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THE HIGH COURT OF DELHI AT NEW DELHI

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Judgement Reserved on: 30.01.2014

Judgement delivered on: 30.04.2014.

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**WP(C) 1490/2006-1507/2006 and CM No.5186/2006, 15911/2008,
12350/2010 and CM No.2309/2011**

DR. R.N. VIRMANI AND ORS.

....PETITIONERS

VERSUS

UNIVERSITY OF DELHI AND ANR.

.....RESPONDENTS

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WP(C) 4122/2011 and CM Nos.8515/2011 and 12935/2011

DR. (MRS.) K. PRABHA

....PETITIONER

VERSUS

UNIVERSITY OF DELHI AND ORS.

.....RESPONDENTS

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WP(C) 105/2012

MRS. VEENA MANGAL NATH AND ORS.

....PETITIONERS

VERSUS

UNIVERSITY OF DELHI AND ORS

.....RESPONDENTS

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WP(C) 2028/2012

B.R. GUPTA

....PETITIONER

VERSUS

UNIVERSITY OF DELHI AND ORS

.....RESPONDENTS

ADVOCATES WHO APPEARED IN THIS CASE:

For the Petitioners : Mr Meet Malhotra, Sr. Adv. with Mr Ravi S. Singh, Mr Prateek Dahiya, Ms Pallak Singh & Mr Anant Ramadhyani, Advs. in WP(C) 1490/2006.

Mr G.D. Gupta, Sr. Adv. with Mr Mayank Goel & Mr Lalruatpuia Sailo, Advs. in WP(C) 4122/2011.

Mr Shanker Raju & Mr Nilansh Gaur, Advs. in WP(C) 105/2012.

Mr Aviral Tiwari, Adv. in WP(C) 2028/2012.

For the Respondents : Mr Mohinder J.S. Rupal, Adv. for University of Delhi.

Mr Amitesh Kumar & Ms Mamta Tiwari, Advs. for Resp./ UGC.

Mr B.V. Niren, CGSC for UOI.

Mr Aurobindo Ghosh, Advs. for Shivaji College.

Mr J.H. Jafri, Adv. for SBS College.

Mr R.P. Sharma & Mr Vaibhav Mehra, Advs. for Janki Devi Memorial College.

CORAM :-

HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. The captioned writ petitions revolve around a singular issue, which is: whether or not the petitioners should be entitled to change over from the Contributory Provident Fund (in short CPF) to the General Provident Fund (GPF)– cum – Pension Scheme (in short the Pension Scheme). The petitioners have claimed a right of change over / switch over to the Pension Scheme based on the Government of India (in short GOI), Department of Pension and Pensioners Welfare Office Memorandum (in short O.M.)

No.4/1/87-P.I.C-I dated 01.05.1987, which was admittedly adopted by respondent no.1 i.e., University of Delhi vide notifications dated 25.05.1987, read with notification dated 04.06.1987, after receiving due approval of its Vice Chancellor.

2. It may be relevant to note that the captioned writ petitions alongwith other writ petitions were listed for hearing before the court from time to time when, vide order dated 21.05.2012, my predecessor, categorised the matters with the assistance of counsels for parties into three separate categories.

2.1 As per order dated 21.05.2012, category-1 comprises of those cases where the petitioners had exercised an option to continue in the CPF Scheme; albeit during the period of extension granted by University of Delhi. The aspect pertaining to extensions, I will advert to as one goes along with the narration of facts. Suffice it to state at this stage, that O.M. dated 01.05.1987, which was duly adopted by the University of Delhi; required employees to exercise the option for continuation under the CPF Scheme by 30.09.1987, failing which, the employees were, “*deemed to have come over to the Pension Scheme.*” It was this deadline which, the University of Delhi extended from time to time. It is the argument of employees falling in this category that extensions were superfluous or otiose since, after the deadline of 30.09.1987, was crossed, as per the provisions of the scheme, this set of employees got automatically covered by the Pension Scheme notwithstanding the fact that they overtly chose to remain under the CPF Scheme.

2.2 Similarly, two other categories of employees was formed; vide order dated 21.05.2012, these being: category-2 and 3. Category-2, thus,

comprises of those employees / petitioners, who had before the cut-off date of 30.09.1987, opted to remain under the CPF Scheme. Category-3, comprised of those employees / petitioners, who chose not to exercise any option. In other words, they neither opted to continue with the CPF Scheme nor did they indicate that they were wanting to switch over to the Pension Scheme.

3. The captioned writ petitions, which fall in Category-3, alongwith other writ petitions came up before me, on 30.01.2014 when, order dated 21.05.2012, was noticed. On that date, I heard arguments in the captioned writ petitions, which pertain to Category-3. In so far as those matters which fell in category-1 and 2 were concerned, actual dates of hearing were given. Incidentally, hearing has been concluded by me even in respect of matters falling in Category-1. The judgement in those matters was reserved on 27.03.2014. The matters falling in Category-2 were listed for hearing on 17.04.2014. Judgement in this batch of writ petition was reserved on the said date after according hearing to counsel for parties.

3.1 In the order dated 30.01.2014, three matters were placed under a new category i.e., Category-4. These were matters which, facially, did not fall in either of the three categories noticed in order dated 21.05.2012. I may only note that in respect of one writ petition, being: WP(C) 5597/2013, which was slated for hearing on 24.04.2014, it has been contended by the counsel for the petitioners that the said matter does not fall in Category-4. This aspect remains to be examined by me.

