

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 483 OF 2011

Monday, this the 25th day of June, 2012

CORAM:

HON'BLE Dr. K.B.S. RAJAN, JUDICIAL MEMBER

M. Janardhanan, S/o. R.N.M. Mannadiyar,
Assistant, Kendriya Vidyalaya,
Kanjikode, Palakkad District.
Residing at "Aiswarya", Sastri Nagar,
Kanjikode, Palakkad District.

- Applicant

(By Advocate Mr. T.C. Govindaswamy)

Versus

1. Kendriya Vidyalaya Sangathan,
No. 18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi – 110 016 –
Through its Joint Commissioner
2. The Commissioner,
Kendriya Vidyalaya Sangathan,
No. 18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi – 110 016.
3. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, IIT Campus,
Chennai – 36.

- Respondents

(By Advocate M/s. Iyer & Iyer)

The application having been heard on 25.06.2012, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Dr. K.B.S. RAJAN, JUDICIAL MEMBER

The applicant was initially appointed under the respondents on 20.10.1973, when, it was the Contributory Provident Fund Scheme that was in existence. After the extension of the recommendations of 4th CPC to the respondents organization, those covered under the scheme have to be brought under General Provident Fund-cum-Pension Scheme with effect

from 01.01.1986 (Annexure A-1 refers). It is only those, who did not want to switch over to GPF, that should exercise upon for retention under the Contributory Provident Fund Scheme. (Para 3.2 of Annexure A-2 refers). The option once exercised shall be final vide para 3.6. The applicant did not choose to exercise any option.

2. The respondents had been continuing to keep the applicant under CPF Scheme, though the orders as per Annexure A-2 were otherwise in respect of those, who did not exercise option to continue CPF scheme.

3. The applicant was, however, served with a requisite pension papers which were also submitted by the applicant duly filled in. The applicant superannuated on 31.05.2011. The authorities had, however, stated that the applicant would be covered only by Contributory Provident Fund Scheme. Annexure A-4 is the decision of the respondents in reply to the request for change over made by the applicant before his retirement. The applicant, has therefore, filled this Original Application seeking the following reliefs:-

"(i) Declare that the applicant is entitled to brought over to the GPF-cum-Pension Scheme in terms of Annexure A-2 with all consequential benefit of monthly pension and other retirement benefits and direct the respondents accordingly.

(ii) Direct the respondents to grant the applicant the benefit of monthly pension and other retirement benefits as if the applicant was covered under the GPF-cum-Pension Scheme by making necessary adjustments as may be required for adjusting the employers contribution and the interest thereon, if any, remitted to the applicant's Provident Fund Account;

(iii) Direct the respondents to pay interest on delayed payment of pension and other terminal benefit like commuted value of pension, etc., with interest at the rate of 9% per annum from the date which the arrears fell due;

(iv) Award costs of and incidental to this Application;

(v) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case"

4. Respondents have contested the O.A. They have relied upon a decision by the Apex Court in Civil Appeal No. 2876/07 (KVS v. Smt Jaspal Kaur) decided on 06.06.2007.

5. The applicant has filed rejoinder stating that as the applicant had not exercised any option by virtue of para 3.2 of Annexure A-2 order, he should be covered by GPF. Counsel for the applicant submitted that the issue is no longer res integra as the Tribunal had earlier decided an identical case vide O.A 297/11 and the order dated 30.11.2011 reads as under:-

"4 We have heard both sides.

5 Annexure A-3 is the relevant order governing the issue. Paragraph 3.1 and 3.2 of Annexure A-3 which are relevant are extracted hereunder:-

"3. All G.P.F beneficiaries, who were in service on 1.1.1986 and who are still in service on the date of issue of these orders will be deemed to have come over the Pension Scheme.

3.2 The employees of the category mentioned above will, however, have an option to continue under the CPF Scheme, if they so desire. The option will have to be exercised and conveyed to the concerned Head of office/Principal by 31.1.1989, in duplicate, in the form enclosed (one form may be sent to this office while the other kept with personal records of the employee concerned) if the employees wish to continue under the CPF Scheme. If no option is received by the Head of Office/Principal by the above date and in this office through them by 28.2.1989 the employees will be deemed to have come over to the Pension Scheme. The Head of the Office/Principals are to forward in one lot options exercised by employees for retention of CPF Scheme received by them, to reach Sangathan's office latest by 28.2.1989. Where no option to continue under the CPF Scheme is received by them from any, a nil report be sent by due date viz. 28.2.1989."

6. Going by the above clause it can be seen that the general rule is that every employee will come under the pension scheme unless he opts out to continue under the CPF scheme. Further such option would be in writing and to reach the office by 31.1.1989. Therefore, if the respondents take the stand that the applicant has opted out to continue under the CPF scheme, they should not only produce the letter by which the option was exercised by the applicant but also should prove that the same has been received by the office on or before 28.2.1989. In this case, the respondents have not produced any letter from the applicant to continue to be governed under the CPF scheme. If

so clause 3.1 and 3.2 will govern the issue and the applicant will deem to have come into the pension scheme.

7. Accordingly, we declare that in the factual situation as mentioned above the applicant is already governed under the pension scheme and follow up action shall taken accordingly. In case the applicant has withdrawn any amount from the CPF the applicant shall pay back the said amount in terms of the conditions of such withdrawal. It is also open to the Kendriya Vidyalaya Sangathan to recover by debiting their contribution with interest from out of the amounts if any credited to the account of the applicant. The aforesaid exercise shall be completed as expeditiously as possible at any rate within a period of six months and intimate the order to the applicant.

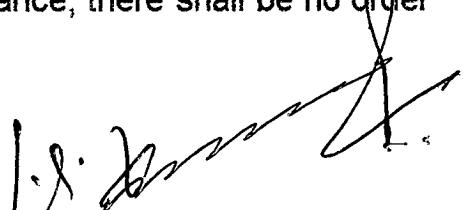
8. O.A is allowed to the extent as above. No costs."

6. Counsel for the respondents submitted that the aforesaid order has been under challenge before the Hon'ble High Court of Kerala and the High Court has granted stay of the same.

7. Counsel for the applicant submitted that notwithstanding such stay, the decision of the Tribunal in the aforesaid O.A could be extended to this case also and decision by the High Court in the other case would bind the case of the applicant as well. Admittedly, the facts in these two cases are identical and that the legal issue involved is one and the same. Counsel for the respondents has no objection to the above suggestion.

8 In view of the above, this O.A is disposed of with the direction to the respondents to extend the decision that may be given by the Hon'ble High Court in the Writ Petition filed by the respondents against Order dated 30.11.2011 in O.A 297/11. Under the circumstance, there shall be no order as to costs.

(Dated 25th June, 2012)



Dr. K.B.S. RAJAN
JUDICIAL MEMBER