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

\+ **Date of Decision: 18.05.2017**

% **LPA 548/2016**

C L KHANNA (RETD)

..... Appellant

Through: Ms. Jyoti Singh, Senior Advocate along with Mr. Tanuj Khurana, Mr.Himanshu Gautam & Mr. Rishabh Garg, Advocates.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Prasanta Varma, Senior Central Govt. Counsel with Dr. G.L. Bhatia, G.P. and Ms. Prativarani Varma, Advocate for respondent No.1.
Mr. Kirtiman Singh, CGSC for respondent/ UOI.
Mr. Amit Bansal & Ms. Seema Dolo, Advocates for respondent No.2.
Mr. Mohinder J.S. Rupal & Ms.Disha Malhotra, Advocates for respondent No.3/ DU.
Mr. Arjun Harkauli, Advocate for respondent No.4/ UGC.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE DEEPA SHARMA

VIPIN SANGHI, J. (OPEN COURT)

C.M. No.47649/2016

1. This application has been preferred by the applicant/ Sh. G.L. Bhatia, Advocate to mark his appearance in the order dated 07.10.2016.

2. For the reasons stated in the application, the same is allowed.

C.M. No. 37224/2016

3. This application has been preferred by the appellant to seek condonation of 847 days delay in filing the present Letters Patent Appeal (LPA).

4. The impugned judgment assailed in the present appeal was rendered by the learned Single Judge on 30.04.2014. However, the present appeal came to be filed, firstly, on 23.09.2016. The explanation furnished by the appellant for the said delay is that he is an old person and is suffering from heart ailments since long. One of the valves of his heart is not working properly since 2011 for which he is under constant treatment and medication from Fortis Escorts Hospital. He has also undergone Angiography and surgery on account of his medical condition.

5. The appellant has placed on record a host of documents which show that he has been receiving treatment at the Fortis Escorts Hospital since 2011. Even after the impugned judgment was rendered, he continued to

receive treatment at the said hospital, which is evidenced from the documents found from pages 355 to 403 on record.

6. We are, therefore, satisfied that the appellant was prevented from preferring the appeal on account of his ill health, which constitutes sufficient cause to explain the delay.

7. Accordingly, the application is allowed.

LPA 548/2016 and C.M. No. 37222/2016

8. The present appeal has been preferred by the appellant/petitioner against the judgment dated 30.04.2014 rendered in a batch of writ petitions, including W.P.(C.) No.1216/2011, insofar as it concerns the appellant. In the said writ petition, the petitioner was arrayed as petitioner No.11. The learned Single Judge allowed the said writ petition and granted relief to practically all the petitioners not only in the aforesaid writ petition, but also the petitioners in the other petitions. However, the petitioner herein, and one Sh. C.M. Gupta were singled out and not granted the relief, on the basis that the facts in their cases were different.

9. The appellant, and the other petitioners in the batch of writ petitions dealt with by the learned Single Judge, were all serving in the Ramanujan College i.e. respondent No.2, which is affiliated to the Delhi University i.e. respondent No.3. Initially, they were all covered by the CPF Scheme. The Government introduced the General Provident Fund cum Pension – Gratuity (GPF) Scheme on 01.05.1987. It provided that all the employees serving as on 01.01.1986, who were covered by the Contributory Provident Fund-cum-

Gratuity (CPF) Scheme would get covered by the GPF Scheme, unless they specifically opt to be covered by the CPF Scheme by the cut-off date. The cut-off date was fixed as 30.09.1987. All the petitioners in the batch of writ petitions, including the appellant herein, did not make an option by the cut-off date. The option was exercised after the cut-off date, whereby they opted for the CPF Scheme. Subsequently, however, they became wiser and sought to get covered by the GPF Scheme, which was more beneficial to them.

10. Since their request to get covered by the GPF Scheme was rejected, they approached the Court by filing the aforesaid batch of writ petitions. The learned Single Judge, in the impugned judgment, has set out the particulars of all the petitioners in the batch of writ petitions and we reproduce the said tabulation hereinbelow. The relevant particulars vis a vis the appellant have been highlighted by us in bold:

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	06.12.2010	P1 – 28.02.88 P2 – 11.12.87 P3 – 27.01.88 P4 – 11.12.87 P5 – 29.02.88

		P6 – 20.11.2011 P7 – 31.05.2018 P8 – 31.05.2016 P9 – 30.09.2013 P10 – 31.03.2010 **P11 – 30.04.2004**		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	5	P1- 2011 P2- 2014	18.07.2011	P1-26.02.88, P2-29.02.88,

and Ors.		P3- 2018 P4- 2017 P5- 2012		P3-27.11.87, P4-21.12.87 P5-17.02.88
5975/2010 Mangala Prasad Upadhyay Vs. Union of India and Ors	1	Retirement due in 2024	28.08.2010	08.10.87
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

