

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:
NEW DELHI**

O.A. NO.3728 of 2018
MA No.2928 of 2019

Orders reserved on : 09.09.2019

Orders pronounced on : 17.09.2019

Hon'ble Ms. Nita Chowdhury, Member (A)

1. Smt. Bhagwati Valgiri Atit, aged 62 years
w/o Sh. Vinodpuri B. Goswami,
Retired Head Mistress from KVS
R/o 36/263, Vandan Apartment, Near Ankur Bus Stop,
Narainpura, Ahmedabad.-380013.
2. Shri D.D. Panchal, aged 64 years,
S/o Sh. Dajubhai D. Panchal,
Retired TGT(Maths) from KVS,
R/o 46-Gopikrishana Society, Chandlodia,
Ahmedabad-382481.
3. Smt. Indu Maheshwari, aged 62 years,
W/o Sh. Ashok Kumar Maheshwari,
Retired Head Mistress from KVS
R/o A/361, Ghanshyam Nagar, Near Noble Nagar,
Kuber Nagar, Ahmedabad-382340.
4. Shri L.N. Goswami, aged 63 years
W/o Sh. Ram Lal Goswami,
Retired Vice Principal from KVS
R/o %/2, Maitri Avenue, Motera, Ahmedabad-380005.
5. Mrs. Rita P. Mishra, aged 62 years,
W/o Sh. Prem Prakash Mishra,
Retired Primary Teacher (PRT) from KVS
R/o 4, Shaily Appartment Vakilwadi,
Opp. LG Hospital, Maninagar, Ahmedabd.
6. Shri M.R. Patel, aged 62 years,
S/o Sh. Ravjibhai Patel,
Retired as TGT (Maths) from KVS
R/o B-16, Paramansukh Society, near Arjun Apartment,
Ranip., Ahmedabad-382480.
7. Shri Prakash Chhatwani, aged 60 years,
S/o Sh. Indersen Chhatwani,

Retired as Librarian from KVS
R/o C-11, Devbhumi Nagar, 'D' Cabin,
Sabarmati, Ahmedabad-380019.

8. Shri Khushalbhair R. Soyantar, Aged 60 years
S/o Sh. Punjabhai,
Retired Sub. Staff from KVS
r/o Post Eiyawa, Taluka Sananad, Distt. Ahmedabad
382170
9. Shri Shantilal P. Solanki, Aged 60 years,
S/o Sh. P.D. Solanki,
Retired Sub. Staff from KVS,
R/o Bavajini Chati, Opp Radhawami Park,
ITI Naroda, Ahmedabad.
10. Smt. Shail Bala Singh, aged 61 years
W/o Sh. Satish Kumar Singh,
Retired as TGT (English) from KVS
R/o A-12, Krishna Bungalows-3, Motera,
Ahmedabad-380005.
11. Shri Mahesh Keshavlal Solanki, aged 64 years,
S/o Sh. Keshavlal Solanki,
Retired Assistant from KVS
R/o 2, Dhabar Nagar Society, ShahiBagh,
Ahmedabad-380004
12. Shri Makwana Revabhai Karshanbhai, aged 64 years,
S/o Shri Makwana Karshanbai,
Retired as Sub. Staff from KVS
R/o DSA Complex, Near Circuit House,
Highway Mehsana, Gujarat.
13. Shri Mahesh Kumar H. Makwana, aged 61 years,
S/o Sh. Hirabhai H. Makwana,
Retired Assistant from KVS
R/o F-3, Kasturba Nagar Society, Sama Main Road,
Vadodara (Guj)-390024.
14. Shri Mansing K. Rathwa, aged 60 years
S/o Sh. Kaliyabhai M. Rathwa,
Retired Sub. Staff from KVS,
R/o Jamli(DO) Raod Phaliya PO Ddlaria
Distt. Chhota Udaipur(Gaj).
15. Smt. Shantaben H. Shah, aged 63 years
W/o Sh. Harish Kumar S. Shah,
Retired Primary Teacher (PRT) from KVS
R/o 186, Sarvodaya Nagar, Sector-30,
Gandhinagar (Guj)382030.

