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

Judgment Reserved on: 17.04.2014
% Judgment delivered on: 30.04.2014

\+ **W.P.(C) 2036/2010**

KANTA BATRA & ORS. ..... PETITIONERS

VERSUS

UNION OF INDIA & ORS. ..... RESPONDENTS

\+ **W.P.(C) 2037/2010**

KAMLESH MALHOTRA & ORS. ..... PETITIONERS

VERSUS

UNION OF INDIA & ORS. ..... RESPONDENTS

\+ **W.P.(C) 3095/2010 and CM No.7718/2011**

MANJEET SIKKA ..... PETITIONER

VERSUS

UOI AND ORS ..... RESPONDENTS

\+ **W.P.(C) 5759/2010**

SHASHI KIRAN & ORS ..... PETITIONERS

VERSUS

UNION OF INDIA & ORS ..... RESPONDENTS

+ **W.P.(C) 7310/2010**

DR. RAJINDER KAUR & ORS ..... PETITIONERS

VERSUS

UNION OF INDIA & ORS ..... RESPONDENTS

+ **W.P.(C) 8560/2010**

GEETA WADHWA AND ORS ..... PETITIONERS

VERSUS

UOI AND ORS ..... RESPONDENTS

ADVOCATES WHO APPEARED IN THIS CASE:

For the Petitioners: Ms. Rekha Palli, Ms. Punam Singh and Ms.Amrita Prakash, Advocates in WP(C) Nos.2036/2010 and 8560/2010; Ms. Nandini Sahni, Advocate in WP(C) 2037/2010; Mr. Abhik Kumar, Advocate in WP(C) 3095/2010; and Mr. Tanuj Khurana, Advocate in WP (C) Nos.5759/2010 and 7310/2010.

For the Respondents: Mr. Dhruv Mehta, Sr. Advocate with Mr. Mohinder J.S. Rupal, Advocate for University of Delhi in WP(C) Nos. 5759/2010 and 7310/2010; Mr. Amit Bansal and Ms. Sanjul Khanna, Advocates for the University of Delhi in WP(C) Nos.2036/2010, 2037/2010, 3095/2010 and 8560/2010; Mr. Amitesh Kumar and Mr. M.F. Khan, Advocates for UGC; Mr. Himanshu Bajaj, CGSC, Advocate for Union of India in WP(C) Nos.2037/2010 and 3095/2010; Ms. Beenashaw N. Soni, Adv. for R-6 in WP(C) Nos.5759/2010

and 7310/2010; Mr. R.P. Sharma and Mr. Vaibhav Mehra, Adv. for R-5 in WP (C) 8560/2010.

CORAM :-
HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. This batch of writ petitions fall in Category-2, as formulated by my predecessor vide order dated 21.05.2012. Category-2, comprises of those employees, who had exercised a positive option to continue under the CPF Scheme on or before the cut-off date i.e., 30.09.1987. This batch comprises of six (6) writ petitions.

1.1 The arguments vis-a-vis this batch of writ petitions were heard on 17.04.2014. Consequently, the judgment in the matters, was reserved on the said date.

2. To be noted, apart from the aforementioned singular fact which distinguishes the other two batches, which fall under Category 1 & 3, there is consensus amongst the counsels, that there is no other distinction on facts. Therefore, the only aspect that I am required to examine (to the extent it is not covered by my judgment in the batch of writ petitions, in which the lead petition is numbered as : ***WP(C) 1490/2006-1507/2006,*** titled as ***: Dr. R.N. Virmani and Ors. Vs. University of Delhi and Anr***.) is: whether the writ petitioners in this batch would also stand covered under the General Provident Fund-cum-Pension Scheme (in short the Pension Scheme) notwithstanding the fact that they had given positive option to

continue under the Contributory Provident Fund (CPF) Scheme on or before the cut-off date i.e.,30.09.1987.

3. Arguments on behalf of the petitioners were advanced by Ms. Rekha Palli, Advocate, who appeared for the petitioners in WP(C) Nos.2036/2010 and 8560/2010, Ms. Nandini Sahni, who appeared for the petitioners in WP(C) 2037/2010, and Mr. Tanuj Khurana, who appeared for the petitioners in WP (C) Nos.5759/2010 and 7310/2010.

