T.Krishnamurthy, S/O V.Thambu ... vs 4 The Principal, Kendriya ... on 12 October, 2012

ERNAKULAM BENCH

O.A. NOs. 139/2012

Dated this the 12th day of October, 2012

C O R A M

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

T.Krishnamurthy, S/o V.Thambu Chetty, 103/23, Devikrupha Main Road, Krishna Nagar, Pondichery - 605 008

.......Applicant

(By Advocate Mr. C.K Sreejith &amp; Mr.Joy K Joseph) Vs.

1 The Assistant Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet

Sing Marg, New Delhi - 110 016

2 The Commissioner, Kendriya Vidyalaya Sangathan 18, Institutional Area, New Delhi - 110 016

3 The Regional Grievance Officer, Kendriya Vidyalaya Sangathan, Regional Office, IIT Campus, Chennai - 600 034 4 The Principal, Kendriya Vidyalaya Sangathan Pattom, Thiruvananthapuram - 695 004 -

......Respondents

(By Advocate M/s Iyer &amp; Iyer)

The Application having been heard on 25.9.2012, the Tribunal delivered the following:

O R D E R

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The grievance of the applicant is to pay him General Provident Fund cum Pension benefits on his superannuation with arrears of pension in lieu of Contributory Provident Fund and benefits derived therefrom. 2 Brief facts of the case as stated by the applicant are that he was a permanent Trained Graduate Teacher in Kendriya Vidyalaya Sangathan, who retired on 31.12.2007. The applicant was a beneficiary of Contributory Provident Fund Scheme (CPF for short). **By Memorandum Annx.A3, the respondents introduced General Provident Fund Scheme (GPF for brevity) to its employees who are under the employment of KVS as on 1.1.1986.** Those who are covered under the CPF Scheme would automatically come over to the GPF Scheme on and w.e.f 1.1.1986 except where a government servant opts to retain the CPF. **It is avered that the applicant did not opt for CPF by any written request in response to the above notification**. According to the applicant it is very clear that unless an option is made by the employee concerned and received by the respondent on or before 28.2.1989 all the employees who are deemed to have come over to the GPF cum Pension Scheme. Therefore the applicant should have been automatically brought to GPF cum Pension Scheme w.e.f 1.1.1986 In this regard applicant submitted his Annx.A4 representation to the respondent No.2 through R.3 on 30.9.2007. It was intimated R3 that his representation could not be forwarded to R2 in view of the instructions from R2 not to forward such representation for switching over from CPF to GPF cum Pension Scheme. He retired on 31.12.2007. Vide Annx.A8, a Cheque for Rs.908,329/- was sent to him which included Rs.425229/- as management share. The applicant avers that he has received the chque under protest. He subsequently sent Annx.A12 representation to the Grievance Cell in the office of R2 and Annx.A14 to R-2. This did not elicit any reply. Hence this O.A. 3 The respondents contested the OA by filing reply. In their reply it was admitted that the employees who joined the Sangathan on or after 1.1.1986 but before 1.1.2004 are governed under the GPF cum Pension Scheme. The employees who were members of CPF Scheme, were given an opportunity to exercise a fresh option to continue in the CPF Scheme if they so desire, failing which they will be covered under GPF cum Pension Scheme. It is further stated that the respondents are following the Govt order which has not provided any option to switch over from CPF to GPF cum Pension Scheme after31.01.1989. Moreover, as per the instruction of Ministry of Human Resource Development vide letter dated 22.2.2006, no requests for to switching over from CPF to GPF cum Pension Scheme can be forwarded to R-2. Hence R-3 did not forward his request to R-2. **The applicant was a CPF optee and retired on 31.12.2007. He opted to continue in CPF Scheme all these years and at no point of time the applicant pointed out that he had exercised his option for GPF cum Pension Scheme and never objected to contribute towards CPF Scheme.** They have cited the judgment of the Hon'ble Supreme Court in Civil Appeal No.2876/2007, Kendriya Vidyalaya Sangathan Vs. Smt.Jaspal Kaur and argued that merely because the original document relating to exercise of option was not produced that should not be a ground to ignore the ample materials produced to show the exercise of the option for CPF.

4 Heard the learned counsel for the parties and perused the records. 5 During the course of hearing the learned counsel for the applicant has brought to my notice an order dated 30.11.2011 passed by a Co-ordinate Bench of this Tribunal in OA 297/11.

6 I have given anxious consideration of the arguments of the learned counsel for the parties and judgments referred to in the O.A 7 Going by Annx.A2 notification, every employee who joined the Sangathan on or after 1.1.1986 but before 1.1.2004 are governed under the GPF cum Pension Scheme. The employees on the rolls of KVS prior to 1.1.86 and who were members of CPF Scheme, are given an opportunity to exercise a fresh option to continue in the CPF Scheme if they so desire. Otherwise they will come under the pension scheme unless one opts to continue under the CPF Scheme. Further, such option should be in writing and reach the office by 31.1.1989. All those who opted for GPF cum Pension Scheme or deemed to have come over the Scheme were alloted GPF numbers and allowed to contribute any amount towards GPF. For CPF, the share of the employee and management is fixed. In this case the applicant admittedly an employee who joined the Sangathan before 1.1.1986 and a member of CPF Scheme, was given an opportunity to exercise a fresh option. It is also an admitted fact that the cut off date given to switch over from CPF to GPF cum Pension Scheme was on 31.1.1989. Ministry of Human Resource Development vide letter dated 22.2.2006 instructed that no employee will be permitted to switch over from CPF to GPF henceforth. **In this case the applicant retired on 31.12.2007. Only three months before his retirement he represented to the respondents about his being treated as an optee for CPF.** 4 years after his superannuation and receiving all the retiral dues he has chosen to agitate the matter before this Tribunal and that too without an application for condonation of delay in filing the OA. At this belated stage he cannot turn around and say that he is eligible for getting GPF cum Pension for which he never opted during his service in the Sangathan. The applicant is stated to have submitted his first representation on 30.9.2007, only after the VI CPC recommendation was released.

8 While rejecting his request for switching over from CPF to GPF, vide Annx.A11, the respondents pointed out that the applicant was receiving annual CPF statement showing the deduction of management share. At that point of time in 1989, he should have pointed out that he is a GPF cum Pension optee.

9 The applicant ssys that his case is squarely covered by the order of the Tribunal in OA 297/11. The applicant therein is a serving employee. She was on medical leave for the entire period from 8.8.1988 to 31.1.1989 and from May 1989 to 1991. According to her she did not exercise an option for GPF and repeatedly represented about being treated as one. Hence the facts in OA 297/11 are totally different from those in the present O.A. Therefore, the applicant in the present OA cannot be treated as similarly situated like the applicant in OA 297/11.

10 The respondents have cited the judgment of the Hon'ble Supreme Court in Civil Appeal No.2876/2007, Kendriya Vidyalaya Sangathan Vs. Smt.Jaspal Kaur, where it was held that merely because the original document relating to exercise of option was not produced that should not be a ground to ignore the ample materials produced to show exercise of the option. Resultantly the Civil Appeal was allowed. 11 In view of the above, I am of the opinion that the applicant has failed to establish a case in his favour. I, therefore, dismiss the O.A. No costs. Dated 12th October, 2012

K. NOORJEHAN

ADMINISTRATIVE MEMBER