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

Judgment Reserved on: 27.03.2014
% Judgment delivered on: 30.04.2014

\+ **W.P.(C) 5631/2010**

N. C. BAKSHI ..... PETITIONER

VERSUS

UNION OF INDIA & ORS ..... RESPONDENTS

\+ **W.P.(C) 1216/2011**

DR. S.C. MAHAJAN & ORS ..... PETITIONERS

VERSUS

UNION OF INDIA & ORS ..... RESPONDENTS

\+ **W.P.(C) 3631/2011**

DR. RAJESH KUMAR SAXENA AND ORS ..... PETITIONERS

VERSUS

SRI VENKATESWARA COLLEGE
AND ANR ..... RESPONDENTS

\+ **W.P.(C) 3863/2011**

DR. PURNIMA GUPTA ..... PETITIONER

VERSUS

SRI VENKATESWARA COLLEGE
AND ANR ..... RESPONDENTS

+ **W.P.(C) 5495/2011**

DR. SUDESH KUMARI SHAH ..... PETITIONER

VERSUS

SRI VENKATESWARA COLLEGE
AND ORS. ..... RESPONDENTS

+ **W.P.(C) 6009/2011 & CM No. 12140/2011**

DR. MANGAL NATH ..... PETITIONER

VERSUS

UNIVERSITY OF DELHI AND ORS ..... RESPONDENTS

+ **W.P.(C) 5106/2011 & CM No. 10351/2011**

SUMAN BALA JAIN & ORS. ..... PETITIONERS

VERSUS

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

+ **W.P.(C) 5975/2010 & CM No. 11775/2010**

MANGALA PRASAD UPADHYAY ..... PETITIONER

VERSUS

UNION OF INDIA & ORS ..... RESPONDENTS

+ **W.P.(C) 5979/2010 & CM No. 11782/2010**

KEWAL KRISHAN SHOREE ..... PETITIONER

VERSUS

UNION OF INDIA & ORS ..... RESPONDENTS

\+ **W.P.(C) 5980/2010 & CM No. 11784/2010**

BALRAJ KUMAR ..... PETITIONER

VERSUS

UNION OF INDIA & ORS ..... RESPONDENTS

\+ **W.P.(C) 5981/2010**

CHETANYA MOHAN GUPTA ..... PETITIONER

VERSUS

UNION OF INDIA & ORS ..... RESPONDENTS

\+ **W.P.(C) 5982/2010 & CM No. 11787/2010**

DHARAM PAL GUPTA ..... PETITIONER

VERSUS

UNION OF INDIA & ORS ..... RESPONDENTS

\+ **W.P.(C) 5985/2010 & CM No. 11793/2010**

RAJENDRA PRASAD ..... PETITIONER

VERSUS

UNION OF INDIA & ORS ..... RESPONDENTS

ADVOCATES WHO APPEARED IN THIS CASE:

For the Petitioners: Mr. Tanuj Khurana and Mr. Gaurav Malik,

Advocates in WP(C) 5631/2010, Mr Anil Sapra, Sr. Adv. with Mr. Saif Mohammad and Mr Harsh Pathak, Advocates in WP(C) 1216/2011; Mr Dinesh Goyal & Mr Rupesh Goyal, Advocates in WP(C) Nos.3631/2011, 3863/2011, 5495/2011; Mr Shankar Raju, Advocate in WP(C) 6009/2011; Ms Payal Jain, Advocate in WP(C) 5106/2011; Mr Virender Ganda, Sr. Adv. with Mr S.K. Giri & Mr Vipul Ganda, Advocates in WP(C) Nos.5975/2010, 5979/2010, 5980/2010, 5981/2010, 5982/2010 and 5985/2010

For the Respondents: Mr Mohinder J.S. Rupal, Advocate for the University of Delhi; Mr Amitesh Kumar, Adv. for the University Grants Commission; Mr Rajinder Dhawan & Mr B.S. Rana, Advocates for Sri Venkateshwara College; Ms Beenashaw Soni, Advocate for Laxmi Bai College.

CORAM :-
HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. These are thirteen (13) petitions in all. These petitions are, in a sense, the first sequel to the batch of petitions, which were heard and reserved for judgement on 30.01.2014. The lead petition in that batch was numbered as : ***WP(C) 1490/2006-1507/2006,*** titled as: ***Dr. R.N. Virmani and Ors. Vs. University of Delhi and Anr***.

