

(2022) 09 JH CK 0030

In the Jharkhand High Court

Case No : Writ Petition (S) No. 6050 Of 2019

Union Of India And Others

APPELLANT

Vs

Priyabrat Singh And Others

RESPONDENT

Date of Decision : 14-09-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2022) 09 JH CK 0030

Hon'ble Judges : Dr. Ravi Ranjan, CJ; Sujit Narayan Prasad, J

Bench : Division Bench

Advocate : Md. Mokhtar Khan, Md. Jalisur Rahman

Final Decision : Dismissed

Judgement

Sujit Narayan Prasad, J

1. The instant writ petition is under Article 226 of the Constitution of India wherein the order dated 19th September, 2019 passed by Central Administrative Tribunal, Patna Bench, Patna (Circuit Bench at Ranchi) in O.A. No.051/00132/2019 has been questioned by which the order as contained in letter No.1521 dated 08.10.2015 has been quashed and set aside holding it contrary to the decision of the Department of Personnel and Training as contained in DOPT No.4/1/87 dated 01.05.1987 issued by the Ministry of Personnel, Public Grievance and Pensions, Government of India wherein it has categorically been mentioned that all CPF beneficiaries, who were in service on 01.01.1986 and who were still in service on the date of issue of these orders would be deemed to have come over to the Pension Scheme.

2. The brief facts of the case, as per the pleadings, which are required to be enumerated herein, read as under :-

The original applicant-respondent claims to be working as PGT Chemistry in Kendriya Vidyalaya Sangathan (KVS), Hinoo, Doranda, Ranchi after having joined the service sometime in the year 1980 and was allotted CPF No.2932. The

original applicant-respondent made a representation before the concerned competent authority seeking conversion from CPF to GPF-cum-Pension Scheme in view of the DOPT letter dated 04.01.1987 / 01.05.1987 issued by the Ministry of Personnel, Public Grievances and Pensions, Government of India whereby it has categorically been mentioned that all CPF beneficiaries, who were in service on 01.01.1986 and who are still in service on the date of issue of these orders, would be deemed to have come over to the pension scheme.

It is the case of the original applicant-respondent that the KVS has arbitrarily recommended the case for conversion of CPF to GPF-cum- Pension Scheme for direct recruits, who joined Kendriya Vidyalaya Sangathan between 01.01.1986 to 31.12.2003, leaving behind the direct recruits like the present applicant who have joined the service prior to 01.01.1986. The aforesaid action of the concerned authorities is without any proper justification for choosing specific time frame.

It is the case of the original applicant-respondent that the KVS is an autonomous body fully financed by the Central Government, Ministry of Human Resources Department and Central Government Rules are applicable to it, like CCS-CCA, Fundamental Rules, General Fundamental Rules, LTC Rules, etc. which are at par with the Central Government Employees and, as such, the KVS decided to implement the decision taken by the Government of India on the basis of the recommendations of 4th Central Pay Commission for KVS employees for change of CPF to Pension Scheme in the manner indicated in DOPT letter dated 01.05.1987.

The grievance of the respondent is that the KVS acted completely against the objectives of the DOPT letter dated 01.05.1987 by taking the ground that the option was offered to switch over from CPF to GPF-cum-Pension Scheme vide letter dated 01.09.1988 but this letter was not the option for the pension Scheme, rather it was for continuation of CPF and no circular was shown/given to the employees including the present respondent, which is against the rules of natural justice.

It is the case of the respondent that there was provision in the DOPT letter dated 01.05.1987 that if option of CPF was not exercised, then automatically, such employees would be deemed to have come to Pension Scheme. Thus, it is a clear cut case of concealment of facts from the employees and this way the employees were deprived their last opportunity to continue in CPF Scheme in a planned manner, by the KVS by acting against the main objectives of DOPT letter dated 01.05.1987.

On the other hand, the case of the writ petitioners is that the KVS is an autonomous organization registered under the Societies Registration Act XXI of 1960 and fully financed by the Ministry of HRD, Government of India with the object to develop the Vidyalayas as a model school. The policies and the decisions of Kendriya Vidyalaya Sangathan are taken by the Board of Governors

consisting of eminent educationists and administrators from all over the country. The service conditions of Kendriya Vidyalaya Sangathan are governed by the Education Code in vogue.

