IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 6th July, 2018
Pronounced on: 17th July, 2018

\+ **W.P.(C) 2740/2004**

Dr. SANTOSH KAUR SANGARI ..... Petitioner
Through: Mr. Amar Nath Gupta, Adv.

Versus

UNIVERSITY OF DELHI & ORS. ..... Respondents
Through: Mr. Anil Panwar, Adv. for UOI/R-2

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

% **JUDGMENT**

C. HARI SHANKAR, J.

1. This writ petition, at the instance of certain teachers employed in the University College of Medical Sciences (hereinafter referred to as "UCMS"), impugns the rejection, by the University of Delhi (hereinafter referred to as "the University") and the University Grants Commission (hereinafter referred to as "the UGC"), of their request for being permitted to switch over, from the Contributory Provident Fund-cum-Gratuity (CPF) Scheme, to the General Provident Fund-cum-Gratuity-cum-Pension (GPF) Scheme. The petitioner avers that she, and certain similarly placed employees, approached 'Common Cause', a registered NGO, which addressed a representation, on their behalf, to the University, which was also turned down on 2nd

September, 2003. The petitioner, therefore, contends that she was entitled to convert from the CPF the GPF Scheme and that, in rejecting her request for such conversion, the respondents acted in violation of the law. Accordingly, the writ petition seeks issuance of a writ of mandamus, commanding the respondents to allow the petitioner to switch over from the CPF to the GPF Scheme, as opted by her in 1999.

2. It would be appropriate to proceed, sequentially, through the various instructions and communications, which have a bearing on the issue.

3. Over a period of time, Central Government employees, who were governed by the CPF Scheme, had been given repeated options to switch over to the GPF Scheme. Prior to the 4th Central Pay Commission (hereinafter referred to as "the 4th CPC"), the last such option was extended by way of Office Memorandum (OM) dated 6th June, 1985, issued by the Department of Personnel and Training (hereinafter referred to as "the DOPT").

4. The 4th CPC recommended that all CPF beneficiaries, in service on 1st January, 1986, should be deemed to have switched over to the GPF Scheme on that date, unless they specifically opted to continue under the CPF Scheme. Following thereupon, the Department of Pension and Pensioners' Welfare issued OM No 4/1/87-P.I.C-I., dated 1st May, 1987, conveying its acceptance to the said recommendations

of the 4th CPC and stipulating that the recommendations would be implemented in the following manner:

> "3.1 All CPF beneficiaries, who were in service on 1st January, 1986, and who are still in service on the date of issue of these orders (viz., 1st May, 1987) will be deemed to have come over to the Pension Scheme.
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> 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 30-9-1987, 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.
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> 3.3. The CPF beneficiaries, who were in service on 1st 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 30-9-1987.
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> 3.4 In the case of CPF beneficiaries, who were in service on 1-1-1986, but have since retired, and in whose case the CPF Account has not already been paid, will be allowed retirement benefits as if they were borne on pensionable establishments unless they specifically opt by 30-9-1987, to have their retirement benefits settled under the CPF Scheme.
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> 3.5 In the case of CPF beneficiaries, who were in service on 1-1-1986, but have since died, either before retirement or after retirement, the case will be settled in accordance with para 3.3 or 3.4 above, as the case may be. Options in such cases will be exercised latest by 30-9-1987, by the widow/widower and in the absence of widow/widower by the eldest surviving member of the family who would have

otherwise been eligible to family pension under the Family Pension Scheme if such scheme were applicable.

3.6 The option once exercised shall be final."

5. Apparently, despite the fact that the OM dated 1st May, 1987 *(supra)* fixed 30th September, 1987, as the cut-off date, by which the employees were required to exercise their option, to continue under the CPF Scheme if they so desired, various autonomous bodies, including universities, while adopting the basic policy of the OM, fixed their own cut-off dates, for exercise of option by the employees. This resulted in disparity among employees of different autonomous bodies. Insofar as the Delhi University was concerned, Statute 28 (5), in its Statute, enabled the extension, to teaching staff of the University, of the benefits accruing consequent to adoption, by the Central Government in respect of its employees. Exercising authority under the said statute, the University, acting through its Executive Council, issued 11 notifications, on 4th June, 1987, 9th February, 1989, 6th September, 1989, 12th July, 1991, 16th July, 1993, 12th July, 1994, 16th July, 1994, 15th March, 1996, 11th February, 1998 and 1st January, 1999, extending the period within which options were required to be exercised by its employees/officers, whether to continue and remain with the CPF Scheme or migrate to the GPF Scheme.