4. Having regard to the fact that the captioned writ petitions pertain to Category-3, I may only note the following brief facts, which are necessary for adjudication qua the controversy in issue :-

4.1 As noticed above on 01.05.1987, the GOI issued an O.M., which permitted Central Government employees who were governed by the CPF Scheme to change over to the Pension Scheme. The said O.M. prefaced two important facts. First, that the employees had been given repeated options by the Department of Personnel and Training (DOPT). However, despite repeated offers, some employees continued under the CPF scheme. Reference in this regard was made to DOPT O.M. dated 06.06.1985. The second aspect, touched upon, was that, the fourth (4th) Central Pay Commission had recommended that all CPF beneficiaries in service on 01.01.1986, should be deemed, as having come over to the Pension Scheme after the cut off date unless they specifically opt to continue under the CPF scheme.

4.2 Importantly, the recommendations of the 4th Central Pay Commission were accepted as indicated in paragraph 2 of O.M. dated 01.05.1987. Pertinently, the manner of implementation was articulated in the subsequent paragraphs of the said O.M. For the purposes of adjudication, paragraphs 3.2, 3.3 and 4.3 are relevant. Incidentally these are the very clauses which were relied upon by counsels for both parties. For the sake of convenience, the said paragraphs are extracted hereinbelow :

“..3.2 The employees of the category mentioned above, will, however, have an option to continue under the CPF Scheme, if they so desire. The option will have to be exercised and conveyed to the concerned 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.

3.3 The CPF beneficiaries who were in service on January 1986, but have since retired and in whose case retirement benefits have also been paid under the CPF Scheme, will have an option to have their retirement benefits calculated under the Pension Scheme provided they refund to the Government, the Government contribution to the Contributory Provident Fund and the interest thereon, drawn by them at the time of settlement of the CPF Account such option shall be exercised latest by 30.09.1987.

4.3 Action to discontinue subscriptions / contributions to CP Account may be taken only after the last date specified for exercise of option, viz. 30.09.1987...”

4.3 It is not in dispute, as is indicated by me hereinabove, that vide notification dated 25.05.1987, read with notification dated 04.06.1987, the O.M. dated 01.05.1987, issued by GOI, was adopted by the University of Delhi with due approval of its Vice Chancellor. The notification dated 04.06.1987 was duly accompanied by, the prescribed specimen form, for exercise of option by the employees. The notification of 04.06.1987, required that the O.M. dated 01.05.1987, be brought to the notice of all concerned.

4.4 The net effect of O.M. dated 01.05.1987, was that if employees were desirous of continuing with the CPF Scheme, they were required to give their option to that effect in the prescribed form by 30.09.1987, failing which, employees were “*deemed to have come over to the Pension Scheme*”.

4.5 The University of Delhi, however, gave its own interpretation to O.M. dated 01.05.1987, by issuing notifications for extension of the “last date for exercising the option”. From the record, it appears that the first extension was granted till 29.02.1988.

4.6 Evidently the Executive Council of the University of Delhi at its Executive Council meeting of 05.09.1989, took a decision to grant another extension. This decision of the Executive Council is reflected in the University of Delhi’s notification dated 09.02.1989. By this notification, employees were granted further three months to exercise their option for change over from CPF to Pension Scheme.

4.7 By notification dated 06.09.1989, there was another extension granted till 30.09.1989. The spate of extensions did not end with this notification; on 30.11.1998, University of Delhi issued yet another notification whereby as a one time exception, it granted leeway to change over till 31.01.1999, pursuant to a decision of its Executive Council, at its meeting held on even date i.e., 30.09.1998.

4.8 I may note that in an affidavit filed on behalf of University of Delhi, in WP(C) No. 5759/2010, titled Shashi Kiran & Ors. vs University of Delhi & Ors., it is stated that twelve (12) extensions were granted by the said University. Pertinently, this writ petition falls in category no.2, arguments in respect of which were concluded on 17.04.2014. To my mind, the number of extensions will not have much impact as much would depend on whether the University of Delhi had power to extend the dates without the approval of the UGC.

5. Till this juncture, the facts pertaining to the writ petitioners in the present batch of petitions are common. It is also common ground, as indicated above, that none of the petitioner in the present batch exercised their option either way, that is, either to continue or, to switch over to the Pension Scheme.

6. Let me therefore briefly touch upon the relevant facts pertaining to the petitioners in the four writ petitions .

WP(C) 1490/2006 – 1507/2006

6.1 The first writ petition, being: 1490/2006-1507/2006 initially comprised of 18 petitioners. An amended memo of parties was filed pursuant to order dated 04.04.2011 passed in CM No. 4814/2011, when one petitioner, Mr. B.R. Gupta, who was originally arrayed as petitioner no.7 was dropped from the array of parties. Prior to this two applications were filed under Order I Rule 10. One for impleading and the other for deletion of parties. The application for impleadment is numbered as: CM No. 5186/2006. This application was filed on 22.04.2006. Impleadment, was sought of Mr Ashok Bagrial, Mr M.K. Chaturvedi, Dr. (Mrs.) Indira Choudhary and Mr P.R. Chadha. By an order passed on 26.04.2006, it appears, CM No. 5186/2006 was, apparently, allowed, though the order does not specifically refer to the application. The second application, which was for deletion of parties, was numbered as: CM 15911/2008. This application was filed on 19.11.2008. Deletion was sought of one Mr Surender Singh and Ms Neelam Kumar. The ground stated was that these petitioners were drawing their benefits under the CPF Scheme, and that, they did not wish to

change over to the Pension Scheme. No order appears to have been passed on this application.