It is the further case of the writ petitioners-KVS that the original applicant-respondent was appointed in KVS on 06.08.1980, i.e. prior to 01.01.1986 with CPF option. The applicant has retained CPF Scheme with reference to KVS vide OM dated 01.09.1988. So far as the provision as contained in DOPT letter dated 01.05.1987 is concerned, the same is applicable only to the Civilian Central Government employees who are subscribing to the CPF under Contributory Provident Fund Rules (India), 1962 and the employees of Statutory/Autonomous Bodies are not automatically covered by the aforesaid Office Memorandum of Board of Governors. The KVS is an autonomous body and in the 51st Meeting of Board of Governors, KVS held on 31st May, 1988, it was decided that KVS will implement mutatis mutandis the decision taken by Government of India on the recommendations of Fourth Pay Commission for the KVS employees for change over from CPF to Pension Scheme in the manner indicated in OM dated 01.05.1987. Therefore, decision was taken vide letter dated 01.09.1988 that the persons who joined in KVS before 01.01.1986 shall be governed by GPF-cum-Pension Scheme and will have no option for CPF Scheme and the employees who would like to continue in CPF Scheme were, however, required to exercise a clear option to continue in CPF.

It is the further case of the writ petitioners-KVS that the aforesaid proposal of the Kendriya Vidyalaya Sangathan as has been taken on 01.05.1987 has also been approved by the Ministry of Human Resources Development, Government of India.

The Tribunal, after appreciating the contention raised on behalf of respective parties, has allowed the Original Application by taking into consideration the DOPT letter dated 04.01.1987 and 01.05.1987, issued by the Ministry of Personnel, Public Grievances and Pensions, Government of India whereby it has categorically been mentioned that all CPF beneficiaries, who were in service on 01.01.1986 and who are still in service on the date of issue of these orders, would be deemed to have come over to the pension scheme. However, the grievance of the original applicant has not been acceded to by the writ petitioners-KVS on the ground that the applicant joined prior to 01.01.1986.

The Tribunal, therefore, after noticing the judgment rendered by Madras High Court in *R. Renukadevi v. The Commissioner, KVS and Others* [WP No.25354 of 2015] several employees have been allowed to switch over from CPF to GPF pension scheme even after the exercise of option originally in favour of the CPF scheme.

The further consideration has been made of the observation made by the Madras High Court wherein it has been observed that such being the case, singling out the few employees in some departments on an erroneous understanding of the

Office Memorandum dated 01.09.1988, would be per se discriminatory and hence consequentially impermissible.

It has further been noticed that even the employees who joined service prior to 01.01.1986 have been allowed to convert them as pensioner under GPF Scheme.

The aforesaid order passed by the learned Tribunal has been assailed in this writ petition by invoking jurisdiction conferred to this Court under Article 226 of the Constitution of India.

3. The writ petitioners-KVS has filed one interlocutory application being I.A. No.1010 of 2022 seeking leave of this Court to consider the document filed through supplementary affidavit dated 22.12.2021.

The said interlocutory application has been allowed vide order dated 05.04.2022. The order dated 05.04.2022 is quoted hereunder :-

"In view of the averments made in the application and also the fact that no counter affidavit has been filed to this interlocutory application as also the fact that these documents are necessary for consideration of lis which could not be filed before the Central Administrative Tribunal, the same is allowed.

The documents are taken on record."

4. Mr. Mokhtar Khan, learned counsel appearing for the writ petitioners-KVS, has argued by referring to the documents appended as Annexure-1/1 to the interlocutory application being I.A. No.1010 of 2022, issued under the signature of Principal, addressed to the Sr. Accounts Officer, Kendriya Vidyalaya Sangathan, New Delhi dated 29.12.1988 / 06.01.1989 wherein the name of the original applicant-respondent has been reflected showing about the continuous retention of CPF Scheme of the three staffs one of which is the original applicant-respondent namely P.B.Singh having Account No.CEC-3562.

Further, the writ petitioner has shown to have its CPF Account No. being 2932, as would appear from the documents appended as Annexure 1/2 Series to the interlocutory application being I.A. No. 1010 of 2022.

The other document, i.e., Form-B pertaining to the form of nomination when subscriber has a family which is for the Contributory Provident Fund wherein the details of the family members have been disclosed by the original applicant-respondent which also suggests that the original applicant-respondent was knowing about his continuous account under the Contributory Provident Fund.

Learned counsel for the writ petitioners has further relied upon the Last Pay Certificate dated 02.05.2012 wherein also the contribution in the CPF Account has been shown.

Therefore, according to the learned counsel, all these documents clearly suggest that the writ petitioner was knowing about the Scheme under which amount was being deducted from his salary to be deposited in the concerned CPF Account

and, as such, it cannot be shown that merely because the original applicant-respondent has not furnished such option, he will be directed to be converted from CPF to GPF-cum-Pension Scheme.

