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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 3985/2021

CENTRAL BOARD OF TRUSTEES, EPF ..... Petitioner

Through: Mr. Puneet Garg, Advocate.

Versus

RAM CHANDER & ANR. ..... Respondents

Through: Ms. Avnish Ahlawat, Standing Counsel with Mr. Nitesh Kumar Singh, Mrs. Tania Ahlawat & Ms. Palak Rohmetra, Advocates for DTC.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
HON'BLE MR. JUSTICE AMIT BANSAL

O R D E R

% 25.03.2021

C.M. No. 12057/2021(exemption)

1. Allowed, subject to just exceptions and in terms of extant rules.

2. The application is disposed of.

W.P.(C) 3985/2021 & C.M. No. 12056/2021(for stay)

3. The petition impugns the order dated 12th April, 2019 of the Central Administrative Tribunal (CAT), Principal Bench, New Delhi, allowing OA No. 2042/2016 preferred by the respondent no.1 and directing the petitioner and the respondent no.2 Delhi Transport Corporation (DTC) to treat the respondent no.1 under the DTC Pension Scheme.

4. The respondent no.1 joined the respondent no.2 DTC on 18th September, 1981 and superannuated on 31st March, 2016. On 27th

November, 1992, a Pension Scheme was introduced in the respondent no.2 DTC for the first time and options were invited. The respondent no.1, in the OA aforesaid, has pleaded that he did not opt for the Pension Scheme and thus continued under the Contributory Provident Fund (CPF) Scheme.

5. We are informed that on 28th October, 2002, another opportunity was given to the employees who had earlier opted out of the Pension Scheme, to come in the fold of Pension Scheme but the respondent no.1 did not exercise the option at that time also and exercised the option for the first time after superannuation on 31st March, 2016.

6. The contention of the counsel for the petitioner and the counsel for the respondent no.2 DTC appearing on advance notice is, that the orders/judgments relied upon by CAT for allowing the OA are all cases in the facts whereof the option had been exercised by concerned employees. During the hearing, it has been explained that though in the year 1992 there was a provision for deemed option of continuing in the Pension Scheme on not opting for CPF Scheme but there was no such deemed option in 2002.

7. We have however, enquired from the counsel for the petitioner and the respondent no.2 DTC, what is there to show that the respondent no.1, in 1992 had expressly opted out of the Pension Scheme inasmuch as unless he expressly opted out, he would be deemed to be covered under the Pension Scheme and would continue to be covered, notwithstanding having not exercised option, on opportunity being again given in 2002.

8. The counsels state that it is the own case of the respondent no.1 that he did not opt under the Pension Scheme in 1992 and continued under the

CPF Scheme and thus the need to place the document of opting out of the Pension Scheme in 1992 does not arise.

9. We are however of the view that it is possible that the petitioner drafted the OA, being under the impression that since he did not exercise the option for coming under the Pension Scheme, he continued under the CPF Scheme and the respondent no.1 is unaware of the deeming provision. It is thus expedient to have a look at the document qua which the respondent No. 1 expressly opted out of the Pension Scheme, in the year 1992.

10. The counsel for the petitioner and respondent no.2 DTC seek time in the interregnum.

11. Let the notice be also issued to the respondent no.1, by all modes including through service channels, returnable on 22nd July, 2021.

12. Till further orders, there shall be stay of operation of the impugned order.

RAJIV SAHAI ENDLAW, J.

AMIT BANSAL, J.

MARCH 25, 2021
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