

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD**

Original Application No. 109/2015

Date of C.A.V. : 03.07.2018

Date of Order : 27.08.2018

Between :

Shyam Sunder Prasad Sharma,
S/o Late M.P.Sharma, Aged about 61 years,
Occ : Professor & Head (Retd.),
Centre for Water & Land Resources (CWLR),
National Institute of Rural Development,
Rajendra Nagar,
Hyderabad – 500 030.

... Applicant

And

1. The Union of India, Ministry of
Rural Development, Rep. by its
Joint Secretary, Room No.249, II floor,
Krishi Bhavan, New Delhi – 110 114.

2. The Under Secretary to Government of India,
Department of Pension & Pension Welfare,
Lok Nayak Bhavan, Khan Market,
New Delhi – 110 003.

3. The Director General,
National Institute of Rural Development,
Rajendra Nagar,
Hyderabad – 5000 030.

... Respondents

Counsel for the Applicant ... Mr.K.Sudhakar Reddy, Advocate

Counsel for the Respondents ... Mr.N.Ashwin Kumar, S.C. For NIRD

CORAM:

Hon'ble Mr.Justice R.Kantha Rao* ... *Member (Judl.)

ORDER

{ As per Hon'ble Mr.Justice R.Kantha Rao, Member (Judl.) }

The OA is filed by the applicant to declare the action of the respondents in applying the New Pension Scheme which came into effect from the year 2004 to the applicant by ignoring the fact that the applicant was appointed in a clear permanent post in the year 2002 as illegal, arbitrary and in violation of applicant's fundamental rights guaranteed under Article 14 and 16 of the Constitution of India and consequently direct the respondents to consider the case of the applicant under Old Pension Scheme by granting all the consequential benefits under the said scheme.

2. The applicant was appointed as Associate Professor in National Institute of Rural Development by direct recruitment in a permanent post on 14.12.2002 on contract basis. He was again appointed as Professor against a permanent vacancy on 03.05.2007 on contract basis. It is submitted by the applicant that even though there is a clear permanent vacancy existing, the organization was making appointments on contract basis and was regularizing the said permanent post on a subsequent date. Accordingly, the applicant's services were regularized by office order dated 04.05.2012. The applicant's probation was also declared as successfully completed on 03.12.2014 vide order dated 30.12.2014. Subsequently the same was confirmed by the General Council w.e.f. 14.08.2012 as Professor. He retired from service on attaining the age of superannuation of 60 years on 31.10.2014.

3. After the retirement the applicant was directed to submit the duly filled in S1 form for onward transmission to NSDL for allotment of Permanent Retirement Account Number (PRAN) so as to settle his benefits under the New Pension Scheme by NSDL. The applicant immediately replied to the above direction vide letter dated 31.10.2014 stating that he had already given option for GPF after the regularization in 2012 to the office of NIRD, he never opted for NPS or for CPS, the NPS applies only to the fresh appointees after 01.01.2014 and not to the pre-appointees. He made a request to apply only Old Pension Scheme to him. He further stated therein that the 6th CPC has considered 10 years service as qualifying period of pension under the Old Pension Scheme, the applicant is going to retire in October 2014, he will not be getting any pensionary benefits under the New Pension Scheme and his pension stands to be governed under the Old Pension Scheme. His request was not acceded to. He submitted several representations to the respondents, copies of which are filed as material papers in the OA. Therefore, he filed the present OA.

4. The respondents opposed to grant the relief prayed for by the applicant contending inter alia in their reply affidavit as follows :

While working as Assistant Professor on contract basis, the applicant had been contributing to CPF and he was allotted CPF A/c No.737. In terms of Rule 5 (2) of CPF Scheme, 1962 he also made nominations on 31.01.2003 in favour of his wife and children. Subsequently he was appointed as Professor on contract basis vide office order dated 12.07.2007 in pay scale of Rs.16400-22400 initially for a period of three years. Clause 5 of the offer of contract appointment explicitly

stipulated that he would be entitled to the benefits of CPF as per CPF Rules of the Institute.

5. The regularization of the academic staff appointed on contract basis was subject to the following terms and conditions as per the Revised NIRD Rules, 2011 for Regular Appointment of the Academic Staff :

(i) The regularization will be a one-time policy and these rules cease to exist once the process of regularization is over.

(ii) The regularization will be subject to the recommendation of the Selection Committee, as prescribed in the Rules of NIRD, 1991.

(iii) Pensionary benefits under the New Pension Scheme would only be given.

6. Therefore, according to the respondents the applicant whose services were regularized under Revised NIRD Rules, 2011 is entitled for pensionary benefits only under the New Pension Scheme, but not under the Old Pension Scheme. They further stated that the regularization of services of the applicant did not bestow upon him the right of exercising fresh option for GPF in deviation to what he was entitled. As he remained as CPF subscriber from 2002 till his retirement, he had been paid the lump sum of his CPF contribution along with Institute contribution on the final date of his retirement. With the above contentions the respondents sought to dismiss the OA.

7. I have heard Mr.K. Sudhakar Reddy, learned counsel for the applicant

and Mr.Avinash Reddy representing Mr.N.Aswani Kumar, learned standing counsel for the respondents and perused the written submissions.

8. The point for determination in the present OA therefore is as to whether the applicant's claim is governed under the Old Pension Scheme or whether his case squarely falls under New Pension Scheme only.