Learned counsel further submits that the Tribunal has failed to appreciate the effect of DOPT letter dated 01.05.1987 issued by the Ministry of Personnel, Public Grievances and Pensions, Government of India and as such, the said order is not sustainable in the eyes of law.

The further ground has been taken that the employee has not opted for their conversion from CPF to GPF-cum-Pension Scheme but this fact has also not been appreciated by the learned Tribunal.

The further ground has been taken by referring to the Office Memorandum dated 01.09.1988 which contains the pension scheme under which the employees were offered the option of switching over from CPF to GPF-cum-Pension Scheme wherein it was made clear that if no option is received by 28.02.1989, the employees will be deemed to have switched over to Pension Scheme, but this aspect of the matter has also not been appreciated by the learned Tribunal.

Learned counsel referred a judgment of Principal Bench, Central Administrative Tribunal, New Delhi, in O.A. No. 973/2018 and O.A. No.942/2016, which has been passed relying on the judgment rendered by Hon'ble Apex Court in KVS and Others v. Jaspal Kaur and Others [(2007) 6 SCC 13], wherein, the same issue has been decided in relation of option by virtue of admitted documents available on record which shows that petitioners were having knowledge about continuation with the CPF Scheme. Thus, it has been submitted that the case of the respondent, herein, stands in similar fact regarding knowledge based on relevant documents i.e., monthly pay bills, annual statement, Form 16 etc., as such he is not entitled to get the benefit of conversion from CPF to GPF-cum-Pension Scheme.

Therefore, according to the learned counsel, the order passed by the learned Tribunal needs interference.

5. Per contra, Mr. Jalisur Rahman, learned counsel appearing for the original applicant-respondent, has defended the order passed by the learned Tribunal on the ground that no such specific option has ever been furnished by the original applicant-respondent.

According to him, as per the Scheme, in case of only specific option the concerned employee will be decided to remain under the CPF Scheme but herein, since the applicant has never opted for CPF Scheme, therefore, what has been contended by the learned counsel appearing for the writ petitioners is not worth to be considered.

So far as the reliance put by the learned counsel appearing for the writ petitioners upon the documents appended to the interlocutory application being I.A. No.1010 of 2022 is concerned, these documents nowhere reflect about

exercise of option by the original applicant. Therefore, the Tribunal, if has interfered with the impugned order on the basis of the fact that no option has been exercised by the applicant, it cannot be said to suffer from any error and, therefore, the writ petition lacks merit and the same is fit to be dismissed.

6. We have heard learned counsel for the parties, perused the documents available on record as also considered the finding recorded by the learned Tribunal in the impugned order.

7. The whole dispute revolves around in this case is as to whether the original applicant-respondent is entitled to be retained under the CPF or is to be converted in the GPF-cum-Pension Scheme.

The Kendriya Vidyalaya Sangathan, an autonomous body, is running schools all over the country. On 01.09.1988, the Kendriya Vidyalaya Sangathan issued circular providing option for the KVS employees to switch over from CPF to GPF-cum-Pension Scheme. The original applicant approached the Tribunal by questioning the decision of the Ministry of Personnel, Public Grievance and Pensions, Government of India as contained in letter No.1521 dated 08.10.2015 wherein it has been mentioned that all CPF beneficiaries, who were in service on 01.01.1986 and who were still in service on the date of issue of these orders would be deemed to have come over to the Pension Scheme.

8. The case of the original applicant-respondent is that he has never furnished option to remain under the CPF Scheme and, therefore, in absence of any option to that effect, it requires to be converted from CPF to GPF-cum-Pension Scheme.

9. While on the other hand, learned counsel appearing for the writ petitioners-KVS, has shown several documents showing therein that the original applicant-respondent, from very beginning, was under the CPF Scheme and as such, there was no requirement to seek option to either remain under the CPF Scheme or to be converted into the GPF-cum-Pension Scheme.

The Tribunal, however, has answered the issue in favour of the original applicant-respondent, against which the present writ petition has been filed as also one interlocutory application being I.A. No.1010 of 2022.

The aforesaid interlocutory application has been filed seeking leave of this Court to consider the documents appended thereto as these documents are necessary for proper adjudication of the lis. The aforesaid interlocutory application was allowed with the concession of the learned counsel for the original applicant-respondent as also considering the fact that the documents which are already in the possession of the writ petitioner, as appended with I.A. No.1010 of 2022, even if these documents were not brought to the notice of the Tribunal or if it will not be allowed at this stage, it will be construed to be non-appreciation of the relevant documents and, therefore, this Court after considering the aforesaid fact, has allowed the aforesaid interlocutory application in order to reach to the rightful conclusion of the issue involved in this case.

