



\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

Date of Decision: 27.07.2022

%

LPA 448/2022 and CM APPL. 32640/2022**JAWAHARLAL NEHRU UNIVERSITY** Appellant

Through: Ms. Mrinmayee Sahu, Mr. Sandeep Mahapatra, Advocates.

versus

MANOJ PANT & ORS Respondents

Through: Mr. Abhik Chimni, Mr. Ch. Animes Prusty, Ms. Shraddha Sondhi, Advocates for Respondent Nos.4, 8, 9, 11, 13, 14, 18, 21, 31, 32, 33, 35, 36, 37 and 38.

CORAM:**HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD****SATISH CHANDRA SHARMA, CJ. (ORAL)**

1. The present Appeal is arising out of the Judgement dated 18.02.2022 passed in W.P.(C.) No. 2989/2010 dated 18.02.2022 in the case of *Manoj Pant and Ors. Vs. Jawaharlal Nehru University*.
2. The facts of the case reveal that the Writ Petition was preferred by the Respondents who were serving the Jawaharlal Nehru University (JNU), being aggrieved by the denial on behalf of the Appellant University in granting them an option to switch over to General Provident Fund Scheme (GPF Pension Scheme).
3. The undisputed facts reveal that the appellant Jawaharlal Nehru



University (JNU) – has been constituted in terms of the Jawaharlal Nehru University Act, 1966. The Appellant is an autonomous body and is governed by the Statutes and Regulations framed there under. Large number of appointments took place after the establishment of JNU on various posts, including teaching posts, and at the time of establishment of the University, the Contributory Provident Fund Scheme (CPF Scheme) was in vogue.

4. In pursuance of the recommendations of the 4th Pay Commission, the Government of India vide Office Memorandum dated 01.05.1987, notified that all the CPF Beneficiaries in service as on 01.01.1986, who were still in service on the date of issuance of Office Memorandum, would be deemed to have opted for the GPF Pension Scheme on that day unless they specifically opted out to continue under the CPF Scheme. Meaning thereby, an option was given to all employees under the Government of India to continue with the CPF Scheme, if they so desired. The option was to be conveyed to the appropriate authority on or before 30.09.1987. The Office Memorandum categorically provided that, in case no such communication was received on behalf of an employee, the employee would be deemed to have been covered by the GPF Pension Scheme. The Appellant university adopted the Office Memorandum *in-toto* in its Executive Council Meeting which took place on 20.07.1987.

5. The University vide Circular dated 21.12.1987 informed all its staff members and employees about the Office Memorandum dated 01.05.1987 and the employees were informed to exercise their option. The decision of the Executive Council was published vide Circular dated 21.12.1987, and



the requisite options were to be submitted by officers and employees latest by 20.05.1988. Some of the employees opted to be members of General Provident Fund-cum-Pension-cum-Gratuity Scheme, and some of the employees opted to continue under the Contributory Provident Fund-cum-Gratuity Scheme.

6. The facts of the case reveal that another Circular was issued on 11.04.1988, requiring the employees of University to exercise an option if they desired to continue with the CPF Scheme by 20.05.1988. It was also made clear to them that they would not be permitted to revise their option after 20.05.1988. Some of the employees of Jawaharlal Nehru University were not able to exercise their option within the time provided under the Circular dated 21.12.1987 and 11.04.1988, and a large number of representations were preferred in the matter. The Executive Council of the Appellant keeping in view the representations, in its meeting which took place on 19.07.1993, resolved to permit the employees to submit their option for change over from CPF Scheme to GPF Scheme. The decision of the Executive Council which took place on 19.07.1993 was again circulated to the employees by a communication dated 05.10.1993. The option which was required to be exercised in the matter also contained a declaration to be given by an employee to refund the employees contribution along with interest to the credit of their respective CPF Accounts. However, some of the employees were again not able to exercise the option, and a Circular was issued by JNU on 26.07.1995 again extending the deadline of exercising the option by three months, i.e. by 15.07.1995.

7. The facts of the case further reveal that some of the employees on



account of ignorance; on account of fact that the Circulars were not made available to them; and for some other reasons, still could not exercise their option, and large number of representations were submitted to the JNU with a request to grant further opportunity to exercise their option either to continue under the CPF Scheme or to join the GPF Scheme.

8. The University, keeping in view the large number of representations, constituted a four-member committee headed by Dr. R. K. Nayak (hereinafter Nayak Committee) as its Chairperson, and the Committee after great deliberations took note of the Office Memorandum issued by the Government of India dated 01.05.1987 – which provided that, in case an employee does not opt to remain covered by the CPF Scheme, he would automatically be deemed to have opted for the GPF Scheme, and, therefore, recommended that one more chance should be given to employees to exercise their option. The report submitted by Nayak Committee was placed before the Finance Committee of the JNU and the recommendations framed by the Committee came up before the Executive Council of the Appellant in its meeting held on 20.11.2006.

9. The Executive Council of the Appellant in its 229th meeting held on 19.11.2006, resolved to approve the recommendations of the Finance Committee and to implement the recommendations of the Nayak Committee to grant one more opportunity to the employees. The resolution of the Executive Council was subject to approval of the Government of India. The Ministry of Finance, Government of India, vide Office Memorandum dated 10.12.2008, refused to accept the request for extension as resolved by the Executive Council, and in those circumstances, the Petitioners came up



before this Court by filing a Writ Petition, and the following reliefs were prayed for by the Petitioners in the matter:

“1. Directing implementation of decision taken by the Respondent vide Executive Council Resolution date 19.07.1993 and the circular dated 26.7.1995 alongwith the recommendations of Nayak Committee to the effect that the petitioners be deemed to have switched over to GPF Pension Scheme.

And in the alternative:-

Allow the petitioners to exercise their option as per Nayak Committee recommendations and the Executive Council Resolution dated 29.1.2006 to remove the discrimination between the similarly situated teachers/ employees.”

10. The Learned Single Judge has allowed the Writ Petition. Paragraphs 37 to 59 of the order passed by the learned Single Judge, reads as follows:

“37. In any case, since the 1987 O.M. did not ipso facto apply to JNU being an autonomous statutory body, it was open to the institution to formulate its own timelines for invitation of options from existing employees. The university cannot possibly be faulted for having afforded its employees a reasonable period of time to make an informed decision with regard to switching over to the pension scheme. More fundamentally, it does not lie in the mouth of the petitioners to urge this submission especially when the majority of them did in fact submit an option within the time prescribed and now seek those choices to be reviewed and reopened. The validity of the options submitted after 20 May 1988, the date originally prescribed by JNU for submission of choices, is a different issue altogether. The submission of Mr. Rai, to the aforesaid extent, consequently, stands negated.

38. That takes the Court to deal with the principal issue which stands raised in this petition. The 1987 O.M. in unequivocal



terms mandated an option being exercised by those employees who chose to continue under the CPF regime. A failure to exercise that option by the last date fixed, was by virtue of a deeming fiction, liable to be viewed as the employee falling within the ambit of GPF. It also becomes pertinent to bear in mind that the learned Single Judge in Shashi Kiran, had taken the position that those who had consciously exercised the option to remain under the CPF scheme within the time prescribed, could not “resile” from the option once exercised. The Division Bench of this Court in Shashi Kiran, however, held that those employees could not be pinned down to the option exercised bearing in mind the supervening events which had occurred in the meanwhile. The first was of the changed economics of the two schemes. The CPF scheme which was dependent upon the interest rate regime had over a period of time become redundant or at least unattractive. Once the economy of the country came to integrate with global interest standards and rates came to be drastically reduced, CPF no longer remained a favorable retiral benefit. The Division Bench in Shashi Kiran then went on to hold that it would be inequitable to presume that these set of employees could prophesize or gaze into the crystal ball of how the change in the financial landscape would impact them in the evening of their careers. Secondly, and more importantly, it found that both the Union as well as similarly placed autonomous employers had themselves contributed to a state of uncertainty coming to prevail on account of conflicting interpretations propounded with respect to the 1987 O.M. Even though S.L. Verma in unequivocal terms recognized the impact of the deeming fiction and underlined the requirement of an option being exercised only in case an employee chose to continue under the CPF scheme, the Union as well as various autonomous institutions proceeded down ambivalent and confounding paths. It was in that backdrop that the Court in Shashi Kiran held that it would be arbitrary and unfair to hold employees down to choices exercised in the backdrop of a state of incertitude. This more so



when the authorities themselves had permitted employees to revisit and revise the choices made.

