

* **HIGH COURT OF DELHI : NEW DELHI**

+ **WP (C) No. 4142/2008**

Dr. Sima Yadav & Ors. Petitioners
Through: Mr. R.K. Singh with Ms. Deepa Rai,
Advocates

Versus

Society of Delhi Institute of Heritage Research and Management
& Ors. Respondents
Through: Ms. Anjana Gosain, Advocate for R-1
& 2.
Mr. Elgin John Matt for Ms. Anju
Bhattacharya, Advocate for R-3.

Judgment pronounced on: 26.11.2010

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MANMOHAN SINGH, J.

1. The present writ petition has been filed by the petitioner under Article 226 of the Constitution of India praying for an order/ writ/ direction for declaring the Board of Management of respondent No. 1 as well as Resolution dated 24.12.2007 as wrong, illegal, null and void, for quashing the said Resolution and subsequent order dated 06.05.2008 and a writ of mandamus directing the respondent No. 1 to continue with the GPF-Pension-Gratuity scheme.

2. The brief facts are that the Delhi Institute of Higher Research and Management (hereinafter referred to as 'DIHRM' for brevity) is an autonomous institution funded fully by the Department of Higher Education (hereinafter referred as DHE),

Government of NCT of Delhi and run and managed by respondent No. 1. The DIHRM's affairs are managed by its Board of Management which exercises all authority over the Rules, Regulations, Bye-laws etc. The said Board comprises of nine members being the Chairperson, Vice-Chairperson, Director, one Head of the Department of the Institute, the Secretary of the Department of Education, Director of Department of Archeology, Government of NCT of Delhi and three eminent scholars nominated by the Chairman.

3. On 09.02.2001 the Board of Management resolved that the teachers of DIHRM would be covered under the General Provident Fund Rules and would also be entitled to pension and other retirement benefits. In the same meeting, the Board of Management also resolved and adopted the DIHRM General Provident Fund-cum-Pension-cum-Gratuity Scheme for its employees which was later approved by the Annual General Body meeting vis-à-vis teachers as well as other employees.

4. In a meeting held on 24.08.2005 the Board of Management noted in Agenda 7 that *"the current scheme in operation at Delhi Institute of Heritage Research & Management would be sent to the Directorate of Higher Education for clarification/implementation of Pension and Gratuity benefits and the implementation of a GPF at Delhi Institute of Heritage Research & Management. The Board of Management also indicated that in the case of response from the DHE is in the negative, the Contributory Provident Fund would be initiated and implemented at the Institute, without any Pensionary benefit to the employees."* Thereafter, on meeting held on 24.12.2007 the Board of

Management observed that *“either CPF having contribution from Government side or LIC scheme will be formed which will take the opinion of all staff and submit the report to the Acting Director.”*

5. Vide notices dated 11.01.2008, 15.01.2008 and 24.01.2008 respondent No. 1 invited objections/suggestions vis-à-vis implementation of the CPF scheme. The grievance of the petitioners is that though they along with other employees objected to the CPF scheme being implemented, by impugned order dated 06.05.2008 the respondent No. 1 announced discontinuance of the GPF-cum-Pension-cum-Gratuity Fund scheme.

6. The grounds on which the present petition has been filed can be enumerated briefly as under :

(i) The unilateral introduction of the CPF scheme is wrong, unconstitutional, violative of the petitioners' fundamental rights under Articles 14, 16 and 21 as well as contrary to the MOA and Rules of DIHRM as the resolution adopted in the meeting on 09.02.2001 has statutory force and cannot be discontinued due to administrative or executive whim. Further, the Resolutions dated 24.08.2005 and 24.12.2007 do not confer any authority upon the acting Director to discontinue with the GPF-cum-Pension-cum-Gratuity Fund Scheme in fact the former only authorized the Institute to send the GPF scheme to the Directorate for clarification/implementation and the latter authorized the constitution of a Committee to take opinions on implementation of CPF or LIC scheme only and the act of discontinuing with the GPF scheme is arbitrary and illegal.

