



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

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Judgment reserved on: 09 February 2022
Judgment pronounced on: 18 February 2022

+ W.P.(C) 2989/2010, CM APPL. 43200/2021

MANOJ PANT AND ORS.

..... Petitioners

Through: Mr. K K Rai, Sr. Adv. with Mr. Shiv Kumar Pandey, Mr. Awanish Kumar, Mr. Chandrashekhar Chakalabbi, Mr. Anshul Rai, Ms. Sreoshi Chatterjee and Mr. Priyesh Srivastava, Advs.
 Mr. Abhik Chimni, Mr. Lakshay Garg, Mr. Shashwat Mehra and Mr. Animes Prusty, Advs. for P-4, 13, 18, 21, 31-32, 35, 43 & 50.

versus

JAWAHARLAL NEHRU UNIVERSITY

..... Respondent

Through: Ms. Monika Arora, SC for JNU.
 Mr. Ruchir Mishra and Mr. Mukesh Kumar Tiwari, Advs. for UOI.
 Mr. Ravinder Agarwal and Mr. Lekh Raj Singh, Advs. for R-4.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

JUDGMENT

1. The petitioners who are the erstwhile and serving teachers in the Jawaharlal Nehru University¹ have petitioned this Court seeking the following reliefs:

¹ JNU



“1. Directing implementation of decision taken by the Respondent vide Executive Council Resolution date 19.7.1993 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 29.11.2006 to remove the discrimination between the similarly situated teachers/employees

2. Pass such other and further orders as this Hon’ble Court may deem fit and proper in the facts and circumstances of the case.”

2. The grievance which is voiced on the petition is a refusal on the part of JNU to permit them to change over to the **General Provident Fund Cum Pension Scheme**². On 01 May 1987, the Union Government through its Ministry of Personnel, Public Grievances and Pensions issued an Office Memorandum³ providing for existing and retired employees to change from the **Contributory Provident Fund Scheme**⁴ to the GPF scheme. Since the case revolves around the provisions made in this O.M., the same is being extracted hereinunder:

“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.

² GPF scheme

³ 1987 O.M.

⁴ CPF scheme



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.”



3. The O.M. essentially provided for options being exercised by employees who sought to continue under the CPF scheme. It further stipulated that the options in this respect would have to be exercised and submitted to the competent authority by 30 September 1987. The O.M. significantly provided that if no option is received by the competent authority by the date prescribed and referred to above, the employees would be deemed to have come over to the pension scheme. In para 3.6, it was further provided that the options once exercised would be treated as final. Para 6.2 of O.M. then proceeded to record that the same would not apply to Central Government employees who were continuing either on re-employment or on contractual terms. It further provided in para 6.3 that its provisions would also not apply to Scientific and Technical Personnel of the Departments of Atomic Energy, Space Electronics and such other scientific departments which had adopted systems prevailing in the Department of Atomic Energy. In terms of the directions contained in para 7.1 and 7.2, the Administrative Ministries in the Union Government were consequently advised to issue appropriate orders in respect of all CPF beneficiaries in order to apprise them of its provisions.

4. Undisputedly, JNU is an autonomous body constituted in terms of the **Jawaharlal Nehru University Act, 1966**⁵ promulgated by Parliament by virtue of Entry 66 of List I of the Seventh Schedule to the Constitution. The 1987 O.M. thus did not ipso facto apply to JNU.

⁵ Act



5. The petitioners have placed on the record the General Provident Fund-cum-Pension-cum-Gratuity and Contributory Provident Fund-cum-Gratuity Schemes Statutes applicable to teaching and non-teaching staff of the JNU. These provisions stand placed under Statute 40 of the Statutes of the University. The statute essentially requires all members upon entering service to exercise an option specifying therein whether they choose to be part of CPF or the GPF schemes. Once the 1987 O.M. in question came to be issued, the matter appears to have come up for discussion before the Executive Council of JNU in its meeting held on 20 July 1987 when it resolved to adopt the same. Its decision in this respect came to be published in terms of a circular dated 21 December 1987. In terms of the provisions made in this circular, the requisite options were to be submitted by officers and employees latest by 20 May 1988 to the Finance Officer. While some of the petitioners who were in service at the time when the 1987 O.M. was adopted, decided to continue under the CPF scheme, some of them exercised that choice after appointment in the JNU post the adoption of the 1987 O.M.

6. JNU apprised all serving employees and teachers of the changes brought about in terms of a circular of 11 April 1988. Both the circulars required employees of JNU to exercise an option if they desired to continue in the CPF scheme by 20 May 1988. They further stipulated that the options exercised would be final and would not be permitted to be revised or reopened after 20 May 1988. It appears that various employees failed to act



in accordance with the provisions made in the circulars aforementioned and failed to submit an option within the time stipulated therein. Taking cognizance of various representations which were made in this respect, the Executive Council in its meeting of 19 July 1993 resolved to allow a fresh option being obtained from employees for change over from the CPF to the GPF scheme. The relevant resolution of the Executive Council stands placed as Annexure P-7 and is extracted hereinbelow: -

“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-cum-Pension-cum-Gratuity Scheme and that the approval of the UGC be obtained for implementing the decision.”