6.2 The amended memo of parties though filed on 19.11.2008, contains the names of twenty (20) petitioners including the name of Sh. B.R. Gupta, who was dropped from the array of parties on 04.04.2011. The names of Mr. Surender Singh and Ms. Neelam Kumar, however, are not reflected in the said amended memo of parties. What is available on record are the details with regard to year of joining and retirement of the petitioners who are employees of respondent no.2 college i.e., Shivaji College. The said application is now, formally allowed, to bring the parties before the court, in accord, with the amended memo of parties.

6.3 It is noticed that apart from the following persons, all others have retired from service :-

(i). Sh. P.R. Chadha (petitioner no.20); Dr. V.P.S. Malik (petitioner no.2); Dr. Promila Mathur (petitioner no.15), Dr. Devender Kumar Singh (petitioner no.16), Dr. S.C. Goel (petitioner no.11), Dr. Manju Banerjee (petitioner no.10), Dr. Manjula Singh (petitioner no.8), Ms. Usha Sharda (petitioner no.9), Dr. Indira Choudhary (petitioner no.19), Dr. Mithlesh Kumar Chaturvedi (petitioner no.18).

6.4 As per information supplied by the Shivaji college, pursuant to the order of this court, none of the petitioners have had exercised their options either way. The University of Delhi, on its part, in its counter affidavit has not disputed this fact.

6.5 The University of Delhi in its counter affidavit has taken the following stand, which is crucial for the purposes of adjudication of the captioned writ petitions. The stand being: that unless an employee exercises his option in writing for continuation under the CPF Scheme, he/ she would be covered by the Pension Scheme. The counter affidavit goes on to state that the petitioners, who are parties to this particular writ petition had opted for the CPF Scheme. I may only note that in the counter affidavit filed, there is no defence taken that the writ petition be dismissed on the ground of delay and laches. The relevant averments made in paragraph 6 of its counter affidavit pertaining to the merits are extracted hereinafter :-

“..6. The Central Government while accepting the recommendations of the IVth Central Pay Commission to be effective from 01.01.1986, by Notification dated 01.05.1987 provided that in respect of government employees in service as on 01.01.1986, with effect from the said date, they would be treated as governed by the GPF Scheme (Pension Scheme) unless they exercise an option on or before 30.09.1987 to be governed by the CPF Scheme (Non-Pension Scheme). Corresponding pay revision in respect of employees of the University were approved by the UGC/Union of India and notified on 14.10.1986 and was adopted by the University vide Resolution of the Executive Council No.155 dated 09.10.1986. The effect of the same is that all the existing employees of the University and Colleges affiliated to the University and also the teachers of the University and teachers serving in Colleges affiliated to the University would be covered by the GPF (Pension Scheme) unless any individual employee exercises his option in writing to be continued under the CPF (Non-Pension Scheme). The petitioners are those who opted for the CPF Scheme i.e., the non pension Scheme. (emphasis is mine)

6.6 During the course of the arguments, nothing was shown to me by the counsel for University of Delhi, which would persuade me to accept the

stand that the twenty (20) petitioners [in fact had to be nineteen (19)] arrayed in this writ petition had exercised their option either way.

6.7 In so far as the said writ petition is concerned, there is a reference to a legal notice sent on behalf of the petitioners to respondent no.2 college wherein, a specific stand has been taken that no communication in writing was submitted to the said college by the petitioners, which was indicative of the fact that they were desirous of continuing with the CPF Scheme. A reference was also made to the fact that, at least in so far as petitioner no.1 was concerned, letters since January 2002 had been issued for correction of the record. This legal notice was replied to by the counsel for respondent no.2 college vide communication dated 19.04.2004, where a stand was taken that the petitioners had opted for continuation in the CPF Scheme. Pertinently, as noticed above, this stand is contrary to the information placed on record by respondent no.2 college pursuant to orders of this court dated 11.11.2008 and 14.11.2008.

6.8 It appears that the petitioners thereafter, issued yet another legal notice on the subject on 21.11.2005.

6.9 Apparently, the said legal notice was not replied to by respondent no.2 College.

WP(C) 4122/2011

7. In this case the petitioner claims that since she was to retire on 30.06.2011, she made enquiries in January 2010 as to the amount of pension she would get on retiring from service. The petitioner claims that it is at this stage that she obtained the copies of O.M. dated 01.05.1987 and notification

dated 04.06.1987. Upon receiving the said notification, the petitioner made an application under the RTI Act on 13.01.2010, seeking to know as to whether she had exercised any option to continue under the CPF scheme.

7.1 The concerned college i.e., Shaheed Bhagat Singh College (in short S.B.S. College) (arrayed as respondent no.2 in the writ petition) vide its reply dated 08.02.2010, informed the petitioner that no record of any option exercised by her was available in its record.

7.2 Consequent thereto, vide two separate communications dated 19.03.2010, a representation was made both to S.B.S College and University of Delhi, for rectification of records. Reminders in this regard were sent to the University of Delhi on 11.06.2010 and to the college on 23.02.2011.

7.3 The writ petition was moved on 03.06.2011 when, this court upon noticing the stand taken by the petitioner, directed that she cannot be permitted to withdraw the “***CPF amount upon her retirement on 30.06.2011***”, since her case was of “***deemed switch over to the Pension Scheme***”.

7.4 As indicated above, the petitioner retired from service on 30.06.2011. However, contrary to the order of this court, on 04.07.2011, the petitioner received a composite cheque of Rs.26,35,764/-. The said amount comprised of both employer and employees contribution to CPF.