(ii) The respondents have violated their constitutional obligation as an autonomous body to provide financial assistance to its employees who have devoted their years to the institute. Article 41 of the Constitution imposes obligation upon the State to not only provide employment but also public assistance to its employees in old age. The Employees Provident Funds & Miscellaneous Provisions Act, 1952 was enacted to ensure the same. The GPF scheme has been in force for seven years and deductions from the employees' salaries for this purpose have been carried out regularly and been audited by the Department of Finance, Government of NCT of Delhi without any objections.

(iii) The petitioners had opted for the GPF scheme and having derived benefits under the same, it cannot now be withdrawn to the disadvantage of the petitioners as they have acquired a vested right to continue enjoying the said benefits. Further, the said benefits were part of their service conditions and cannot be taken away without their voluntary opting for another scheme.

(iv) The Board of Management comprises of nine members as per Rule 6 and is required to meet at least twice every year. Despite this, the Board has not met after November, 2002 and since then the said Board has neither been constituted nor has it met except on two occasions i.e. 24.08.2005 and 24.12.2007. Even in the above said meetings, only four members who were not duly appointed by the society were present and in order to show that majority of the members were present, on both occasions one member (Smt.

Rina Roy on the prior meeting and Sh. Keshav Chandra on the latter one) was shown in dual capacity. The said action is tantamount to playing fraud.

(v) The respondent No. 1, even if it wants to introduce the CPF scheme must offer it to the employees to either opt for the GPF Scheme or the CPF Scheme but the same cannot be forced upon all the employees'. Further, there is an impediment to introducing the said CPF scheme as it has not even been formulated and put to discussion and resolution by either the Board of Management or the respondent No. 1 society. The CPF scheme has not met the approval of the General Body of the society either. No CPF accounts have been opened in any bank to enable the employees to use the CPF scheme.

(vi) The petitioners' exercise of choice by which they opted for the GPF scheme has been completely ignored and nullified by the respondents.

7. In support of their submission, it was submitted that the employees who had retired by the time the pension scheme was introduced must have definitely availed the benefit under the Provident Fund Scheme and on the issue that the new pension scheme cannot be thrust upon such employees if it may prima facie be beneficial to them.

8. Counsel submits that the petitioners have no objection if the respondent may alter or replace the existing scheme for future employees or prospectively however, the petitioners and other employees have protested that for the present employees the respondent cannot alter or replace the existing scheme unless

they themselves opt for it and, therefore, the respondents are under the law, estopped under the doctrine of estoppel from altering the same. The petitioners who have acquired the vested rights to continue to enjoy the benefits of GPF cum pension cum gratuity fund scheme which were part and parcel of terms and conditions of their service right from 1997 till February, 2008.

9. The other point raised by the petitioners is that the Delhi Higher Education, Government of NCT of Delhi was represented by the Education Minister as Chairman of DIHRM, Principal Secretary, Education and Director of Education at the BOM meeting held on 09.02.2001. As per the said resolution of BOM, the approved GPF-cum-Pension Scheme was forwarded to the Finance Department, Govt. of NCT of Delhi for "information and necessary action". Since then and until 24.08.2005, there were never any objections to the Scheme and the necessary grants-in and were regularly disbursed to the DIHRM society. Besides what the BOM resolved on 24.08.2005 was only with regard to "Provident Fund Scheme" to be initiated. But this could not mean that vide the resolution dated 24.08.2005, the BOM could resolve to take away vested rights of the employees, which accrued in their favour since 1997. Therefore, the said action on the part of the respondent No.1 in its Resolution dated 24.08.2005 was only contrary to the law and fundamental rights under Article 14, 16 and 21 of the Constitution of India.

10. In the counter filed by the respondent Nos. 1 and 2, it has been submitted that admittedly, on 09.02.2001 the GPF scheme was placed for consideration before the Board of Management and approved. Thereafter, due to various allegations

the then Director Professor Makkhan Lal who opened the savings account for the GPF scheme was asked to proceed on leave and was later on suspended in March, 2004 due to the allegations being proved.

11. On 27.08.2004 a query was raised by the AAO regarding the difference of interest received on GPF through FDR and the interest paid on GPF subscription due to which the lacuna on the GPF account of the respondent institute was revealed and the PF fund was found to be an unrecognized one. The matter was then placed before the Board of Management, which on meeting dated 24.08.2005 held as under :

““The BOM was unanimous in their agreement that the said scheme prevailing in the Institute was not a fully recognized Provident Fund.

