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

\+ **W.P.(C) 5292/2014 & CM No. 10522/2014**

SNEH LATA JAIN & ORS. ..... Petitioners

Through: Mr Rajeshwar Kumar Gupta, Advocate.

versus

UNION OF INDIA AND ANR. ..... Respondents

Through: Ms Monika Arora, CGSC for UOI.
Ms Nishima Arora, Advocate for Mr Sanjay Dewan, Advocate for respondent.
Ms Sangita Rai with Mr Pradeep Singh Tomar, Advocates for GNCTD/R-2.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **05.12.2018**

1. The petitioners have filed the present petition impugning an Office Memorandum dated 11.11.2011 (hereafter 'the impugned memorandum') issued by respondent no.1 (Union of India, Ministry of Finance) and the subsequent notification dated 25.11.2011 (hereafter 'the impugned notification').

2. The petitioners are authorised agents for canvassing/securing investments in saving schemes. They are, essentially, aggrieved by the impugned office memorandum and the impugned notification to the extent that the payment of commission on the Public Provident Fund Scheme (hereafter 'the Scheme') has been discontinued. Prior to the impugned notification, the petitioners were being paid commission at the rate of 1% of

the subscriptions to the Scheme secured by them.

3. The petitioners claimed that the payment of commission on subscription to the Public Provident Fund is a part of the Scheme and, therefore, the same could not be altered by the Central Government without placing the same before the Parliament.

4. The Parliament enacted the Public Provident Fund Act, 1968 (hereafter 'the Act') to provide the statutory framework for establishing a fund known as the Public Provident Fund.

5. Section 3 of the Act provides for framing of a Public Provident Scheme. Section 12 of the Act expressly provides that the Scheme would be laid before the Parliament as soon as it is framed. The said Sections of the Act are relevant and are set out below:-

> "3.**Public Fund Provident Fund Scheme:-** (1) the Central Government may, by notification in the Official Gazette, frame a scheme to be called the Public Provident Fund Scheme for the establishment of a provident fund for the general public and there shall be established as soon as may be after the framing of the Scheme, a Fund in accordance with the provisions of this Act and the scheme.
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> (2) Subject to the provisions of this Act, the Scheme may provide for all or any of the matters specified in the Schedule.
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> (3) The Scheme shall have effect notwithstanding anything contained in any law for the time being in force other than this Act or in any instrument having effect by virtue of any law other than this Act.

(4) The Central Government may, from time to time, by notification in the Official Gazette, add to, amend or vary the Scheme.

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12. **Scheme to be laid before Parliament:-**The scheme will be laid, as soon as may be, after it is framed before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in any provision of the Scheme or both Houses agree that any provision in the Scheme should not be made, the provision of the Scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any modification or annulment shall be without prejudice to the validity of anything previously done under that provision."

6. The Schedule to the Act expressly provides for the matters for which provision may be made under the Scheme. The said Schedule is set out below:-

"THE SCHEDULE

[*See* section 3(2)]

Matters for which provisions may be made in the Scheme

(1) The manner in which subscriptions to the Fund may be made and the maximum and minimum limits of such subscriptions.

(2) The manner in which interest on subscription to the fund may be calculated.

(3) The documents to be issued to subscribers as evidence of the subscriptions made by them to the Fund.

(4) The extent to which and the terms and conditions under

which withdrawals may be made by subscribers from the amounts standing to their credit in the Fund.

(5) The authority or authorities by or through whom subscriptions to the Fund may be collected or withdrawals therefrom may be made.

(6) The terms and conditions under which loans may be granted to subscribers out of the amounts standing to their credit in the Fund and the authority or authorities by whom such loans may be granted.

(7) The accounts to be maintained with respect to subscriptions to the Fund, and withdrawals and final payments made and loans granted therefrom and the authority or authorities by whom such accounts shall be maintained.

(8) The nomination of any person to receive the amount standing to the credit of a subscriber in the Fund in the event of his death and the cancellation or change of such nomination.

(9) The issue of duplicate of any document issued as evidence of any subscription to the Fund in the event of damage, loss or destruction of original and the fee on payment of which such duplicate may be issued.

(10) Any other matter which is to be provided for in the Scheme or which may be necessary or proper for the purpose of implementing the Scheme."

7. The only question that falls for the consideration of this Court is whether the Central Government was empowered to discontinue the commissions payable to agents on the subscription secured through them. In terms of Section 3(1) of the Act, the Central Government was empowered to frame a Scheme to be called the Provident Fund Scheme and for the establishment of Provident Fund for General Public.

8. Section 12 of the Act requires that the claim would be placed before the Parliament while it is in session for a total period of 30 days. Section 12 of the Act also expressly provides that if the Scheme is modified, the same shall have an effect only in such modified form.

9. A plain reading of Section 12 of the Act indicates that, it only envisages placing of the Scheme when it was first framed in terms of Section 3(1) of the Act. The modifications referred to under Section 12 of the Act are the modifications that would be effected during the period when the Scheme is laid before the Parliament (the total period of 30 days). The Act does not envisage that every subsequent modification to the Scheme be also placed before the Parliament. Thus, the contention that the respondents were required to place the proposal for discontinuing the commission payable to agents is unmerited. In this regard, it is also relevant to refer to Sub-section (4) or Section 3 of the Act, which expressly empowers the Central Government to amend or vary the Scheme from time to time by notification in the official gazette.

10. In view of the above, the petitioners' contention that the respondents are not empowered to modify the right of commission payable to agents cannot be accepted.

11. The respondents also contend that payment of commission is not part of the Scheme as framed under Section 3(1) of the Act.

12. *Prima facie,* this contention is merited. However, it is not necessary to dwell on this issue any further, since in any event the Central Government has the power to amend the Public Provident Fund Scheme from time to

time by way of notification in terms of Section 3(4) of the Act.

13. The petition is, accordingly, dismissed. The pending application is also disposed of.

VIBHU BAKHRU, J

DECEMBER 05, 2018
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