(2019) 10 CAT CK 0001

In the Central Administrative Tribunal

Case No : Miscellaneous Application No. 908 Of 2016, Original Application No. 942 Of 2016

Shashi Gupta APPELLANT

Vs

Union Of India And Anr RESPONDENT

Date of Decision : 16-10-2019

Acts Referred:
Administrative Tribunals Act, 1985 — Section 19

Citation : (2019) 10 CAT CK 0001

Hon'ble Judges : Pradeep Kumar, Member (A)

Bench : Single Bench

Advocate : E.J. Verghese, S. Rajappa

Final Decision : Dismissed

Judgement

1. Heard Sh. E.J.Verghese, learned counsel for applicant and Sh. S.Rajappa, learned counsel for respondents on MA as well as OA.

2. The applicant brought out that she was appointed as Primary Teacher in Kendriya Vidyalaya (KV) on 19.07.1977 and was confirmed on 01.08.1980. She retired on 31.03.2016 on attaining the age of superannuation. As per initial appointment, KV employees were covered under CPF Scheme. Subsequently, on 01.09.1988 one scheme was launched by Kendirya Vidyalaya Sangathan (KVS) wherein it was specified that those employees who were in service on 01.09.1988 and who are still in service, are deemed to have switched over to the new GPF-cum-Pension Scheme. However, the existing employees were also given an option that if they want to still continue in the old CPF Scheme, they can exercise an option for the same by 31.01.1989.

3. The applicant pleaded that she had not exercised any option to continue with the CPF Scheme and as such under the deemed option, as per the provision of the said circular of 01.09.1988, she is deemed to have come over to the GPF-cum-Pension Scheme.

The applicant, however, also pleaded that she came to know of this Scheme only in March 2012. However, since the respondents were continuing to treat her under CPF Scheme even though she had not exercised any option at the relevant point of time, being unaware of the whole thing, she made a representation on 16.03.2012. Thereafter, another representation was made on 07.09.2015 followed by another one on 28.10.2015. However, there was no response from the respondents. She met the Deputy Commissioner of Grievance Cell, KVS and made another representation on 14.11.2015. This was followed with more representations dated 05.12.2015, 28.01.2016 and 01.02.2016. There was, however, still no response.

Since her date of superannuation was 31.03.2016, certain forms were required to be filled in preparation to retirement, which were filled on 07.01.2016. While filling these forms, she had no option but to indicate her CPF number as CPF-1569. However, in this form there was a column vide item no.12 which reads "details of omissions, imperfections of deficiencies in the service book which have been ignored under Rule 59 (1) (b) (ii)". In this column, she had filled "With reference to Apropos JC Admn. Letter KVS (HQ) F.No.152-1/79-80/KVS/Budget/ part II dated 1.9.88. My CPF Scheme deemed to change over to Pension Scheme as I was in KVS in 1986 and never filled form of continuous retention of CPF Scheme on the date of issue of aforesaid orders."

4. Since there was no response to her representations, she had filed a RTI application for which reply was received on 29.01.2016. As per this reply, the KVS, New Delhi HQ office advised the P.I.O. of KVS Regional Office, New Delhi that option form for continuation in CPF Scheme was not available in the said office of KVS but the P.I.O. of KVS, Regional Office was directed "to furnish the information directly to the applicant within the stipulated time under intimation to this office".

5. In view of the foregoing, since the applicant had not specifically opted for continuation in CPF Scheme, she is deemed to have switched over to the GPF Scheme as per the provision of OM dated 01.09.1988. In support of this contention, the applicant brought out a decision of Hyderbad Bench of this Tribunal in the case of R.S.Giri vs. KVS, OA No.821/2004 decided on 10.02.2005. It is seen from this judgment that the application of Sh. R.S.Giri to be treated under deemed option for GPF-cum-Pension Scheme dated 05.10.2001 was initially rejected by KVS. However, it was noted by the Tribunal that subsequently one advance from CPF was processed and sanctioned on 08.12.1989 and accordingly this advance could not have been processed unless Sh. R.S.Giri had opted for CPF. However, since the respondents were unable to produce the said option, this judgment gave the following directions:

"6. In view of the above, when the respondents have sanctioned advance to the applicant from his CPF Account on 8.12.1989, there must be record available for the purpose of according sanction and in view of the contention of the learned counsel for the applicant that when the record is not available, in terms of para

3.2 of the OM dated 1.9.1988, in case the applicant had exercised his option, one form should be available in the personal file of the applicant, I find it just and proper to dispose of this application by directing the respondents to verify the personal file of the applicant and the records relating to sanction of advance to the applicant from his CPF Account and to pass appropriate order after giving personal hearing to the applicant, within a period of two months from the date of receipt of a copy of this order. At the time of personal hearing, respondents shall produce the above record/file to the applicant for his perusal. OA is disposed of accordingly with no order as to costs."