39. For the purposes of the present matter, it would be pertinent to bear in mind that the JNU had initially fixed the last date for submission of options as 20 May 1988 for those who desired to remain in the CPF regime. The subsequent circulars of 1993 and 1995 fixed the last dates as 31 December 1993 and 15 July 1995 respectively. However, the subsequent circulars required employees to submit options for migration to the GPF scheme. The 1993 circular further provided that in case option to change over to the GPF scheme is not furnished within the time specified, the employee “would be deemed to have opted to continue under the existing...” CPF scheme. Here JNU committed the same folly as Delhi University losing sight of the terms of the 1987 O.M. which had categorically provided that options would only be required if an employee chose to continue to draw benefits under the CPF scheme. That O.M. had in unequivocal terms spelt out the consequences of a failure to submit an option by 30 September 1987 by providing that the employee would be deemed to have changed over to the GPF scheme. It was this significant facet of the 1987 O.M. which was highlighted firstly by the Supreme Court in S.L. Verma and was reiterated by this Court in Virmani and Shashi Karan.

40. The decisions of this Court recognized the impact of a failure to submit an option at all, an option submitted after the cut-off date and an option submitted during the extended periods provided by the employer. The fate of the first class of employees would not detain the Court even momentarily since they would be deemed to have migrated to the GPF scheme by operation of law. The Court in Shashi Kiran had proceeded to dismiss the appeals of the Delhi University insofar as they pertained to “Category I” noting that the learned Judge had rested the same on the pertinent observations of the Supreme Court in S.L. Verma which had held that once the rubicon was crossed, any option to revert to CPF would be of no avail since



the transition to GPF would have come into effect by virtue of the legal fiction enshrined in the 1987 O.M.

41. The Court also bears in mind the evident fact that while the original circular of JNU did comply with the 1987 O.M., the subsequent circulars of 1993 and 1995 proceeded on the mistaken premise that a positive option to be part of the GPF scheme was required to be submitted. More importantly, the consequences of a failure to submit the requisite option was ordained to be that the employee would continue under the CPF. This was clearly contrary to the basic tenet of the 1987 O.M. The Court is of the considered view that the Nayak Committee rightly noticed this fallacy when it observed that the “default option” was incorrectly mandated to be CPF. The options submitted after the default dates were recognized as liable to be ignored by the Court in Virmani. Those who had exercised an option after the date prescribed were held entitled to the benefits of the GPF scheme. To that extent the judgment in Virmani was affirmed by the Division Bench in Shashi Kiran. Consequent to the dismissal of the appeals of the Delhi University taken against that decision and the principles enunciated by the Division Bench, unequivocally bind this Court.

42. The Division Bench, however, set aside the decision of the learned Judge in Shashi Kiran which related to those who had exercised an option to continue under the CPF within the time prescribed. The relief extended to these set of employees rested on two seminal facts which were found to be conclusively proven by the Court. The Court in Shashi Kiran firstly found that numerous employees had changed over to the GPF scheme in the extended periods provided by the respondents there. It then took cognizance of the fact that various other autonomous institutions had been permitted to provide an extended window to their employees to switch over to the GPF scheme after the last date prescribed under the 1987 O.M. It consequently found no justification to deny this class of petitioners the right to switch to the GPF scheme notwithstanding a positive assertion on their part to remain under the CPF regime. The Division



Bench in Shashi Kiran delved into the changed economic scenario depicted by the drastic fall in interest rates which rendered the CPF scheme unviable and less beneficial. It ultimately held that it would be unfair to pin down this class of employees to a choice originally exercised since it would be too onerous to hold them liable to either prophesize or “view into the crystal ball” and predict that the CPF regime would remain relevant and beneficial for them. Taking into consideration the fact that other organizations had been permitted to extend this benefit to their employees who were similarly placed, the Court in Shashi Kiran proceeded to allow the appeals of these employees.

43. Viewed in that light, the Court firstly considers the right of the 42 petitioners who ostensibly and with so called certitude decided to remain in the CPF regime within the cut-off date prescribed by JNU. Admittedly, JNU permitted numerous employees to revise the options submitted in terms of the original circular pursuant to the 1993 and 1995 extensions. Shashi Kiran has held in favour of this category of employees holding that they cannot be pinned down to the original choice as exercised. The view of the learned Single Judge in Shashi Kiran that these employees could not be permitted to resile stands overruled by the Division Bench of the Court. That judgment clearly binds this Court. These set of employees cannot, consequently, be denied relief on this score.

44. That takes the Court to deal with the fate of those employees who joined the University after 20 May 1988 and during the currency of the 1993 and 1995 circulars. It has already been found that the two circulars referred to above, digressed from the initial understanding of JNU of the import of the 1987 O.M. The original circular had rightly held that only those employees who wanted to continue in the CPF regime were liable to submit options. It also correctly provided that a failure to submit a choice would be understood as the employee migrating to the GPF regime. However, by the time the 1993 and 1995 circulars came to be issued, JNU committed the patent mistake of requiring employees to submit a positive



option to be part of GPF. The more fundamental mistake committed by it was when it provided that those who did not submit an option, would be deemed to have continued under the CPF scheme. The change of course adopted in the 1993 and 1995 circulars is what fell for adverse comment of the Nayak Committee leading it to observe that the language of those circulars prevented a “default conversion” to the GPF scheme. This is evident not just from the terms of the two circulars referred to above, but also the nature of the options which were liable to be submitted. The unambiguous command of those circulars was that a failure to migrate to the GPF scheme would be deemed to amount to an exercise of choice to continue under the CPF scheme. This clearly flew in the face of the terms of the 1987 O.M.

45. The options submitted by employees during the period when the 1993 and 1995 circulars held the field are liable to be evaluated in the backdrop of the default option being ordained to be a continued application of the CPF scheme. Viewed in that background and the uncertainty which came to prevail, the petitioners cannot be faulted for having chosen, either mistakenly or unknowingly, to be part of the CPF scheme. In order to hold an employee down to a choice validly exercised and to recognise it as being one consciously made, it is incumbent upon the Court to consider whether the avenues available to be chosen were spelt out with sufficient or at least reasonable clarity by the employer. The respondent has failed to convince this Court that its actions meet this fundamental benchmark. The defense proffered by the respondent crumbles on account of the seminal mistake committed of providing the default option to be CPF.

46. Regard must also be had to the fact that the Nayak Committee had in terms of its report found as a matter of fact that the 1993 and 1995 circulars had not been brought to the notice of the remainder employees who were likely to be impacted. It has observed that “administrative lapses” were committed and the circulars were not “appropriately circulated”. It proceeded to recommend that CPF holders as



existing on 26 July 1995 who were still serving may be given an opportunity to convert to GPF or to opt specifically to be part of CPF. Those recommendations were also guided by the fact that 95% of the employees of JNU had already opted to be part of the GPF scheme and a miniscule 87 employees had been deprived this benefit. Undisputedly, the recommendations made by the Nayak Committee were approved by the Finance Committee of JNU and ultimately accepted by the Executive Council in its meeting of 29 November 2006 when it decided to grant one further opportunity to the remainder employees to choose to be part of the GPF scheme.