[emphasis supplied]

11. The learned Single Judge allowed the writ petitions by holding that,

since the options had not been exercised by them by the cut-off date, i.e. 30.09.1987, by default, they came to be covered by the GPF Scheme and the subsequent exercise of option by them was of no avail. The petitioner and Sh. C.M. Gupta were, however, denied relief on the premise that at the time when they retired, they accepted the CPF amounts, and the writ petitions were preferred much later in the year 2011. So far as the appellant petitioner is concerned, he had given his option after the cut-off date, i.e. on 23.12.1987 and he retired on 30.04.2004. .

12. The decision of the learned Single Judge in the batch of writ petitions was assailed by the Delhi University in LPAs. The other unsuccessful petitioner, namely Sh. C.M. Gupta also preferred his LPA vide LPA No. 594/2014. While LPAs of the Delhi University were dismissed, the appeal preferred by Sh. C.M. Gupta was allowed vide common judgment dated 24.08.2016. The lead LPA was LPA No. 410/2014 titled *Smt. Shashi Kiran and Others Vs. Union of India & Others*. It is informed that the said decision has been carried in appeal by the Delhi University before the Supreme Court. However, the SLPs have not been listed so far.

13. So far as the appellant is concerned, on account of his ill health, he could not file his LPA earlier. The LPAs were decided by the common judgment dated 24.08.2016. The present LPA was filed only on 23.09.2016.

14. We may observe that the writ petitions preferred by some of the employees, who had opted for the CPF Scheme before the cut-off date, and subsequently wanted to switch over to GPF Scheme, had also been dismissed by the learned Single Judge. However, the Division Bench by the

aforesaid common judgment allowed their LPAs as well.

15. Learned senior counsel for the appellant submits that the appellant's case is covered by the decision dated 24.08.2016 rendered by the Division Bench in the aforesaid LPAs. She submits that the appellant is similarly situated as C.M.Gupta-the appellant in LPA No. 594/2014. She further submits that learned Single Judge while rejecting the appellant's claim had erred in concluding that the appellant had accepted the CPF amount upon his retirement without protest or demur. She submits that the correspondence placed on record would show that the appellant had not accepted the CPF amount without protest. In this regard, she has referred to the correspondence which the appellant had undertaken since before his retirement.

16. On the other hand, it is pointed out by Mr. Rupal, who appears for the Delhi University, that the special circumstances of the appellant's case-which were taken into account while denying relief to him, have not been considered by the Division Bench while deciding the batch of LPAs on 24.08.2016. Thus, the appellant cannot seek to take advantage of said common judgment rendered by the Division Bench in the LPAs. He points out that though the LPA preferred by C.M.Gupta was allowed by the Division Bench, the specific facts of his case did not receive consideration by the Division Bench. He points out that the other employees whose cases were considered by the Division Bench were still in service, whereas the appellant had retired on 30.04.2004; he had accepted the CPF amount without protest, and; had preferred the writ petition along with ten others only in the year 2011.

17. We have perused the common judgment rendered by the Division Bench in LPA No. 410/2014 titled *Smt. Shashi Kiran and Others Vs. Union of India & Others.* and other connected LPAs rendered on 24.08.2016. The Division Bench in paragraph 17 of the said decision, inter alia, observed in relation to the GPF Scheme;

> *"………that the nature of the scheme contemplated by the notification was to ensure that only those wishing to continue in the CPF scheme had to opt to do so. A default in that regard, meant that the employee not filling his option (to continue in CPF) was deemed to have "come over" or migrated to the Pension Scheme. The University and the official respondents (UGC, Central Government etc) had urged that the petitioners in the Virmani group are deemed to have accepted the CPF benefits, because they allowed deductions from their monthly salaries during the interregnum and permitting Pension Scheme benefits would not be fair; in the same breath it was urged that there was delay. This court is of opinion that the University – and the respondents are relying on contradictory pleas. If they urge that the true interpretation of the 1987 circular meant that anyone not furnishing an option to continue in the CPF scheme is deemed to have opted for the Pension Scheme (as the Virmani group undoubtedly did) there is no way they can succeed on the ground of laches or estoppel. If plain grammatical meaning of the language of the May 1987 OM were to be given, all those who do not opt would automatically be borne in the Pension Scheme. Such being the position, the argument that the petitioners in Virmani allowed deduction of CPF amounts from their salary, cannot be argued against them. CPF schemes typically require employees to commit greater amounts than in GPF scheme, on a monthly basis. That these staff members allowed higher amounts, which were held under a scheme (and which earned interest), the benefit of which had not accrued and was not available to them till the date of superannuation, cannot be urged against them. Likewise, the question of laches would not arise, because at the most, pension*

would not be allowed for the entire period, given that in matters of pension (see Union of India & Ors. V. Tarsem Singh (2008) 8 SCC 648) there is a continuing cause of action. Therefore, we find no infirmity with the learned Single Judge's order, in Virmani's case."

