**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**Date of decision: 09.05.2017**

**CWP No.941 of 2013**

Shantanu Chatterji & others ...Petitioners

Vs.

Union of India & others ...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA**

Present: Mr. R.K.Chopra, Senior Advocate, with
Mr. Gaurav Sharma, Advocate, for the petitioner.

Mr. Brijeshwar Singh Kanwar, Advocate,
for respondents No.1 & 2.

Mr. I.S.Sidhu, Advocate,
for respondents No.3 & 4.

**RAJIV NARAIN RAINA, J. (ORAL)**

When the petitioners were faced with the prospect of opting out of the General Pension Fund scheme (GPF) and continue with the Contributory Pension Fund scheme (CPF), they took a conscious decision in writing in 1989 exercising their option that they wished to continue with the CPF scheme. Thereafter, Government acted according to their wishes and started depositing their share of the provident fund subscriptions. Today, the petitioners wish to shift in reverse gear and claim a change over from the CPF to the GPF scheme. That request has been rejected by the order dated 04.05.2006 (Annex P-8), which reads as under:

> "I am directed to enclose a copy of the letter no. nil dated 13th March, 2006 received from the employees of your institute on the above cited subject and to state that regarding switching over from CPF to GPF scheme is concerned, this

> Ministry had earlier taken up the matter with Ministry of Finance and who in turn informed that the request for switching over from CPF to GPF cannot be acceded to as the switching over from CPF to GPF is applicable only to the Central Government employees and not the employees of Autonomous Organisations.
>
> Keeping in view of the above position, you may accordingly inform the concerned."

The reason for denial of switching over from CPF to GPF, as recorded in the order is that switching over is applicable only to Central Government employees and not to the employees of autonomous organizations. The petitioners belong to an autonomous organization.

The only document relied upon by learned senior counsel Mr. R. K. Chopra is a letter from the Council of Scientific & Industrial Research addressed to the Director/Head of all National Labs./Institutions of CSIR. The letter is dated 06.04.2011 (Annex P-15). By the very nature of the letter issued by way of instructions on subject matter of switch over from CPF to GPF is case specific to CSIR and can have no impact on the respondent institution i.e. National Institute of Technical Teachers Training & Research (NITTTR) and bind the organization and bring relief of switch over from one to the other scheme to its employees.

The situation prevailing at the time when the letter was issued in 2011 was that in CSIR employees who fell among the category of Group IV Scientists there were many of them covered by the GPF scheme. There was still a small group of Scientists that continued to be governed by CPF scheme. In order to remove this anomaly, in para.2 of the letter, it was informed that in order to resolve the issue once and for all, the Director General, CSIR had constituted a Committee under the Chairmanship of Dr. Chandra Shekhar, Director, CEERI, Pilani to examine and make holistic recommendations to settle the issue finally. The Committee deliberated and came to the conclusion that there were 85 Scientists in CSIR, who continued to be governed by the CPF scheme as either they had opted for CPF or for various reasons could not exercise any option. With the examination of the instructions on the subject, the Committee converged to the view that Scientists confirmed w.e.f. 28.11.1984 or thereafter should be covered by the Pension Scheme automatically from the date of their confirmation. The recommendations of the Committee were approved and that is how the switch over took place in that organization.

If the argument of Mr. Chopra is to sustain to the advantage of his clients and to succeed to the effect that the letter of CSIR should be made automatically applicable to NITTTR then the contention should rest on direct decisions taking the same view by the Central Government appropriate to the respondent institution. But this letter of CSIR cannot be extended by necessary implication to the employees of NITTTR, who seek a switch over from CPF to GPF even after consciously opting for CPF in 1989. No other direct material has been shown to this Court from where it can safely be concluded that the law in the Central Government is directly in favour of the petitioners to change them over from CPF to GPF scheme. This argument does not impress me.

The judgment of the Delhi High Court cited by Mr. Chopra in LPA 410/2014 titled '<u>Smt. Shashi Kiran & others Vs. Union of India & others</u>' and a large number of connected cases decided on 24.08.2016, is inapplicable to the facts of this case. For one, the Delhi High Court did not deal with Scientific Officers, but with the teaching staff working in colleges affiliated to the Delhi University and teachers in the University itself. There the Court found that there were classes of persons who have opted while others who have not opted for one or the other scheme. The effect of silence was automatic switch over to the pension scheme.

But in this case, there were declarations made in writing attached as Annex R-5 (Collectively), where the petitioners made conscious decision to be governed by the CPF scheme way back in 1989. The effect of exercising option is in the nature of waiver of right and akin to contract since the right claimed is personal to the employee and is not addressed to public. The right is neither fundamental in nature, which cannot be parted away, not is it a civil right, which can be waived and the best evidence of waiver is in writing opting one way or the other. The writing is akin to an undertaking at the time of exercising option which binds maker.

