973/2018 decided on 08.08.2019;

(ii) KDS Yadav vs. KVS & Anr, OA No. 3972/2018, decided on 12.07.2019;

(ii) Smt. Shashi Gupta vs. Union of India & Anr., OA No. 942/2016, decided on 16.10.2018; and

(iii) S.P. Tak vs. Kendriya Vidyalaya Sangathan & Anr., OA No. 290/00331/2015, decided on 21.07.2016"

However, the respondents cannot get any benefit from the said cases because the facts of all these cases are different. It also emerged during the hearing that the case of S.P. Tak (supra) was heard by Jodhpur High Court in the WP(C) No. 10662/2016 which reversed the CAT decision and SLP No. 17762/2019 filed before the Apex Court by KVS was dismissed on 26.07.2019 followed by the dismissal of the Review Petition.

14. Further, in the case of Shashi Gupta (supra), this Tribunal has observed that the matter in question is different to the case of B.C. Tyagi vs. Union of India, OA No. 2073/2014, decided on 08.11.2016, who had been appointed by fresh recruitment notice after the cut off date for GPF. In Para 14 of the judgment, this Tribunal has observed the following:-

"14. In the case of B.C. Tyagi (Supra), the employee was earlier appointed as TGT under KV on 06.11.1984 when he was covered under CPF Scheme. Thereafter against a fresh recruitment notice for PGT, the employee was appointed on 07.02.1992 when the Pension Scheme had already come into force for all new employees, however, the respondents were still treating Shri B.C. Tyagi under the old CPF Scheme which was not upheld and it was directed that the Pension Scheme shall be applicable as he was a fresh appointee as a PGT w.e.f. 07.02.1992. Accordingly, this case is also not similar to the instant case and no ratio can be withdrawn."

In OA No. 912/2020 - Rajeshwar Mahto Vs.KVS, the circumstances are similar to OA No. 854/2020. The applicant was appointed as Primary Teacher on 11.07.1977 and subsequently appointed PGT (Hindi) on 02.12.1995 on direct recruitment basis. He retired from the same post on 31.11.2013.

15. In light of the above, these OAs are allowed with the following directions:-

(i) the impugned orders are set aside;

(ii) the respondents are directed to extend the benefit of GPF-cum-Pension Scheme to the applicants in the aforesaid OAs, keeping in mind the date of their appointment as PGT on direct recruitment basis; and

(iii) adjustment of account/ amounts shall also take place as per relevant OMs, with regard to the amounts already paid to the applicants.

16. The respondents will complete this exercise within a period of two months from the date of receipt of a certified copy of this order.

There shall be no order as to costs.

