

CASE NO.:
Appeal (civil) 2876 of 2007

PETITIONER:
K.V.S. and Ors.

RESPONDENT:
Jaspal Kaur and Ors.

DATE OF JUDGMENT: 06/06/2007

BENCH:
DR. ARIJIT PASAYAT & D.K. JAIN

JUDGMENT:
JUDGMENT

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.

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. 1's 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 having 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 8.3.2004 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 were 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 brushed 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 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. 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 sufficient to show that, respondent no. 1 had exercised option.

4. Learned counsel for the appellants submitted that the reference has been made to various documents which prima facie show that the option has been exercised. On the contrary, the learned counsel for the respondents submitted that the original documents showing exercise of option were not produced. Merely because some other pieces of evidence were produced, they were not sufficient to show that option had been exercised.

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. 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.

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 CPF no. is shown as 1889 in place of the earlier CPF 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/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 CPF 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 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 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.

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