3.1 On behalf of the University Grants Commission, arguments were advanced by Mr. Amitesh Kumar. University of Delhi was represented by Mr. Dhruv Mehta, Sr. Advocate instructed by Mr. Mohinder J.S. Rupal, in WP(C) Nos. 5759/2010 and 7310/2010. In WP(C) Nos.2036/2010, 2037/2010, 3095/2010 and 8560/2010, University of Delhi was represented by Mr. Amit Bansal. The Union of India, for the first time, qua the issue of switch over from CPF scheme to Pension Scheme was represented by Mr. Himanshu Bajaj, Advocate, in this batch of writ petitions. As would be apparent from the earlier two judgements, there was no representation by the Union of India.

4. Ms. Palli, who led the arguments on behalf of the petitioners submitted as follows :-

(i). that the petitioners' right for grant of pension flowed from Statute 28A of schedule to Act No. VIII of 1922 (in short the 1922 Act). The Office Memorandum (in short O.M.) dated 01.05.1987, which provided for submission of option by the prescribed cut-off date i.e., 30.09.1987 had no legal basis;

(ii). under Statute 28-A, only the Executive Council of the University of Delhi had the power to extend the date for exercise of option for change over to the Pension Scheme;

(iii). as per the decision of the Executive Council of the University of Delhi taken at its meeting held on 05.02.1989, which is reflected in the circular dated 09.02.1989, the factum of extensions granted by it had to be brought to the notice of each employee and, his or her acknowledgement of having noted the said fact was required to be obtained and kept in the office record. In case of employee's, who had expired, the nominees of the eligible deceased employees's were required to be informed of such extension in the manner prescribed. In this behalf, reference was made to paragraph 3 of circular dated 09.02.1989. Reliance was also placed on notification dated 11.02.1998, which is broadly in line with the circular dated 09.02.1989. By notification dated 11.02.1998, the date for exercising the option "as one time exception", was extended till 31.03.1998;

(iv). that as per the additional affidavit filed by the University of Delhi, which is impleaded as respondent no.4 in WP (C) 5759/2010, twelve (12) extensions were given by the said University to the employees between 09.02.1989 to 16th/17th.11.1998 and 20.11.1998 to 16.12.1998, to change over, from CPF Scheme to the Pension Scheme. During this period, a total number of 2469 employees both from University of Delhi and from 52 of 86 colleges affiliated to the said University had availed of the option of switch over to the Pension Scheme. Of these 2469 employees, 1368 had retired and were now in receipt of pension from University of Delhi, out of the funds made available by the UGC.

(v). The present petitioners and those who are part of the other two batches of the petitions, heard by this court, thus, constituted a small percentage of the total number of employees, who have been allowed to switch over after the cut-off date of 30.09.1987, was crossed over. The resistance of the respondents in permitting the petitioners to switch over to the Pension Scheme was discriminatory, and thus, violative of Article 14 of the Constitution; and

(vi). Lastly, in case this court were to disagree with the submissions of the petitioners in the present cases, it would affect even the interest of those 1368 employees, who had already retired from service and were now getting pension. In support of the submissions, the learned counsel relied upon the following judgments :-

> ***"Dakshin Haryana Bijli Vitran Nigam and Ors. Vs. Bachan Singh; (2009) 14 SCC 793; K.S.R. Chari Vs. Union of India and Ors., (2011) 126 DRJ 371; and State of Haryana Vs. Dr. B.S. Sharma, passed in LPA No.216/2009 (O&M) on 31.03.2009"***

5. As indicated above, Ms. Nanidni Sahni appeared for the petitioners in WP(C) 2037/2010. It may be noted that the petition as originally filed had three petitioners arrayed as parties. Vide order dated 24.05.2010, seven (7) petitioners were added. These petitioners were impleaded as petitioner nos.4 to 10. The list of the petitioners was, once again, expanded when, yet another application was moved to add another nine (9) petitioners. These petitioners were impleaded as petitioner nos.11 to 19. Thus, in effect, WP(C) 2037/2010 comprises of 19 petitioners.

5.1. Ms. Nandini Sahni, in effect, adopted the submissions made by Ms. Palli, The only point that she highlighted was, that only 300 teachers of the University of Delhi were left out of the benefit of the Pension Scheme though, as indicated by Ms. Palli, 2469 employees had been allowed to convert to Pension Scheme after the cut-off date i.e., 30.09.1987.

