

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

% *Judgment Reserved On: 21st December, 2010*
Judgment Delivered On: 6th January, 2011

+ **W.P.(C) 3197/2010**

U.O.I. & ORS. Petitioners

Through: Mr.Naresh Kaushik, Ms.Amita Kalkal
Chaudhary and Ms.Aditi Gupta,
Advocates.

versus

T.M.SAMPATH & ORS. Respondents

Through: Mr.A.K.Behera, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. National Water Development Agency (hereinafter referred to as "NWDA"), a Registered Society under the Societies Registration Act, 1860 and working under the administrative control of Ministry of Water Resources was set up in the year 1982 to carry out detailed studies, surveys and investigations in respect of Peninsular Component of National Perspective for Water Resources Development. For the proper discharge of its functions and smooth functioning, NWDA framed rules and regulations known as Bye-laws of the National Water Development Agency. For the purposes of resolving the

controversy involved in the present case, it is most apposite to note bye-laws 26 (a) and 28:-

“Posts and appointments:

26 (a) The emoluments structure i.e. pay scales, allowances and revision thereof for the employees of the NWDA will be adopted with the approval of the Govt. of India in consultation with the Ministry of Finance (Department of Expenditure). However, approval of the Govt. of India need not be sought in regard to adoption of scales of pay & allowances identical to those adopted for corresponding posts as per the Central Govt. orders issued from time to time.

Service Conditions:

28. Till such time as the Agency framed its own working rules and regulations governing service conditions of the employees of the Agency, the rules and orders applicable to the Central Government Employees shall apply mutatis-mutandis to the employees of the Agency subject to such modifications as may be made by the Governing Body from time to time provided that the powers of the Governments. Ministries and Departments of Govt. of India, will vest in the Governing Body and those of Head Department will be exercised by the Director General. In case of any doubt in the application of any rules, the matter will be referred to the Governing Body whose decision will be final.”

2. In the year 1982 NWDA framed Contributory Provident Fund Rules, which Rules were duly approved by the Governing Body of NWDA.

3. The respondents or the predecessor-in-interest of such respondents who stands substituted as the legal heirs of the deceased respondents were employed by NWDA and held different posts.

4. On 01.05.1987, the Department of Pensions and Pensioners' Welfare, Government of India, issued an Office Memorandum regarding switch over from Contributory

Provident Fund Scheme to Pension Scheme, relevant portion whereof reads as under:-

“The Central Government employees who are governed by the Contributory Provident Fund Scheme (CPF Scheme) have been given repeated options in the past to come over to the pension scheme. The last such option was given in the Department of Personnel and Training O.M. No.F.3 (1)-Pension Unit/85, dated 6th June, 1985. However, some Central Government employees still continue under the CPF Scheme. The Fourth Central pay Commission has recommended that all CPF beneficiaries in service on January, 1, 1986, should be deemed to have come over to the Pension Scheme on that date unless they specifically opt out to continue under the CPF Scheme.

2. After careful consideration, it has been decided that the said recommendation shall be accepted and implemented in the manner hereinafter indicated.

3.1 All CPF beneficiaries, who were in service on 1st January, 1986, and who are still in service on the date of issue of these orders (viz, 1st May, 1987) will be deemed to have come over to the pension Scheme.

3.2 The employees of the category mentioned above will, however, have as option to continue under the CPF Scheme, if they so desire. The option will have to be exercised and conveyed to the Head of Office by 30.09.1987, in the form enclosed if the employees wish to continue under the CPF Scheme. If no option is received by the Head of Office by the above date the employees will be deemed to have come over to the Pension Scheme.

.....

6.1 These orders apply to all Civilian Central Government employees who are subscribing to the Contributory Provident Fund under the Contributory Provident Fund Rules (India) 1962. In the case of other contributory provident funds, such as Special Railway Provident Fund or Indian Ordinance Factory Workers Provident Fund or Indian Naval Dockyard Workers

Fund, etc. necessary orders will be issued by the respective administrative authorities.

....