47. Viewed in that backdrop, this Court is of the considered view that it is not open to JNU to either repudiate or disown the findings of the Nayak Committee report to the extent that it speaks of administrative lapses having occurred and the 1993 and 1995 circulars proceeding on the incorrect premise of a failure to opt for the GPF scheme resulting in the employee being governed by CPF. While Ms. Arora has vehemently contended that all the petitioners held important and responsible positions in the university and it is not open to them to assert that they had no knowledge of those circulars, the Court finds no justification to accept this submission in light of what was found by the Nayak Committee on facts and which ultimately finds resonance and tacit acceptance in the resolution of the Executive Council of 29 November 2006.

48. While the facet of the passing of the aforesaid resolution and JNU consequently being bound by the same poses no problem, admittedly the same did not come to be approved by the concerned Ministry in the Union Government. This decision of JNU was also not accorded approval by the UGC unlike the circulars of 1993 and 1995 which had been specifically assented to and the university permitted to proceed accordingly. The petitioners have failed to establish that JNU was entitled to proceed further in terms of the Executive Council resolution of 29 November 2006 notwithstanding the refusal of that proposal by the Ministry and the UGC. Learned counsels appearing for the petitioners have failed to establish



that the Act sufficiently and independently empowered JNU to move forward on a matter having financial implications notwithstanding the explicit disapproval of the concerned Ministry and UGC.

49. However, none of the petitioners [as per the particulars furnished by the respondents and appearing at pages 239-244 of the paperbook] are shown to have been appointed after the last date for submission of options prescribed under the circular of 26 July 1995. In fact, most of the petitioners appear to have submitted their options either pursuant to the original circular of 21 December 1987 or the subsequent circular of 5 October 1993. The solitary exceptions in this regard are petitioner No. 10 who joined on 1 June 1995 and submitted an option on 29 August 1995 and Petitioner No. 43 who was appointed on 17 January 1995 and submitted an option on 8 February 1995. These petitioners submitted an option as per the circular of 26 July 1995. The petitioners are thus all covered by the 1993 and 1995 circulars and were required to furnish their options as per the dates prescribed in those circulars. This Court in the preceding parts of this judgment has already dealt with the impact of those circulars and how they impeded an informed choice being made. It thus comes to the firm conclusion that the petitioners' right to claim conversion to GPF cannot be said to be impacted by the refusal of the Ministry or UGC to approve the decision of the Executive Council of 29 November 2006.

50. This since their right to seek conversion and migrate to the GPF accrued in terms of the 1993 and 1995 circulars. Both these circulars were duly approved by UGC. The fact that those circulars were not appropriately circulated has been duly noted by the Nayak Committee. The same committee also found that these two circulars themselves led to a cloud of confusion descending upon the nature of the option to be submitted as well as the contingency in which an option was to be exercised at all. If the JNU had merely proceeded in terms of the principles embodied in the 1987 O.M., all those employees who had failed to submit an option would be deemed to have



switched to the GPF scheme. Additionally, and in any case there was no requirement of an employee opting for the GPF scheme. The fundamental flaw in the two circulars as pointed out earlier was the stipulation that in case an employee chose not to progress to the GPF scheme, it would be presumed that the employee had opted for the CPF scheme. It is this fundamental fallacy which ultimately impacted the rights of the petitioners here. Viewed from whichever angle, denying the claim of the petitioners here would be wholly unfair and fall contrary to the principles laid down in Virmani and Shashi Kiran.

51. The Court is conscious of the admitted position that various employees of JNU did in fact exercise an option to move to GPF in terms of these circulars. However, the mere fact that the petitioners here, albeit a miniscule number, failed to appreciate the true import of the choice being exercised or comprehending the relative merits of the two schemes, cannot result in them being denied the right to change over to GPF. An inaccurate understanding of the nature of the option which was to be submitted and which act came to be tainted by the nature of the 1993 and 1995 circulars would have clearly left the petitioners' on the horns of a dilemma. Merely because some of the employees of JNU did providentially opt for the GPF cannot constitute a valid ground in law to deny the petitioners' here the rights otherwise conferred on them.

52. At the cost of repetition, it may be noted that the option was to be submitted only in case the employee desired to remain within the CPF umbrella. The conclusions arrived at by the Nayak Committee and the ultimate recommendation made came to be accepted and a remedial measure formulated by the Executive Council in terms of its decision taken on 29 November 2006. However, the right of the petitioners which accrued in 1993 and 1995 cannot be said to have been extinguished and that too on account of an administrative lapse on the part of JNU or the Ministry and UGC refusing to accord approval to that resolution.



53. While the issue of the NPS coming into effect from 31 December 2003 was also raised, the Court noted that the Office Memorandums of 30 June 2009 as well as the Notification of 31 January 2019, which have been placed by the respondents on the record, do not appear to detract from the right of the petitioners to seek conversion to the GPF scheme. This since admittedly on account of factors which prevailed, all of them have remained under the CPF scheme.

54. Before closing and for the completeness of the record it may be noted that Ms. Arora had vehemently urged that all the petitioners despite having spent years in service in JNU had failed to opt for the GPF scheme. Ms. Arora submits that despite the opportunities provided by JNU in terms of the 1993 and 1995 circulars, the petitioners for reasons best known to them chose to be under the CPF regime. It was her contention that this fact alone disentitles the petitioners from the grant of any relief. The Court finds itself unable to sustain this submission for the following reasons. The failure to submit a positive option to be considered part of the GPF cannot be adjudged *de hors* the shortcomings which beset the 1993 and 1995 circulars noticed above. This petition came to be instituted in April 2010. It was filed by most of the petitioners while they were still in service or on the verge of retirement. This the Court notes since petitioner nos. 47, 48 and 52 retired in 2010. While petitioner nos. 47 and 48 were still in service when the writ petition came to be preferred, petitioner no. 52 retired on 31 March 2010 and thus evidently a few days before the present cause came before this Court. It cannot therefore be said that the petitioners are guilty of indolence or are liable to be denied relief on grounds as urged by Ms. Arora.

55. The caveat which however must necessarily be entered is in respect of the following petitioners who retired years before the present petition came to be preferred. Their details are placed below:—

Petitioner Nos.	Year of retirement
-----------------	--------------------



53	2006
54	2005
55	2006
56	2007
57	2004
58	2006
61	1997

56. Insofar as petitioner nos. 53, 54, 55, 56, 57, 58 and 61 are concerned, there is no material on record which may indicate whether they accepted the CPF benefits without demur and protest and after a long hiatus chose to join the rest of the petitioners here. This issue would merit consideration by JNU bearing in mind the note of caution which was recorded by the learned Judge in Virmani and more particularly in paragraph 17.5. of the report. While Mr. Rai learned senior counsel sought to urge that the doctrine of merger would apply and this caveat entered would no longer hold good in light of the judgment of the Division Bench in Shashi Kiran, the Court finds itself unable to sustain this submission for the following reason. It must be remembered that the judgment in Virmani came to be affirmed by the Division Bench in Shashi Kiran. The appeals of the Delhi University preferred came to be dismissed. However, while parting the Division Bench did not interfere or dilute this cautionary note as entered in Virmani. The submission of Mr. Rai in this respect is liable to be and is thus rejected.