5.2. Ms. Sahni in support of her submissions, gave example of Ms. Sharda Swani, a teacher in the Department of Economics in Shyama Prasad Mukherjee College, Punjabi Bagh (West), Delhi, New Delhi, who had been allowed to switch over to the Pension Scheme. Ms. Sahni submitted that this act of the respondents reflected discrimination.

5.3 Ms. Sahni also submitted that both the Sixth (6th) Central Pay Commission as well as the report submitted by Prof. G.K. Chadha had recommended that one further chance ought to be given to the employees to change over to the Pension Scheme; albeit after considering financial implications.

5.4 It may only be noted that assertion with regard to Ms. Sharda Swani has been made by the petitioners only in their rejoinder. I have not found any sur-rejoinder of the respondents on record.

6. Mr. Tanuj Khurana, who was the other counsel, who appeared for the petitioners in WP (C) 5759/2010, also adopted the submissions made by Ms. Rekha Palli. In addition to the said submissions, he also laid stress on the following aspects :-

(i). First, with regard to the requirement of issuance of the notice in the manner prescribed for extension of time to employees to change over to the Pension Scheme as stipulated in circular dated 09.02.1989 and notification dated 11.02.1998; and

(ii). Second, the purported discriminatory approached adopted by the respondents in not permitting switch over to the present set of petitioners.

6.1 In respect of the first aspect, Mr. Khurana relied upon the counter affidavit of the concerned college i.e., Mata Sundri College for Women (respondent no.5). Mr. Khurana sought to demonstrate that even as per respondent no.5, no separate notices for extension for change over to the Pension Scheme were served on the petitioners, and consequently, no acknowledgements were received and placed on record. It was submitted that a perusal of the averments in the counter affidavit filed by respondent no.5 would show that both the initial notification dated 04.06.1987 of the University of Delhi, which adopted O.M. dated 01.05.1987, and the subsequent notifications, were pasted by respondent no.5, on the notice board in the teachers common room. This according to Mr. Khurana was, violative of the provisions of circular dated 09.02.1989 and the notification dated 11.02.1998.

6.2 In so far as the second aspect is concerned, Mr. Khurana adverted to averments made in paragraph (xxxiv) and (xxxv) to buttress his submission of discrimination by citing specific examples of those employees, who had been allowed a switch over from CPF Scheme to Pension Scheme after 30.09.1987.

7. On the other hand, Mr. Amitesh Kumar, appearing for UGC, refuted the submissions made on behalf of the petitioners. Mr. Amitesh Kumar submitted that the cut-off date prescribed in O.M. dated 01.05.1987, was sacrosanct. It was his submission that the O.M. dated 01.05.1987, whereby the recommendations of the Fourth (4th) Central Pay Commission were accepted by the Government of India (GOI) prescribed the cut-off date as : 30.09.1987. Mr. Kumar thus, contended that this O.M. of the GOI was fully adopted by the University of Delhi vide notification dated 25.05.1987 followed by the notification dated 04.06.1987 which, clearly stated that it had the approval of the Vice Chancellor of the University of Delhi. Therefore, according to him, there could have been no extensions of the cut-off date. Thus, the extensions granted by the University of Delhi, according to Mr. Amitesh Kumar, were unauthorised and had no approval of the UGC.

7.1 Mr. Amitesh Kumar, as a matter of fact, drew my attention to a letter dated 05.05.1987 addressed by the Ministry of Human Resource Development (MHRD), GOI to the Registrar, Delhi University. By this letter, MHRD, GOI gave its approval to the amendment sought to be made to Statute 28-A which brought about a parity between Central Government employees and the employees of University of Delhi vis-a-vis benefits pertaining to grant of pension, GPF, CPF, etc. It was, in effect, Mr. Amitesh Kumar's submission that once, Statute 28-A, was brought in line with the Central Government Pension Scheme, the University of Delhi adopted the same vide notifications dated 25.05.1987 and 04.06.1987. These notifications, according to Mr. Amitesh Kumar, had obviously the

backing of the Executive Council of the University of Delhi, as otherwise it would not have ventured to grant extensions which, though, did not have the approval of the UGC.