7.5 The petitioner vide communication dated 11.07.2011 sought information with regard to the employer contribution and upon receipt of the said information, returned an amount of Rs.17,62,213/- to S.B.S. College vide cheque of even date, which was duly encashed by S.B.S. College.

7.6 The petitioner filed an interlocutory application, being: CM No.12899/2011 wherein, it was averred that one Prof. R.D. Arora had been allowed change over to Pension Scheme though he was similarly placed as the petitioner. By order dated 29.09.2011, my predecessor, allowed the aforementioned application with a direction that the petitioner would be permitted to argue, based on the additional facts pleaded in the said application.

WP(C) 105/2012

8. This writ petition comprises of fourteen (14) petitioners. In this writ petition, apart from the University of Delhi and the college concerned, which is, Janki Devi Memorial College (JDM College), the University Grants Commission (UGC) is also impleaded as a party.

8.1 In this case as well, the petitioners claim to have attempted to access information with regard to whether or not they had exercised option for switch over by taking recourse to the RTI route. The RTI application, however, appears to have been filed by a third party, one, Dr. S.K. Laroia. This application was filed on 12.11.2011, with the UGC.

8.2 Interestingly, the answers of UGC to query nos.4 and 8 in the application seem to convey that if employees were to exercise their option for continuing in CPF Scheme after 30.09.1987 then, they would automatically stand covered under the Pension Scheme, and that, in this behalf, UGC had issued necessary directions to the University of Delhi and, through it, to its constituent colleges to comply with its letter dated

11.11.2010 which, inter alia, indicated that no case for switch over to Pension Scheme could be entertained after 30.09.1987.

8.3 It is averred that vide letter dated 08.03.2011 issued by UGC to JDM College, it once again took the same stand, which is that, no change over after 30.09.1987, was permissible.

8.4 Apparently, in the light of the said position taken by the petitioners, a representation was addressed to University of Delhi, dated 25.01.2011 wherein, it was inter alia, indicated by some of the petitioners that since they had not exercised their option to continue with CPF Scheme prior to 30.09.1987, they were governed by the Pension Scheme.

8.5 Similar representations were apparently also made between the months of March and May, 2011.

8.6 In the counter affidavit filed on behalf of the JDM College, while a stand has been taken that the petitioners should not be granted relief on account of the fact that they failed to opt for the Pension Scheme, there is no averment though with respect to, any option, having been filed by the petitioners to continue with the CPF Scheme.

8.7 The UGC, in its counter affidavit, has briefly taken the following stand :-

- (i). that the option for employees for change over from CPF to Pension Scheme was available only upto 30.09.1987;
- (ii). the revised options given to employees to return to Pension Scheme were “absolutely incorrect and against the Rules”;

(iii). the fact that 30.09.1987 was the cut-off date was conveyed by the UGC to the University of Delhi vide its letter dated 25.05.1999;

(iv). the UGC vide its communication dated 08.08.2001 had requested the GOI through Ministry of Human Resources Development (in short MHRD) to consider extension of the scheme of conversion, which was, however, not agreed to as reflected in GOI's letter dated 27.09.2001. The stand of the GOI as reflected in the said communication was based on its earlier communication dated 19.06.2000 which, adverted to the fact that the matter had been examined by the Ministry of Finance, GOI which had, in turn, advised against grant of another option for change over from CPF to Pension Scheme;

(v) In September 2002, letters were exchanged between the UGC and MHRD, GOI as also between University of Delhi and UGC.

(v)(a) To be noted, letters exchanged amongst the entities referred to above have been appended with the counter affidavit of UGC.

(v)(a)(i) The letters exchanged between the UGC and MHRD, GOI are dated: 03.09.2002, 24.10.2002, 26.03.2007, 28.03.2007, 11.05.2007, 26.09.2008, 10.09.2008;

(v)(a)(ii). In so far as correspondences exchanged between University of Delhi and UGC are concerned, these are dated : 28.02.2003, 23.09.2003, 21.12.2006.

(v)(a)(iii). Apart from the above, there is a reference to representations by teachers, who were employed with University of Delhi and colleges affiliated to it, prior to 01.01.1986.

(v)(b). The sum and substance of the correspondences referred to above is, that while UGC was sympathetic to extension of the date of conversion till at least 31.03.1998, it did not want to take the burden of pension liability of the employees if, GOI was not agreeable to the extension of date beyond 30.09.1987. (see letter dated 03.09.2002). As a matter of fact, UGC sought instructions in the matter from the GOI, which vide its letter dated 24.10.2002, advised UGC, being the funding agency for Central Universities and deemed Universities, to take a decision at its end without referring the matter to MHRD.

(v)(b)(i). The UGC, therefore, on its part vide its communication dated 23.09.2003, informed University of Delhi that it could not grant, a retrospective, one time change over from CPF Scheme to Pension Scheme.

(v)(b)(ii). What interestingly, though, emerges from the correspondence, is that, since several institutions, such as, IIT Kanpur and other autonomous institutions such as, the Department of Atomic Energy and CSIR had extended the date of switch over qua its employees – UGC's request that the conversion date be extended till 31.12.2003, as a new Pension Scheme had kicked-in vis-à-vis persons joining the University on or after 01.01.2004, was declined by MHRD. (see letter dated 26.03.2007).

(v)(b)(iii). I must, however, at this point extract the stand taken by the University of Delhi in its letter dated 21.12.2006, addressed to the UGC

which, seemingly attempts to demonstrate the disparity between employees who were appointed before 01.01.1986 and those who were appointed on or after 01.01.1986. The apparent disparity, according to the University of Delhi, stemmed from the fact that those who were appointed prior to 01.01.1986 were not given an option of switch over. The relevant extract from the letter of University of Delhi is set out hereinbelow.