57. The Court further records that learned counsels have not urged that the change over is to take effect from an anterior date. In fact, no such relief is also claimed. The Court notes that similar was the position which was noticed in Virmani as evident from paragraph 17.4 of the report. Consequently the relief as framed hereinafter would only have prospective application.



58. The writ petition shall consequently stand allowed in the following terms. JNU is hereby called upon to process the claims of the petitioners for migration to the GPF scheme in light of the findings recorded hereinabove. The aforesaid consideration shall be subject to the petitioners refunding the employer's contribution together with interest @ 8% p.a. as per the directions framed in paragraph 20 of Virmani.

59. Insofar as petitioner nos. 53, 54, 55, 56, 57, 58 and 61 are concerned, the Court leaves it open to JNU to consider their entitlement to relief in light of the principles enunciated in this decision subject to the rider placed in paragraphs 55 and 56 of this judgment."

11. Learned Counsel appearing for the University has vehemently argued before this Court that the learned Single Judge, while delivering the judgment has erred in law and facts by placing reliance upon the judgment delivered by this Court in the case of **Smt. Shashi Kiran & Ors. v. Union of India & Ors.**, (2016) SCC OnLine Del 4819, and ignoring the vital fact that the Respondents in the LPA opted to continue under the CPF Scheme and never gave any option for the GPF Pension Scheme in spite of multiple opportunities granted to them and, therefore, the Order passed by the learned Single Judge deserves to be set aside.

12. It has further been argued that in the case of **Smt. Shashi Kiran & Ors** (supra), as many as 12 extensions were granted for exercising the option of changing over to the GPF Scheme from the CPF Scheme, that too without obtaining the consent of UGC/ Ministry of Finance, and in those circumstances, the judgment was delivered in the case of **Smt. Shashi Kiran & Ors** (supra) whereas, in the present case, the last of such consent/ intimation from/ to the UGC was declined way back in 1995 and, therefore,



the learned Single Judge has erroneously applied the principles of parity which was not applicable to the facts and circumstances of the present case.

13. Learned Counsel for the Appellant has vehemently argued before this Court that the recommendations based upon the Nayak Committee Report were declined in the year 2008 and, therefore, the Jawaharlal Nehru University was not left with an option to invite fresh proposals from teachers for their shifting/ change over from the CPF to the GPF Scheme. He submits that the Ministry of Finance has rejected the recommendations of the Nayak Committee and the order passed by the Ministry of Finance was not in question before the learned Single Judge, hence, the learned Single Judge has erred in law and facts by directing the University to grant an option to the teachers to exercise their rights in order to shift from the CPF to the GPF Scheme.

14. It has further been argued by learned Counsel for the Appellant that the recommendations of the Nayak Committee were not accepted by Ministry of Finance and, therefore, once the recommendations were not accepted by Ministry of Finance, the resolution of the Executive Council dated 29.11.2006 could not have been implemented and by no stretch of imagination can the Respondent employees be given an option to switch over from CPF to GPF Scheme as has been directed by the learned Single Judge and, therefore, the judgment deserves to be set aside.

15. It has been reiterated that the learned Single Judge has, in fact, while allowing the writ petition, overruled the decision dated 10.12.2008 of the Ministry of Finance, and no such relief was sought in the writ petition and,



therefore, the judgment passed by the learned Single Judge is bad in law.

16. Learned counsel has vehemently argued before this Court that the University cannot be at fault in the matter as the University has granted multiple opportunities to the employees to switch over from the CPF to the GPF Scheme, and majority of them did submit their option within the prescribed time period and the persons who did not exercise the option cannot be permitted at this juncture to exercise their option afresh as it will result in a heavy financial burden upon the University and, therefore, the order passed by the learned Single Judge deserves to be set aside.

17. The other ground raised by the appellant University in the present appeal is that the learned Single Judge has arrived at erroneous findings in the matter of implementation of the 1987 Office Memorandum. It has been argued before this Court that the 1993 and 1995 Circular issued on the subject categorically provided that an employee who wants to switch to GPF Scheme, will have to exercise the option, and the Respondent employees have consciously chosen to be governed by the CPF Scheme. Hence, they were not entitled to any benefit which has been extended by the learned Single Judge.

18. Learned counsel has vehemently argued before this Court that in case the order passed by the learned Single Judge is implemented, there will be a recurring liability in the matter of payment of pension, arrears of pension will have to be paid along with the interest. He submits that the University already has a deficit of more than 100 crores in its non-salary expenses and will not be able to bear the financial burden imposed upon the University by



virtue of the Judgment delivered by the learned Single Judge.

19. Lastly, it has been argued that the judgment passed by the learned Single Judge deserves to be set aside and the employees, who have not exercised their right to exercise their option for transfer from the CPF to the GPF Scheme, by no stretch of imagination, at this juncture can be permitted to exercise the option as directed by the learned Single Judge.

20. Per contra, learned counsel for the Respondents has vehemently argued before this Court that the judgment delivered on the subject does not warrant any interference and it was the University which has not implemented the Office Memorandum issued by Government of India through the Ministry of Personnel, Public Grievances and Pensions dated 01.05.1987 *in toto* and it has resulted in the present anomaly. It has been stated that based upon the Judgment delivered in the case of **Smt. Shashi Kiran & Ors** (supra), the learned Single Judge was justified in allowing the writ petition and no case for interference is made out in the matter.

21. Learned counsel for the Respondent - employees has referred to the report submitted by the Nayak Committee and the executive instructions issued on the subject from time to time, and thus, a prayer has been made for dismissal of the instant Appeal.

22. Heard learned Counsel for the parties and perused the material on record. The matter is being disposed of at the admission stage itself with the consent of the parties. The undisputed facts of the case reveal that the appellant University was established as Jawaharlal Nehru University in 1966 and the establishment, management and functioning of the University is



governed under the Act of 1966, read with statutes and regulations framed thereunder. The University, since its establishment has introduced a CPF Scheme for its employees and all employees were members of the CPF Scheme. The Government of India, based upon the recommendations of the 4th Pay Commission, issued an Office Memorandum dated 01.05.1987 notifying the option for all CPF Scheme beneficiaries to switch to the GPF Pension Scheme. The Office Memorandum categorically provided that all the beneficiaries of the CPF Scheme would be covered by the GPF Pension Scheme, until and unless they specifically opted to continue under the CPF Scheme. Thus, it was categorically mentioned that the employees would have the option to continue with the CPF Scheme if they so desired and the option was to be submitted up to 30.09.1987.

23. The Office Memorandum of Government of India was considered by the Executive Council of the University and the same was adopted by the Executive Council in its meeting held on 20.07.1987. The University vide circular dated 21.12.1987 informed its staff members and other employees about the adoption of Office Memorandum dated 01.05.1987 and an option was given to switch over to the GPF Pension Scheme. The Office Memorandum dated 01.05.1987 is reproduced as under:

“

OFFICE MEMORANDUM

Subject: Change over of the Central Government employees from the Contributory Provident Fund Scheme to Pension Scheme - implementation of the recommendations of the Fourth Central Pay Commission.

The undersigned is directed to state that the Central Government employees who are governed by the Contributory



Provident Fund Scheme (CPF Scheme) have been given repeated options in the past to come over to the Pension Scheme. The last such option was given in the Department of Personnel and Training O.M. No..F3(1)-Pension Unit/ 85 dated the 6th June, 1985. However, some Central Government employees still continue under the CPF Scheme. The Fourth Central Pay Commission has now recommended that all CPF beneficiaries in service on January 1, 1986, should be deemed to have come over to the Pension Scheme on that date unless they specifically opt out to continue under the CPF Scheme.

2. After careful consideration the President is pleased to decide that the said recommendation shall be accepted and implemented in the manner hereinafter indicated.