The applicant was, however, unable to state anything further on the case of Sh. R.S.Giri, as to what happened after said examination.

6. The applicant brought out two other judgments; one by the Principal Bench of this Tribunal titled B.C.Tyagi vs. Union of India, OA No.2073/2014 decided on 08.11.2016 and another judgment by Hon'ble High Court of Madras titled Union of India and others vs. S.Subbiah and others, WP (C) No.28092 to 28094 of 2015 decided on 05.01.2017 wherein relief sought in instant OA has been granted in similar circumstances. In view of the foregoing, applicant pleaded that she should be treated under GPF-cum-Pension Scheme.

7. The applicant has sought the following reliefs:

"(a) Allow the Application of the Applicant under section 19 of the Administrative Tribunals Act 1985 with cost.

(b) Direct the respondents to implement the OM dated 01/09/1988, granting pension and pensionary benefits to the applicant.

(c) Extend the benefit of the order and judgment of the this Honourable Tribunal Hyderabad Bench dated 10/02/2005 in OA No.821/2004 in favour of the applicant, extending the benefit of GPF/Pension.

(d) Any other relief, if any, this Honourable Tribunal deems fit and proper in the facts and circumstances of the case."

8. The respondents drew attention that options were to be exercised by 31.01.1989 and after almost 30 years, it is not possible now to bring out the records of that time, however, there are other corroborative records in the form of pay slip and deductions and contributions towards CPF which had continued unabated and even by applicant's own admission, she had filled up her CPF number also in the settlement papers at the time of retirement. Further, by way of applicant's own admission, she had made the first representation on 16.03.2012, i.e., after almost 23 years of the cut off date. Now, she had already superannuated on 31.03.2016 wherein all final payments including CPF had already been released and hence it is not permissible to go back and treat her under GPF-cum-Pension Scheme.

9. Respondents also drew attention to a proposal which was sent by them to

Ministry of Human Resource Development for grant of one time permission for changing from CPF to GPF-cum-Pension Scheme. This was in the context of many such representations. However, this was not agreed and reply was communicated vide Ministry of Human Resource Development letter dated 07.04.2015 as under:

"I am directed to refer to the correspondence resting with KVS's letter No.110125/2014/KVS/CPF to GPF/1576 dated 21.08.2014 on the subject mentioned above and to say that the proposal for grant of one time permission for changing from CPF to GPF cum Pension Scheme for teaching and non-teaching staff of KVS was considered in consultation with the Department of Expenditure. The Department of Expenditure after examining the proposal has inter-alia observed as below:

"The employees of Kendriya Vidyalaya Sangathan who were in service as on 1.1.1986 and decided to opt for CPF made a conscious decision knowing well that the option once exercised is final. Grant of one more option to such CPF subscribers in KVS could have repercussion elsewhere with such an option having to be extended to all other CPF beneficiaries as well whose number is quite substantial.

In view of the above position, the proposal of grant of one time permission for changing from CPF to GPF cum Pension Scheme for teaching and non teaching staff of KVS is not agreed to."

10. The respondents also drew attention to two judgments both by Hon'ble Apex Court as under:

(i) KVS & ors. vs. Jaspal Kaur and anr., CA No.2876/2007 decided on 06.06.2007 of Hon'ble Supreme Court.

(ii) Union of India & ors. vs. M.K.Sarkar, CA No. 8151/2009 decided on 08.12.2009 of Hon'ble Supreme Court.