One fine example of such an undertaking though not in a case directly involving the facts of this case or the issue involved, but involving interpretation of proposition (ii) in State of Punjab & others Vs. Rafiq Masih (White Washer) & others, AIR 2015 SC 696: 2015 (1) SCT 195 is in a recent Supreme Court judgment reported as High Court of Punjab & Haryana & others Vs. Jagdev Singh, AIR 2016 SC 3523: 2016 (4) SCT 286. The Supreme Court was dealing with a case where there had been committed a mistake of over payments of money by the High Court and which were sought to be recovered. Proposition (ii) in *Rafiq Masih's* case is to the effect that "recovery from retired employees, or employees who are due to retire within one year, of the order of recovery", no recovery will be made. The Supreme Court explained Proposition (ii) and held that it cannot apply to a situation where the officer furnished an undertaking while opting for the revised pay scale. He was then bound by the undertaking and recoveries could be made and the directions in *Rafiq Masih* were inapplicable. Jagdev Singh was put on notice by the High Court that any payment found to have been made in excess at the time of release of revised pay scale would be required to be refunded. To my mind, the principle in *Jagdev Singh's* can be applied by analogy to this case.

It is pointed out by the learned counsel for the Union of India that on 30.06.2009, a sea change has been brought about altering the entire structure of the CPF scheme and the petitioners have opted for that new scheme called the 'New Pension Scheme' (NPS). The Office Memorandum dated 30.06.2009 which restructures the benefit of retirement pension scheme is reproduced below:

> "Subject: Transition from Contributory Provident Fund to Defined Contribution Pension Scheme for the employees of Autonomous Bodies.
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> ***
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> Proposals from various autonomous bodes are being received in the Ministry of Finance with the request for a shift from Contributory Provident Fund to GPF-cum-Pension Scheme or for creation of a Pension Fund in respect of employees who joined before 01.01.2004.
>
> 2. The employees of autonomous bodies who have joined on or after 01.01.2004 have been already covered under the New Pension System (NPS). It has now been decided that these organization may also be permitted to shift to a defined contribution pension scheme i.e. NPs in respect of employees who have joined before 01.01.2004. The salient features of the scheme are as under:
>
> (i) The existing corpus of Contributory Provident Fund (both employees & the employers) would be moved over to the Trust Fund accounts under the New Pension Scheme.
>
> (ii) In order to facilitate the transition from Contributory Provident Fund to Defined Contribution Pension Scheme, the autonomous body would make, in addition, one time ex-gratia payment of 10% of the employers' contribution for each of the employees opting to switch over to the NPS.

(iii) Recurring monthly contribution by employee @ 10% basic pay + DA and a matching contribution by the Autonomous organizations @ 10% of Basic Pay + DA would be payable. The employer's contribution would be made from the month the organization/employee shifts over to NPS and would be limited to 10% of Basic Pay + DA.

(iv) The procedure for NPS would be identical to that presently applicable for employees appointed on or after 01.01.2004. In this context, PERDA may be consulted for further details on the implementation of the scheme. Reference is invited to our earlier OM No.1/13/2008, dated 28th November, 2008 dealing the procedure for NPS of employees of autonomous bodies appointed on or after 01.01.2004.

(v) The employees recruited prior to 01.01.2004 may be given an option either to remain in the existing CPF scheme or more over to the NPS."

This puts paid to the argument of Mr. Chopra for a change over to the GPF scheme. The petitioners, I am informed, have opted for the NPS scheme, vide letter dated 16.03.2009 appended to the petition as Annex R-12 at Pp.135 of the paper-book. I do not see that in the face of the option exercised in 1989, the request having been rejected in 2006, sea change born in 2009 with fresh option exercised, then pray what is it that the petitioners have in mind to achieve in approaching this Court in 2013.

The contention of Mr. Chopra that on discovery that the NPS scheme was floated was not more beneficial to the employees has to be rejected since as petitioners seem to be quite satisfied with their lot from 1989 till 2009 and till 2013 with the petition was filed complaining of NPS scheme. How one scheme is more beneficial or less beneficial has not been demonstrated in rupees and paisa.

I would, therefore, commend dismissal of this petition on all fronts including on huge delay and unexplained laches and the hazy claim without any fixed moorings. Besides, the order dated 04.05.2006 (Annex P-8) has neither been impugned in this petition nor could be in view of fresh option exercised under NPS scheme by the petitioners. Neither has the NPS scheme been challenged in the writ petition. The petitioners appear to me a confused lot lost in CPF, GPF & NPS schemes.

For the foregoing reasons, I find no merit in this petition. It is dismissed.

**09.05.2017** **[RAJIV NARAIN RAINA]**
Vimal **JUDGE**

*Whether speaking/reasoned:* *Yes*
*Whether Reportable:* *No*