7.2 Administrative Ministries administering any of the Contributory Provident Fund Rules, other than Contributory Provident Fund Rules (India) 1962, are also advised to issue similar orders in respect of CPF beneficiaries covered by those rules in consultation with the Department of Pension and Pensioners' Welfare.

....."

5. Subsequent thereto, many employees of NWDA made representations to NWDA and the Ministry of Water Resources to the effect that in view of the directions contained in the afore-noted Office Memorandum dated 01.05.1987 issued by the Department of Pensions and Pensioners' Welfare the employees of NWDA who had not opted to continue under CPF Scheme shall be deemed to have switched over to the Pension Scheme, pursuant to which the Ministry of Water Resources sought advice from the Ministry of Finance in said regards. In response thereto, Department of Expenditure, Ministry of Finance, Government of India issued a letter dated 16.03.2000 to the Ministry of Water Resources, relevant portion whereof reads as under:-

"The Department of Expenditure has been receiving a number of proposals regarding introduction of pension scheme on GOI pattern for the employees of autonomous bodies under various Ministries/Departments for the Government of India.....

3. 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 of the employees and without any contributions from the

Government or the employees may join the pension scheme introduced by the Ministry of Labour for the PF subscribers. It may be please noted that introduction of pension scheme on GOI pattern to the employees of the autonomous bodies should not be agreed to as a rule, any exception in this regard should be referred to this Department.”

6. The proposal for the implementation of the Office Memorandum dated 01.05.1987 issued by the Department of Pensions and Pensioners’ Welfare in case of the employees of NWDA was placed before the Governing Body of NWDA in its 38th meeting held on 30.03.2000, which proposal was rejected by the Governing Body. The relevant portion of the minutes of 38th meeting of Governing Body of NWDA reads as under:-

“Item No.38.8: Introduction of Pension-cum-GPF-DCRG Scheme in NWDA.

The proposal was discussed by the Governing Body in detail. It was pointed out by the Deputy Secretary (Finance), Ministry of Water Resources that the Govt. of India, Ministry of Finance, Deptt. of Expenditure, vide their DO No.25(I)EV/2600 dated 16.3.2000, have issued instructions that introduction of Pension Scheme on Govt. of India Pattern for the employees of autonomous bodies should not be agreed to, as the CPF is a one time payment, while Pension is a life long commitment on the part of the Govt.

Accordingly, the Governing Body did not agree to the proposal.”

7. On 21.06.2007 the respondent No.1 wrote a letter to the Public Information Officer, NWDA seeking information under Right to Information Act regarding the status of the proposal for the implementation of the Office Memorandum dated 01.05.1987 issued by the Department of Pensions and Pensioners’ Welfare in case of the employees of NWDA. Vide letter dated 18.05.2007 NWDA informed the respondent No.1 that in view of the letter dated 16.03.2000 issued by the

Ministry of Finance the Governing Body of NWDA had rejected the aforesaid proposal way back on 30.03.2000.

8. Aggrieved by the decision of the Governing Body of NWDA of rejecting the proposal for the implementation of the Office Memorandum dated 01.05.1987 issued by the Department of Pensions and Pensioners' Welfare in case of the employees of NWDA, the respondents jointly filed an application under Section 19, Administrative Tribunals Act, 1985 before the Principal Bench, Central Administrative Tribunal, New Delhi in the year 2008.

9. In reply, the petitioners contended before the Tribunal that:- (i) the application filed by the respondents is barred by limitation as the respondents had filed the application seeking to derive benefit of the Office Memorandum dated 01.05.1987 issued by the Department of Pensions and Pensioners' Welfare before the Tribunal after about 21 years of issuance of the said Office Memorandum and that in any case the respondents had full knowledge of the decision of the Governing Body taken in its 38th meeting held in the year 2000 as some of the employees of NWDA had attended the said meeting but chose to file the application before the Tribunal only in the year 2008 (ii) Office Memorandum dated 01.05.1987 issued by the Department of Pensions and Pensioners' Welfare has no application in the case of the employees of NWDA and (iii) the recommendations of the Fourth Central Pay Commission regarding the switch over of the Central Government employees have not been approved by the Governing Body of NWDA.