16. Shri Rishi Kumar, aged 58 years,
S/o Sh. Purushottamdas Devani,
Working as Principal in KVS
R/o C1, K.V. Staff Colony, Mehsana.
17. Smt. Premila J. Patel, aged 56 years,
W/o Sh. Jayesh Kumarn N. Patel,
Working as Primary Teacher in KVS
R/o B/No.2, Eketa Homes, D Cabin,
Sabarmati, Ahmedahad.
18. Shri Vitulbhai P. Prajapati, aged 56 yeas
s/o Sh. Pittamber Dass Prajapati,
working as Lab. Attendent in KVS
R/o F-104, Sankal Residency, Uvarsad Road,
Near Vavol, Gandhi Nagar, (Guj.).
19. Shri Chandrakant Raghunath Ayare, aged 57 years
S/o Sh. Raghunath,
Working as UDC in KVS
R/o A-252, Somnath Nagar, near Motingar-3,
Tarballi, Vadodra (Guj).

.... Applicants

(By Advocate : Shri Yogesh Sharma)

VERSUS

1. Union of India through the Secretary,
Ministry of Human Resources Development,
Shastri Bhawan, New Delhi.
2. Kendariya Vidyalaya Sangathan,
Through the Commissioner,
18, Institutional Area, Shahzed Jeet Singh Marg,
New Delhi.
3. The Joint Commissioner (Admn.)
Kendariya Vidyalaya Sangathan,
18, Institutional Area, Shahzed Jeet Singh Marg,
New Delhi-110016.

.... Respondents

(By Advocate : Shri R.K. Jain for R-1 and Shri U.N. Singh for
R-2 and R-3)

ORDER

MA No.2928/2019

This MA has been filed by the applicants in pursuance
of directions issued by this Tribunal dated 16.8.2019, seeking

withdrawal of instant OA on behalf of applicants no.5, 6, 7, 9, 15, 20, 22 and 23 from the array of parties of the unamended OA with liberty to file fresh OA with better application for explaining the delay. This MA is allowed with liberty as prayed for. The amended Memo of parties as annexed with the instant MA is taken on record.

2. By filing this OA, the applicants, who were/are working in the Kendriya Vidyalaya Sangathan (KVS) on different posts, are seeking the following reliefs:-

- “(i) That the Hon’ble Tribunal may further graciously be pleased to pass an order declaring to the effect that the whole action of the respondents not accepting the request of the applicants for shifting them from CPF scheme to GPF pension scheme is illegal, arbitrary and discriminatory and consequently, pass directing the respondents to treat the applicants as governed by GPF cum pension scheme by way of extending the benefits of Hon’ble Madras High Court judgment dated 24.2.2017 in the case of N. Subrmanian vs. the Commissioner, KVS & Ors., WP No.19215/2015 and other identical cases, with all consequential benefits including granting the service pension from the date of retirement with arrears and interest.
- (ii) Any other relief which the Hon’ble Tribunal deem fit and proper may also be granted to the applicant with the cost of litigation.”

3. Heard learned counsel for the applicant and learned counsel for the respondents.

4. Counsel for the applicants submitted that while in service the applicant made representations to the respondents stated that they are entitled to be extended the

benefits under GPF cum Pension Scheme but they were being shown as CPF beneficiaries, though they did not exercise that option at all. On the other hand, learned counsel for the respondents submitted that the applicants are liable to be continued under CPF Scheme, since deductions were being effected continuously towards subscription to CPF.

5. Counsel for the applicants has not disputed the fact that all the employees of first respondent, i.e., KVS, were covered by CPF Scheme and in the year 1988, option was given to the employees either to remain in CPF or to continue under GPF Scheme by respondent no.1 and that such of the employees, who did not exercise any option at all, are brought under the GPF Scheme and it is only when a specific option is exercised that they would be continued in CPF. However, counsel for the applicants submitted that the applicants have not opted to continue in CPF Scheme prior to cut of date. In support of the claim of the applicants, learned counsel for the applicants mainly placed reliance on the decision of the Hon'ble Madras High Court judgment dated 24.2.2017 in the case of ***N. Subrmanian vs. the Commissioner, KVS & Ors.*** (WP No.19215/2015) as also of various decisions of this Tribunal on the issue involved in this case.