10. Similar issue fell for consideration before the Hon'ble Apex Court in *University of Delhi v. Shashi Kiran and Others* [2022 SCC OnLine 594], but the Hon'ble Apex Court, while considering the issue about the effect if the employee has not furnished its option in pursuance to the option sought to be furnished by virtue of order dated 13.04.1987 followed by DoPT letter dated 01.05.1987 and in absence of any option, only because subscription has been made in the CPF account from the salary of one or the other employee, which has been considered by the Delhi High Court in the Case of R.N. Virmani and other batch cases, wherein the appeal preferred by the employer/University, has been dismissed by declining to interfere with the order passed by the learned Single Judge, as would appear from the reference of the same, as has been made in the judgment rendered in the case of *University of Delhi v. Shashi Kiran and Others*, which reads hereunder :-

"7. These decisions in all three batches of cases were appealed against by the University before the Division Bench, which dealt with each of these batches as under:—

"A) R.N. Virmani batch of cases:

17. This court is of opinion that the submissions of the University, the appellant, in regard to the Virmani's order, have no force. There is no denial and there can be none—that the nature of the scheme contemplated by the 01.05.1987 notification was to ensure that only those wishing to continue in the CPF scheme had to opt to do so. A default in that regard, meant that the employee not filling his option (to continue in CPF) was deemed to have "come over" or migrated to the Pension Scheme. The University and the official respondents (UGC, Central Government etc) had urged that the petitioners in the Virmani group are deemed to have accepted the CPF benefits, because they allowed deductions from their monthly salaries during the interregnum and permitting Pension Scheme benefits would not be fair; in the same breath it was urged that there was delay. This court is of opinion that the University - and the respondents are relying on contradictory pleas. If they urge that the true interpretation of the 1987 circular meant that anyone not furnishing an option to continue in the CPF scheme is deemed to have opted for the Pension Scheme (as the Virmani group undoubtedly did) there is no way they can succeed on the ground of laches or estoppel. If plain grammatical meaning of the language of the May 1987 OM were to be given, all those who do not opt would automatically be borne in the Pension Scheme. Such being the position, the argument that the petitioners in Virmani allowed deduction of CPF amounts from their salary, cannot be argued against them. CPF schemes typically require employees to commit greater amounts than in GPF scheme, on a monthly basis. That these staff members allowed higher amounts, which were held under a scheme (and which earned interest), the benefit of which had not accrued and was not available to them till the date of superannuation, cannot be urged against them. Likewise, the question of laches would not arise, because at the most, pension would not be

allowed for the entire period, given that in matters of pension (see Union of India v. Tarsem Singh, (2008) 8 SCC 648) there is a continuing cause of action. Therefore, we find no infirmity with the learned Single Judge's order, in Virmani's case."

The appeals were thus dismissed.

... .."

The Hon'ble Apex Court, after discussing the same, has been pleased to hold that if no option was exercised before the cut-off date, the concerned employee cannot deem to have been considered of exercising option to be under CPF. For ready reference, paragraph 20 of the aforesaid judgment is quoted hereunder:-

"20. According to the notification dated 01.05.1987 two situations were contemplated. First, the deeming provision in terms of which the concerned employee was taken to have 'come over' to GPF. The second situation being where a conscious option was exercised before the cut-off date to continue to be under CPF. R.N. Virmani batch of cases was therefore rightly allowed by the learned Single Judge and the Division Bench of the High Court, as no conscious option was exercised by the cut-off date. Consequently, the concerned employees must be deemed to have 'come over' to GPF. Logically, it would be immaterial whether the concerned employee continued to make contribution assuming himself to be covered under CPF, even though contributions were made by the concerned authorities. The benefit was therefore rightly granted in favour of the employees and the entire contribution was directed to be refunded. The University has chosen not to appeal against that decision and thus the matter has attained finality."

11. In the facts of the given case, the plea taken by the respondent K.V.S. by putting reliance upon the documents i.e., (i) photocopy of Service Book showing old CPF No.CEC-3562 and New CPF No.2932 (ii) Nomination Form under CPF Scheme (iii) Copy of letter issued by KVS (HQrs) dated 27.02.2006 and dated 19.01.2007 (iv) LPC issued by the Principal KV Namkum vide letter dated 02.05.2012 (v) Copy of Annual Statement of CPF for the year 2018-19 (vi) Copy of Form-16 for the year 2018-19 and 2019-20 (vii) Copy of Pay Bill for the month of November, 1989 showing CPF deduction and, as such, it will be deemed to be an option on behalf of the concerned employee.

12. Learned counsel for the appellant has relied upon the judgment rendered in the case of KVS and Others v. Jaspal Kaur and Others (Supra) and has assailed the order passed by the learned Central Administrative Tribunal, since the same has not been considered.