10. Vide impugned judgment and order dated 08.02.2010 the Tribunal has allowed the application of the respondents and has directed the petitioners to implement the Office Memorandum dated 01.05.1987 issued by the Department of Pensions and

Pensioners' Welfare in respect of the respondents and treat the respondents as covered under Pension Scheme in terms of Central Civil Services (Pension) Rules 1972 with effect from 01.01.1986 with all benefits, as applicable to the other Central Government employees. In so holding and dealing with the contentions urged in the reply filed, on the issue of limitation, it has been held by the Tribunal: (i) since the impugned decision dated 30.03.2000 taken by the Governing Body of NWDA had an impact on the pension payable to the respondents the cause of action to file the application was continuing and thus limitation had no role to play in case of continuing cause of action; (ii) the impugned decision dated 30.03.2000 taken by the Governing Body of NWDA was communicated to the respondents only in the year 2007 in response to a query sought by one of the respondents under Right to Information Act and thus the application filed by the respondents in the year 2008 was well within time; and (iii) it is settled legal position that the government cannot defeat rightful claim of its employees by taking the hyper-technical plea of limitation. On merits, it has been held by the Tribunal: (i) there is nothing in the language of clause 6.1 of the Office Memorandum dated 01.05.1987 to suggest that the said Office Memorandum does not apply to the employees of the autonomous bodies controlled by the Central Government and that the said view finds support from clause 7.2 of the said Office Memorandum; (ii) the advise dated 16.03.2000 issued by the Ministry of Finance to the Ministry of Water Resources at best can be treated as an executive order and as the same has no retrospective application it cannot overrule Office Memorandum dated 01.05.1987; (iii) NWDA/Ministry of Water Resources committed an error in seeking advice from the Ministry of Finance regarding the

implementation of the Office Memorandum dated 01.05.1987 in respect of the employees of NWDA for the reason bye-law 26(a) of bye-laws of NWDA provides that no approval of the Central Government is required to adopt scales of pay or allowances identical to those adopted for the corresponding posts as per order issued by the Central Government; (iv) bye-law 28 of bye-laws of NWDA provides that the rules and orders applicable to the Central Government employees shall mutatis mutandis apply to the employees of NWDA till the time NWDA does not frame its own rules governing service conditions of its employees and that since no rules were framed by NWDA regarding switch over of its employees from CPF Scheme to Pension Scheme the Office Memorandum dated 01.05.1987 squarely applied to the employees of NWDA; and (v) the issue regarding application of the Office Memorandum dated 01.05.1987 to the employees of the autonomous bodies controlled by the Central Government is no longer res integra in view of the decision of Supreme Court reported as Union of India v S.L. Verma (2006) 14 SCALE 56.

11. Aggrieved by the impugned judgment and order dated 08.02.2010 passed by the Tribunal, the petitioners have filed the present petition under Article 226 and 227 of Constitution of India. We may note at the outset that learned counsel for the petitioners urged pleas on merits and did not urge the issue of limitation raised before the Tribunal.

12. From the afore-noted conspectus of facts, it is clear that three questions arise for consideration in the present case; namely: (i) whether the Office Memorandum dated 01.05.1987 issued by the Department of Pensions and Pensioners' Welfare applies to the employees of NWDA; and (ii) whether the reliance

placed by the Tribunal upon the decision of Supreme Court in S.L. Verma's case (supra) is correct.

In re: Question (i)

13. As already noted herein above, two principal reasons which have weighed with the Tribunal in coming to the conclusion that the Office Memorandum dated 01.05.1987 applies to the employees of NWDA are that there is nothing in the language of clause 6.1 of the said memorandum to suggest that the same does not apply to the autonomous bodies working under the control of the Central Government particularly when the said clause is read in conjunction with clause 7.2 of the memorandum and that in view of bye-law 28 of the bye-laws of NWDA the Office Memorandum dated 01.05.1987 which applies to the Central Government employees mutatis mutandis applies to the employees of NWDA.

