

K.V.S. AND ORS.
v.
JASPAL KAUR AND ORS.

JUNE 6, 2007

[DR. ARIJIT PASAYAT AND D.K. JAIN, JJ.]

Service Law:

Provident Fund Schemes—GPF and CPF—Employee of Kendriya Vidyalaya Sangathan subscribing to GPF Scheme—Issuance of Circular by KVS providing for option to employee to change over from GPF to CPF Scheme—Incumbent, teacher, opted to continue in the CPF Scheme—New CPF Scheme number allotted to her—Later, she desired to change from CPF Scheme to GPF Scheme—Representation—Rejected by Authorities—Allowing original application, Central Administrative Tribunal held that she was entitled to claim benefit of GPF Scheme—Challenge to—Dismissed by High Court—On appeal, Held: Last pay Certificate clearly indicates that she was subscribing to CPF Scheme—All other documents produced by the authorities establish that she had exercised option for the CPF Scheme—Merely because the original documents relating to exercise of such option was not produced by the authorities, should not be a ground to ignore the ample material produced by them to show the exercise of the option by the incumbent—Both the Courts below are not justified in taking a different view.

Respondent no. 1 joined as a Primary School Teacher in the Kendriya Vidyalaya Sangathan (KVS). KVS issued a Circular providing for an option to its employees to switch over to GPF Scheme from the CPF Scheme. Respondent No.1 having exercised the option to continue in CPF Scheme, a new CPF account number was allotted to her. Later, she desired to change from CPF Scheme to GPF Scheme. Therefore, she made a representation to the concerned authorities. The authorities rejected the representation. Thereafter, an order was passed by KVS to the effect that she was not entitled to claim benefit of GPF Scheme cum Pension Scheme as she had opted for CPF Scheme. She moved the Central Administrative Tribunal (CAT). CAT held that she was entitled to claim benefit of GPF Scheme cum Pension Scheme. The order of CAT was challenged by the authorities by filing a writ

A petition, which was dismissed by the High Court. Hence the present appeal.

Appellants contended that the option to continue with CPF Scheme had been exercised by respondent no. 1, which is evident from several documents produced by them before the Court.

B Respondents submitted that the original documents showing exercise of option were not produced; and that because some other pieces of evidence were produced, they were not sufficient to show that option had been exercised

Allowing the appeal, the Court

C HELD: 1.1. Respondent no. 1, in her letter dated 15th March, 1997, has categorically stated that she was contributing towards CPF Scheme, wherein she has mentioned her account number. The letter was addressed to the accounts Officer. This document clearly establishes that respondent no 1 was aware of the change in account number and she herself referred to account number. Her feigned ignorance about the change is absolutely hollow because

D she herself knows about the changed number. [Para 6] [973-A, B]

1.2. The last pay certificate issued to the respondent no. 1 when she handed over charge on 23.5.1992 clearly indicates that CPF subscription of Rs. 130/- was being deducted and that she had opted for the pay of CPF Scheme and rate of subscription is Rs. 130/- per month and CPF account number was being inferred. On the face of these documents the CAT and the High Court should no have held that option was not exercised by the respondent no. 1.

E [Para 7] [973-B, C]

1.3. All the documents produced establish that respondent no. 1 had exercised the option for the CPF Scheme. 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. The CAT and the High Court were not justified in taking a different view.

F [Para 7] [973-D, E]

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2876 of 2007.

From the Final Judgment and Order dated 22.3.2005 of the High Court of Punjab and Haryana at Chandigarh in C.W.P. No. 2365 of 2005.

S. Rajappa for the Appellants.

H

Rajesh, Dinesh Verma, Usha, A.P. Mohanthy and Rajesh Kumar Basandhi
for the Respondents. A

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the order passed by a Division Bench
of the Punjab and Haryana High Court dismissing the writ petition filed by
the appellants. B