18. The Division Bench further observed in para 20 as follows:

"…………that all the employees opted for the CPF benefits, after the cut-off date. It was because of this and the expressed stand of the UGC- and the University that the learned Single Judge concluded that notwithstanding the so called option, exercised in terms of the extensions given, the writ petitioners could not be denied the benefit of the Pension Scheme because they were deemed, by the OM of 01.05.1987 to have opted for it, by default. Having regard to these facts, the appellants could not have urged that the benefit of the Pension Scheme should have been denied to these class of petitioners/teaching staff. Therefore, we are of opinion that there is no infirmity with the impugned judgment of the learned Single Judge. The University's appeals, therefore, deserve to fail."

19. Thus, the appellant could not have been denied coverage under the GPF Scheme merely because he had opted to be covered by the CPF Scheme after the cut-off date.

20. The appellant has pointed out the rationale found in the impugned judgment, on the basis of which the appellant has been denied relief. The same reads as follows:

"*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.***"

21. Thus, it needs examination whether it could be said that the appellant received the benefits under the CPF Scheme upon retirement without protest. For this purpose, we may take notice of the *inter se* correspondence undertaken by the appellant, by the University and by the UGC, and a few other relevant facts.

22. On 03.12.2003, the appellant sent a communication along with 17 others, addressed to the respondent college stating that as per notification dated 10.06.1987 of Delhi University, all CPF beneficiaries who were in service on 01.01.1986 were deemed to have switched over to the pension scheme unless they had specifically opted to continue under the CPF Scheme, and the options had to be exercised by 30.09.1987. They stated that the employees who had not exercised their option by 30.09.1987, should be deemed to have given their option for GPF-cum-Pension Scheme. They further stated that they had not so exercised their option by the stipulated date. They also referred to the D.O. No.F/1-7/93 (CU/DC) dated 16.10.2003 of the UGC, addressed to the Registrar of Delhi University stating that options exercised after 30.09.1987 had become redundant. Since they had exercised their options after 30.09.1987, which were invalid, they sought coverage under the GPF-cum-Pension Scheme.

23. Thereafter, the appellant individually sent a communication on 26.02.2004 to the respondent college stating that he is due to retire on 30.04.2004. He once again reminded the college that he applied for conversion from CPF to GPF-cum-Pension Scheme on 03.12.2003 along with 17 others, but that he had not received any response. He stated that since his retirement is shortly due, an early decision be taken in the matter.

He further stated that "*If however no final decision is arrived at till the date of my retirement I request you to retain the college share of my provident fund till a final decision is taken on this matter*".

24. The respondent college, acting on the representation made by the petitioner and others, sent a communication dated 03.09.2004 to the UGC. In this communication, after referring to the fact that 18 employees-who had opted for the CPF Scheme after cut-off date, had sought coverage by GPF-cum-Pension Scheme, the respondent college stated as follows:

> " *Sir, according to your D.O. Letter No. F.1-7/93 (CU/DC) dated 15/16.10.2003, option given by employees after 30th September, 1987 (final cut off date) is invalid. Accordingly, 18 employees have represented that since their options were submitted after the cut off date of 30th September, 1987 they should be treated as invalid and all 18 employees should be admitted to GPF immediately.*
>
> *As per the policy of GOI & UGC the employees share alongwith interest thereon is required to be refunded to UGC in cases where switch over to GPF Pension Scheme has been accepted as per cut off date. We have therefore, worked out the total accumulation in their CPF (employers & interest) in respect of these 18 employees which we would refund to UGC for admitting these employees in GPF Pension Scheme."*

25. Pertinently, when the appellant retired on 30.04.2004, he did not receive the employer's contribution along with interest under the CPF Scheme. After over a year after his retirement, the respondent college along with communication dated 31.05.2005, sent to the appellant the amount of Rs.6,53,309/- towards the college's share of the CPF amount and interest thereon, which was computed till the date of the appellant's retirement. In

this communication, the respondent college stated as follows:

> "*Since the U.G.C. has expressed it's inability to shift the case of CPF to GPF the college decided not to retain the amount further, therefore we are enclosing herewith the cheque No.144874 dated 31.05.2005 amounting Rs.6,53,309/- (Rupees Six lacs Fifty Three Thousand Three hundred Nine Only) towards the College Share & interest on it till the date of your retirement.*"

26. In the light of the aforesaid correspondence, we find merit in the submission of Ms.Singh that it cannot be said that the appellant consciously and quietly accepted the entire CPF amount at the time of his retirement on 30.04.2004, and only thereafter raised the issue with regard to coverage under the GPF-cum-Pension Scheme for the first time in the year 2011 while filing the writ petition.