6. The petitioners rely on an undated Notification, issued by the University, which read thus:

> " The Executive Council at its meeting held on 30.9.1998 (EC Res. No 132) has decided that the teaching

> and non-teaching staff of the University and its colleges who were in service on 30.9.1998 be allowed to change their option from Contributory Provident Fund-cum-Gratuity Scheme to General Provident Fund-cum-Pension-cum-Gratuity Scheme, as one-time exception provided they exercised their option by 31.1.1999.
>
> Principal/Heads of Departments are requested kindly to bring the content of this notification to the notice of each employee and his her acknowledgement for having noted the contents to be obtained and kept in the office record.
>
> The specimen of the option forms to be filled in duplicate are enclosed. In respect of the employees of the University option forms may be sent to the Assistant Registrar (A/cs-II) and in the case of college employees to the respective Principles so as to reach latest by 31 January 1999."

7. By a subsequent communication, dated 20th November, 1998, addressed to the individual colleges (including the UCMS), the last date, for submission of options for switching over from the CPF to the GPF Scheme, by the employees, was extended, by the University, till the 1st week of February, 1999.

8. Taking note of the fact that various autonomous bodies, including Universities and, significantly, the IIT, Kanpur, had, while applying the instructions, of the DOPT, permitting switch-over from the CPF to the GPF Scheme, fixed their own cut-off dates and had been allowing exercise of such option year after year at a stretch, the UGC wrote to the MHRD, pointing out that a situation of disparity, amongst similarly placed employees in different autonomous bodies, had arisen. In order to neutralise the situation, the UGC stated, in the

said letter, that it was necessary to obtain the consent of the MHRD to allow one more cut-off date "to stop this disparity in UGC and other autonomous institutions within UGC umbrella specially in all those institutions where the pension scheme already exists and only a few employees have been left out for the switchover from CP fund to GP fund." It was also pointed out, in the said communication, that the cost of extending the scheme, in these cases, would be minimal, and would not cast any additional burden on the exchequer. Accordingly, the MHRD was requested to consider the suggestion of the UGC and "extend the schemes of conversion from CPF to GPF scheme to all employees of autonomous bodies (or to employees of UGC/Central and Deemed Universities) who have already pension scheme since inception, and notify some clear-cut off future date, so that these institutions do not fix their own cut-off dates and create disparities and confusion."

9. The MHRD, however, responded, *vide* letter dated 27th September, 2001, addressed to the UGC, regretting its inability to allow one more option to change over from the CPF to the GPF Scheme, to the employees of the UGC and the institutions maintained by it. It was pointed out, in the said communication, that a similar request had, earlier, been received, from the UGC, on 8th August, 2001 and was rejected.

10. Specifically with respect to the University of Delhi, the UGC addressed yet another communication, on 4th September, 2002, to the MHRD, which read thus:

“ As per Government of India instructions, option for conversion from CPF to GPF was given up to 30.9.87 for employees of the Central and Deemed Universities, which are getting 100% maintenance grant from UGC.

It has come to our notice that Delhi University and Colleges affiliated to it gave option to its employees for conversion from CPF to GPF beyond the cut-off date of 1987 and continued up to 31.3.98 with approval of Executive Council of Delhi University. The University Grants Commission has already instructed Delhi University and its Colleges to remove this anomaly by immediately stopping the change of option from CPF to GPF given to its employees. Delhi University was also informed that UGC will not pay pension to the employees were allowed to exercise the option after 30.9.87.

Delhi University has informed that many of its employees who have opted from CPF to GPF and taken advantage of pension after the cut-off date have already retired. There are 2 options for consideration to resolve the issue:-

<u>EITHER</u>

1) Government of India may regularise the changeover of conversion of CPF to GPF scheme which was allowed by Delhi University and its affiliated Colleges and other Central Universities up to 31.3.98 with the approval of Executive Council and the amount available under this head may be allowed for special items with the prior approval of UGC.

<u>OR</u>

2) Govt of India may instruct to UGC that the pension liability of those employees may not be met by UGC who have been permitted regular conversion from CPF to Pension Scheme after the cut-off date of 30.9.87.

Keeping in view the factual position as stated above, the Ministry may kindly advise as to which option the UGC

> may exercise to resolve the pending issue. This may be treated as urgent and decision of Govt of India may be communicated to the UGC at the earliest."

11. The UGC responded, somewhat laconically, thus, on 24th October, 2002:

> " Please refer to your D.O. No. F.7-1/93 (CU) dated 4.9.2002 regarding change of option from CPF to GPF in respect of the employees of the University of Delhi.
>
> 2. Since the University Grants Commission is the funding agency and it itself had extended the Government policy on conversion from CPF to GPF to the Central Universities and Deemed Universities receiving 100% maintenance grant from the UGC, no specific Government instructions are warranted to decide the cases of those employees of the University of Delhi who had been permitted irregular conversion from CPF to GPF/Pension Scheme after the prescribed cut-off date.
>
> 3. You are, therefore, advised to decide the issue at your end without referring it to this Ministry."