The Board of Management decided that the current scheme in operation at the Institute would be sent to the Directorate of Higher Education for clarification/ implementation of Pension and Gratuity benefits and the implementation of a GPF at the Institute. The Board of Management also decided that in case of the response from the Directorate of Higher Education is in negative, the Contributory Provident Fund would be initiated and implemented at the Institute, without any pensionary benefit to the employees.”

12. It has been submitted that response from respondent No. 3 was imperative as DIHRM is fully funded through grants from respondent No. 3. Although respondent No. 1 had the employees' well being in mind at the time of initiating the GPF scheme, its hands are bound by the objection raised by the Department of Finance, Government of NCT of Delhi via Circular issued which stated that the said scheme could not be introduced in autonomous bodies unless the said bodies have their own funds to support the scheme.

13. As per respondents in their counter affidavit, another

scheme called the Employees Provident Fund was attempted to be adopted but could not be implemented as out of 26 employees, only 12 employees opted for the said scheme upto 2.4.2008 and the rest still preferred the old GPF scheme. However, the GPF scheme was unrecognized and raised audit objections therefore the matter was placed before the Board which on 24.08.2005 sent the said scheme to respondent No. 3 for clarification/implementation. The Directorate clarified the implementation of the GPF scheme vis-à-vis DIHRM by advising as under :

“...autonomous bodies to continue to follow the CPF scheme, if they so desire, may work out on annuity scheme through LIC of India, based on voluntary contribution by the employees and without any contribution from the Govt. and that introduction of Pension Scheme on Govt. of India pattern to the employees of autonomous bodies should not be agreed as a rule.”

14. It is submitted that after 2004 the employees of an autonomous body cannot subscribe to the GPF scheme and in view of the same, no employee of DIHRM could be allowed to opt for/ join the GPF scheme.

15. In the meeting held on 24.12.2007 the Board decided that either CPF or LIC would be implemented and for deciding which one, a Committee would be formed which would take the opinion of the staff. Hence, the question was not whether the GPF scheme could be continued but whether which one of the two, CPF scheme or LIC scheme, ought to be adopted. Further, the GPF scheme had to be ceased as certain objections were raised by ELFA Audit in its audit for the financial year 2005-06 and due to the subsequent clarifications received by the Board from the Directorate.

16. To support his submissions learned counsel for the

petitioner has referred the following decisions:

- i) In the case titled as **DTC Retired employees Association Vs. DTC** (2001) 6 SCC 61 wherein it was held:

“14. It is to be noted that those who had retired by the time the Pension Scheme was introduced must have definitely availed of the benefit under the Provident fund Scheme and as per the Pension Scheme they were liable to refund the employer's share of provident fund with interest thereon, if they wanted to opt for the Pension Scheme. On the contrary, some such retired employees might not have been interested in refunding the money received by them and having utilised such amount would also find it difficult to raise the funds for repayment. It cannot be assumed that they are bound by the Scheme and would automatically come under its purview. The Pension Scheme cannot be thrust upon such employees even if it may, prima facie, be beneficial to them. As regards the existing employees as on 27.11.1992, the employer could always ask them to exercise their option within a stipulated period and if they failed to exercise their option, the deeming provision can be invoked and it could be said that they are covered by the Scheme. It is also important to note that as per Clause 4 of the Scheme, those employees who joined DTC with effect from 23.11.1992 are compulsorily covered by the Scheme. Therefore, the Division Bench is perfectly justified in holding that the employees who retired on or after 3.8.1981 but before 27.11.1992 and had not exercised their option within the stipulated period or within the extended period, are not entitled to pension under the Scheme.”