6. On the other hand, counsel for the respondent no.1 and 2 submitted that the applicants were well aware through the secondary records, viz. monthly pay bills, Annual Statements

issued to them in year to year and Form 16 issued to them every year to file Income Tax Return from time to time duly mentioning the CPF deduction made based on which the applicants filed the Income Tax Return from time to time, which clearly indicate that the applicants were aware that they were members of the CPF Scheme and not GPF cum Pension Scheme. In support of his contention, learned counsel for the respondent nos.1 and 2 placed reliance on the decision of the Hon'ble Supreme Court in the case of **KVS and others vs. Jaspal Kaur & Ors.** (2007) 6 CC 13 wherein the Apex Court held that *"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."* Counsel for the respondents also placed reliance on the decision of the Hon'ble Delhi High Court in the case of **DTC vs. Madhu Bhushan Anand** (WP (C) No.14027/2009), and other connected cases, decided on 10.8.2010 and specifically drew our attention of para 44 of the said judgment, which reads as under:-

"44. In our opinion these respondents have no claim whatsoever to receive pension. They novated the contract by volition when they subsequently opted out of the pension scheme and DTC accepted the same and paid to them even the management's share in the CPF account. Their claims are hit by delay, laches and limitation.

They are not entitled to plead that right to receive pension is a continuous cause of action, for the reason, in law either pension can be received or benefit under the CPF account. If the management forces down the gullet of an employee payment under the CPF Scheme and the employee desires pension he has to approach the Court or the Tribunal within a maximum period of 3 years being the limitation prescribed to file a suit.”

7. Counsel for the respondent nos.1 and 2 specifically drew our attention to the averment made in the counter affidavit that the applicants were not considered for change over from CPF to GPF cum Pension Scheme and all the applicants were served reasoned/speaking order for denial, as all the applicants joined KVS prior to 1.1.1986 with CPF option and also continued the CPF after 1.1.1986 with reference to KVS's OM dated 1.9.1988.

8. Counsel for the respondent no.1 also submitted that all the applicants, on their own volition, had opted for CPF Scheme and had made conscious decision to continue in CPF Scheme. Counsel also submitted that matter regarding one time permission for change over from CPF to GPF cum pension scheme was considered by MHRD in consultation with the Department of Expenditure and the MHRD vide their letter No.F.3-14/2012-UT-2 dated 7.4.2015 has informed that the Department of Expenditure, after examining the proposal, has *inter alia* observed as under:-

“The employees of Kendriya Vidyalaya Sangathan, who were in service as on 01.01.1986 and decided to opt

for CPF, made a conscious decision knowing well the option exercised is final. The grant of one more option to such CPF Subscribers in KVS could have repercussion elsewhere with such an option having to be exercised to all other CPF beneficiaries as well whose number is quite substantial.

In view of above position, the proposal of grant of one time permission for changing from CPF to GPF cum pension Scheme for teaching and non-teaching staff of KVS is not agreed to.”

9. Counsel for the applicants placed reliance on the judgment of the Hon'ble Delhi High Court in LPA No.410/2014 and connected matters decided on 24.8.2016 and contended that whole action of the respondents not considering the cases of the applicants to change over the from CPF Scheme to GPF cum Pension Scheme is totally illegal, arbitrary and against the Govt. of India instructions and against the law of the land and discrimination in the eyes of law.

