

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 297 of 2011

Wednesday, this the 30th day of November, 2011

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

Lovely Thomas, aged 54 years,
W/o. K.K. Thomas, Primary Teacher,
Kendriya Vidyalaya No. 2,
Naval Base, Cochin – 682 004,
Permanent Address : Kodilil,
Kalampoor, Piravom, Ernakulam District,
Pin – 686 664.

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Applicant

(By Advocate – Mr. TC. Govindaswamy)

V e r s u s


1. Kendriya Vidyalaya Sangathan,
18, Institutional Area, Shaheed Jeet Singh Marg,
New Delhi – 110 016 – through its Joint Commissioner.
2. The Commissioner, Kendriya vidyalaya Sangathan,
18 – Institutional Area, Shaheed Jeet Singh Marg,
New Delhi – 110 016.
3. The Regional Grievance Officer,
Kendriya Vidyalaya Sangathan,
Regional Office, IIT Campus, Chennai – 600 036.
4. The Principal, Kendriya Vidyalaya No. 2.,
Naval Base, Cochin – 682 004.

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Respondents

(By Advocate – M/s. Iyer & Iyer)

This application having been heard on 30.11.2011, the Tribunal on the same day delivered the following:



ORDER

By Hon'ble Mr. Justice P.R. Raman, Judicial Member -

The applicant is presently working as a Primary Teacher at Kendriya Vidyalaya No. 2, Naval Base, Cochin. Applicant is aggrieved by the refusal on the part of the respondents in not treating her as governed under the pension scheme in accordance with the office memorandum dated 1.9.1988 Annexure A-3 produced in the case.

2. The applicant was initially appointed as a Primary Teacher on 28.8.1984 and during the period from 8.8.1988 to 6.2.1991 the applicant was on leave/medical leave supported by medical certificates. During the relevant time the applicant was governed under the Contributory Provident Fund scheme (hereinafter referred to as CPF scheme) and later accepting the recommendation of the 4th Central Pay Commission the Government of India, Department of Pension and Pensioners' Welfare issued OM No. 4/1/87/PIC-I, dated 1.5.1987 directing that those who are under the employment as on 1.1.1986 and covered under the CPF scheme would automatically come over to the General Provident Fund scheme (hereinafter referred to as GPF scheme) on and with effect from 1.1.1986 except where a Government servant opts to retain the CPF scheme. A copy of the OM is produced in this OA as Annexure A-2. The Kendriya Vidyalaya Sangathan also decided to implement the Government of India order and accordingly issued OM Annexure A-3. In terms of the above according to the applicant it is very clear that unless an option is made by the concerned employee and received by the department on or before 28.2.1989 all the employees will be



deemed to have come over to the GPF cum pension scheme. Since the applicant was on medical leave for the entire period from 8.8.1988 to January, 1989 and from May 1989 to 6.2.1991, she should have been automatically stood transferred to GPF cum pension scheme with effect from 1.1.1986 in terms of Annexure A-3. Applicant though submitted a representation Annexure A-4, there was no response to the same. Yet another representations were also made Annexure A-6 and Annexure A-7 but without any relief. The applicant is due to retire by 31.8.2017 and unless the pension rights are settled in the meantime, the applicant will be aggrieved by such circumstances and will be a denial of the scheme provided under Annexure A-3.

3. In the reply the respondents would take the stand that the applicant has opted to continue under the CPF scheme. This is disputed in the rejoinder filed by the applicant. Despite such objection the respondents have not produced any piece of paper to show that the applicant has opted to continue under the CPF scheme.

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 to 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 should 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 Vidhyalaya 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. OA is allowed to the extent as above. No costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

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