(2018) 12 CAT CK 0168

In the Central Administrative Tribunal

Case No : Review Application No. 242 Of 2018 In Original Application No. 942 Of 2016

Shashi Gupta APPELLANT

Vs

Union Of India And Anr RESPONDENT

Date of Decision : 03-12-2018

Acts Referred:

Citation : (2018) 12 CAT CK 0168

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. The applicant was appointed as Primary Teacher in Kendriya Vidyalaya (KV) on 19.07.1977. At that time all employees of KV were covered by CPF Scheme. Kendriya Vidyalaya Sangathan (KVS) notified a scheme on 01.09.1988 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 the option for the same by 31.01.1989.

2. The applicant had pleaded that she had not exercised any option to continue in the CPF Scheme and as such under the deemed option she is deemed to have come over to the GPF-cum-Pension Scheme. Since this was not agreed by the KVS, she felt aggrieved and she filed the OA. The OA was dismissed being devoid of merit vide order dated 16.10.2018. The applicant, however, preferred a review application.

3. Matter has been reviewed. Following is observed:

(i) The option called for had closed on 31.01.1989. It was on 16.03.2012 i.e. only 23 years later when she represented for the first time to KV that she had not opted for CPF Scheme and hence needs to be covered under GPF-cum-

Pension Scheme. The applicant is thus squarely time barred for raising such an objection after 23 years. Her plea, that she came to know of the circular dated 01.09.1988 in 2012 for the first time, is not acceptable. It is noted here that in all these 23 years, monthly contributions to CPF Scheme had continued. It is inconceivable that the applicant would, at no time, have come across the existence or otherwise of the new GPF Scheme.

(ii) The RTI reply issued by KV on 25.07.2016, indicates a list of 20 such staff who had opted for CPF Scheme. This list does not contain the name of the applicant. However, the view held by this Tribunal is that such a list issued after almost 27 years, cannot be a sufficient ground in view of the fact that for good 23 years duration, the applicant had continued CPF contributions before raising any objection whatsoever.

4. The applicant had drawn attention in respect of the decision by the Tribunal in OA No.3112/2013 passed on 19.09.2016 titled Hoshiyar Singh vs. Union of India and others. This was a case wherein the applicant was first appointed as Principal, KVS on deputation basis w.e.f. 14.08.2002. Subsequently, vide orders issued in November 2004, all such appointees of 2002 were reverted. This reversion order was subsequently withdrawn vide KV circular dated 19.09.2007 and thereafter vide KVS office order dated 26.09.2007, the applicant"s service as Principal was regularised with effect from the date when he was initially appointed as Principal on deputation basis w.e.f. 14.08.2002.

Admittedly, as of 14.08.2002 it was GPF-cum-Pension Scheme that was applicable in the KVS. With this background, the Tribunal had passed the following order in this case:

"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."

It is clear that Tribunal had taken the date of appointment as 14.08.2002 and treated the applicant to be covered under GPF-cum-Pension Scheme. This ratio is not applicable in the instant case as the applicant was originally appointed on 19.07.1977 when CPF Scheme was in force, and thereafter options were called vide circular dated 01.09.1988.

5. In the case of Hoshiyar Singh (supra), he was not being covered under GPF-cum-Pension Scheme initially by the KVS. He made a representation dated 18.01.2012 before he superannuated on 31.08.2014. In view of the circumstances of initial appointment of Sh. Hoshiyar Singh as Principal on 14.08.2002, as brought out above, the question of limitation was not relevant since it was GPF-cum-Pension Scheme which was applicable to all new appointees as of 14.08.2002.

As against this, in the instant case, the limitation period starts from 31.01.1989 when the date for option closed whereas the applicant continued to make contributions to CPF for next 23 years without any protest whatsoever and applied only on 16.03.2012 for the first time, for being covered under GPF scheme under deemed clause, and hence in respect of limitation the decision for Hoshiyar Singh is not relevant in the instant case.

6. The applicant had also raised a question that the respondent no.1, namely, Ministry of Human Resource and Development, had not contested the instant case vigorously and in absence of the same, the contest by KVS who are respondent no.2 cannot be taken into account. In this regard, the averments made in the Review Application by the applicant are reproduced below:

"That when the respondent No.1 is not contesting the OA, respondent No.2 has no locus standi to contest the OA and it amounts to judicial impropriety."

The above contention cannot be agreed as it is the KVS where the applicant was working and it was KVS who had issued a policy dated 01.09.1988 wherein last date was specified as 31.01.1989.

7. The applicant had relied upon the judgment of 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. The applicant had pleaded that DOP&T had issued a directive to seek options for GPF scheme on 01.05.1987 with cut off date being 30.09.1987. However, Department of Atomic Energy (DAE) where Sh. S.Subbiah was working, had extended the cut off date from 30.09.1987 upto 30.12.1987. This was not upheld by the Hon"ble High Court on the plea that the cut off date of 30.09.1987 was specified by DOP&T and as such DAE had no authority to extend the same.

In the instant case, the policy itself was issued by KV on 01.09.1988. KVS is an autonomous organisation and had they not issued the policy directives dated 01.09.1988, CPF would have continued and there would not have been any option for GPF-cum-Pension to the existing employees, including the applicant. It is also seen from the OA and the RA that the very issue of this policy dated 01.09.1988 by the KVS, has not been questioned.

In view of this, the ratio of the judgment in S.Subbiah (supra), policy being issued/extended by an incompetent authority, is not considered applicable in the instant case.

8. All other arguments extended in RA have already been taken into account and it is the considered view of this Tribunal that no change is required. The orders issued on 16.10.2018 stands. Hence, the RA is dismissed being devoid of merits.