9. Much reliance has been placed by the learned counsel for the respondents on the regularization letter which stipulated that the pensionary benefits will be given to the applicant, under the New Pension Scheme. As to this, it is pointed out by the learned counsel appearing for the applicant that the same regularization letter also mentioned that the applicant's services would be governed by the NIRD Service By-Laws, Chapter IX Para-52 Section (4) gives right to employees for exercising option to elect GPF or to continue under CPF and if the option was not given within three months they would be deemed to have opted for GPF pension scheme. The learned counsel also invited the attention of the Tribunal to Condition No.6 of offer of contract appointment dated 22.07.2002, according to which the applicant will be entitled to the benefit of GPF / Contributory Provident Fund (CPF) subject to and in accordance with the provisions contained in the GPF/CPF rules of the Institute. The offer of contract appointment was agreed to by the applicant and the same was approved by the respondents.

10. Now it is crucial to refer to the relevant Bye-Laws which are binding on the applicant as well as the Institute. Bye-Law No.47 in Chapter IX shows that

the Institute shall have two schemes, namely (1) Pension-cum-Gratuity-cum-Family Pension Scheme and General Provident Fund Scheme (2) Contributory Provident Fund Scheme. Bye-Law 52 deals with application and eligibility of the scheme, according to which a person appointed on contract under Service Bye-law 2 (2) shall be eligible to be governed only by the Contributory Provident Fund Scheme under Bye-law 50, for the period he holds the appointment on contract basis. However clause 4 of Bye-law 52 which is relevant for the purpose of the present case lays down that an employee of the category referred to in sub-clause (2) i.e. holding the post on contract basis under service bye-law 2(2) shall continue to be governed by the Contributory Provident Fund Scheme. When he is appointed to that post or any other post on a regular basis, he shall have the option to elect either (i) the Pension-cum-Gratuity-cum-Family Pension Scheme and the General Provident Fund Scheme referred to in bye-laws 48 and 49 or (ii) to continue to be governed by the Contributory Provident Fund Scheme referred to in bye-law 50. He shall exercise the option within a period of three months. However, as per the provision if a person does not communicate in the manner aforesaid, he shall be deemed to elect Pension-cum-Gratuity-cum-Family Pension and General Provident Fund Scheme.

11. In the instant case from various representations submitted by the applicant it is obvious that soon after he was appointed as a Professor on regular basis, he exercised his option for the Old Pension Scheme. As there was no response for his representations, he filed the present OA. This is not the case wherein the applicant continued under contract appointment till his retirement.

His services were regularized and he was appointed as a Professor on regular basis. Therefore, he had an option to elect either GPF or CPF.

12. Before parting the order it would be necessary to refer to the judgements relied on by the learned counsel for the applicant :

Som Nath & Others Vs. State of Punjab and others in CWP No.1432 of 2012, wherein the Learned Single Judge of Hon'ble High Court of Punjab and Haryana High Court held as follows :

"I have considered the submissions of the counsel for the parties and with their assistance have gone through the records of the case.

In the light of the admitted facts that the petitioners were appointed prior to 1.1.2004, although, their services have been regularized after 1.1.2004 and in the light of the Division Bench judgement of this Court in Harbans Lal's case (supra), on going through the same I am of the considered view that the claim of the petitioners is covered in their favour on all fours. The stand as has been projected by the respondents in the written statements filed in the cases, have been duly considered by the Division Bench and rejected. The operative part of the judgement reads as under :

"From the above discussion, we have come to the conclusion that the entire daily wage service of the petitioner from 1988 till the date of his regularization is to be counted as qualifying service for the purpose of pension. He will be deemed to be in govt. service prior to 1.1.2004. The new Re-structured Defined Contribution Pension Scheme (Annexure P-1) has been introduced for the new entrants in the Punjab Government Service w.e.f. 01.01.2004, will not be applicable to the petitioner. The amendment made vide Annexure P-2 amending the Punjab Civil Services Rules, cannot be further amended by issuing clarification/instructions dated 30.5.2008 (Annexure P-3). The petitioner will continue to be governed by the GPF Scheme and is held entitled to receive pensionary benefits as applicable to the employees recruited in the Punjab Govt. Services prior to 1.1.2004. In view of the above, the writ petition is allowed. Accordingly respondents are directed to treat the whole period of work charge service as qualified service for pension because accordingly to clarification issued on 30.5.2008 (Annexure P-3), the new defined Contributory Pension Scheme would be applicable to all those employees who have been working prior to 1.1.2004 but have been regularized thereafter. Let his pension and arrears be calculated and paid to him expeditiously, preferably within a period of three months from the date of

receipt of copy of this order."

The **Review Petition (C) No.2038 of 2013 in Special Leave Petition (C) No.23578 of 2012** which was filed against the judgement of the Division Bench of High Court of Punjab and Haryana in Harbans Lal's case was dismissed by the Hon'ble Supreme Court. The Hon'ble Supreme Court held as follows :

"We are of the opinion that the High Court has not committed any error which would call for our interference in exercise of our jurisdiction under Article 136 of the Constitution of India.

We are of the opinion that no case case for review of order dated 30.07.2012 is made out."

13. Turning to the facts of the present case, the applicant was initially appointed through direct recruitment against a permanent post dated 14.12.2002 on contract basis. Thereafter, he was appointed as a Professor through direct recruitment against a permanent post on 03.05.2007 which was also on contract basis. His services were regularized w.e.f. 14.08.2012. As per the above referred judgements his entire service has to be taken into account for the purpose of determining his pensionary benefits and also under which scheme they have to be determined and paid. As the applicant was appointed prior to 01.01.2004 which is much prior to the New Contributory Pension Scheme came into force, the OA therefore deserves to be allowed.

14. Consequently the action of the respondents in applying the New Pension Scheme (NPS) is declared illegal and unsustainable in law. The respondents are directed to consider the case of the applicant under the Old Pension Scheme (GPF) and pay all the pensionary benefits to him under the said

scheme.

15. The OA is allowed accordingly. There shall be no order as to costs.

(JUSTICE R.KANTHA RAO)
MEMBER (JUDL.)

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