7.2 The fact that the approval of UGC was required was, sought to be established by Mr. Amitesh Kumar by seeking to place reliance upon the General Financial Rules(GFRs). In this context, reliance was placed on Rule 206 and 209(6)(iv)(a) of the GFR. Mr. Amitesh Kumar contended that the GOI provided funds to the UGC which, in turn, provided funds to all Central and deemed Universities. It was contended that in terms of Rule 209(6)(iv)(a), the University of Delhi being the grantee institution, which was funded to the extent of 100% by the UGC, was required to formulate terms and conditions of service of their employees, which were, by and large comparable to those applicable to a similar category of employees in the Central Government. Therefore, given the fact that O.M. dated 01.05.1987, which was applicable to the Central Government employees provided for no scope of relaxation in the cut off date similar dispensation would apply qua employees of the University of Delhi and its affiliated colleges.

8. As regards, examples cited in the writ petition of employees of IITs and Banaras Hindu University, who had been allowed to switch over, Mr. Amitesh Kumar said that, no approval had been given by the UGC, in that behalf.

9. Mr. Mehta, the learned senior counsel, who appeared on behalf of the University of Delhi in WP(C) 5759/2010 and 7310/2010, agreed with the

submissions of Mr. Amitesh Kumar that the cut-off date of 30.09.1987, was sacrosanct. Mr. Mehta, though, conceded that the University of Delhi had permitted a switch over in the case of 2469 employees, and that, the switch over, in respect of, these employees was contrary to O.M. dated 01.05.1987; which was adopted by the University of Delhi.

9.1 It was, however, the contention of Mr. Mehta that the petitions ought to be dismissed on the ground of delay and latches. On a specific query being put, Mr. Mehta, did concede that the University of Delhi was required to obtain the approval of the UGC for according extensions in the cut-off date, as it was the authority through which funds flowed in favour of the University. In other words, extensions which had been granted by the University of Delhi, could not had been granted, without the approval of the funding authority i.e., UGC.

10. Mr. Bansal, who appeared for the University of Delhi in WP (C) Nos.2036/2010, 2037/2010, 3095/2010 and 8560/2010, accepted the submissions made by Mr. Mehta, on behalf of the University of Delhi. He further submitted that the recommendations made by the Chadha Committee for grant of another opportunity to the employees to switch over from the CPF Scheme to the Pension Scheme, was not accepted. Mr. Bansal stated that the issue had come up before the Fifth (5th) Central Pay Commission; which did not favour, grant of another option for switch over. He further submitted that, after receiving several requests from employees of Central Universities, MHRD had submitted a proposal for grant of another option for switch over to the, Ministry of Finance, GOI. This proposal was, however, rejected vide communication dated 30.07.2007.

The reason, for rejection, broadly, was that, the cost of introduction of Pension Scheme was much higher than the CPF Scheme and this cost, according to Ministry of Finance, GOI, continuously increased with every increase / revision in the scales of pay and pensionary benefits, upon receipt of recommendation of successive Pay Commissions, set up by the GOI. According to the Ministry of Finance, GOI acceptance of such proposal would have wide repercussions with many similarly placed autonomous bodies demanding the same treatment. Pursuant to the said decision of Ministry of Finance, MHRD had rejected the requests of employees such institutions to accord approval for switch over to the Pension Scheme; albeit after the cut-off date i.e., 30.09.1987. The learned counsel highlighted the fact that MHRD vide order dated 31.12.2008 had accepted that it would adopt the recommendations of the Sixth (6th) Central Pay Commission made in respect of Central Government employees qua only those teachers, and other cadres, who were already getting pension in Central Universities / colleges and deemed universities, falling under the purview of UGC.

10.1 It was contended that no new cases of conversion were being entertained as, a new Pension Scheme had already kicked-in w.e.f. 01.01.2004 - which was the reason that the representation of the Federation of Central Universities Teachers Associations, was not entertained.

11. Mr. Bajaj, who appeared for the Union of India in WP (C) Nos.2037/2010 and 3095/2010 adopted the submissions made by counsels, who appeared for the respondents. He agreed though that the extensions

granted by the University of Delhi, were unauthorised since, they were not backed by requisite approval either of the UGC or GOI.