3. All CPF beneficiaries, who were in service on 1.1.1986 and who are still in service on the date of issue of these orders will be deemed to have come over to the Pension Scheme.

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.

3.3 The CPF beneficiaries, who were in service on 1.1.1986, 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 illegible.... of settlement of the CPF Account. Such option shall be exercised latest by 10.9.1987.

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 30.09.1987 to have their retirement benefits settled under the CPF Scheme.

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 30.09.1987 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.

3.7 In the types of cases covered by paragraph 3.3 and 3.5 involving refund of Government's contribution to the contributory provident fund together with interest drawn at the time of retirement, the amount will have to be refunded latest by the 30th September, 1987. If the amount is not refunded by the said date, simple interest thereon will be payable at 10% per annum for period of delay beyond 30.9.1987.

4.1 In the case of employees who are deemed to come over or who opt to come over to the Pension Scheme in terms of paragraphs 3.3, 3.4 and 3.5, the retirement and death benefits will be regulated in the same manner as in case of temporary/quasi permanent or permanent Government servants, as the case may be, borne on pensionable establishment.

4.2 In the case of employees referred to above, who come over or are deemed to come over to the Pension Scheme, the Government's contribution to the CPF together with the interest thereon credited to the CPF Account of the employee will be resumed by the Government. The employee contribution together with the interest thereof at his credit in the CPF Account will be transferred to the GPF account to be allotted to him on his coming over to the Pension Scheme.



4.3 Action to discontinue subscriptions/contributions to CPF Account may be taken only after the last date specified for exercise of option viz., 30.09.1987.

5. A proposal to grant exgratia payment to the CPF beneficiaries, who retired prior to 1.1.1986 and to the families of CPF beneficiaries who died prior to 1.1.1986, on the basis of the recommendations of the Fourth Central Pay Commission is separately under consideration of the Government. The said ex-gratia payment, if and when sanctioned, will not be admissible to the employees or their families who opt to continue under the CPF Scheme from 1.1.1986 onward.

6.1. These orders apply to all Civilian Central Government employees who are subscribing to the Contributory Provident fund under the Contributory Provident Fund Rules (India), 1962. In the case of other contributory provident funds, such as Special Railway Provident Fund or Indian Ordnance Factory Workers Provident Fund or Indian Naval dockyard workers provident fund etc., the necessary orders will be issued by the respective administrative authorities.

6.2 These orders do not apply to Central Government employees who on employment illegible..... Subscribe to Contributory Provident Fund. These orders also do not apply to Central Government employees appointed on contract basis where the contribution to the contributory provident fund is regulated in accordance with terms of contract.

6.3 These orders do not also apply to scientific and technical personnel of the Department of Atomic Energy, Department of Space, Department of Electronics and such other Scientific Departments as have adopted the system prevailing in the Department of Atomic Energy. Separate orders will be issued in their respect in due course.

7.1 Ministry of Agriculture etc., are requested to bring these orders to the notice of all CPF beneficiaries under them, including those who have retired since 1.1.1986 and to the families covered by paragraph 3.5 of these orders.



7.2 Administrative Ministries administering any of the Contributory Provident Fund Rules, other than Contributory Provident Fund Rules (India), 1962, are also advised to issue similar orders in respect of CPF beneficiaries covered by those rules in consultation with the Department of Pension and Pensioners' Welfare.

8. These orders issue with the concurrence of the Ministry of Finance Department of Expenditure vide their U.O. No.2038/JS (Pers)/87 dated 13.4.1987.

9. In their application to the persons belonging to Indian Audit and Accounts Department, these orders issue after consultation with the Comptroller and Auditor General of India.

10. Hindi version of these orders follows. "

24. The aforesaid Office Memorandum was implemented in respect of Jawharlal Nehru University and some of the employees could not exercise their option pursuant to the circular dated 21.12.1987 and, therefore, the Executive Council, keeping in view the various representations made by the employees in its meeting dated 19.07.1993, resolved to allow fresh option from the employees for change over from CPF to GPF Scheme. The relevant extract of the Resolution passed by the Executive Council is reproduced as under:

"5.6 Considered allowing fresh option to University employees for change over from Contributory Provident Fund-cum-Gratuity Scheme to General Provident Fund-cum-Pension-cum-Gratuity Scheme and Resolved that the employees of the University may be allowed a fresh option for change over from CPF-cum-Gratuity Scheme to the GPF-cumPension-cum-Gratuity Scheme and that the approval of the UGC be obtained for implementing the decision."

25. The appellant University vide communication dated 05.10.1993 issued a circular for switching from the contributory Provident fund-cum-



Gratuity Scheme to the General Provident Fund-cum-Pension-cum-Gratuity scheme, and the Circular dated 05.10.1993 is reproduced as under:

“

CIRCULAR

Sub: Fresh option to the University employees for change over from contributory Provident fund-cum-Gratuity Scheme to General Provident Fund-cum- Pension-cum-Gratuity scheme.

The Executive Council of the University at its meeting held on 19.7.1993 has decided to allow fresh option for changeover from the Contributory Provident fund-cum-Gratuity Scheme to General Provident fund-cum-pension-cum-Gratuity Scheme. The option for changeover from CPF to GPF is to be exercised by the employees of the University in the prescribed performa obtainable from the Dy. Registrar (Admn.)/ Dy. Registrar (Acad)/ Dy. Registrar (A&E) and returned duly completed by 31.12.1993 by all teaching and non-teaching staff to DR (Acad)/ DR (Admn.)/ DR (A&E) respectively.

2. All CPF beneficiaries of the University who were in service as on 19.7.1993 but have since retired or died before or after retirement, they or their widow/ widower and in their absence by the eldest surviving member of family are also entitled to exercise the above option.

3. The option will not be available to unemployed persons and persons appointed on tenure posts as they are entitled only to contributory Provident Fund.

4. The option once exercised will be final and no request for any change at a later date will be entertained. The CPF beneficiaries who do not exercise any option will be deemed to have opted to continue under the existing contributory provident fund-cum-Gratuity Scheme.

5. The Deputy Registrar (Academic), Deputy Registrar (Admn) and Deputy Registrar (Acad & Estt) may kindly bring the contents of this circular to the notice of those who on the date of issue of this circular are on study leave, deputation, foreign service etc. or have since retired or died.



6. All the Head of the Deptt./ Deans of the Schools/ Chairpersons of the Centres are requested to bring the contents of this Circular to the notice of employees Teaching/Non-Teaching working under their Administrative Control.

Receipt of this communication may please be acknowledged.”

26. The aforesaid circular makes it very clear that the Executive Council has extended the date for submission of option up to 19.07.1993 subject to the approval of the University Grants Commission and the University Grants Commission has granted no objection to the extension by issuing a communication dated 09.09.1994. The communication issued by University Grants Commission dated 09.09.1994 is reproduced as under:

“
*University Grants Commission
 Bahadurshah Zafar Marg
 New Delhi-110002
 9 Sep. 1994*

*The registrar
 Jawaharlal Nehru University
 New Delhi*

Sub: Allowing fresh option to the University employees for change over from CPF to GPF regarding

Sir,

I am directed to refer to your letter No.VII/1/8/78/PF/48 dated 15.4.1994 on the above subject and to say that the commission has no objection towards the option of the University employees for changeover from CPF to GPF. Regarding the utilization of funds on account of option from CPF to GPF is under consideration.

Yours faithfully

Sd/-

(R.D. Sharma)



Under Secretary”

27. The facts of the case further reveal that in spite of the circular issued by the University, some of the employees failed to furnish options for switching over from CPF to GPF and, in those circumstances, the Deputy Finance Officer of JNU again issued a circular dated 26.07.1995 granting three months’ time from 15.07.1995 to submit the option for switching over from the CPF to the GPF Scheme.