14. The first reason given by the Tribunal to hold that the said memorandum applies to the employees of NWDA is wholly erroneous. Why do we hold so?

15. A careful reading of the Office Memorandum dated 01.05.1987, particularly of clauses 6.1 and 7.2 thereof, brings out that three distinct situations are envisaged therein regarding the application of the said memorandum. The first part of clause 6.1 envisages the first situation that the Office Memorandum dated 01.05.1987 shall apply to the Civilian Central Government employees who are subscribing to the Contributory Provident Fund Rules India (1962). The second part of clause 6.2 envisages the second situation that the Office Memorandum dated 01.05.1987 shall not ipso facto apply to the Civilian Central Government employees who are subscribing to any of the Contributory Provident Fund Rules other than Contributory Provident Fund Rules India (1962) and that the respective

administrative authorities shall issue necessary orders in said regards. Clause 7.2 envisages the third situation that the Office Memorandum dated 01.05.1987 shall not ipso facto apply to the autonomous bodies and public sector undertakings etc. working under the administrative control of the various ministries of the Central Government and subscribing to any of the Contributory Provident Fund Rules other than Contributory Provident Fund Rules (India) 1962 and that the respective administrative ministries are advised to issue similar orders as Office Memorandum dated 01.05.1987 in respect of CPF beneficiaries covered under said rules after consultation with Department of Pensions and Pensioners' Welfare.

16. In the instant case, the employees of NWDA are not "Civilian Central Government employees" as NWDA is not an organization of the Central Government but an autonomous body working under the administrative control of the Ministry of Water Resources, Government of India. Also it is worth noticing that the employees of NWDA who are subscribing to CPF Scheme are governed by National Water Development Agency Contributory Provident Fund Rules 1982 and not Contributory Provident Fund (India) Rules 1962. In that view of the matter, the employees of NWDA are covered under the third situation envisaged under clause 7.2 of the Office Memorandum dated 01.05.1987 and not under the two situations envisaged under clause 6.1 of the memorandum and thus in view of the advise contained in clause 7.2 of the memorandum the Ministry of Water Resources ideally should have consulted the Department of Pensions and Pensioners' Welfare for issuance of similar order as Office Memorandum dated 01.05.1987 for the employees of NWDA. However, the Ministry of Water Resources consulted the Department of Expenditure, Ministry of Finance in respect of the

said matter instead of consulting the Department of Pensions and Pensioners' Welfare. To that extent, the petitioners have erred in not consulting the matter of issuance of order similar to the Office Memorandum dated 01.05.1987 to the employees of NWDA with the Department of Pensions and Pensioners' Welfare.

17. As regards the reason given by the Tribunal predicated upon bye-law 28 of bye-laws of NWDA is concerned, suffice would it be to state that a bare reading of bye-law 28 makes it explicitly clear that the rules and orders applicable to the Central Government employees shall mutatis mutandis apply to the employees of NWDA only in cases where NWDA has not framed its own rules and regulations. In the instant case, as already noted in foregoing paras, NWDA has framed its own Contributory Provident Fund Rules in the year 1982. In such circumstances, bye-law 28 has no role to play in the instant case and the same could not have been resorted to by the Tribunal to apply the Office Memorandum dated 01.05.1987 to the employees of NWDA.

In Re: Question No. (ii)

18. In S.L.Verma's case (supra), the facts were that the respondents Nos.1 to 13 were employed by Bureau of Indian Standards which is an authority created under Bureau of Indian Standards Act, 1986 and working under the administrative control of Ministry of Consumer Affairs. The respondents Nos.1 to 13 were the members of Contributory Provident Fund Scheme. Pursuant to and in furtherance of Office Memorandum dated 01.05.1987 Bureau of Indian Standards asked its employees to give their option whether to continue under the Provident Fund Scheme or not. Furthermore, Bureau of Indian Standards framed Regulations known as "Bureau of Indian