10.1 In the case of Jaspal Kaur (supra), Hon'ble Supreme Court has held as under:

"3. ..... On 1.9.1988 the KVS issued Circular providing for the option to the KVS employees to switch over to GPF Scheme from the CPF Scheme. On 6.3.1989 KVS allotted account numbers in the CPF Subscription in which the respondent no. 1s name is at serial no. 8. This document shows that a number of employees opted for the benefit of CPF Scheme. On 6.7.1989 a new CPF account number was allotted to respondent no. 1 for having exercised the option to continue in the CPF Scheme. on 15.7.1989 revised CPF account which was allotted by letter dated 6.3.1989 was further changed vide O.M. dated 15.7.1989 in which also name of respondent no. 1 appeared at serial no. 8.

xxx xxx xxx

7. The last pay certificate issued to the respondent no.1 when she handed over charge on 23.5.1992 clearly indicate that CPF subscriptions 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 month and allotment of CPF account number 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 10.6.2005 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 19.4.2003 and the last pay certificate of 18.1.1982. All these documents establish that respondent no. 1 had exercised the option for the CPF Scheme. Merely because the original documents relating to exercise to option was not produced that should not be a ground to ignore the ample materials produced to show exercise of the option. The CAT and the High Court were not justified in talking a difference view."

Accordingly, non-availability of the option form which was exercised by an employee, was not held sufficient to treat the employee as deemed covered under GPF-cum-Pension Scheme, if some other corroborating evidence to the contrary is available.

10.2 In the case of M.K.Sarkar (supra), applicant was working with the Railways and options to switch over from CPF to GPF was extended by Railways many times. The last such option was on 23.07.1974. This option was to be exercised by 31.12.1978. Sh. Sarkar was Head of Department and was covered under CPF. He retired on 15.10.1976. At the time of retirement, he could still opt for pension but did not opt. It was only after 22 years of such retirement that he approached the respondent - Railway, to treat him as covered under pension. This was not agreed. This was upheld by Hon'ble Apex Court.

11. It was pleaded that in view of the foregoing, the applicant cannot be covered under GPF-cum-Pension Scheme at this belated stage.

12. Matter has been heard at length. All employees were extended an option on 01.09.1988 that unless they want to continue with the CPF Scheme, they will be deemed covered under GPF-cum-Pension Scheme. The applicant's plea is that she has not exercised any option for CPF scheme at the relevant point of time, being not aware of it in the first place, and as such she is deemed to have been covered under GPF-cum-Pension Scheme. This plea is not acceptable in view of other corroborating evidence of CPF deductions being made from her monthly salary which had continued all along till her retirement. She had herself also indicated the CPF number etc. in her retirement papers. In the case cited by the applicant in respect of R.S.Giri (supra), no ratio can be drawn (para 5 supra).

13. In the case of S.Suubiah (supra), who was working under Department of Atomic Energy, the relevant circular for employees to exercise option was issued by DoP&T on 01.05.1987 with the last date being 30.09.1987. Thereafter, this cut off date was extended till 30.12.1987 by Department of Atomic Energy vide circular dated 18.09.1987. The applicant did not exercise option to continue in

CPF Scheme within original cut off date. In this case the option to continue in CPF Scheme was exercised in this extended period. It was subsequent to exercise of this option that the employee wanted to be covered under GPF-cum-Pension Scheme. The Hon'ble High Court had quoted a judgment by Hon'ble Apex Court in Union of India & anr. Vs. S.L.Verma & ors. dated 28.11.2006 and observed that no seriousness was attached by the Department of Atomic Energy to the said cut off date 30.09.1987. Further, as per the original scheme, the employees, who were covered under CPF Scheme were given an option of deemed coverage under Pension Scheme unless they had exercised the option to continue with CPF Scheme in time. The Hon'ble Court observed that "the said option given during the time of extended period has no sanctity in law". The Hon'ble High Court also observed that such option given by the employees cannot be held against them in view of the fact that several similarly placed employees of the Central Government were allowed to switch over to the CPF Scheme, meaning that no seriousness attached to the cut of date prescribed original by the Official Memorandum dated 1.5.1987. If these employees were denied pension in the facts and circumstances, it would certainly amount to discrimination, which per se constitutionally impermissible. Moreover, the decision of the Delhi High Court cited supra and the contentions which were extracted above, would unequivocally supported the claim of the respondent employees notwithstanding the fact that whether they exercised their option or not."

In the instant case, there was no such extension. Moreover applicants continued under CPF Scheme for almost 23 years without any protest. Therefore, this case cannot be considered similar to the instant case and no ratio can be withdrawn.

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 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 drawn.

15. In view of the foregoing, the case of applicant that she be deemed to be covered under GPF-cum-Pension Scheme, is not acceptable and specially so in view of availability of other corroborating evidence in the form of monthly deductions for CPF for subsequent 27 years right till her superannuation, and the case having been already settled once the applicant retired from service on 31.03.2016 on attaining the age of 60 years.

In the event, MA as well as OA are dismissed being devoid of merit. No order as to costs.

