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

+ **W.P.(C) 479/2016**

KANTA KUMARI & ANR

..... Petitioner

Through: Ms. Jyoti Singh, Sr. Adv. with Mr.
Tanuj Khurana and Mr. Rishab Garg,
Adv.

versus

UNION OF INDIA & ORS

..... Respondent

Through: Mr. Ajay Digpaul, CGSC with Ms.
Mohita for R-1&3

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

21.04.2017

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The petitioners assail the order dated 24.02.2015 passed in O.A. No.2220/2012 by the Central Administrative Tribunal, Principal Bench, New Delhi ("Tribunal") dismissing the aforesaid original application of the petitioners. The petitioners were aggrieved by the rejection of their request for being covered by the pension scheme on the ground that they had opted for the Contributory Pension Fund (CPF) Scheme and on that account they could not be covered by the pension scheme. The relevant facts in relation to the two petitioners may be taken note of:

Petitioner No.1 was appointed on 22.01.1981 as Stenographer; whereas petitioner No.2 was appointed on 06.04.1982 as LDC. The respondents introduced the pension scheme on 01.05.1987, which was available to the employees who were in service as on 01.01.1986. Prior to this, the employees were covered under the CPF Scheme. The last date for making the option for one, or the other scheme was 30.09.1987. Under the scheme, the default clause was that employees who do not give their options by the last date i.e. 30.09.1987, would be deemed to have opted for the pension scheme. Thus, the options were meaningfully required to be submitted, only to continue to be governed by the pre-existing CPF scheme.

The petitioners did not give any option by the last date i.e. 30.09.1987. However, on 05.04.1989 and 09.06.1989 the petitioners respectively gave their options to be covered by the CPF scheme. Subsequently, on 15.06.2010 and 16.04.2010 respectively, the two petitioners sought to be covered by the pension scheme. Their case was recommended by the employer UGC on 07.08.2010 and a reminder was sent to the DoPT on 09.09.2010. A further representation was sent by the UGC to the Ministry of Human Resources Development on 11.04.2011. When the said representation was rejected on 26.09.2011, the petitioners approached the tribunal.

We may observe that a learned Single Judge of this Court had already pronounced on the issue raised in the present petition in a batch of writ petitions, including in W.P. (C.) No. 5631/2010 – *N.C. Bakshi v. Union of India & Others*, decided on 30.04.2014. The learned Single Judge had allowed the writ petitions preferred by the employees, who were similarly situated as the petitioners herein. The learned Single Judge had relied on his

earlier decision in *R.N. Virmani v. Delhi University*, W.P. (C) No. 1490/2006 – 1507/2006, rendered in respect of employees of the Delhi University. When the original application was heard and decided by the tribunal, the decision of a learned Single Judge in *N.C. Bakshi* (supra) was pending consideration in appeal – vide LPA No.554/2014. In fact, there was a batch of similar appeals which were pending consideration.

During the pendency of the present petition, the decision of the Division Bench has been rendered in a batch of LPAs including LPA No.410/2014, *Smt. Sashi Kiran & Ors. v. Union of India* (which also includes the LPA in the case of N.C. Bakshi) on 24.08.2016. The Division Bench has held in favour of the employees, by observing that the pension scheme was a beneficial scheme and the same had to be applied without discrimination. Consequently, the appeal preferred by the Delhi University in the case of N.C. Bakshi was dismissed.

The submission of learned senior counsel for the petitioner is that the present case is, therefore, squarely covered by the said decision of the Division Bench. This position is not even disputed by counsel for the respondent.

Consequently, we allow the present writ petition following the decision of the Division Bench in *Smt. Sashi Kiran & Ors. v. Union of India*, LPA No.410/2014 pronounced on 24.08.2016. Learned senior counsel for the petitioners, on instructions, has stated that the petitioners shall forego all benefits that they may have derived on account of the fact that they had opted for the CPF scheme on 05.04.1989 and 09.06.1989, and that they shall refund the amounts with interest that they may have received under the CPF scheme. The respondents may, therefore, compute the

pensionary benefits after accounting for the amounts, if any, received by the petitioners and may also deduct the interest on the amounts so released while computing the pensionary benefits of the petitioners.

The petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

DEEPA SHARMA, J

APRIL 21, 2017

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