Standards (Terms and Conditions of Service of Employees) Regulation 1988. Regulations 16 thereof provides that *'the employees shall be governed by the Central Civil Services (Pension) rules, 1972; provided that the employees who had specifically elected to be governed by the Contributory Provident Fund Rules (India), 1962 immediately before the date of commencement of these regulations shall continue to be governed under the Contributory Provident Fund Scheme.'* The respondents Nos.1 to 13 did not opt to continue under Contributory Provident Fund Scheme but were being treated as if they were continuing under CPF Scheme. Aggrieved by the said fact, the respondents Nos.1 to 13 the respondents Nos.1 to 13 filed a writ petition before Single Judge of the High Court. The stand taken by the Central Government was that in order to be governed under Pension Scheme it was obligatory on the part of the respondents Nos.1 to 13 to give a positive option for the said purpose. The aforesaid stand of the government was repelled by Supreme Court in the following terms:-

“....The said Office Memorandum dated 1.5.1987 assumes importance in view of the language used therein to which we intend to immediately advert to. The Office Memorandum is prefaced with calling for repeated options in the past asking the employees to switch over to the pension scheme. It was mentioned that such option has been asked for on 6.6.1985. The Central Government notices that despite the same, some of the employees still continued in the CPF Scheme. It further notices that the recommendations of the Fourth Central Pay Commission to the effect that CPF beneficiaries in service on 1.1.1986 would be deemed to have switched over to the pension scheme on that date unless they specifically opt out to continue under the CPF Scheme. It is not in dispute that the said recommendations of the Fourth Central Pay Commission has been accepted by the Central Government and the same is applicable to the

employees of the respondent No.14-Bureau of Indian Standards.....

.....

7. The Central Government, in our opinion, proceeded on a basic misconception. 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 respondents 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 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 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 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 respondents 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.

....." (*Emphasis Supplied*)

19. A careful comparison of the facts of S.L. Verma's case (supra) with the facts of the present case shows that there are two material facts which entirely distinguish S.L. Verma's case (supra) from the present case. The first fact is that in S.L. Verma's case Supreme Court proceeded on the premise that Office Memorandum dated 01.05.1987 was fully applicable to the employees of Bureau of Indian Standards. In fact, there are traces in the said decision that the Office Memorandum dated 01.05.1987 was adopted by Bureau of Indian Standards, such as that pursuant to the Office Memorandum dated 01.05.1985 Bureau of Indian Standards sought option from its employees regarding the continuation in the CPF Scheme and framed Regulation 16, which regulation is in consonance with Office Memorandum dated 01.05.1987. While on the other hand, in the instant case, the specific case set up by the petitioners was that the Office Memorandum dated 01.05.1987 does not apply to the employees of NWDA. The second fact is that in S.L. Verma's case Supreme Court proceeded on the premise that the recommendations of the Fourth Central Pay Commission pertaining to switching over of the Central Government employees from CPF Scheme to Pension Scheme were accepted by Bureau of Indian Standards whereas in the instant case it was specifically pleaded by the petitioners that the said recommendations of Fourth Central Pay Commission were not accepted by the Governing Body of NWDA. That being the position, the Tribunal completely erred in blindly applying the ratio laid down by Supreme Court in S.L. Verma's case in the present case.

Conclusion

20. The gist of the above discussion is that the impugned judgment and order dated 08.02.2010 passed by the Tribunal is

faulty and deserves to be set aside and we do so by formally directing that the impugned judgment and order dated 08.02.2010 allowing the Original Application filed by the respondents is set aside. However, in view of the discussion contained in paragraphs 15 and 16 above, we direct the Ministry of Water Resources to consult the matter of the issuance of an order similar to the Office Memorandum dated 01.05.1987 for the employees of NWDA with the Department of Pensions and Pensioners' Welfare and thereafter take an appropriate decision in said regard within four months from the date of the receipt of the copy of this order. Needless to state, while taking necessary decision, the Ministry of Water Resources and Department of Pensions and Pensioners' Welfare shall examine the concerns raised by the Department of Expenditure, Ministry of Finance in the letter dated 16.03.2000.

21. The instant petition is allowed in the above terms.

22. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(SIDDHARTH MRIDUL)
JUDGE

JANUARY 06, 2011
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