“...I have received representations from 376 teachers of constituent colleges and departments of this University addressed to the Chairperson, UGC, requesting for the grant of a fresh option to switch over from the CPF to the GPF cum pension scheme. All of them were appointed *before* 1.1.1986.

The representations have drawn attention to the huge disparity between those on the GPF cum pension scheme and those on the CPF scheme. This is because over the years and especially in the last few years – Government decisions have led to a situation where those entitled to pensionary benefits have been placed in a far more advantageous position than those entitled to CPF schemes. As a result of the Fifth Pay Commission’s recommendations, 40% of pensions can now be commuted, giving a huge lump payment to pensioners. The communication is restored after fifteen years. Those on CPF get only a lump payment which includes their own contribution. Pensions are now fully indexed to inflation and their nominal value rises twice every year, in the case of those on CPF, the Government – keeping in view its overall fiscal and macro-economic strategy has reduced interest from a high of 12% in 1998 to 8% today. While the high interest rates which made CPF schemes attractive have come down, the nominal value of pensions keeps going up because of inflation indexing.

All this has created a significant disparity between those on GPF-cum-pension and those on CPF schemes. According to a rough calculation, this could run into several lakh rupees over a period of time in the case of two identically placed professors.

I think there is merit in the request that those who continue to be on the CPF scheme should be given a fresh option to switch over to the GPF cum pension scheme instead of taking the legalistic stand that those on CPF opted for the scheme. The Government, as a fair employer, may kindly take action to remove the growing inequality between those on CPF and those on GPF cum pension schemes. I would, therefore, request you to please take up the matter with the Ministry of HRD and the Ministry of Finance to allow a fresh option to those on the CPF scheme to come over to the GPF-cum-pension scheme...”

WP(C) 2028/2012

9. In so far as this petition is concerned, it appears to have been filed by a person (i.e., Shri B.R. Gupta), who was initially part of WP (C) 1490/2006-507/2006. As indicated above, he was deleted from the array of parties vide order dated 04.04.2011, based on an application moved by him, being: CM No.4814/2011.

9.1 It is averred by Shri. B.R. Gupta that he withdrew his writ petition on the assurance of the respondents that his case for conversion would be considered only if, he withdrew the matter pending in court. In this behalf, he also blames his lawyer with regard to purported incorrect advice received by him.

9.2 The facts adverted to in this petition are similar to those referred to in WP(C) 1490/2006-1507/2006 until the stage, the petitioner, was deleted from the array of parties in WP (C) 1490/2006-1507/2006.

9.3 The events, post 04.04.2011, as articulated in the writ petition, are suggestive of the fact that the petitioner approached respondent no.2 College vide communication dated 15.04.2011.

9.4 The petitioner, also avers that, the concerned College i.e., Shivaji College vide communication dated 19.08.2011, forwarded his case to University of Delhi for consideration of switch over to Pension Scheme. In the very same communication, Shivaji College also highlighted the fact that the petitioner had remitted a sum of Rs.2,44,312.52 to facilitate a switch over, despite which, the petitioner's case was rejected by University of Delhi vide its letter dated 29.08.2011, which was forwarded by Shivaji College to the petitioner vide its communication dated 19.09.2011.

9.5 The petitioner, made a request for reconsideration of his case to Shivaji College vide letter dated 20.09.2011. A reminder was sent in that behalf on 30.11.2011, in which, a reference was made to one Sh. Bhagwati Prasad, whose case for change over to Pension Scheme had been approved, apparently, by University of Delhi on 11.02.2011.

9.6 Though the petitioner was informed by Shivaji College vide letter dated 05.12.2011 to collect his CPF benefits, he declined the same vide a return communication dated 16.12.2011.

9.7 Consequently, this court was moved by the petitioner on 11.04.2012.

9.8 As expected, Shivaji College in its counter affidavit brought to fore the fact that the petitioner after withdrawing the writ petition approached Shivaji College for processing his case under the Pension Scheme.

9.9 In so far as the UGC was concerned, its stand was no different than that which was taken in WP(C) 105/2012.

SUBMISSIONS OF COUNSELS

10. In the captioned writ petitions, on behalf of the petitioners, arguments were advanced in WP (C) 1490-1507/2011 by Mr. Meet Malhotra, Sr. Advocate assisted by Mr. Ravi S. Singh and Mr. Prateek Dahiya. In WP(C) 1422/2011, arguments were advanced by Mr. G.D. Gupta, Sr. Advocate assisted by Mr. Mayank Goel; while in WP(C) 105/2012, arguments were advanced by Mr. Shanker Raju. Similarly, in WP(C) 2028/2012, arguments were advanced by Mr. Aviral Tiwari, Advocate. Mr. Mahender J.S. Rupal argued on behalf of the University of Delhi, whereas UGC was represented by Mr. Amitesh Kumar, Advocate.

11. The arguments on behalf of the petitioners were largely pivoted on the judgement of the Supreme Court in the case of *Union of India and Anr. Vs. S.L. Verma and Ors.*, (2006) 12 SCC 53.

11.1 It was submitted that in none of the captioned cases the petitioners had given an option for continuation under the CPF Scheme, therefore, by virtue of a deeming legal fiction, the switch over took place automatically. The consequent result of which, according to the learned counsel for the petitioners was, that the petitioners should have got benefits under the Pension Scheme after the cut-off date of 30.09.1987, stipulated in O.M. dated 01.05.1987, was crossed.