11.1 On being asked, as to what would be the position of the GOI with regard to the pension liability already undertaken by the University of Delhi vis-a-vis 2469 employees, Mr. Bajaj said that the liability in that behalf would have to be borne and adjusted by the University of Delhi under the head 'unapproved expenditure'.

11.2 I may note at this stage that a similar query was put to Mr. Amitesh Kumar, the learned counsel appearing for UGC who, took an identical stand on the issue. Mr. Bajaj, thus, made it a point to draw my attention to the observations made in paragraph 8 at page 56 of the judgment of the Supreme Court in the case of ***Union of India and Anr. Vs. S.L. Verma and Ors., (2006) 12 SCC 53*** in support of its stand that the GOI, could not be called upon to bear the financial burden of the decision taken by the University of Delhi, to extend the date of change over. Reliance in this regard was also placed on the judgement of the Division Bench of this court in the case of ***Union of India vs. UGC Class 1 Officers Association and Ors., (2006) 87 DRJ 783***.

11.3 Mr. Bajaj, also submitted that the petitions should be rejected only on the grounds of delay and latches. For this purpose, he relied upon the judgments of the Supreme Court in the cases of ***KVS and Ors. Vs. Jaspal Kaur and Anr., (2007) 6 SCC 13 and Union of India and Ors. Vs. M.K. Sarkar (2010) 2 SCC 59***

12. Having heard the learned counsels for the parties and perused the record, I must state at the very outset that the issues concerning the effect of the provision of the cut-off date in O.M. dated 01.05.1987, and the aspect of delay and latches has already been dealt with by me, in the judgment delivered vis-a-vis the batch of writ petitions, in which the lead petition is, numbered as : ***WP(C) 1490/2006-1507/2006*** titled : ***Dr. R.N. Virmani and Ors. Vs. University of Delhi and Anr***. Therefore, for the sake of brevity, those aspects are not referred to in detail in this judgment. On these aspects the said judgment be read in conjunction with this judgment.

12.1 Suffice it to say that I have come to the conclusion that O.M. dated 01.05.1987, created a deeming legal fiction, which envisaged that if, a positive option was not given by employees, who were in service on 01.01.1986, to continue in the CPF Scheme by 30.09.1987, then, they automatically stood covered by the Pension Scheme. Admittedly, the present set of cases are those in which the petitioners did give a positive option for continuation in the CPF Scheme prior to 30.09.1987.

13. The petitioners, however, sought to argue that the O.M. dated 01.05.1987 issued by the GOI and the notification dated 04.06.1987 whereby, O.M. dated 01.05.1987 was adopted by the University of Delhi, had no legal basis as their right to pension flowed from Statute 28-A. In order to examine this contention, one would have to refer, not only to the relevant provisions of Statute 28-A, but also, certain dates and events.

13.1 To be noted, the 1922 Act, defines under Section 2(f) Statutes, Ordinances and Regulations to mean respectively Statutes, Ordinances and

Regulations of the University of Delhi made under the said Act. Statute 28, which deals with Statutes, Ordinances and Regulations provides under clause (d) that subject to the provisions of the Act, the Statutes may provide, inter alia, amongst others for constitution of a pension or provident fund and establishment of an Insurance Scheme for the benefit of its officers, teachers and other employees of the University.

13.2 Section 29(1) of the Act provides that on the commencement of Delhi University (Amendment) Act, 1943 Statues of the University will be those which are set out in the Schedule. Sub-Section (2) of Section 29 of the Act provides that the Executive Council may, from time to time, make new or additional Statutes or may amend or repeal the Statutes. Sub-Section(2) of Section 29 has several provisos which, circumscribe the power of the Executive Council in that behalf. There are, however, no arguments addressed by the counsel for the petitioners in respect of the same.

13.3 Similarly, Section 46 of the Act empowers the University to constitute for the benefit of its employees for teaching and non-teaching pension insurance and provident funds as it may deem fit subject to such conditions as may be prescribed by the Statutes.

13.4 Thus, in effect, "The Statutes of the University" are contained in the Schedule annexed to the Act. Statute 6 invests the Executive Council with the power to manage and administer the revenue and property of the University and conduct all administrative affairs of the University which are not otherwise provided for. This power though, is subject to the control

of the court. In clause 2 of Statute 6 certain specific powers in addition to the general power are referred to in respect of which the Executive Council can act.