2. In the batch of petitions, led by, ***Dr. R.N. Virmani and Ors. Vs. University of Delhi and Anr.***, I have rendered a detailed judgement. The submissions advanced both on behalf of the petitioners and the respondents

have been taken note of. There are, however, two distinctions, which are notable :-

(i). first, though Union of India was a party in at least some of the petitions, no arguments were advanced on behalf of the Union of India;

(ii). Second, the captioned batch of writ petitions fall in category-1, formulated by my predecessor, vide order dated 21.05.2012. The details with respect to the three categories formulated by this court vide order dated 21.05.2012, have been set out in the judgement delivered by me, in the batch of petitions, in which the lead petition, as indicated above, was numbered as: ***WP(C) 1490/2006-1507/2006,*** titled as: ***Dr. R.N. Virmani and Ors. Vs. University of Delhi and Anr***.

3. Suffice it to say, there is consensus amongst the counsels, who appeared in the captioned batch of writ petitions that, all cases fall within category-1. Category-1 relates to those cases where employees had exercised an option to remain under the CPF Scheme; albeit during the period when extensions granted by the University of Delhi, were operative. Therefore, in the present lot of writ petitions, all that one is required to examine is the legal effect of this overt action of the writ petitioners.

3.1 In order to examine the said issue, one would necessarily have to bear in mind the following details, which are set out in tabular form :-

WP(C) No. & short title	Total number of petitioners as arrayed	Date of Retirement	Date of filing of Writ petitions	The date on which option was given for CPF Scheme

5631/2010 N.C. Bakshi Vs. Union of India and Ors.	1	31.08.2010	16.08.2010	23.12.87
1216/2011 Dr. S.C. Mahajan and Ors. Vs. Union of India and Ors.	11	P1 - 31.05.2016 P2 - 31.07.2014 P3 - 31.10.2013 P4 - 30.09.2014 P5 - 30.09.2015 P6 - 20.11.2011 P7 - 31.05.2018 P8 - 31.05.2016 P9 - 30.09.2013 P10 - 31.03.2010 P11 – 30.04.2004	06.12.2010	P1 - 28.02.88 P2 - 11.12.87 P3 - 27.01.88 P4 - 11.12.87 P5 - 29.02.88 P6 - 28.02.88 P7 - 29.02.88 P8 - 27.01.88 P9 - 27.01.88 P10 – 27.01.88 P11 – 23.12.87
3631/2011 Dr. Rajesh Kumar Saxena and Ors. Vs. Sri Venkateshwara College and Anr.	4	P1- 30.05.2015 P2- 30.09.2017 P3- 31.03.2019 P4- 30.06.2020	21.05.2011	P1- 18.01.88 P2- 08.01.88 P3-28.01.88 P4-28.01.88
3863/2011 Dr. Purnima Gupta Vs. Sri Venkateshwara College and Anr.	1	30.11.2014	30.05.2011	29.01.88
5495/2011 Dr. Sudesh Kumari Shah Vs. Sri Venkateshwara College and Ors.	1	31.12.2013	27.07.2011	29.01.88
6009/2011 Dr. Mangal Nath Vs. University of Delhi and Ors.	1	31.12.2011	09.08.2011	11.11.87
5106/2011 Suman Bala Jain and Ors. Vs. Union of India and Ors.	5	P1- 2011 P2- 2014 P3- 2018 P4- 2017 P5- 2012	18.07.2011	P1-26.02.88, P2-29.02.88, P3-27.11.87, P4-21.12.87 P5-17.02.88
5975/2010 Mangala Prasad	1	Retirement due in	28.08.2010	08.10.87

Upadhyay Vs. Union of India and Ors.		2024		
5979/2010 Kewal Krishan Shoree Vs. Union of India and Ors.	1	2013	28.08.2010	27.01.88
5980/2010 Balraj Kumar Vs. Union of India and Ors.	1	30.09.2010	31.08.2010	01.12.87
5981/2010 Chetanya Mohan Gupta Vs. Union of India nad Ors.	1	March 2003	28.08.2010	27.01.88
5982/2010 Dharam Pal Gupta Vs. Union of India and Ors.	1	Retirement due in 2014	28.08.2010	28.02.88
5985/2010 Rajendra Prasad Vs. Union of India and Ors.	1	Retirement due in 2015	28.08.2010	11.12.87