11.2 It was further submitted that right to pension was a fundamental right which could not be circumscribed by the respondents by taking recourse to pleas such as delay and latches, specially, in the circumstances, that the petitioners, were willing to disgorge the benefits with interest taken under the CPF Scheme. Apart from relying on the judgement in *S.L. Verma's*

case, the petitioners also relied upon the judgement of the Supreme Court in the case of ***D.S. Nakara and Ors. Vs. Union of India, (1983) 1 SCC 305.***

11.3 A submission was also made on behalf of the petitioner in WP(C) 4122/2011 that the notifications issued by the University of Delhi extending the date for change over were not brought to the notice of the petitioners; had these notifications being brought to their notice, the petitioners would have taken appropriate steps in that behalf. In support of this submission, reliance was placed on the judgement of the Supreme Court in ***Dakshin Haryana Bijli Vitran Nigam Vs. Bachan Singh, (2009) 14 SCC 793.***

11.4 Apart from the aforesaid judgement of the Supreme Court, reliance was also placed on the judgement of the Division Bench dated 11.12.2009, passed in ***LPA No.633/2009***, titled : ***Maya Devi Vs. Govt. of NCT of Delhi and Ors.***

11.5 On the other hand, Mr. Rupal, appearing for the University of Delhi submitted that pension was being disbursed out of funds received from UGC, which included payment to those teachers who had switched over from CPF Scheme to Pension Scheme after 30.09.1987 till 1998. In other words, since UGC was the funding agency, pension could be granted, if so ordered, only upon receipt of funds from the UGC.

11.6 Mr. Rupal, however, did not dispute the fact that University of Delhi, from time to time, had extended the date for change over from CPF to Pension Scheme.

11.7 Mr. Rupal, however, did emphasise the point that the petitioners were guilty of delay and latches, and that, they should not be allowed to now seek

a switch over from CPF Scheme to Pension Scheme. In support of his submissions, reliance was placed by him on the judgement of the Supreme Court in the case of: ***KVS and Ors. Vs. Jaspal Kaur and Anr., (2007) 6 SCC 13.***

11.8 Mr. Amitesh Kumar appearing on behalf of the UGC raised a similar contention. He submitted that O.M. dated 01.05.1987, was in the knowledge of the petitioners, despite which, they had continued to contribute towards CPF Scheme by allowing deductions to be made from their salaries on a month to month basis. He submitted that the present writ petitions were filed in 2011-2012, without any explanation as to the delay and laches in approaching the court though, the cause of action for conversion arose immediately after 30.09.1987.

11.9 Mr. Amitesh Kumar submitted that in somewhat similar circumstances, the Supreme Court had declined to grant relief to parties. Reference in this regard was made to the following judgements :-

(i) Union of India and Ors. Vs. M.K. Sarkar (2010) 2 SCC 59;

(ii) Naresh Kumar Vs. Department of Atomic Energy and Ors., (2010) 7 SCC 525 and

(iii) Panchi Devi Vs. State of Rajasthan and Ors. (2009) 2 SCC 589.

12. In addition reference was also made to the judgement of the Supreme Court in the case of ***KVS and Ors. Vs. Jaspal Kaur and Anr.,*** cited by Mr Rupal.

REASONS

13. I must note at this juncture that both in the written submissions and in oral submissions, Mr. Amitesh Kumar did concede that if, option to continue under the CPF Scheme was not made by 30.09.1987, the concerned employee would be deemed to have come over to the Pension Scheme. According to the counsel, UGC's position in this regard is also reflected in its letter dated 25.05.1999, addressed to the Registrar, University of Delhi.

13.1 With this preface let me consider the issue at hand in the background of submissions made by counsels and the record.

14. In my view, the answer to the question: as to whether employees, who had not issued any overt communication with regard to his / her desire to continue with the CPF Scheme, stood covered by the Pension Scheme; would largely depend upon the provisions of O.M. dated 01.05.1987, itself.

14.1 It is not in dispute before me that O.M. dated 01.05.1987 was adopted by the University of Delhi vide notification dated 25.05.1987 read with notification dated 04.06.1987, pursuant to an approval received in that behalf from its Vice Chancellor. Therefore, much would depend, in my opinion, upon the language of the relevant clause of O.M. dated 01.05.1987. The said O.M. clearly applies to all employees who were CPF beneficiaries on 01.01.1986. Clause 3.1 read with clause 3.2 is plainly indicative of the fact that all such employees, who are CPF beneficiaries, shall be deemed, to have, come over to Pension Scheme unless the employee(s) concerned submitted his or her option to continue with the CPF Scheme. This option had to be submitted in the prescribed form to the concerned Head of Office by 30.09.1987. In case, no option was received by the Head of Office by 30.09.1987, employees were deemed to have come over to the Pension

Scheme. Therefore, by legal fiction once, the deeming clause kicked-in, those who did not submit their option form for continuation under the CPF Scheme stood covered by the Pension Scheme. If there was any doubt with regard to the language of clause 3.2, when read with clause 3.1, the prescribed option form puts at rest all such thoughts. For the sake of convenience, the prescribed form is extracted hereinbelow :-

“Form of Option

I _____(name), employed as _____(designation) in the Ministry / Department/Office of _____(name of the Ministry/Department/Office), do hereby opt to continue under the Contributory Provident Fund Scheme in terms of the Department of Pension and Pensioners’ Welfare, O.M. No.4/1/87-P..1.C.-1, dated 01.05.1987.”