12. Adverting, now, to the facts of the present case, the petitioner, as well as certain of her colleagues, who were employed in the UCMS and were beneficiaries of the CPF Scheme, applied, in response to the undated Notification *(supra)*, issued by the University, for conversion to the GPF Scheme, in the prescribed form. While the writ petition discloses that, at the time of her so applying for conversion to the GPF Scheme, she was a beneficiary of the CPF Scheme, and making contributions thereunder, it is not clear, from the record, whether the petitioner had, pursuant to the DOPT Notification dated 1st May, 1987, applied for continuing in the CPF Scheme, or not. However,

this aspect loses significance after the judgement of this Court in ***Shashi Kiran v. U.O.I., MANU/DE/2237/2016***, which covers the present dispute in favour of the petitioner, as would become apparent hereinafter.

13. The forms of the petitioner, and her colleagues, were forwarded, to the University, by the UCMS, under cover of letter dated 4th February, 1999. This was followed by reminders, from the UCMS to the University, on 1st June, 1999 and 18th October, 2000, exhorting the University to consider the case of the petitioner and her colleagues expeditiously and sympathetically.

14. On finding no meaningful response to their application, the petitioner, and her colleagues who had applied with her for conversion from the CPF to the GPF Scheme, approached an NGO, 'Common Cause', which addressed a representation, on their behalf, to the University, on 28th March, 2003. The said representation elicited a response, from the University, on 2nd September, 2003, in which, after noting the aforementioned notification dated 13th September, 1998 and subsequent communication dated 13th November, 1998, issued by the University, it was stated thus:

> "Unfortunately, the entire exercise turned out to be futile because the UGC vide its letter no. F.6-2/97 (CU) dated 15th June, 2000 enclosed a copy of letter no. F-4-49/99-U.I. dated 19th June 2000 of the Ministry of Human Resources Development on this issue. The MHRD had examined the issue in consultation with the Ministry of Finance (department of Expenditure) and regretted its inability to allow one more option to change over from CPF to GPF to

> the employees of the UGC and the institutions maintained by it. In view of the above, in the present circumstances, the University cannot allow the change over from CPF to GPF unless it is approved by the Government of India and conveyed to us by the UGC."

15. It is in these circumstances that the petitioner has approached this court, by means of the present writ petition. The petitioner has also annexed, with a writ petition, a list of 170 employees of the University who, in the year 1998 itself, were allowed to switch over from the CPF to the GPF scheme, as communicated *vide* letter dated 22nd June, 1998. I may note, here, that the counter-affidavit, filed by the University, is completely silent, regarding this document. It is to be presumed, therefore, that the University has accepted the fact that, in fact, these 170 employees were, in 1998, allowed to switch over from the CPF to the GPF scheme.

16. Without further ado, one may refer, immediately, to the judgement of a Division Bench of this Court (authored by S. Ravindra Bhat, J.), in ***Shashi Kiran (supra),*** which adjudicated a batch of Letters Patent Appeals(LPAs), preferred against the judgement of a learned Single Judge of this Court. The facts, in the said case, parallel those in the present. There, too, teachers of the University, who had, pursuant to the periodical notifications issued by the University, permitting them to opt for being transposed to the GPF Scheme, from the CPF Scheme, so opted, approached this Court, consequent on their requests for transposition being rejected. There were three categories of such teachers. The first category consisted of teachers who had

initially in 1987, exercised a positive option to remain under the CPF Scheme and, later, opted for being switched over to the GPF Scheme, pursuant to the Notification, issued by the University, inviting such options. The learned Single Judge had, in the case of such teachers (referred to, in the judgement of the Division Bench, as the "Shashi Kiran batch"), dismissed the writ petitions, on the ground that employees of the University, who had earlier consciously opted to remain in the CPF Scheme, were in a "no comeback" situation, and could not, therefore, later seek conversion to the GPF Scheme. The second category (referred to, in the judgement of the Division Bench, as the "Virmani batch") consisted of teachers who had *not* exercised their option, in 1987, to remain in the CPF Scheme and, later, sought conversion to the GPF Scheme. In the case of these teachers, the learned Single Judge held that they were entitled, in any case, to the benefits of the GPF Scheme, in view of the fact that the original OM, dated 1st May, 1987, as adopted by the University, treated all employees, who had not consciously opted for remaining under the CPF Scheme, as automatically converted to the GPF Scheme. As such, held the learned Single Judge, the University could not deny, to the Virmani batch, the benefit of the GPF Scheme. In other words, the learned Single Judge distinguished the teachers in the Shashi Kiran batch, from those in the Virmani batch, on the ground of the former having consciously opted, in 1987, to remain in the CPF Scheme, as against the latter, who had not so opted. This difference, in the perception of the learned Single Judge, was crucial. The learned Single Judge proceeded on the premise that, employees who had opted to remain in the CPF Scheme in 1987, stood foreclosed from, thereafter, seeking conversion to the GPF Scheme. Those who had not so opted, in 1987, for remaining in the CPF Scheme (i.e. the Virmani batch) were, per corollary, entitled to all the benefits of the GPF Scheme, as, in default of their having opted for continuing under the CPF Scheme, they, in any case, automatically stood transferred to the GPF Scheme in 1987 itself. It is important to note that the learned Single Judge did not extend, to either batch of teachers, the benefit of their subsequent option, as a basis to accede their request for conversion to the GPF Scheme. The case was decided, in respect of both categories of teachers, on the basis of what they did in 1987.