3. Background facts in a nutshell are as follows:

Respondent no. 1 joined as a primary School Teacher in the Kendriya
Vidyalaya Sangathan (for Short 'KVS') on 20th July, 1978. KVS is an autonomous
body running schools all over the country. On 1.9.1988 the KVS issued
Circular providing for the option to the KVS employees to switch over to GPF
Scheme from the CPF Scheme. On 6.3.1989 KVS allotted account numbers in
the CPF Subscription in which the respondent no. 1s name is at serial no. 8
This document shows that a number of employees opted for the benefit of
CPF Scheme. on 6.7.1989 a new CPF account number was allotted to respondent
no. 1 for habingn exercised the option to continue in the CPF Scheme. on
15.7.1989 revised CPF account which was allotted by letter dated 6.3.1989 was
further changed vide O.M. dated 15.7.1989 in which also name of respondent
no. 1 appeared at serial no. 8 On 15.3.1997 letter was received from respondent
no. 1 stating that she had been continuing under the CPF Scheme and it
should be changed to GPF Scheme. In this letter respondent no. 1 stated that
she had been contributing towards the CPF and the CPF account no. is JRC
1889. On 16.9.2002 respondent no. 1 made another representation to change
from CPF Scheme to GPF Scheme. By letter dated 7,11,2002 Senior Audit and
Accounts Officer rejected the representation for change from CPF Scheme to
GPF Scheme. on 8,32004 an order was passed by KVS to the effect that
respondent no. 1 was not entitled to claim benefit of GPF Scheme cum
Pension Scheme as she had opted for CPF Scheme. She moved the Central
Administrative Tribunal, Chandigarh Bench, Chandigarh (for Short the 'CATA'
' CAT held that she was entitled to claim benefit of GPF Scheme cum Pension
Scheme The original applications was allowed by CAT on the ground that the
appellants did not produce direct evidence to show that respondent no. 1 had
opted for the Scheme and bushed aside the secondary evidence before it by
the appellants to the effect that she had been continuing in the CPF Scheme
and that she was allotted CPF account number, The CAT further held that H

- A respondent no. 1 was entitled to the benefit of GPF cum Pension Scheme on Account of her being in service in KVS. Further direction was given to the effect that respondent no.1 was entitled to get GPF pension Scheme with effect from the due date with consequential benefits. Writ petition filed before High Court was dismissed on the sole ground that in spite of the number of opportunities given to the department no direct evidence was furnished was
- B The High Court department on direct evidence was furnished. The High Court held that the option was to be exercised in writing and other materials produced were not sufficeir to show that, respondent no. 1 had exercised option
- C 4. Learned counsel for the appellants submitted that the reference has been made to various documnts which *prima facie* show that the option has been exercised. On the contrary, the learned counsel for the respondents submitted that the original documents show exercise of option were not not produced. Merely because some other pieces of evidence were produced, they were not sufficient to show that option had been exercised.
- D 5. In this context it is to be noted that the Tribunal itself noted that in the Pass Book name of applicant appears at no. 1889 and the signatures of the Principal of KVS is indicated. It indicates her appointment in KVS from July 1978 to May 1992 in Delhi, from May 1992 to April 2002 Baddowal, from April 2003 to April 2004 at Halwara and thereafter again at KVS Baddowal.
- E It shows her account no. 1889. A copy of the Income tax return having deductions from pay and allowance for depositing in the CPF confirm this fact. The secondary pieces of evidence which go to show that deductions were being made at regular basis from pay and allowance. This according to CAT was not sufficient to show that she had exercised her option.
- F 6. It is to be noted that in the allotment of revised CPF number in the letter of KVS no. 16-2/CO/89-90/CPF/KVS/PF dated 6.3.89, name of respondent no.1 appears at serial no.8 and the revised CPG no. is shown as 1889 in place of the earlier CPG no. CEC 2685. This change has not been denied by respondent no. 1. Additionally, again in letter no. KVS no. 16-2/CO/89-90/CPF/
- G KVS/PF dated 6.7.1989 the name of respondent no.1 appears at serial no. 8 and again existing CPF No. CEC 2685 has been indicated. This letter is significant because there is a note in the service book of the concerned employee in respect of allotted CPC A/C under intimation to them. KVS letter no. F-2/C.O/89-90/CPF/KVS/PF dated 15.7.89 with reference to the earlier letter of 6.7.89 intimated the employees about the change. Again in this letter the
- H

name of respondent no. 1 appears at serial no. 8. Most vital document in this controversy is respondent no. 1's letter dated 15th March, 1997. In this she has categorically stated that she was contributing towards CPF and her account no. is JRC 1889. This was addressed to the Accounts Officer. This document clearly establishes that respondent no. 1 was aware of the change in account number and she herself referred to account number. Her feigned ignorance about the change is absolutely hollow because she herself knows about the changed number.

7. The last pay certificate issued to the respondent no. 1 when she handed over charge on 23.5.1992 clearly indicate that CPF subscriptions of Rs. 130/- was being deducted and that she had opted for the pay of CPF Scheme and rate of subscription is Rs. 130/- for month and allotment of CPF account number 1889 was being transferred. On the face of these documents the CAT and the High Court should not have held that option was not exercised by the respondent no. 1. Pursuant to this Court's order the original service book of respondent no. 1 was produced. Even on 10.6.2005 in the last pay certificate it has been stated that she had opted for the CPF Scheme. Similar is the position in the last pay certificate dated 19.4.2003 and the last pay certificate of 18.1.1982. All these documents establish that respondent no. 1 had exercised the option for the CPF Scheme. 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.

8. The appeal is allowed but in the circumstances without any order as to costs.

S.K.S.

Appeal allowed.