- ii) In another case titled as **Union of India Vs. S.L. Verma (supra)** it was held by the Apex Court:

“5. The said request of the respondent No. 14 was not acceded to by the Ministry of Finance. It was, however, accepted by the respondent No. 14 that only 19 employees

were left out and the total financial implication therefore would come to about Rs. 7.20 lakhs per annum, if all the employees are allowed to switch over to the Pension Scheme. It was made clear that for the said purpose the respondent No. 14 would not depend upon the Government grants. Although the Ministry of Consumer Affairs, Food and Public Distribution agreed with the aforesaid suggestion of the respondent No. 14, it appears that the Ministry of Finance did not agree thereto stating:

...In view of the above, we have been advising autonomous bodies under various Ministries/Departments of the government of India to continue to follow the CPF Scheme or the autonomous bodies, if they so desire, may work out an annuity, scheme through the life Insurance Corporation of India based on voluntary contributions by the employees and without any contribution from the Government or the employees may join the pension scheme introduced by the Ministry of Labour for the PF subscribers. It may pleased be noted, that introduction of pension scheme on GOI pattern to the employees of autonomous bodies should not be agreed to as a rule, any exception in this regard should be referred to this Department.

7. The Central Government, in our opinion, proceeded on a basic mis-conception. By reason of the said Office Memorandum dated 1.5. 1987 a legal fiction was created. Only when an employee consciously opted for to continue with the CPF Scheme, he would not become a member of the Pension Scheme. It is not disputed that the said respondents did not give their options by 30.9.1987. In that view of the matter respondent Nos. 1 to 13 in view of the legal fiction created, became members of the Pension Scheme. Once they became the member of the Pension Scheme, Regulation 16 of the Bureau of Indian Standards (Terms and Condition of Service of Employees Regulation, 1988) had become ipso-facto applicable in their case also. It may be that they had made an option to continue with the CPF Scheme at a later stage but if by reason of the legal fiction created, they became members of

the Pension Scheme, the question of their reverting to the CPF would not arise. The respondent No. 14 has correctly arrived at a conclusion that an anomaly would be created and in fact the said purported option on the part of respondent No. 1 to 13 was illegal when a request was made by respondent No. 14 to the Union of India for grant of approval so that all those employees shall come within the purview of the Pension Scheme. In our opinion the Ministry of Finance proceeded on a wrong premise that the Pension Scheme was not in existence and it was a new one. Two legal fictions, as noticed hereinbefore, were created, one by reason of the memorandum, and another by reason of the acceptance of the recommendations of the Fourth Central Pay Commission with effect from 1.1.1986. In terms of such legal fictions, it will bear repetition to state, the respondent Nos. 1 to 13 would be deemed to have switched over to the pension scheme, which a fortiori would mean that they no longer remained in the CPF scheme.

7. In that view of the matter the Single Judge was correct in allowing the writ petition filed by the private respondents herein with a rider that thereby the Union of India would not be liable to financial liability but the Division Bench could not have modified the same, as was sought to be done, by its order dated 16.9.2004. Subject to the aforementioned observations, the appeal is dismissed. There shall be no order as to costs.”

17. Learned counsel for the petitioner has also relied on a case titled as ***Air India Employees Self Contributory Superannuation pension Scheme Vs. Kuriakose V. Cherian and Others***, (2005) 8 SCC 404 wherein it was held by the Apex Court:

“6. Besides the Scheme, the existing employees represented by their respective associations are the appellants before us. According to the appellants, the Scheme was defective inasmuch as large amounts

were given to the retiring employees without having regard to the contributions made by them towards the Scheme and resultantly the old employees by making smaller contributions received disproportionately larger amount of benefits. No fund would have been available with the Scheme for giving pension to the employees retiring after 2005 despite they having contributed large amount to the fund under the Scheme, thus, requiring corrective action. Under these circumstances, the Scheme was amended with effect from 3rd April, 2002. The amendment requires the pensioners to make payment of additional contribution towards annuities purchased from LIC. The amendment provided that the amount of the pension shall be corresponding to the contribution made by the respective retired employees and not on the basis of 40 per cent of the last drawn salary of the employees. Corresponding amendments were also made in the Rules, inter alia, providing that the employees who have retired upto 31st October, 2001 shall contribute the amount so as to make up the difference between cost of annuity purchased for them from the pension fund from LIC and the total contribution made by them till date of retirement. Other consequential amendments were also made providing that the trustees shall notify LIC for retrieval of the shortfall in the contribution from the purchase price of the annuity paid to LIC in respect of such members and for appropriate reduction in the monthly amount payable to such employees. The amount so retrieved is required to be added to and form part of the corpus of the trust fund to be equally distributed amongst the contributing members.

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48. The rights of the employees to receive the annuity and quantum of the annuity get crystallized at the time of purchase of the annuity.