28. The records of the case further reveal that some of the employees who were not aware of the circulars issued from time to time or on account of other reasons could not submit their options and submitted large number of representations to the University with the request to grant one last opportunity to exercise their option. Keeping in view the representations received by the University, the University constituted a Four-Member Committee presided over by R.K. Nayak as its Chairman and the Committee after great deliberations, observed as under:

“1. As a part of the implementation of the Fourth Pay Commission, the Government issued a notification dated 1st May 1987, giving an option to employees in CPF scheme to change over to GPF. JNU provided this option to its employees through a notification dated 21st Dec, 1987. Individual employees were sent this notification by name to ensure that the information reached every one (Appendix-I). At that time some employees opted to continue in the CPF scheme. 65 employees opted to change over to the GPF scheme. There was a provision in the notification that those employees who did not exercise the option would be deemed to have opted for the GPF. Under this default provision, 226 employees who did not respond by returning the option forms were switched over to the GPF scheme.



2. *With the permission of the UGC, JNU gave a fresh option to its employees covered under CPF on 14th Oct 1993 and 26 July 1995, for conversion to GPF. These circulars asking for options, unlike the initial circular of 21st Dec, 1987, were sent as general circulars and not by name (Appendix-II). Moreover, unlike the previous notification of 21st Dec, 1987, the default option was not a switch over to GPF, but was continuing to remain in the CPF scheme. This prevented the persons who did not receive / respond to these latter circulars from automatic change over to the GPF as was the case with the original circular of 1987. Many employees have claimed that they did not receive the latter circulars.*

3. *The Fifth Pay Commission implemented with effect from 1.1.1996 did not offer options for such switch over from the CPF to the GPF schemes.*

4. *The current position in this aspect is that almost 95% of the University employees are covered under the GPF scheme and a small number of employees (87 as per the list enclosed as Appendix-III) are still in the CPF scheme. Employees in the latter group have made many representations verbal and written, to the Vice Chancellor to let them switch over to the GPF scheme. In most cases the plea is that the general circulars of 1993 and 1995 for switching over to the GPF option did not reach them. This seemed to suggest that there were some administrative and procedural lapses in the last two options of 1993 and 1995. A view was taken by the University to have the matter examined by an independent committee to facilitate further decision in the matter.”*

29. The Committee took note of the fact that almost 90% of the employees had switched over to the GPF Pension Scheme and no serious financial implication would be caused by permitting the employees to switch over from CPF to GPF Scheme.

30. In paragraph 5 of its report, the Committee observed as under:



“(5) Observations of the Committee:

The committee noted that the circulars giving option for conversion to GPF in 1988, 1993 and 1995 differed in some crucial details.

1. The circular of 1988 offering an option to convert to GPF was sent to JNU employees by name. This minimized the chances of circular not reaching the addressee or getting lost in distribution process.

2. Later circulars of 1993 and 1995 were however sent as general circulars.

3. The default option in 1988 circular was GPF whereas it was CPF in the later circulars.”

31. The Committee after submitting a detailed exhaustive report, submitted its recommendations and the recommendations of the Committee are reproduced as under:

“(6) Recommendations of the Committee

1. The Committee recognizes that there are two dimensions to the issue. One is the larger issue of giving another option to employees after the recommendations of the Fifth Pay Commission, which, otherwise forbade it. This issue, the Committee feels, can only be addressed by the Government of India keeping in view the welfare of employees.

2. The other dimension highlighted before the Committee is that even when the JNU extended fresh options to its employees in 1993 and 1995 with the specific approval of UGC, there were administrative and technical lapses in the manner of its circulation and implementation. The facts brought out before the Committee have revealed that the circulars of 1993 and 1995 were not appropriately circulated. They needed to have been circulated by name to only those who had, in 1988, chosen to remain in CPF. If these employees did not opt to continue in the CPF, they would automatically be deemed to have come over to the GPF scheme. The objective of the 1987 circular was



clearly to offer one last conscious choice to concerned employees to continue in the CPF scheme and convert all others who either made no choice, or did not opt to continue in the CPF, into the GPF scheme.

3. The Committee, therefore, recommends to the JNU administration to rectify administrative lapse as pointed above, by addressing the CPF holders of 26th July 1995 who are still in service today offering the appropriate choice, i.e. to opt specifically to continue in the CPF, or get converted into the GPF. Cases of persons retiring between July 1995 to April 2005 can be considered separately, to the extent that the retrospective choice in their case is feasible.

4. Cases of persons retiring between July 1995 to April 2005 can be considered on merits provided they fulfill the following three criteria:

a) the employee was in service of the University as on 26.7.1995

b) retired from the service of the University before 30.4.2005.

c) he/she had in the meantime made a formal representation for change over from the CPF to the GPF option.

5. The Committee has noted that the additional financial liability on this account even if all the 87 persons concerned are converted into GPF with effect from 26th July 1995 will be marginal and spread over the next two decades. However, the Committee recommends that the University may also explore possibilities of meeting this expenditure from its own resources, pending the regularisation of this administrative act by the UGC/MHRD.

6. The University should evolve a regular mechanism of keeping its employees well informed of various kinds of benefits available to them. All relevant information should also be available on the University's website. The Administration should play a proactive role in keeping all its employees well informed on this count.



The committee presents this report and Unanimous recommendations to the Vice Chancellor, JNU.”

32. The Executive Council of the University in its meeting held on 20.11.2006 passed a Resolution in its 229th Meeting and the same reads as under:

“MINUTES OF THE 229th MEETING OF THE EXECUTIVE COUNCIL HELD ON WEDNESDAY, THE 29 NOVEMBER, 2006 AT 11.30 A.M. IN THE COMMITTEE ROOM, (ROOM NO. 225), ADMINISTRATIVE BLOCK OF THE UNIVERSITY.

6.1 Considered the recommendations of the Finance Committee meeting held on 20.11.2006.

While considering recommendations of the Finance Committee the members raised the issue of extending GPF scheme in respect of those University employees who were not allowed the same due to some technical reasons. The members emphasized that this indeed is a course correction as no fresh option to convert from CPF to GPF scheme is being advocated. The members further emphasized that the Nayak Committee has already deliberated the matter in detail and has made its recommendations. The Council after detailed deliberations resolved to allow conversion from CPF to GPF as recommended by Nayak Committee as a one time rectification. The expenditure on this account will not be met out of the maintenance grant. The Council further resolved not to entertain any future request in this respect. The conversion will also be applicable to retired employees i.e. those who retired on or after the last option was given.”

Thereafter the Council resolved to approve the recommendations of the Finance Committee meeting held on 20.11.2006 as given in Annexure-III.”

33. The Executive Council, based upon the recommendations of the Nayak Committee, resolved to grant one more opportunity to the remaining employees, subject to approval from Government of India, and the matter



was forwarded to Government of India. The Ministry of Finance, Government of India, vide Office Memorandum dated 10.12.2008, rejected the request made by the University and the Office Memorandum dated 10.12.2008 is reproduced as under:

“OFFICE MEMORANDUM”

“The undersigned is directed to refer to the Rector, Jawaharlal Nehru University letter dated 31st October, 2008 seeking approval of Department of Expenditure to allow some of the employees of JNU to switch over from CPF to GPF Scheme with retrospective effect as a special dispensation.