13. We have considered the judgment passed by the Hon'ble Apex Court in KVS and Others v. Jaspal Kaur and Others (Supra), wherein consideration has been given about the deemed option since, the amount has been deducted and deposited in the CPF account, as would appear from paragraph 5 thereof, which

reads as hereunder :-

"5. In this context it is to be noted that the Tribunal itself noted that in the Pass Book name of applicant appears at no. 1889 and the signatures of the Principal of KVS is indicated. It indicates her appointment in KVS from July 1978 to May 1992 in Delhi, from May 1992 to April 2002 Baddowal, from April 2003 to April 2004 at Halwara and thereafter again at KVS Baddowal. It shows her account no. 1889. A copy of the Income tax return having deductions from pay and allowance for depositing in the CPF confirm this fact. The secondary pieces of evidence which go to show that deductions were being made at regular basis from pay and allowance. This according to CAT was not sufficient to show that she had exercised her option.

6. It is to be noted that in the allotment of revised CPF number in the letter of KVS no. 16-2/CO/89-90/CPF/KVS/PF dated 6.3.89, name of respondent no.1 appears at serial no.8 and the revised CPG no. is shown as 1889 in place of the earlier CPG no. CEC 2685. This change has not been denied by respondent no. 1. Additionally, again in letter no. KVS no. 16-2/CO/89-90/CPF/KVS/PF dated 6.7.1989 the name of respondent no.1 appears at serial no. 8 and again existing CPF No. CEC 2685 has been indicated. This letter is significant because there is a note in the service book of the concerned employee in respect of allotted CPC A/C under intimation to them. KVS letter no. F-2/C.O/89-90/CPF/KVS/PF dated 15.7.89 with reference to the earlier letter of 6.7.89 intimated the employees about the change. Again in this letter the name of respondent no. 1 appears at serial no. 8. Most vital document in this controversy is respondent no.1's letter dated 15th March, 1997. In this she has categorically stated that she was contributing towards CPF and her account no. is JRC 1889. This was addressed to the Accounts Officer. This document clearly establishes that respondent no.1 was aware of the change in account number and she herself referred to account number. Her feigned ignorance about the change is absolutely hollow because she herself knows about the changed number.

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 taking a difference view.”

14. This Court is having two views of the Hon'ble Apex Court; one in the case of KVS and Others v. Jaspal Kaur and Others (Supra) and another in the case of University of Delhi v. Shashi Kiran and Others (Supra).

15. The position of law is well settled that if there are two conflicting views of the Hon'ble Apex Court, the latest judgment is to be considered having the binding precedence, as has been held in Subhash Chandra and Another v. Delhi Subordinate Services Selection Board and Others [(2009) 15 SCC 458]. For ready reference, the relevant paragraph of the aforesaid judgment is quoted hereunder:-

“96. A decision, as is well known, is an authority for what it decides and not what can logically be deduced therefrom. In S. Pushpa [(2005) 3 SCC 1] , decisions of the Constitution Benches of this Court in Milind [(2001) 1 SCC 4] had not been taken into consideration. Although Chinnaiah [(2005) 1 SCC 394] was decided later on, we are bound by the same. It is now a well-settled principle of law that a Division Bench, in case of conflict between a decision of a Division Bench of two Judges and a decision of a larger Bench and in particular Constitution Bench, would be bound by the latter.

(See Sardar Associates v. Punjab & Sind Bank [(2009) 8 SCC 257] .)”

16. This Court, taking into consideration the aforesaid position of law that the latest judgment of the Hon'ble Apex Court is required to be followed, therefore, is of the considered view that the view as has been taken by the Hon'ble Apex Court in University of Delhi v. Shashi Kiran and Others (Supra) is required to be followed herein also.

17. This Court, after having discussed the factual aspect and the legal position based upon the judgment rendered by Hon'ble Apex Court, has gone through the order passed by the Central Administrative Tribunal and found therefrom that the view expressed therein based upon the judgment passed by the Hon'ble Apex Court in University of Delhi v. Shashi Kiran and Others (Supra), requires no interference, since therein also the learned Central Administrative Tribunal has come to a view that in absence of any specific option furnished by one or the other employee of the organization, there cannot be any deemed option.

18. This Court, on the basis of the discussion made hereinabove, is of the view that it is not a fit case to exercise the power of judicial review conferred under Article 226 of the Constitution of India to interfere with the order.

19. In the result, the instant writ petition stands dismissed.

20. Consequently, I.A. No.321 of 2020 (stay petition) also stands disposed of.