Place _____

Date _____

(Signature of the Optee)”

(emphasis is mine)

14.2 A perusal of the aforesaid form would show that the only option which had to be exercised was with regard to continuation by an employee under the CPF Scheme. The employee was not required to submit any form if, he or she wanted to be covered under the Pension Scheme, as that was automatic, in view of the deeming provision incorporated in clause 3.1 and 3.2 of O.M. dated 01.05.1987. This is precisely the reasoning given by the Supreme Court in no uncertain terms in **S.L. Verma**’s case. The relevant observations of the Supreme Court are contained in paragraphs 4 and 7, which for the sake of convenience, are extracted hereinbelow.

“..4. The Central Government as also the respondent No.14-Bureau of Indian Standards have proceeded on some legal misconception that it was obligatory on the part of the said employees to give a positive option for the said purpose. For the first time on 2.2.1999, the respondent No.14 requested the Union of India for grant of another chance to the respondents to switch over to pension scheme stating that they purported to have exercised their option for CPF Scheme on the cut-off date.

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 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 Conditions of Service of Employees Regulations, 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...” (emphasis is mine)

14.3 The argument advanced on behalf of the respondents based on the judgement of the Supreme Court in the case of *Union of India Vs. M.K. Sarkar*'s case in my view cannot be accepted. The reason for the same are several: First, the facts as set out in the judgement indicate that the Pension Scheme as formulated by the Railways in that case perhaps required exercise of a positive option for switch over from CPF to Pension Scheme. Second, eight (8) extensions were given in that behalf to enable the employee to switch over. Third, the respondent employee in that case was in service, at a point in time when the last extension was still valid. The employee, however, voluntarily retired from service in October 1976 and, received his contributory pension. Lastly, the respondent-employee in that case sought to rake up the issue for the first time by way of a representation only in October 1998.

14.4 Having regard to these crucial facts, the Supreme Court reversed the view both of the Central Administrative Tribunal and the High Court since the petitioner had failed to exercise his option for switch over within the time accorded in that behalf by the applicable scheme.

14.5 Clearly, the Pension Scheme as reflected in O.M. dated 01.05.1987 and the facts under consideration, in the present case, are different. There is no requirement for a positive option being exercised for conversion to Pension Scheme. On the cut-off date i.e., 30.09.1987, employees by a deeming legal fiction got covered under the Pension Scheme, unless they

chose to exercise a positive option to continue with the CPF Scheme by 30.09.1987.

14.6 Similarly, in *Naresh Kumar's* case as well, the employees were required to exercise a positive option by a given date. The appellant in that case, three days prior to the cut-off date i.e., 16.02.1998 exercised a positive option for drawing pro rata monthly pension and family pension benefits as against his claim thereafter to opt for combined benefits of civil and military pension. The appellant, in that case had rendered service both in military and civilian establishments, hence, his desire to change his option to the combined benefits of civil and military pension. This plea of the appellant was rejected, once again, on peculiar facts obtaining in that case having regard to the fact that a positive option was exercised by him way back in 1998 from which he chose to resile by filing a writ petition in January 2007.

14.7 *Panchi Devi's* case is also distinguishable on facts. This case pertains to the claim of pensionary benefits by a widow of a work-charged employee. The husband of the appellant had died in 1978, while the right to claim pensionary benefit by widows generally, of work-charged employees, was made effective from 01.09.1982. The Supreme Court rejected the appeal of the appellant-widow of the work-charged employee, on the ground that benefit which came into existence after the death of her husband, could not be extended to her, as the amended rule in that behalf, was clearly prospective. The Supreme Court after discussing the merits of the matter sustained the view taken by the High Court that the petition could not be entertained on the grounds of delay and latches. In my view, the *Panchi Devi's* case is clearly distinguishable.

14.8 Similarly, the facts in *KVS's* case are also distinguishable as, the Supreme Court found that the Scheme provided for an option to the employees to switch over from CPF Scheme to Pension Scheme. The court also found that even though the appellant was not able to produce the original option form which was indicative of the fact that the employee was desirous of continuing under the CPF Scheme, the attendant circumstances showed that she chose to remain under the CPF Scheme. As indicated above, much would turn on the terms of the Scheme in issue.

14.9 O.M. dated 01.05.1987, gave no such choice to the employees. A plain reading of the provisions show that employees automatically stood covered under the Pension Scheme.

15. As indicated above, the University of Delhi, at one stage, with respect to employees who were in service prior to 01.01.1986, did seek to demonstrate the unfairness in having those employees continue under the CPF Scheme, which decidedly less beneficial, when compared to employees, who were covered under the Pension Scheme only by virtue of the fact that they were in employment on 01.01.1986, unless they, consciously chose to straddle the contrary course.

16. The argument raised before me by the respondents, which veered towards approbation, was based on the fact that petitioners had continued to contribute under the CPF Scheme. This submission would not cut much ice with me, having regard to the plain terms of O.M. dated 01.05.1987. If, the cover under the Pension Scheme, gets triggered with effect from 30.09.1987, the contribution by an employee and its receipt by the employer clearly proceeds on a misconception of the provisions of O.M. dated 01.05.1987.

As a matter of fact, this very argument was repelled by the Supreme Court, in *S.L. Verma's* case, and I think, for good reason. Consequently, there is no room for entertaining such an argument. The relevant observations made in paragraph 7, specific to this aspect, are, once again, extracted hereinafter.

“..It may be right 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..” (emphasis supplied)

17. This brings me to the submissions advanced by the respondents that the writ petitions should be dismissed in limine on the ground of delay and laches. As a matter of fact, the argument dealt with above with regard to the petitioners' contribution to CPF Scheme was made in support of this submission, as well.