49. In **Sasadhar Chakravarty and Anr. v. Union of India and Ors.** (1998)III LLJ 36SC , the question arose as to when the right of employee to receive annuity and the quantum thereof gets crystallized. In

that case, the employer had set up a non-contributory superannuation fund under the provisions of Income Tax Act, 1961. On retirement, under the rules of the fund, the retired employee was receiving an annuity under the policy purchased by the members of the fund from LIC. A writ petition was filed by retired employee contending that certain improvements have been effected in the executive staff fund to which the pensioners who had already retired were entitled and denial thereof was arbitrary and violative of Article 14 of the Constitution. The retired employee claimed right to the larger benefits which though not available at the time of his retirement but were being given to the employees who retired after the improvements to the fund have been made. This Court held that the right of the employee to receive an annuity and the quantum thereof get crystallized at the time of purchase of the annuity under the then existing scheme of the LIC and any subsequent improvements in a given pension fund scheme would not be available to those persons whose rights are already crystallized under the scheme by which they are governed because the amounts contributed by the employer in respect of such persons are already withdrawn from pension fund to purchase the annuity. With reference to Rules 85 and 89 of Income Tax Rules, this Court held that the same are meant to safeguard the monies deposited in the superannuation and to secure the annuitant annuity amount. Undoubtedly, Rule 89 requires the Trustee to purchase an annuity from the LIC to the exclusion of any one else but this provision must be judged in the context of the fact that the contracts of life insurance which are entered into by the LIC are backed by a government guarantee which is provided by Section 37 of the Life Insurance Act, 1956. The Court observed right of an employee to receive the annuity and the quantum gets determined at the time when the annuity is purchased. Any subsequent improvement in a given pension fund will benefit only those whose moneys form part of the pension fund. As soon as an employee retires, an annuity is purchased for his benefit under Rule 89, there remains no scope for any fresh contribution on his account so as to entitle

him to an increased pension prospectively on the basis of the improvements made subsequently in the pension scheme of a fund since the existing pensioners form a distinct class.”

18. I have heard the submissions of learned counsel for both parties.

19. In a nutshell the scheme of GPF was approved by the Annual General Body Meeting held in February, 2001 and the petitioner and other employees of respondent No.1 opted for GPF-cum-Pension-cum-Gratuity Fund Scheme. On 24.08.2005, Board of Management (BOM) under agenda item No.7 decided to seek clarification from the Directorate of Higher Education about the GPF-cum-Pension-cum-Gratuity Fund Scheme. Thereafter nothing happened after two years. On 24.12.2007 Board of Management meeting was convened and the Board proposed to bring into operation either CPF or LIC scheme in the institute. A committee was constituted to take the opinion/objection of the staff and submitted the report. The said report of the committee was never made public nor it was put to General Body Meeting of the respondent No.1. On 11/15/24.01.2008, notices/orders for option were issued to all employees by the respondent inviting objection/suggestion to the proposed implementation of CPF scheme. The petitioners and many others objected to the proposed replacement of GPF-cum-Pension scheme to CPF Scheme. In March 2008 deduction of GPF discontinued and on 02.04.2008 CPF scheme was implemented despite of the petitioners and other employees opting to continue under the GPF-cum-Pension Scheme. On 06.05.2008 Circular issued by the respondent for scheme of CPF having contribution of LIC Scheme

as an option and also announced the discontinuance of GPF cum Pension scheme.

20. The respondent No.1 is a registered society under the Societies Act, 1860 w.e.f. 21.08.1997 and is working as an institution of Higher Learning and Research. There is no dispute between the parties that the respondent No.1 is fully funded by Department of Higher Education, Government of NCT of Delhi in terms of Board of Management Society, Rules and Regulations under which decision can be taken as alleged by the respondent No.1. The relevant clauses under which all the rules and regulations can be framed are Clause 25 Sub-Clause 10 which reads as under:

“Subject to the provisions of the memorandum of association and the rules and bye-laws, the board of Management of the Institute shall have the power to frame bye-laws on behalf of the society which may provide for all or any of the following matters”.

21. In terms of Clause 31, funds, accounts, audit and annual reports are all to be examined and checked by the Auditor General. The powers of the Board of Management is headed by Director, Head of the Departments and the meetings are conducted by votes to be presided by the Chairman of the Society and the quorum required is 1/4th of the members.