17. The third category of teachers were those who had opted for the GPF scheme between 1987 and 1988. Their case is not of any relevance, insofar as the present petition is concerned.

18. The Shashi Kiran batch appealed against the dismissal of their writ petitions, whereas the University appealed, against the allowing of the writ petitions of the Virmani batch, by the learned Single Judge.

19. The Division Bench, adjudicating both sets of appeals, held as under:

(i) No fault could be found, with the judgement of the learned Single Judge, qua the Virmani batch. The notification of 1st May, 1987 called for options only from those employees who wished to continue in the CPF Scheme. Default in exercise of such option resulted, automatically, in the employee migrating to the GPF Scheme. That being so, the Virmani batch of teachers could not be denied the benefit of the GPF Scheme. The only contention advanced by the University, to counter the case of the money batch, was that the said teachers had allowed, over the years, deduction of CPF amounts from their salaries. The Division Bench held, and unexceptionably, that such deduction did not stop the Virmani batch of teachers from claiming the benefits of the GPF scheme.

(ii) However, insofar as the Shashi Kiran batch was concerned, the Division Bench did not agree with the judgement of the learned Single Judge. It was observed, in this regard, that, in view of the fact that the Central Government had itself permitted employees in other institutions, *including educational institutions such as the IIT Kanpur* (which parallelizes the case of the teachers in the Shashi Kiran batch to the present petitioners), to opt, in extended dates, for switch-over to the GPF Scheme, the rejection, by the Central Government, of the request, of UGC, for extension of the conversion date till 31st December, 2003, was arbitrary and reflective of non-application of mind. The Division Bench further opined that, in the matter of grant of option to convert to the GPF Scheme, to employees who sought to avail the benefit of the extended cut-off dates, no distinction could be drawn between employees who had originally opted for retention in the CPF scheme, and those who had not done so. This was because, according to the Division Bench, the employees could not be expected to gaze into the crystal ball, as it were, and predict how, over a period of time, the two Schemes would work themselves out, or which would, at any given point of time, be more beneficial to their interests. Additionally, where the option to switch over to the GPF Scheme was permitted, upto 31st December, 2003, in the case of other autonomous institutions, the Division Bench held that there was no justification to deny the said benefit to employees of the University. Proceeding on the said reasoning, the Division Bench held, reversing the judgement of the learned Single Judge in that regard, that denying the right, to opt for the GPF Scheme, in the case of the Shashi Kiran batch, was unsustainable and had resulted in arbitrariness. The appeals, filed by the employees constituting the said batch were, therefore, allowed.

20. The upshot of the judgement of the Division Bench is that all employees, of the University, who opted, within the extended cut-off dates, as allowed by the Notifications issued by the University, for switch-over from the CPF Scheme to the GPF Scheme, were allowed to do so. The judgement of the learned Single Judge – which, essentially, proceeded on the same lines as do the counter-affidavits, filed by the University and the UGC, in the present case – was set aside. All employees of the University, who opted, for conversion

from the CPF Scheme to the GPF Scheme, within the extended cut-off dates as allowed by the Notifications issued by the University, were given the said benefit, irrespective of whether, in 1987, they had, or had not, initially opted to remain within the CPF Scheme.

21. Quite obviously, the aforementioned judgement of the Division Bench of this Court, in ***Shashi Kiran (supra)*** covers the present case on all fours. Learned counsel appearing for the respondent, too, was unable to dispute the applicability thereof.

22. Consequently, the writ petition is allowed. The University is directed to disburse, to the petitioner, arrears, which would become due to her as a result, within a period of four weeks from the date of receipt of a certified copy of this judgement.

23. There shall be no order as to costs.

C.HARI SHANKAR
(JUDGE)

JULY 17, 2018
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