17.1 In my opinion, the petitions in the instant case cannot be dismissed on the ground of delay and laches for the following reasons. Firstly, consistent with the provisions of O.M. dated 01.05.1987, the petitioners were not required to carry out an overt act to get cover under the Pension Scheme. The fallacy, if any, was that of the respondents who sought a positive option in that behalf. The respondents, in my view, misconstrued the contributions towards CPF Scheme as an act which could unilaterally alter the provisions of O.M. dated 01.05.1987. Therefore, in that sense, the argument of delay cannot be advanced by the respondents.

17.2 Secondly, the delay if at all of the petitioners was in making representations to the respondents to correct the record. The inter se

correspondence exchanged amongst the UGC, University of Delhi and the MHRD would show that MHRD did not relent on varying the provisions of O.M. dated 01.05.1987. Though, there was, a slight thaw in the position of MHRD when, vide letter dated 24.04.2007, it sought details qua the financial ramifications of extending the date of switch over, nothing fruitful emerged from this query as UGC, could not supply the necessary information. This is reflected in UGC's letter dated 11.05.2007 addressed to MHRD.

17.3 The delay, thus, in approaching the court is largely explained. The respondents, who were otherwise sympathetic to the cause of the petitioners, cannot take this plea in court when they were, in a sense, complicit in the cause of the petitioners as outside, the litigation periphery they supported demand for variation of the provisions of O.M. dated 01.05.1987, wholeheartedly. The cause for grievance, therefore, continued to remain operative vis-a-vis the petitioners. The failure on the part of the respondents to cover the petitioners under the Pension Scheme, if not a continuing wrong, certainly fell within the realm of a successive wrong, when each time the respondents failed to correct the record. [See observations of the Supreme Court in *Union of India & Ors. vs Tarsem Singh (2008) 8 SCC 648* and *State of Madhya Pradesh & Ors. vs Yogendra Shrivastava (2010 12 SCC 538)*]. The cause of action will, however, not survive where employees have collected their dues under the CPF Scheme without protest whether by institution of an action in court or otherwise. In so far as arrears of pension are concerned in *Tarsem Singh* case (which was the case of disability pension), in paragraph 8 at pages 651-652, the following principle

is enunciated. For the sake of convenience, the relevant portion is extracted hereinbelow:

“..... In this case, the delay of sixteen years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to sixteen years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances.....

17.4 Since no arguments were addressed by counsels of either side with respect to the arrears of pension, nor were any facts supplied in respect of the same, I am not called upon to rule upon this aspect. Pertinently, no relief is also sought in that behalf in any of the petitions. Therefore, this aspect is not dwelled upon any further.

17.5 I must though add a caveat here, which is that, the position could be materially different where say an employee chooses to take his benefits under the CPF Scheme without protest (whether in the form of institution of action in court or otherwise), and thereafter, approaches a court for a similar relief. In that situation one may have to examine the issue of delay and latches bearing in mind the fact that cause of action would perhaps come to an end upon receipt of benefits under the CPF Scheme and, therefore, delay would have to be reckoned from that date. Subsequent representations and their disposal would not give a fresh cause of action to such employees.

17.6 In my opinion, if there was any unfairness in the petitioners being allowed the cover of Pension Scheme, at this stage, is largely removed by the fact that all the petitioners offered to return the benefits received under

the CPF Scheme with interest in terms of clause 4.2 of the O.M. dated 01.05.1987. The only difficulty is that the rate of interest, which is to be charged while recouping Government's contribution to the CPF Scheme, is not provided in the said notification. As indicated above, at least one of the petitioners i.e., Dr. (Mrs.) K. Prabha has already returned the employer's contribution under the CPF Scheme.

18. Having regard to the dicta of the Supreme Court in *D.S. Nakara's* case that grant of pension is a measure of socio-economic justice which, provides economic security in the evening of one's life, and that, this discernible purpose should inform the interpretive process involved in any such scheme, and therefore, should receive liberal construction, I am inclined to hold that the petitioners would stand covered under the Pension Scheme. In my view, this conclusion accords with the decision of the Supreme Court in *S.L. Verma's* case and the stand taken by the UGC with regard to the interpretation placed on clause 3.2 of O.M. dated 01.05.1987.

19. The captioned writ petitions are accordingly allowed. I must, however, clarify as to why, despite the petitioner, in WP(C) 2028/2012 seeking his deletion from array of parties, while being part of WP(C) 1490-507/2006, is being given the same relief. I have carefully perused the averments made in CM No.4814/2011, whereby it is indicated that the said petitioner sought deletion on the ground that he had gathered information through the RTI route that his case was being considered by the respondents under the Pension Scheme. Since, the petitioner was retiring on 31.03.2011, he was apparently, motivated to file the said application on 30.03.2011. It was not as if the petitioner wanted to continue under the CPF Scheme which

is what, albeit, erroneously, was sought to be portrayed by the concerned College in its counter affidavit. There is no dispute with respect to the fact, even in case of this petitioner, that he had not exercised an option to continue under the CPF Scheme. As a matter of fact, though the benefit owed to the petitioner under the CPF Scheme, had been received by Shivaji college, the same was not collected by him, as is reflected in his communication dated 16.12.2011, addressed to the said college.

20. Having regard to the above discussion, the respondents - University of Delhi/ concerned Colleges will be entitled to recoup their contribution under the CPF Scheme, if not already recouped, with simple interest at the rate of 8% p.a.

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

RAJIV SHAKDHER, J.

APRIL 30, 2014

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