13.5 Statute 28-A deals with emoluments. Clause 2(a) and (b) of Statute 28-A on which specific reliance was placed by the counsels for the petitioners to the extent relevant is extracted hereinbelow :-

> "..2. Notwithstanding any provisions of Statute 28
>
> (a). A person who joins the University service on or after the 1st day of April, 1964, who was a subscriber to the Provident Fund under Statute 28, shall be entitled to subscribe to one of the two alternative schemes, i.e., to the General Provident Fund-cum-Pension-cum-Gratuity Scheme set out in Appendix 'A' or to the Contributory Provident Fund-cum-Gratuity Scheme set out in Appendix 'B. He shall have the option to continue to subscribe in terms of Statute 28 :
>
> Provided a person who joins the University service after the 1st Day of January, 1986 shall not be entitled to subscribe to the Contributory Provident Fund-cum-Gratuity Scheme set out in Appendix 'B'. He shall be governed by the General Provident Fund-cum-Gratuity Scheme set out in Appendix 'A'.
>
> (b). A person who joined the University service before the 1st day of April, 1964 and who, for that reason, had been permitted to contribute to the Provident Fund under Statute 28, may continue to be governed by the provisions of that Statute, or, may, at his option, elect to be governed instead, either by the General Provident Fund-cum-Pension-cum-Gratuity Scheme set out in Appendix 'A' or by the Contributory Provident Fund-cum-Gratuity Scheme set out in Appendix 'B' to this Statute. The option provided for in this sub-clause shall be exercised and communicated to the Registrar, in writing, on or before the date to be specified by the Executive Council and when once exercised, shall be final. The service of such person who opts

> for General Provident Fund-cum-Pension-cum-Gratuity Scheme shall be deemed to have been in the pensionable post from the commencement of his service in the University, irrespective of the period of service for which the person might have subscribed to the Provident Fund…."

13.6 Clause 5 of Statute 28-A being also relevant, to which a reference was made by the counsel for the UGC, is also extracted for the sake of convenience :-

> "..5. <u>As and when the Central Government amends its Rules giving more benefits to its employees relating to General Provident Fund, Contributory Provident Fund, Pension, Gratuity</u>, etc. which are advantageous to the employees of the University, the employees of the University will be entitled to the same benefits with effect from the date such amendment is brought into force by the Central Government with respect to its employees…"

13.7 A reading of the aforesaid provisions makes it clear that a person who joined the University on or after 01.04.1964 and who was a subscriber to the provident fund under Statute 28-A was entitled to opt for one of the two schemes i.e., the GPF-cum-Pension-Gratuity Scheme, as set out in Appendix 'A' to the Statute or the CPF-cum-Gratuity Scheme, as set out in Appendix 'B' of the said Statute. The employee had also an option to continue to subscribe in terms of Statute 28-A. The proviso in clause 2(a) of Statute 28-A is indicative of the fact that a person who joined the University after 01.01.1986 was not entitled to subscribe to the Contributory Provident Fund-cum-Gratuity Scheme, set out in Appendix 'B'. Such a person was required to be governed by the General Provident Fund-cum-Gratuity Scheme, set out in Appendix 'A'.

13.8 Similarly, under clause 2(b) of Statute 28-A, a person who joined University before 01.04.1964 and who for that reason had been permitted to contribute to the Provident Fund under Statute 28-A had the option to continue to be governed by the provisions of that Statute or could elect to be governed by the GPF-cum-Pension-Gratuity Scheme, as set out in Appendix 'A' annexed to the Statute or by Contributory Provident Fund-cum-Gratuity Scheme out in Appendix of the statute. The option provided by this sub-clause have to be exercised and communicated to the Registrar in writing on or before the date to be specified by the Executive Council and when once exercised, the option was final.

13.9 Ms. Palli, based on the provision in sub-clause (b) of Clause 2 of Statute 28-A submitted that only the Executive Council was the authority, which could take a decision with regard to the cut-off date.