10. Having heard learned counsel for the parties and perusing the pleadings available on record, it is observed that some of the applicants' representations are annexed in the OA, i.e., applicant nos.1, 2, 3, 5, 8, 9 and 10 and from the perusal of the same, it is evidently clear that they themselves admitted that they had chosen to opt for CPF Scheme despite the fact that KVS issued OM in the year 1988 whereby options were given to the employees either to remain in CPF or to come under GPF Scheme and it was only in those cases

in which the employees who did not exercise any option at all, were brought under the GPF Scheme. As such so far as applicant nos.1, 2, 3, 5, 8, 9 and 10 are concerned, their claim is not sustainable in the eyes of law as they themselves admitted and not specifically denied in their representations that they have not opted for CPF scheme at the relevant point of time.

11. So far as other applicants are concerned, since the respondents have specifically averred in their counter affidavit that the applicants were not considered for change over from CPF to GPF cum Pension Scheme and all the applicants were served reasoned/speaking order for denial, as all the applicants joined KVS prior to 1.1.1986 with CPF option and also continued the CPF after 1.1.1986 with reference to KVS's OM dated 1.9.1988, these applicants are also not entitled to any relief on the basis of the judgments referred by the counsel for the applicants, as the applicants have not controverted the said averment of the respondents in their rejoinder as also during the course of hearing but they stated that some similarly situated persons approached this Tribunal in OA No.1064/2018 and this Tribunal vide Order dated 14.3.2018 gave a direction to the respondents to decide the representation dated 14.12.2017 of the applicants therein and if their case is found to be similar to the judgment of the Hon'ble Madras High Court in the case of **N. Subrmanian vs.**

the Commissioner, KVS & Ors., WP No.19215/2015, they may be given similar benefits as were granted to the applicants therein. As such once the respondents have considered their cases and served them reasoned and speaking order denying the benefit of GPF Scheme, the applicants ought to have challenged the same or even placed the same on record for better appreciation of their cases, as such the reliance placed by the applicants on the decision of Hon'ble Madras High Court in **N. Subrmanian** case (supra) is not relevant to the facts of this case. Moreover, the Hon'ble Supreme Court in the case of **KVS and others vs. Jaspal Kaur & Ors.** (2007) 6 CC 13, specifically held that "*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.*"

12. It is further relevant to mention that one time permission for change over from CPF to GPF cum pension scheme was considered by MHRD in consultation with the Department of Expenditure and the MHRD vide their letter No.F.3-14/2012-UT-2 dated 7.4.2015 has informed that the Department of Expenditure, after examining the proposal, has *inter alia* observed as under:-

“The employees of Kendriya Vidyalaya Sangathan, who were in service as on 01.01.1986 and decided to opt for CPF, made a conscious decision knowing well the option exercised is final. The grant of one more option to such CPF Subscribers in KVS could have repercussion elsewhere with such an option having to be exercised to all other CPF beneficiaries as well whose number is quite substantial.

In view of above position, the proposal of grant of one time permission for changing from CPF to GPF cum pension Scheme for teaching and non-teaching staff of KVS is not agreed to.”

13. In **P.U.Joshi vs. Accountant General** (2003) 2 SCC

632, the Apex Court held as under:

“10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substruction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing

conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.”

Further in ***Indian Drugs & Pharmaceuticals Ltd. vs.***

Workman, Indian Drugs & Pharmaceuticals Ltd., (2007) 1

SCC 408, the Apex Court held as follows:-

“When the State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the constitution and if not, the court must strike down the action. While doing so the court must remain within its self imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize quo any matter which under the constitution lies within the sphere of the legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers”.

The courts must, therefore, exercise judicial restraint, and not encroach into the executive or legislative domain. Orders for creation of posts, appointment on these posts, regularization, fixing pay scales, continuation in service, promotions, etc. are all executive or legislative functions, and it is highly improper for Judges to step into this sphere, except in a rare and exceptional case. The relevant case law and philosophy of judicial restraint has been laid down by the Madras High Court in great detail in *Rama Muthuramalingam vs. Dy. S.P.* AIR 2005 Mad 1, and we fully agree with the views expressed therein.”

14. In the result, for the foregoing reasons, we do not find any merit in this case and the same is accordingly dismissed.

There shall be no order as to costs.

(Nita Chowdhury)
Member (A)

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