3.2 The aforementioned details would show that each of the petitioners in this batch of writ petitions have opted to continue in the CPF scheme though after the cut-off date i.e., 30.09.1987. In the judgment delivered by me in the batch of writ petitions, in which the lead petition was numbered as : ***WP(C) 1490/2006-1507/2006,*** titled as: ***Dr. R.N. Virmani and Ors. Vs. University of Delhi and Anr***., I have held that the provisions of the O.M. dated 01.05.1987 required a positive option to be given only if, an employee was desirous of continuing with the CPF Scheme and that too by 30.09.1987. In the event, no positive option was received from an employee expressing his or her desire to continue with the CPF Scheme then, the employee stood automatically covered by the Pension Scheme by virtue of the deeming legal fiction created under the provisions of the O.M. dated

01.05.1987. This conclusion, I had reached after examining the provisions of O.M. dated 01.05.1987, in particular, clauses 3.1 and 3.2 and the form appended to it. As noted in the said judgement, this is also the view taken by the Supreme Court in the case of ***Union of India and Anr. Vs. S.L. Verma and Ors., (2006) 12 SCC 53***. For the sake of brevity, I am not detailing out in extenso the rationale provided in the said judgement. The observations made in the said judgment be read as part of the present judgement.

4. I may only note that none of the counsels appearing: for University Grants Commission (UGC), the University of Delhi or the concerned colleges took a stand which would convey that the cut-off date provided in O.M. dated 01.05.1987, was not sacrosanct.

4.1 In this context, I had also put to the counsel for the University of Delhi as to whether the extensions granted qua the cut-off date for exercise of option of conversion to CPF Scheme, were valid. The counsel for the University of Delhi took an unambiguous stand that the extensions granted were not valid. The main thrust therefore of both the counsels for the UGC as well as the University of Delhi was that the petitions were marred by delay and latches and, therefore, no relief ought to be granted to the petitioners. In this behalf, the counsels for the aforementioned respondents were also supported by the counsels for the concerned Colleges.

4.2 Having regard to the aforesaid stand of the counsels for the UGC, University of Delhi and concerned Colleges, the only conclusion that I can come to is that notwithstanding the fact that the petitioners in this batch of petitions had overtly expressed their desire to continue in the CPF Scheme,

they got automatically covered by the Pension Scheme, once, the cut-off date of 30.09.1987, was crossed. Therefore, the objection qua delay and latches cannot be sustained in case of these writ petitioners, save and except, in those cases where the petitioners received, upon retirement, without protest (either by filing an action in court or otherwise) their benefits under the CPF Scheme. As explained in Dr. R.N. Virmani's judgement delay and latches will not get attracted as the cause of action in these cases if not continuing, is certainly recurring, each time the record was not corrected. (read paragraphs 17.3 & 17.4 of Dr. R.N. Virmani's judgment delivered by me today along with this judgement). The availability of relief to such petitioners, who collected their CPF benefit without protest, one would deny, not on the interpretation of the provisions of O.M. dated 01.05.1987, but on the grounds of equity. The exercise of jurisdiction under Article 226 of the Constitution being a discretionary remedy in such like cases, I would not be persuaded to exercise my discretion. Furthermore, once CPF benefits are collected without protest cause of action will decidedly come to an end. Therefore, the captioned writ petitions are allowed qua all the petitioners except vis-a-vis the petitioner in WP(C) No. 5981/2010 and, in respect of petitioner No.11 in WP(C) No.1216/2011.

4.3 As per communication dated 05.05.2009 (appended as annexure P-21 in WP(C) No.5981/2010), the sole petitioner, i.e., Mr C.M. Gupta in the said writ petition, received his dues as per CPF Scheme, on retirement. The said petitioner, evidently, retired on 28.03.2006 as per information given in the said document; the petitioner though avers, in paragraph 2 of the petition, that he retired in March, 2003. The difference in dates, though unexplained,

will have no impact on the outcome. Accordingly, WP(C) 5981/2010 is dismissed.

4.4 Similarly, no relief can be granted to petitioner no. 11 (Sh. C.L. Khanna) in WP(C) No. 1216/2011. As per annexure P-20, appended at pages 67-68 of the said writ petition, he retired on 30.04.2004 when, all dues as per CPF scheme were received by him.

4.5 It is made clear though, that conversion to Pension Scheme would be subject to the employer-respondent being entitled to recoup its contribution under the CPF Scheme if, not already recouped, with simple interest at the rate of 8% p.a.

5. The writ petitions and all pending applications are disposed of in the aforesaid terms. There shall, however, be no order as to costs.

RAJIV SHAKDHER, J.

APRIL 30, 2014
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