2. In the communication it has been stated that in the year 1995, the University had called for option from its employees to switch over from CPF to GPF Scheme. In this regard it is intimated that Government of India had last given the option to the employees who were governed by CPF Scheme to come over to GPF cum-Pension Scheme in May, 1987. Thereafter, option for switch over to GPF-cum-Pension Scheme has not been allowed by the Government of India. Therefore, the option allowed by the JNU in the year 1995 itself is not valid one. 3. JNU therefore, in the first instance is requested to clarify as to how the option for switch over from CPF to GPF-cum-Pension was called for by them in 1995 without the approval of Ministry of Finance/M/o HRD.”

34. The Respondents before this Court who have not switched over from CPF to GPF Scheme were left with no option, but to knock on the doors of this Court, and the learned Single Judge allowed the writ petition.

35. The undisputed facts of the case make it very clear that the 1st Office Memorandum issued on the subject by Government of India dated 01.05.1987 categorically provided for automatic conversion from CPF to GPF Scheme in case no option was submitted for switching over. However,



in case of Jawaharlal Nehru University, such a condition was not in existence.

36. In the considered opinion of this Court, once the Office Memorandum provided for automatic switching over in case of non-submission of an option, the question of depriving the benefit to the present Respondents does not arise and, therefore, the learned Single Judge was justified in allowing the writ petition.

37. The issue involved in the present case in respect of switching over from CPF to GPF has already been considered in the case of **R.N. Virmani v. University of Delhi**, (2014) SCC OnLine Del 2799, **Kanta Batra v. Union of India**, (2014) SCC OnLine Del 2797 and **Smt. Shashi Kiran & Ors. v. Union of India & Ors.**, (2016) SCC OnLine Del 4819 and the Division Bench of this Court in the case of **Shashi Kiran & Ors.** (supra) has held in paragraphs 23 to 31 as under:

“23. The last category is the Shashi Kiran batch. Here, the University staff, who constituted the writ petitioners, had consciously opted for the CPF benefits. Their grievance was that of discriminatory exclusion. They had approached the court, contending that when they sought for options, the respondents refused to extend it, saying that the previous extensions had ended and later, that the UGC and the Central Government had refused to grant approval.

24. This court noticed earlier that relief was granted in the Virmani batch of petitions, by a separate judgment though delivered on the same day. In that judgment, the sequence of events which led to the extensions and how the respondents (i.e UGC and Union of India) were aware of it, was noticed. The said portion of the judgment is relevant and is extracted below:



“(i). that the option for employees for change over from CPF to Pension Scheme was available only upto 30.09.1987;

(ii). the revised options given to employees to return to Pension Scheme were “absolutely incorrect and against the Rules”;

(iii). the fact that 30.09.1987 was the cut-off date was conveyed by the UGC to the University of Delhi vide its letter dated 25.05.1999;

(iv). the UGC vide its communication dated 08.08.2001 had requested the GOI through Ministry of Human Resources Development (in short MHRD) to consider extension of the scheme of conversion, which was, however, not agreed to as reflected in GOI's letter dated 27.09.2001. The stand of the GOI as reflected in the said communication was based on its earlier communication dated 19.06.2000 which, adverted to the fact that the matter had been examined by the Ministry of Finance, GOI which had, in turn, advised against grant of another option for change over from CPF to Pension Scheme;

(v) In September 2002, letters were exchanged between the UGC and MHRD, GOI as also between University of Delhi and UGC.

(v)(a) To be noted, letters exchanged amongst the entities referred to above have been appended with the counter affidavit of UGC.

(v)(a)(i) The letters exchanged between the UGC and MHRD, GOI are dated: 03.09.2002, 24.10.2002, 26.03.2007, 28.03.2007, 11.05.2007, 26.09.2008, 10.09.2008;

(v)(a)(ii). In so far as correspondences exchanged between University of Delhi and UGC are



concerned, these are dated: 28.02.2003, 23.09.2003, 21.12.2006.

(v)(a)(iii). Apart from the above, there is a reference to representations by teachers, who were employed with University of Delhi and colleges affiliated to it, prior to 01.01.1986.

(v)(b). The sum and substance of the correspondences referred to above is, that while UGC was sympathetic to extension of the date of conversion till at least 31.03.1998, it did not want to take the burden of pension liability of the employees if, GOI was not agreeable to the extension of date beyond 30.09.1987. (see letter dated 03.09.2002). As a matter of fact, UGC sought instructions in the matter from the GOI, which vide its letter dated 24.10.2002, advised UGC, being the funding agency for Central Universities and deemed Universities, to take a decision at its end without referring the matter to MHRD.

(v)(b)(i). The UGC, therefore, on its part vide its communication dated 23.09.2003, informed University of Delhi that it could not grant, a retrospective, one time change over from CPF Scheme to Pension Scheme.

(v)(b)(ii). What interestingly, though, emerges from the correspondence, is that, since several institutions, such as, IIT Kanpur and other autonomous institutions such as, the Department of Atomic Energy and CSIR had extended the date of switch over qua its employees - UGC's request that the conversion date be extended till 31.12.2003, as a new Pension Scheme had kicked-in vis-à-vis persons joining the University on or after 01.01.2004, was declined by MHRD. (see letter dated 26.03.2007)."



25. *The discrimination complained of by the appellants in Shashi Kiran's batch of cases is that even though the deadline of 30.09.1987 was not deemed sacrosanct by the University (and through omission and, therefore, tacit approval, by UGC and the Central Government) a large number of employees who had not opted either way were allowed to switch-over to the Pension Scheme through options given over 14 years, by 12 different extensions. Given that the ground realities had undergone a sea change, the CPF scheme was unfeasible and had lost viability; on the other hand, the Pension Scheme was more beneficial. These appellants argue that in such a situation, when 2469 staff members opted for pension on various dates during these extensions, when they wished to do so, the respondents unfairly refused the benefit.*

26. *The learned Single Judge's view has some logic in it because the University refused the Pension Scheme benefits in case of those who had chosen it: in Virmani's case, by default (i.e. no option, which meant deemed option) and in the other cases, because of the option for CPF, given after the date prescribed. While the logic for directing relief in the first category (Virmani) is sound, the second category was given relief by ignoring that they consciously wished to switch-over to the CPF scheme, but after the cutoff date. Thus, the learned Single Judge ignored the conscious choice made only on the ground that the choice or option for CPF was after the cut-off date. Now, this has led to a peculiar situation where those who opted for CPF benefits have been divided into two categories: one, who opted before the cut-off date and two, those who opted after the cut-off date. The latter have been given relief. That is also the basis for refusing relief to the former, who are appellants in this batch.*

27. *As noticed earlier, 2469 staff members are enjoying the benefit of the Pension Scheme, on account of the choice or option made by them. Furthermore, the University in its additional affidavit in the course of proceedings in the writ petitions had stated as follows:*



“The reason for such a large number of petitioners seeking to migrate from the CPF scheme to the GPF-cum-Pension scheme is entirely due to the huge disparity in financial benefits that has developed, since the late 1990s, between those on CPF scheme and those on GPF-cum-pension scheme. Till the late 1990s, the interest rates applicable to the CPF scheme were very high-the rate was at 14% for 6 years until 1999-2000, thereafter, the interest rate sharply declined to 8% in 2003-2004. On the other hand, however, those who were covered by the GPF-cum-pension scheme benefited from the generous provisions made on the basis of the recommendations of the fifth and sixth pay commission. As a result, basic pensions have undergone a significant increase in dearness allowance on pensions goes up every six months due to inflation indexation; 40% of the pension is available for commutation the original value being restored after 15 years; and, the basic pension goes up by 20% after the age of 80 and every five years thereafter. Thus, it is evident that the two retirement benefit schemes give differential benefits, with the GPF-cum-Pension scheme providing much more benefits than the CPF scheme, especially after the recommendations of the two pay commissions. It is solely on this account that the petitioners are belatedly attempting to migrate from the CPF scheme to the GPF-cum-pension scheme, even though they chose to remain covered by the CPF scheme and fully reaped the benefits that accrued to them under the scheme. The writ petitions are liable to be dismissed on the grounds of delay and laches, as well as the principle of approbate and reprobate.”