27. We have deliberately extracted hereinabove, in detail, the correspondence undertaken by the appellant jointly with others employees, as well as individually. The same clearly shows that the appellant, since well before his retirement, repeatedly represented that he should be covered under the GPF-cum-Pension Scheme since, by the cut-off date i.e. 30.09.1987, he had not opted to be covered by the CPF Scheme. He even did not accept the employer's contribution and interest thereon while receiving his retiral dues upon his retirement on 30.04.2004. It was only after about 13 months that the respondent college, on its own, sent the said amount to him. Merely because the appellant may have received and encashed the cheque for Rs.6,53,309/- at that stage, it cannot be said that he had waived his rights to be covered by the GPF-cum-Pension Scheme.

28. Ms. Singh has also drawn our attention to the fact that the respondent college itself had been representing the case of the appellant and the other similarly situated employees before the UGC. The Governing Body of the respondent college in its meeting held on 12.09.2009 constituted a committee with regard to implementation of the letter received from the UGC regarding transfer of employees from CPF to GPF Scheme. A Three-Member Committee was constituted, which made its report dated 17.12.2009 in favour of the appellant and other similarly situated employees. The said report of the Three-Member Committee was placed before the Governing Body of the respondent college and the Governing Body of the respondent college in its meeting held on 17.01.2010 decided to address the said issue before the Delhi University with the recommendations of the Committee. Thus, it cannot be said that the approach by the appellant before the Court in the year 2011 to seek relief along with others was highly belated and, on that ground, his writ petition ought to have been dismissed. Pertinently, the relief was not denied by the learned Single Judge to any of the petitioners before it, including the petitioner herein, on the ground of delay and latches.

29. In the light of the aforesaid, in our view, there was no justification to single out the case of the appellant herein for denying the relief which was granted to the other writ petitioners in the batch of writ petitions. Pertinently, Sh. C.M. Gupta, who was similarly situated as the appellant, was granted relief since his LPA was allowed by the Division Bench in a batch of LPAs decided on 24.08.2016. In our view, the learned Single Judge has not appreciated the aforesaid facts which show that the appellant had not

accepted the entire CPF amount without protest.

30. Accordingly, the impugned judgment is set aside insofar as it denies relief to the appellant. It is declared that the appellant is entitled to coverage under the GPF-cum-Pension Scheme.

31. The appellant retired on 30.04.2004. His request was rejected on 31.05.2005 when he was sent the payment of Rs.6,53,309/-. However, the writ petition, i.e. W.P.(C.) No. 1216/2011 – wherein the appellant was one of the petitioners, was preferred only in the year 2011. Merely because the respondent college may have been pursuing the cause of the appellant and the other employees with the University, did not prevent the appellant from agitating his rights before a judicial forum. He could have preferred the writ petition earlier as well. Since the respondent college finally communicated the decision of the University while making payment of the amount of Rs.6,53,309/-, the appellant could have raised his grievance before a Court immediately thereafter.

32. In view of the aforesaid, we restrict the relief of grant of arrears of pension to the appellant for a period of three years prior to the date of filing of the writ petition by him before the learned Single Judge. He shall be entitled to grant of pension for the period beginning three years prior to the date of filing of the writ petition. The arrears of pension due to the appellant shall, accordingly, be worked out. The amount of CPF and interest thereon received by the appellant is liable to be refunded by the appellant along with interest @ 8% per annum as held in ***Union of India & Others Vs. Tarsem Singh***, (2008) 8 SCC 648. The amount to be refunded by the appellant, as

aforesaid, shall first be adjusted from the arrears of pension that may be worked out and the balance, if any, shall be paid to the appellant. If the amount to be refunded by the appellant is larger than the arrears due to him, he shall refund the balance amount within three weeks of the amount being communicated to him. The entire exercise in respect of computation and payment of arrears/ refund, if any, and the payment of pension henceforth shall be completed within two months from today.

33. The appeal stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

DEEPA SHARMA, J

MAY 18, 2017
B.S. Rohella