

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 4202 OF 2011
(Arising out of S.L.P. (C) No. 9803 of 2006)

Union of India through the Secretary, Appellant
National Council of Educational
Research & Training

Versus

Shyam Babu Maheshwari Respondent

JUDGMENT

A. K. PATNAIK, J.

Leave granted.

2. This is an appeal against the order dated 23.05.2006 of the Division Bench of the Rajasthan High Court, Jaipur Bench, dismissing Civil Special Appeal (Writ) No.898 of 2005 of the appellant.
3. The facts of this case are that the respondent was in the service of the National Council of Educational Research and Training (for short 'the NCERT'). The employees of the NCERT were given an option to

choose either the Central Provident Fund Scheme (for short 'the CPF Scheme') or the General Provident Fund-cum-Pension Scheme (for short 'the Pension Scheme'). In 1977, the respondent opted for the CPF Scheme. On 31.07.1984, the respondent retired from service and withdrew his benefits under the CPF Scheme. On 06.06.1985, the Ministry of Personnel and Training Administrative Reforms & Public Grievances and Pension (Department of Personnel and Training) issued O.M. No.F.3(1)-Pension Unit/85 (for short 'the O.M. dated 06.06.1985') intimating the decision of the Government that Central Government employees who had retained the Contributory Provident Fund benefits in terms of Rule 38 of the Contributory Provident Fund Rules, 1962 or in terms of any other orders issued in that behalf, may be allowed another opportunity to opt for the Pension Scheme as laid down in the Central Civil Services (Pension) Rules, 1972. In the O.M. dated 06.06.1985, it was made clear that the option was open to those employees who were in service on 31.03.1985 and

were retiring from service on or after that date. NCERT issued a circular dated 18.07.1985 intimating all concerned that employees of NCERT, who had earlier opted for the CPF Scheme, may exercise their option before 06.12.1985 to switch over to the Pension Scheme and such option once exercised will be treated as final.

4. Before his retirement, the Respondent claims to have applied on 27.02.1984 to change over from the CPF Scheme to the Pension Scheme. The said request for change over from the CPF Scheme to the Pension Scheme was rejected on 23/26.06.1989. The respondent filed an application before the Rajasthan Non-Government Education Tribunal, Jaipur (for short 'the Tribunal') in the year 1995, seeking permission to opt for the Pension Scheme. By order dated 02.11.1995, the Tribunal relying on the decision of this Court in *Subramaniam v. Chief Personnel Officer, Central Railways, Ministry of Railways* (AIR 1995 SC 983) directed the appellant to declare the respondent as entitled to the benefits of the Pension Scheme with

effect from the date of his retirement and fix his pension accordingly. The appellant challenged the order of the Tribunal before the High Court in Civil Writ Petition No.1447 of 1997 which was dismissed by the learned Single Judge of the High Court by order dated 02.08.2005. The appellant then filed Civil Special Appeal (Writ) No.898 of 2005 which was also dismissed by the Division Bench of the High Court by the impugned order.

5. Learned counsel for the appellant submitted that the Tribunal, the learned Single Judge of the High Court and the Division Bench of the High Court have all relied on the decision of this Court in *R. Subramaniam v. Chief Personnel Officer, Central Railways, Ministry of Railways* (AIR 1995 SC 983 = (1996) 10 SCC 72) which was rendered on the peculiar facts of that case. He submitted that a Constitution Bench of this Court in *Krishena Kumar, etc. v. Union of India & Ors.* [(1990) 4 SCC 207] has clearly held that employees who opt for the CPF Scheme and employees who opt for the Pension Scheme fall into two distinct classes and once

an employee opts within the cut-off date to be under the CPF Scheme, he cannot later on make a request to switch over to the Pension Scheme. He submitted that the decision of the Constitution Bench of this Court in *Krishena Kumar* (supra) has subsequently been followed in *V.K. Ramamurthy v. Union of India & Anr.* [(1996) 10 SCC 73] and *Union of India & Ors. v. Kailash* [(1998) 9 SCC 721] and in these subsequent decisions this Court has explained that the decision of this Court in *R. Subramaniam* (supra) was rendered on the particular facts of that case. He further submitted that in any case it will be clear from the language of the O.M. dated 06.06.1985 which was adopted by the NCERT that the option to switch over from the CPF Scheme to the Pension Scheme was available to only those employees who were in service on 31.03.1985 and were to retire from service on or after 31.03.1985 and not to the appellant who was not in service on 31.03.1985 having retired on 31.07.1984.