22. It is not denied by the petitioners that the new CPF scheme was adopted by Guru Gobind Singh Indraprastha University in December 2004. Even otherwise the GPF scheme has been discontinued by the Government of India since 2004 and new CPF scheme continues. No doubt the GPF scheme was approved by the Annual General Body on 09.02.2001 but the same was not

confirmed by the Government, because the Resolution passed on 09.02.2001 was corrected in the meeting dated 24.08.2005 and 24.12.2007.

23. The relief is sought by the petitioner that the said Resolution dated 24.12.2007 be declared illegal and the GPF scheme should continue. The learned counsel for the respondent in support of her submission has referred the following decisions of the Apex Court.

A) In the case titled as ***Union of India Vs. Godfrey Philips India Ltd.***, (1985) 4 SCC 369 the Apex Court has discussed the law laid down in 'Motilal Sugar Mills case' and Jeet Ram's case'. It was observed that the doctrine of promissory estoppel cannot be against the legislature nor against any public authority. The Government cannot be debarred from carrying out a function or enforcing a statutory provision by way of promissory estoppel.

B) In the case ***Union of India Vs. International Trading Company***, (2003) 5 SCC 437 wherein it was held:

12. Doctrines of promissory estoppel and legitimate expectation cannot come in the way of public interest. Indisputably, public interest has to prevail over private interest. The case at hand shows that a conscious policy decision has been taken and there is no statutory compulsion to act contrary. In that context, it cannot be said that respondents have acquired any right for renewal. The High Court was not justified in observing that the policy decision was contrary to statute and for that reason direction for consideration of the application for renewal was necessary. Had the High Court not recorded any finding on the merits of respective stands, direction for consideration in accordance with law would have been proper and there would not have been any difficulty in accepting the plea of the learned counsel for the respondents. But having practically

foreclosed any consideration by the findings recorded, consideration of the application would have been mere formality and grant of renewal would have been the inevitable result, though it may be against the policy decision. That renders the High Court judgment indefensible.

13. What remains now to be considered, is the effect of permission granted to the 32 vessels. As highlighted by learned counsel for the appellants, even if it is accepted that there was any improper permission, that may render such permissions vulnerable so far as 32 vessels are concerned. But it cannot come to the aid of respondents. It is not necessary to deal with that aspect because two wrongs do not make one right. A party cannot claim that since something wrong has been done in another case; direction should be given for doing another wrong. It would not be setting a wrong right, but would be perpetuating another wrong. In such matters there is no discrimination involved. The concept of equal treatment on the logic of Article 14 of the Constitution of India, 1950 (in short 'the Constitution') cannot be pressed into service in such cases. What the concept of equal treatment presupposes is existence of similar legal foothold. It does not countenance repetition of a wrong action to bring both wrongs on par. Even if hypothetically it is accepted that wrong has been committed on some other cases by introducing a concept of negative equality respondents cannot strengthen their case. They have to establish strength of their case on some other basis and not by claiming negative equality.

15. While the discretion to change the policy in exercise of the executive power, when not trammelled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give impression that it was so done arbitrarily on by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. The basic requirement of Article 14 is fairness in

action by the state, and non-arbitrariness in essence and substance is the heart beat of fair play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for a discernible reasons, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualized than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness.

16. Where a particular mode is prescribed for doing an act and there is not impediment in adopting the procedure, the deviation to act in different manner which does not disclose any discernible principle which is reasonable itself shall be labelled as arbitrary. Every State action must be informed by reason and it follows that an act uninformed by reason is per se arbitrary.

20. As was observed in *Punjab Communications Ltd. v. Union of India and Ors.*, the change in policy can defeat a substantive legitimate expectation if it can be justified on "Wednesbury reasonableness". The decision maker has the choice in the balancing of the pros and cons relevant to the change in policy. It is, therefore, clear that the choice of policy is for the decision maker and not the Court. The legitimate substantive expectation merely permits the Court to find out if the change of policy which is the cause for defeating the legitimate expectation is irrational or perverse or one which no reasonable person could have made. A claim based on merely legitimate extension without anything more cannot ipso facto give a right. Its uniqueness lies in the fact that it covers the entire span of time: present, past and future. How significant is the statement that today is tomorrow's yesterday. The present is an we experience it, the past is a present memory and future is a present expectation. For legal purposes, expectation is not same anticipation. Legitimacy of an expectation

can be inferred only if it is founded on the sanction of law.

