

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

% *Date of Decision: May 20, 2013*

+ **W.P.(C) 3122/2011**

UOI & ORS. Petitioners
Represented by: Mr.Ruchir Mishra, Advocate with
Mr.Sanjiv Kumar Saxena, Advocate

versus

AMIT MUKHERJI & ORS. Respondents
Represented by: Mr.L.R.Khatana, Advocate for R-1 to
R-26

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE V. KAMESWAR RAO

PRADEEP NANDRAJOG, J. (Oral)

1. At the outset we note that only 26 persons, most of whom are Group-C and Group-D employees, working under Delhi Urban Art Commission would be affected by any decision which we take in the instant writ petition. Said 26 persons have been impleaded as respondents No.1 to 26 in the writ petition.

2. The 26 respondents are employees of Delhi Urban Arts Commission (DUAC) and the grievance which they raised before the Tribunal was that whereas the Central Government accorded approval to the decision taken by the managements of as many as 12 bodies/subordinate offices under the Central Government to switch over from the CPF scheme to the pension scheme, for no valid reasons, similar request was declined when the management of DUAC, after taking approval from the employees to effect switch over, sent the same for approval to the Central Government.

3. With a view to have uniformity in the pension schemes in various divisions and departments under various ministries, the 4th Central Pay Commission recommended a switch over to the pension scheme.

4. It is not in dispute that on May 01, 1987, the Department of Pension and Pensioners Welfare issued a directive to all ministries, inter alia, directing : *‘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. The OM dated May 01, 1987 has been interpreted by the Supreme Court in the judgment reported as (2006) 12 SCC 53 UOI & Anr. Vs. S.L.Verma & Ors. as under:

“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.....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, Respondents 1 to 13 would be deemed to have switched over to the Pension Scheme, which a fortiori would mean that they are no longer remained in the CPF scheme.”

6. We concur with the view taken by the Tribunal as per the impugned decision dated April 12, 2010, for firstly, since the writ petitioners could furnish no valid reason as to why permission was accorded to the 12 Autonomous Bodies, names whereof have been tabulated in paragraph 3 of

the decision by the Tribunal, to switch over to the pension scheme; approval was not granted to DUAC which had also passed a similar resolution. Secondly, for the reason the OM dated May 01, 1987 has already been construed by the Supreme Court as creating a legal fiction i.e. an automatic switch over to the pension scheme unless the employee opted out.

7. Before concluding we may note that the NCR Planning Board is under the same nodal ministry i.e. Ministry of Urban Development which is the nodal ministry of DUAC and we find that the decision taken by the management of the NCR Planning Board to switch over to the pension scheme has been accorded approval by the cadre controlling nodal ministry and its employees are receiving pension. We would be failing not to further highlight that in the tabular form chart prepared by the Tribunal in paragraph 3 of the opinion, the number of employees working in the 12 Autonomous Institutions where the Central Government has permitted the management to shift over to the pension scheme ranges between a minimum of 117 to a maximum of 463, except DTC where the number is in thousands; and yet to a small body employing only 26 personnel (where the financial impact would be minimal) the benefit is denied. Is it that the Central Government follows the principle: '*Might is Right*'?

8. The writ petition is dismissed.

9. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(V.KAMESWAR RAO)
JUDGE

MAY 20, 2013

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