14. The other argument, as indicated above, was that the right to pension flowed from provisions of Statute 28-A and therefore, neither O.M. dated 01.05.1987 nor the notification dated 04.06.1987 could bind the petitioners. According to me, the submissions of Ms. Palli are flawed for various reasons :-

(i). first, the petitioners have made no such averment in their petitions. When this aspect was put to the counsels appearing for petitioners, which included Ms. Palli, Mr. Khurana and Ms. Sahni, they resorted to a simplistic answer, which is, that, it was a question of law and therefore, the court could consider it. The counsel for the petitioners seeking to clutch at straws sought to draw my attention to the circular dated 09.02.1989, which

makes a reference to Statute 28-A. According to me, a mere reference to a provision in a circular would not suffice as the petitioners are required to make a specific pleading to demonstrate as to how the facts obtaining in each of their respective cases, if at all, are covered by a particular provision of the Act or the Statute. Such a pleading, if made, would have enabled the opposing parties to deal with the factual and legal aspects of the submissions made by the petitioners. In the absence of pleadings, this contention deserves to be rejected on this short ground alone;

(ii). Second, since, petitioners are those persons, who had joined the University of Delhi after 01.04.1964 and were in service on 01.01.1986, they were clearly covered by sub-clause (a) Clause 2 of Statute 28-A which gave them an alternative to either subscribe to the GPF-cum-Pension-cum-Gratuity Scheme or the CPF-cum-Gratuity Scheme. The petitioners in this case were obviously optees of CPF-cum-Gratuity Scheme.

(ii)(a). With the constitution of the Fourth (4th) Central Pay Commission and the acceptance of its recommendations by the Central Government the optees of the CPF Scheme, in the Central Government, were given an opportunity to switch over to the Pension Scheme, subject to conditions stipulated in O.M. dated 01.05.1987. The condition being: that only those who opted to continue under the CPF Scheme that too by 30.09.1987 would be governed by the CPF Scheme, while the others by a deeming legal fiction would get covered after 30.09.1987 by the Pension Scheme.

(ii)(a)(1). This decision of the Central Government was accepted by the University of Delhi as well. Consequently, approval was sought by the University of Delhi to amend Statute 28-A, by inserting clause (b) in Statute 28-A. The fact that the GOI gave its approval to the amendment, which inter alia, brought the employees of the University of Delhi at par with the Central Government employees vis-a-vis benefits concerning GPF, CPF and pension is reflected in the letter dated 05.05.1987, addressed by MHRD, GOI to the University of Delhi. It is precisely for this reason that clause (5), which is been extracted hereinabove, was inserted in Statute 28-A. The said approval was followed evidently by issuance of notification dated 25.05.1987 which, inter alia, set out the salient features of the revised benefits of pension and family pension as accepted by the GOI, pursuant to the recommendations of the Fourth (4th) Central Pay Commission.

(ii)(a)(2). What is important is that this notification also adverted to the fact that all those employees of the University who were beneficiaries of the CPF and were in service on 01.01.1986 would be deemed to have come over to the Pension Scheme under Statute 28-A appendix 'A' unless they specifically opt out to continue under the CPF Scheme i.e., Statue 28-A appendix 'B'. Both, the insertion of clause 5 in Statute 28-A and the notification dated 25.05.1987, on which, Ms. Palli, also chose to place reliance in the course of her arguments, are consistent with the decision, which is reflected in the notification dated 04.06.1987. Therefore, the argument of Ms. Palli, that the OM. Dated 01.05.1987 or the notification dated 04.06.1987, had no legal basis is according to me, misconceived.

(iii). The other argument of Ms. Palli that the extensions granted by Circular dated 09.02.1989 and notification dated 11.02.1998 were valid as they had the imprimatur of the Executive Council while this was not the case in respect of notification dated 04.06.1987, fails to recognize the following facts :-

(a). as noted above, the notification dated 04.06.1987 was preceded by communication dated 05.05.1987 and a notification dated 25.05.1987 both of which were demonstrative of the fact that these decisions had the imprimatur of the Executive Council;

(b). the argument that extensions were valid and the initial decision of adoption of O.M. dated 01.05.1987, as reflected in notification dated 04.06.1987 was not valid since it referred to the approval of the Vice Chancellor, in my view, fails to recognize the fact that Executive Council could have proceeded to decide on extensions only if, the initial decision had the requisite approval, in place, which included itself, the UGC and the GOI. This is, however, not to say that extensions which the Executive Council granted, are valid. The reason for the same, in my view, as correctly submitted by counsels for the respondents is that, the extensions did not have the approval either of the UGC or the MHRD, GOI.