6. Learned counsel for the respondent, on the other hand, supported the orders of the Tribunal, the

learned Single Judge of the High Court and the Division Bench of the High Court and relied on the decision of this Court in *R. Subramaniam* (supra).

7. We have carefully perused the decision of this Court in *R. Subramaniam* (supra) on which reliance has been placed by the Tribunal, the learned Single Judge and the Division Bench of the High Court as well as learned counsel for the respondent and we find that in that case the Central Administrative Tribunal, Bombay, by its order dated 11.11.1987 had directed that Railway employees who had indicated their option in favour of Pension Scheme either at any time while in service or after their retirement and who then desired to opt for the Pension Scheme should be given the benefit of the Pension Scheme. This order dated 11.11.1987 of the Central Administrative Tribunal was challenged by the Union of India in a Special Leave Petition, but the Special Leave Petition was dismissed and a Review Petition was also dismissed by this Court. When the matter came before this Court for the second time in *R. Subramaniam* (supra) this Court held

that the Union of India cannot resist the claim of R. Subramaniam. It is thus clear that in *R. Subramaniam* (supra) the claim of the employee had to be allowed by this Court because in an earlier order, the Central Administrative Tribunal had allowed the claim of the railway employees to switch over to the Pension Scheme and the order of the Central Administrative Tribunal had become final on the dismissal of the Special Leave Petition and the Review Petition by this Court. The facts of this case are entirely different. There is no such earlier order of the Tribunal or a Court allowing the claim of the respondent to switch over from the CPF Scheme to the Pension Scheme, which had become final. The Tribunal, the learned Single Judge and the Division Bench of the High Court were thus not right in relying on the decision of this Court in *R. Subramaniam* (supra) in allowing the claim of the respondent to switch over from the CPF Scheme to the Pension Scheme.

8. We may now consider whether *dehors* the decision of this Court in *R. Subramaniam* (supra) the respondent could be allowed to opt for the Pension Scheme having earlier opted for the CPF Scheme while in service. Admittedly, the respondent while he was in service of NCERT had opted for the CPF Scheme way back in 1977 and on his retirement, he had availed the benefits of the CPF Scheme. This Court has held in *Krishena Kumar, etc. v. Union of India & Ors.*, *V.K. Ramamurthy v. Union of India & Anr.* and *Union of India & Ors. v. Kailash* (supra) that once an employee has opted for the CPF Scheme, his exercise of option was final and he is not entitled to change over to the Pension Scheme because the two schemes are entirely different. It, however, appears that the Government in the Ministry of Personal and Training by the O.M. dated 06.06.1985 gave an opportunity to Central Government employees who had earlier opted for the CPF Scheme to opt for the Pension Scheme. The relevant portion of the O.M. dated 06.06.1985 is extracted hereinbelow:-

“... In the light of these changes, the President is now pleased to decide that Central Government employees who have retained the Contributory Provident Fund benefits in terms of rule 38 of the Contributory Provident Fund Rules (India), 1962 or in terms of any other orders issued in this behalf, may be allowed another opportunity to opt for the Pension Scheme as laid down in the Central Civil Services (Pension) Rules, 1972. The option is open to those Government employees who were in service on the 31st March, 1985 and retiring from service on or after that date. The option should be exercised within a period of six months from the date of issue of this O.M. Option once exercised shall be final.”

The O.M. dated 06.06.1985 has been adopted by the NCERT in its Circular dated 18.07.1985. It will be clear from the language of the O.M. dated 06.06.1985 that the option to an employee to switch over from the CPF Scheme to the Pension Scheme was open to only those employees who were in service on 31.03.1985 and who were retiring on or after 31.03.1985. By 31.03.1985, admittedly, the respondent had retired, his date of retirement being 31.07.1984. He is, therefore, not entitled to fresh option to switch over from the CPF Scheme to the Pension Scheme.

9. For these reasons, we set aside the orders of the Tribunal, the learned Single Judge of the High Court

and the Division Bench of the High Court and allow this appeal. There shall be no order as to costs.

.....J.
(R.V. Raveendran)

.....J.
(A. K. Patnaik)

New Delhi,
May 09, 2011.