28. If these facts are taken together with the Central Government's conceded stand in permitting staff members and



employees in other institutions, including educational institutions such as IIT Kanpur, the Department of Atomic Energy and Council for Scientific and Industrial Research to opt in extended dates for switch-over qua its employees, the rejection of UGC's request that the conversion date be extended till 31.12.2003, reveals the arbitrariness and non-application of mind by the Central Government.

29. That the Central Government permitted change over as late as till 31.12.2003, i.e before the sixth pay commission recommendations (introducing CPF benefits to all those employed later, universally with effect from 01.01.2004). This aspect assumes critical importance, because the Central Government (and UGC) admit that all those who opted after the cutoff date (and many of them having opted for CPF earlier) have been granted benefits under the Pension Scheme. The ground realities with respect to the nature of benefits that accrue to CPF optees in comparison with GPF/Pension optees paints a stark picture. One should keep in mind that while opting for such schemes, employees cannot gaze into the crystal ball, as it were, and speculate whether the existing state of affairs would continue. At the time when these options were sought and given, those opting for CPF were reasonably certain that having regard to the nature of contributions and the rate of interest, the end package would compare favourably with Pension optees, with respect to returns earned at the stage of superannuation. In other words, when the options were given, these appellants were in employment; neither they, nor for that matter the respondents could have visualized a drastic fall in the interest rates, which severely undermined the CPF option and shrunk the ultimate lump sum CPF benefit available to these appellants. While examining whether a statute once valid and upheld as such on the ground of Article 14 ceases to be so due to later developments and with passage of time, the Supreme Court has declared in a number of judgments that the earlier declaration of validity or basis of classification cannot be the basis to deny the arbitrariness of the law, if it is proved to be so later (Refer to State of Madhya Pradesh v. Bhopal



Sugar Industries (1964) 6 S.C.R. 846; Narottam Kishore Dev Varma v. Union of India (1964) 7 S.C.R. 55; H.H. Shri Swamiji of Shri Admar Mutt v. The Commissioner, Hindu Religious & Charitable Endowments Department (1980) 1 S.C.R. 368; Motor General Traders v. State of Andhra Pradesh. 1984 (1) S.C.R. 594.) In H.H. Shri Swamiji of Shri Admar Mutt (supra) it was held that: “there is a firm foundation laid in support of the proposition that what was once a non-discriminatory piece of legislation may in course of time become discriminatory and be exposed to a successful challenge on the ground that it violated Article 14 of the Constitution.”

30. In this case, clearly when the appellants opted for CPF benefits, they did so without premonition of future developments. The net result was that as between two individuals in the same grade and post, carrying the same pay scale, one who opted for the Pension Scheme was entitled to a substantial amount and future adjustments in pension whenever Dearness Allowance were to be enhanced. However, for the appellants, there was no such advantage; they saw a shrinking package on account of later developments - notably the drop in interest rates. Now, interest at the rate or anyway, somewhere near the rates, which prevailed when the scheme was introduced, was one of the significant basis for the CPF scheme. With a drastic change in the rates, those opting for CPF were at a grave disadvantage. To compound their problems, the University's interpretation of a fairly clear Office Memorandum (dated 01.05.1987) injected much confusion. The third factor is that even amongst University staffers, 12 extensions were given and a large number of options for the Pension Scheme were furnished - both in respect of those who opted for CPF earlier and those who did not. Taking the totality of circumstances, the University's insistence to pin the appellants to the options they originally exercised is discriminatory.

31. The other reason why this court is inclined to allow this appeal is that neither the Central Government nor the UGC



have furnished a single reason for why option to switch-over to the Pension Scheme was permitted up-to 31.12.2003 to several other autonomous institutions and denied to the appellants. This singular omission to say what compelled the Central Government to deny the petitioners the benefit of switch-over, while permitting those in other institutions, in the opinion of the court, clearly amounts to discrimination. The mere fact that the petitioners are working in the University whereas the other employees work in other institutions is not sufficient, given that the consistent stand is that options once given cannot be altered. Therefore, it is held that denying the right to opt to the Pension Scheme in the case of the Shashi Kiran batch is unsustainable; it has resulted in arbitrariness.”

38. It is true that an SLP has been preferred before the Hon’ble Supreme Court, i.e. Special Leave Petition (Civil) Diary Nos. to Appeal 13901 and 17007 of 2017, titled ***University of Delhi v. Shashi Kiran and Ors.***, however, the judgment delivered by the Delhi High Court has not been stayed.

39. The undisputed facts of the case make it very clear that on account of the Office Memorandum dated 01.05.1987, the Jawaharlal Nehru University has issued a circular for submission of option up to 20.05.1988 and the Jawaharlal Nehru University, in its wisdom inserted a condition that those employees who want to continue with the CPF Scheme should submit their option, and those who want to switch over shall also submit their option. It was a mistake committed by the Jawaharlal Nehru University as the Jawaharlal Nehru University lost sight of the terms and conditions of the Office Memorandum dated 01.05.1987. The Office Memorandum provided for automatic transfer from CPF to GPF in case no option was submitted.

40. The facts also make it very clear that there was ambiguity in the initial



circular issued by the Jawaharlal Nehru University and, therefore, time was extended again and again. Under those circumstances, the Nayak Committee constituted in the matter, rightly arrived at the conclusion that one last opportunity should be given to the employees in the matter.

41. This Court fails to understand the stand of the Jawaharlal Nehru University, especially in the light of the Nayak Committee Report. The Nayak Committee Report categorically states that there were administrative lapses on the part of the administration and the circulars were not appropriately circulated. Once the Nayak Committee Report recommended that the employees are entitled for one last opportunity and those recommendations were approved by the Finance Committee and accepted by the Executive Council, the University, at this juncture, cannot take a different stand as the apex body of the University has accepted the Nayak Committee Report and merely because the Ministry of Finance has not accepted the decision taken by the Executive Council, the Jawaharlal Nehru University has taken a somersault in the matter by opposing the writ petition and by filing the present LPA.

42. The matter was forwarded to the Ministry of Finance keeping in view the final implications in the matter and, therefore, as the Respondents had a right to migrate to the GPF, especially in the light of the fact that the Office Memorandum provided for automatic migration from CPF to GPF in case of non-submission of the option. The Respondents, therefore, could not have been deprived of the benefit of switching over to GPF.

43. This Court, after careful consideration of the documents on record, is



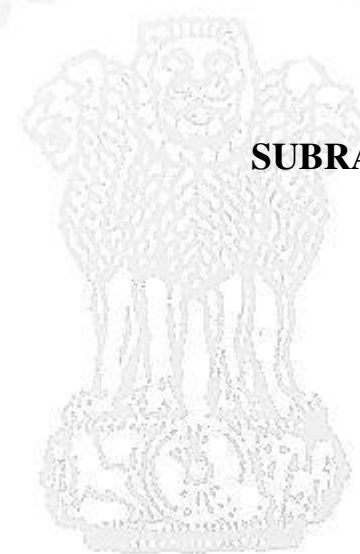
of the considered opinion that the Respondents cannot be deprived of their right to switch over to GPF as the initial Office Memorandum dated 01.05.1987 provided for the same in case of non-submission of the option. This Court does not find any reason to interfere with the order of the learned Single Judge, and the instant LPA is dismissed.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J.

JULY 27, 2022

aks/N.Khanna



न्यायमेव जयते