15. This would bring me to the next argument advanced by the counsel for the petitioners that no notice was given to the petitioners in the manner prescribed in circular dated 09.02.1989 and notification dated 11.02.1998. This argument, in my opinion, is once again mis-conceived for the following reasons :-

(i). first and foremost, having reached the conclusion that no extensions could have been given by the University of Delhi without due approval of the UGC or the GOI, the entire argument is, in a sense, a non-starter;

(ii). second, the petitioners having given their positive options to continue under the CPF Scheme in terms of O.M. dated 01.05.1987, as adopted by the University of Delhi, cannot now resile from the said position;

(ii)(a). assuming without accepting that University of Delhi could grant extensions, a careful reading of the circular dated 09.02.1989 would demonstrate that even as per the University the circular was intended to give one more opportunity to those employees of the University of Delhi or colleges affiliated to it, which were, receiving maintenance grant from the UGC to "***come over to the pension Scheme***." The circular was not directed towards those employees, who had consciously opted to remain in the CPF Scheme. In other words, no come back situation was contemplated in the said circular. Therefore, the argument that the extensions had to be brought to the notice of the employees in the manner prescribed in the said circular which required the employer to obtain acknowledgements and keep a record of the same, had no applicability to employees, such as, the present petitioners. The employers were, in such like cases, in my opinion, not required to issue any further notice assuming that the extensions were valid, as they had already exercised their option, to remain under the CPF Scheme.

(ii)(b). As indicated above, this is not to say that the extensions were valid or that the petitioners could resile from the option given by them to

remain under the CPF Scheme prior to 30.09.1987; pursuant to the issuance of O.M. dated 01.05.1987 and its adoption by University of Delhi on 04.06.1987.

16. Having come to the conclusion that extensions by themselves were not valid as they did not have the approval of the UGC or the Central Government, in my view, the ratio of the judgments of the Supreme Court in the case of ***Dakshin Haryana Bijli Vitran Nigam and Ors.(supra),*** and that of a single Judge of this court in ***K.S.R. Chari Ors.(supra)*** would have no applicability.

16.1 I may only note that the Supreme Court in the case of the ***Calcutta Port Trust and Ors. Vs. Anadi Kumar Das (Capt.) and Ors., JT 2013 (15) SC 21*** has distinguished the judgment in the case of ***Dakshin Haryana Bijli Vitran Nigam and Ors.(supra)***. In paragraph 22 at page 33, the Supreme Court repelled the stand of the employees that they were not aware of the Pension Scheme in view of the fact that the relevant circulars regarding extension were issued, while the employees in that case were in service.

16.2 In so far as the judgment of the Division Bench of Punjab and Haryana High Court in the case of ***State of Haryana Vs. Dr. B.S. Sharma*** is concerned, the same is distinguishable as there was an amendment to the Rules in 2001 with retrospective effect w.e.f. 11.05.1998. The petitioner had given his option prior to the amendment and, therefore, the court came to the conclusion that an option once exercised, could be changed if, benefit was extended on a later date, with retrospective effect. This judgement is, clearly distinguishable, on facts.

17. Before I conclude I must only clarify that the argument of the petitioners that 2469 employees had been allowed to switch over even after they had their given their option to continue under the CPF scheme and, thus, the respondents had discriminated against this set of petitioners is, an argument, which cannot be countenanced in law. As is well settled, by several judgements of the Supreme Court that there is no equality in illegality (see ***M.K. Sarkar's*** case, paragraph 25 at page 69). If, the University of Delhi, has wrongly permitted switch over to some of its employees to the Pension Scheme contrary to the provisions of O.M. dated 01.05.1987 as adopted by it, it cannot be the ground to grant relief to the petitioners. Since, the case of those 2469 employees is not before me, I am not required to return a finding on them. As indicated by counsel for UGC and the Union of India, the expenditure, if any, on account of the said 2469 employees can only be classified under the head, 'unapproved expenditure' and, therefore, the financial burden if at all, in that behalf would lie only on the University of Delhi.

18. In view of the above, in my view, the captioned writ petitions and the pending applications have no merit and the same are accordingly dismissed. There shall, however, be no orders as to costs.

RAJIV SHAKDHER, J.

APRIL 30, 2014
yg