

A UNION OF INDIA THROUGH THE SECRETARY,
NATIONAL COUNCIL OF EDUCATIONAL RESEARCH &
TRAINING

v.

B SHYAM BABU MAHESHWARI
(Civil Appeal No. 4202 of 2011)

MAY 09, 2011

[R.V. RAVEENDRAN AND A.K. PATNAIK, JJ.]

C *Service Law:*

Service benefits – Switchover from CPF scheme to pension scheme – Permissibility of – Respondent-employee while he was in service of NCERT had opted for the CPF Scheme way back in 1977 and on his retirement, had availed the benefits of the CPF Scheme – Claim of respondent to switch over from CPF scheme to Pension Scheme – Allowed by Tribunal, the Single Judge and the Division Bench of the High Court – Justification of – Held: Not justified – Once an employee has opted for the CPF Scheme, his exercise of option is final and he is not entitled to change over to the Pension Scheme because the two schemes are entirely different – However, Ministry of Personnel and Training by 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 O.M. dated 06.06.1985 was adopted by the NCERT in its Circular dated 18.07.1985 – It is clear from the language of 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, the respondent had retired, his date of retirement being 31.07.1984 – He was, therefore, not entitled to fresh option to switch over from the CPF Scheme to the Pension Scheme –

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*Contributory Provident Fund Rules, 1962 – Rule 38 – Central
Civil Services (Pension) Rules, 1972.* A

The respondent was in the service of the National Council of Educational Research and Training (NCERT). The employees of the NCERT were given an option to choose either the CPF Scheme or the General Provident Fund-cum-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 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. B
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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. 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. F
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A The respondent filed an application before the
 Rajasthan Non-Government Education Tribunal in the
 year 1995, seeking permission to opt for the Pension
 Scheme. The Tribunal relying on the decision of this
 Court in R. Subramaniam directed the appellant to declare
 B 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 which was dismissed by a Single Judge of the
 C High Court. The appellant then filed Civil Special Appeal
 (Writ) which was also dismissed by the Division Bench
 of the High Court.

In the instant appeal, the appellant submitted that a
 Constitution Bench of this Court in Krishena Kumar has
 D 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
 E Scheme. 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
 F 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.

Allowing the appeal, the Court

G HELD:1. In the decision of this Court in R.
 Subramaniam, the Tribunal, 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

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desired to opt for the Pension Scheme should be given the benefit of the Pension Scheme. This order dated 11.11.1987 of the 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 this Court held that the Union of India cannot resist the claim of R. Subramaniam. It is thus clear that in R. Subramaniam the claim of the employee had to be allowed by this Court because in an earlier order, the Tribunal had allowed the claim of the railway employees to switch over to the Pension Scheme and the order of the 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. In the instant case, the Tribunal, the 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 in allowing the claim of the respondent to switch over from the CPF Scheme to the Pension Scheme. [Para 7] [555-E-H; 556-A-D]

R. Subramaniam v. Chief Personnel Officer, Central Railways, Ministry of Railways (AIR 1995 SC 983) – distinguished.

2. 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. Once an employee has opted for the CPF Scheme, his exercise of option is final and he is not entitled to change over to the Pension Scheme because the two schemes are entirely different. It, however,

A 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 O.M. dated 06.06.1985 was adopted by the
 B NCERT in its Circular dated 18.07.1985. It is 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
 C respondent had retired, his date of retirement being 31.07.1984. He was, therefore, not entitled to fresh option to switch over from the CPF Scheme to the Pension Scheme. [Para 8] [556-E-G]

D *Krishena Kumar, etc. v. Union of India & Ors.* [(1990) 4 SCC 207: 1990 (3) SCR 352]; *V.K. Ramamurthy v. Union of India & Anr.* [(1996) 10 SCC 73: 1996 (4) Suppl. SCR 583] and *Union of India & Ors. v. Kailash* [(1998) 9 SCC 721] – relied on.

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Case Law Reference:

AIR 1995 SC 983	distinguished Para 4, 5, 6, 7,8
F 1990 (3) SCR 352	relied on Para 5, 8
1996 (4) Suppl. SCR 583	relied on Para 5, 8
(1998) 9 SCC 721	relied on Para 5, 8

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4202 of 2011.

From the Judgment & Order dated 23.5.2006 of the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur in DB Civil Appeal (Writ) No. 898 of 2005.

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Raju Ramachandran, S. Rajappa, Dr. Puran Chand, B. A
Badrinath, Puneet Sharma for the Appellant.

V. Seshagiri, Alok Tiwari, (for Dua Associates) for the
Respondents.

The Judgment of the Court was delivered by B

A. K. PATNAIK, J. 1. 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 C
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 D
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 E
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 F
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. G
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

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A 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.

B 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 C '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 D 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 E 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.

F 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 G 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 H 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

A 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
B 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
C 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.
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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
E 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 &
F 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
G 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:-

H “... 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." A
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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. D
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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. F

B.B.B.

Appeal allowed.