24. It is not denied by the learned counsel for the petitioner during the course of hearing of the petition that the continuation of GPF scheme is neither approved by the Delhi Higher Education, GNCTD nor Government of India. In view thereof, there is force in the submission of the respondent No.1 that the only option is that the amount deposited under the earlier scheme be refunded with interest and the CPF scheme be started.

25. It is also not disputed by the parties that board of Management is the competent authority to resolve and decide upon the service conditions of the employees. Even prior to the resolution and adoption of the DIHRM General Provident Fund-cum-Pension-cum-Gratuity Scheme, vide BOM Resolution dated 09.02.2001, the petitioners and other employees had been inducted into the General Provident Fund-cum-Pension-cum-Gratuity Scheme w.e.f. 1997 and were subjected to deductions on that account. After said adoption and approval by the BOM, the scheme acquired statutory force and now cannot be done away with or discontinued unilaterally under administrative or executive fiat.

26. After having considered the facts and decisions referred by the parties, I am of the view that the prayer sought by the petitioners cannot be allowed on the following reasons:

- a) As far as the implementation of the GPF-cum-Pension-Pension Scheme of the employees of respondent No.1 is concerned, no doubt the proposal in this regard was duly resolved and approved by the Annual General Body in the Board of Management meeting dated 09.02.2001.

However, no approval by the Govt. of Delhi had been granted despite of the fact that the respondent No.1 sent a letter dated 11.02.2000 on the subject about the introduction of GPF pension scheme and respondent no.1 also continued deduction in the name of GPF and bank account was also opened. The same was admittedly discontinued in March 2008. Rather in O.M. No.19011/6/2000/FIN-II dated 4.4.2000 the Government of India had advised autonomous bodies to continue to follow the CPF Scheme or, if they so desire, may work out an annuity Scheme through Life Insurance Corporation of India based on voluntary contribution by the employees and without any contribution from the Government and that introduction of pension scheme on Govt. of India pattern to the employees of autonomous bodies should not be agreed as a Rule.

b) In view of the above said reasons, it is clear that as far as implementation of the GPF scheme is concerned, it was a proposal which was neither approved by the Govt. of Delhi nor strictly implemented by respondent no.1 even though certain steps like opening a bank account and making deduction from salaries of the employees towards G.P.F. were taken by respondent No.1.

c) In the 10th meeting dated 9.2.2001 of the Board of Management of respondent, the GPF-Gratuity-Pension Scheme to the employees of the Institute which had been adopted from Guru Gobind Singh Indraprastha University without any alteration or change was placed

for approval. In the meeting of Board of Management, the agenda item No.7 (GPF, Gratuity and Pension Scheme to the Institute's employees) was considered and approved. It was also desired in the Board of Management meeting that the same be sent to Finance Department, Govt. of NCT of Delhi, for their information and necessary action. In view of the said resolution, saving bank account was also opened on 16.08.2001. Since various allegations were made against the then Director, Prof. Makkhan Lal, for opening the account, he was asked to proceed on leave and later on he was suspended in March 2004 due to said allegations. In the meanwhile, Mr. Keshav Chandra was asked by the Government to take charge of this Institute from December, 2003. In view of the query raised on 27.8.2004 by AAO regarding the difference of interest received on GPF through FDR and the interest paid on GPF subscription, the matter was again placed before the Board of Management who, vide their meeting dated 24.8.2005, passed the resolution.

d) Therefore, none of the contentions raised by the petitioners have any force nor the judgments referred by the petitioners are applicable to the facts and circumstances of the present case as the facts in the present case are materially different. It is the admitted position that the resolution dated 24.8.2005 was passed by the majority. The submission of the petitioner that it was not passed by the majority of the members is

without any force.

27. In view of the aforesaid reasons, there is no merit in the writ petition and the same is hereby dismissed. No cost.

MANMOHAN SINGH, J.

NOVEMBER 26, 2010
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