7. The decision so taken by the Executive Council was again circulated amongst the serving employees by a communication of 05 October 1993. That circular reads as follows: -

“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 form CPF to GPF is to be exercised by the employees of the University in the prescribed performa obtainable form 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.”

8. This circular too called for options being submitted by employees seeking to change over from CPF to GPF. It required employees to submit their options in accordance with the proforma which stood appended to that circular. It becomes pertinent to note that the proforma envisaged existing employees furnishing a declaration to the effect that the earlier options exercised by them for being beneficiaries under the CPF scheme would stand cancelled and that they in consequence chose to migrate to the GPF scheme. All employees executing that declaration further undertook to refund the employers contribution along with interest standing to the credit



of their respective CPF accounts. The relevant extract of that declaration is reproduced hereinbelow: -

“ REVISED
DECLARATION

(In terms of Circular No.VII/1/8/78/PPP dated 5.10.1993)

Having fully understood the comparative advantages of Pensionary and Provident Fund benefits as applicable in my case-

(1) I opt for the General Provident Fund-cum-Pension-cum-Gratuity Scheme as contained in Appendix ‘A’ to Statute-40.

The earlier option exercised by me for Contributory Provident Fund-cum-Gratuity Scheme stands cancelled.

(2) I undertake to refund U.C. alongwith interest credited to date thereon in my C.P.F. account No. C/ / .

Signature_____

Date_____

Name in Full _____

(in block letters)

Post Held_____

School/Centre/Deptt. of the

University_____”

9. The record further bears out that the Executive Council had extended the last date for submission of options up to 19 July 1993, subject to the approval of the University Grants Commission⁶ being obtained. The UGC expressed its no objection to the extension in terms of its communication of 09 September 1994 which forms part of the record as Annexure P-10.

10. It appears that despite the aforesaid circulars having been issued, various employees of JNU failed to furnish the options as required in order

⁶ UGC



to switch from CPF to GPF. Taking the aforesaid facts into consideration the Deputy Finance Officer of JNU issued a circular of 26 July 1995 to the following effect: -

“Dated: 26-7-1995

No.VII/1/8/78/PFP

CIRCULAR

It is noticed that some of employee could not submit their option request to switch over from Contributory Provident Fund-cum-Gratuity Scheme to General Provident Fund-cum-Pension-cum-Gratuity Scheme even after the latest option Circular of even No. dated 5-10-1993. Separate applications are being received frequently. It is therefore, now felt that concerned Establishment Branch viz. D.R. (Admn), D.R. (Acad), D.R. (A&E) may invite the name of such person who intend to opt the GPF Scheme by giving another 3 months time from 15-7-1995 so that necessary decision can be taken in this regard. The staff members may also be informed that this is last change and no request for change of option from C.P.F. to G.P.F, will be entertained after this date.”

11. The dispute, however, did not end here. It has come on the record that despite the circulars having been issued in 1993 and 1995 permitting officers and employees who had been left out or had failed to exercise an option to do so latest by 31 December 1993 [in terms of the circular of 05 October 1993] and within three months from 15 July 1995 [in terms of the circular of 26 July 1995], representations continued to be received by JNU for a further opportunity being given to employees to exercise their choice in this respect. Taking note of the same, the University constituted a four-member committee⁷ headed by Dr. R. K. Nayak as its Chairperson. That

⁷ Nayak Committee



report of the Nayak Committee has been placed on the record by the petitioners as Annexure P-12. While noting the status of implementation of the scheme to move from CPF to GPF, the Nayak Committee noted the following facts:-

“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.”

12. The Nayak Committee, thereafter, undertook a comparative review of the benefits of the CPF and GPF schemes. It also took note of the position prevailing in various other autonomous bodies including the IITs’ which had given further chances to enable their employees to convert to GPF. It further proceeded to record that no serious financial implication would be caused by permitting employees to change over from CPF to GPF and granting them a further opportunity to exercise the requisite option. It also noted that almost 95% of the employees of JNU already stood covered under the GPF scheme. It then proceeded to record that the University appears to have failed to act appropriately in failing to ensure that the circulars of 1993 and 1995 were specifically addressed to those employees who were continuing under the CPF regime. It further observed that the university appeared to have failed to ensure that the 1993 and 1995 circulars were adequately circulated and brought to the notice of various employees. This is evident from its observations as set forth in paragraph 5, which reads thus: -

“(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.

In, university system, a number of general circulars are sent routinely and, unless a circular is issued by name, it may escape attention of the employee. As a result an employee may not get an opportunity of responding to such a serious matter involving life long benefits in case a copy of the circular does not reach the table of the concerned employee due to our systemic lapse. The circulars of 1993 and 1995 should have been sent only to CPF holders and that too by name. Additionally, in the interest of benefits of employees, University should have taken special care to explain the importance of this option. Many employees, especially of the teaching community are not well versed with financial matters and care should have been taken to inform them of the implications of this option and help them make a well informed decision. The default option in 1993 and 1995 circulars (which were meant to be extensions of the 1988 circular) was changed to CPF. Why this was done is not clear, but this prevented default conversion to GPF as was the case with 1988 option. The committee noted that the University Administration did not take adequate steps to ensure circulation of such an important option circular, and also, perhaps, missed out on conveying the default option correctly.

The committee unanimously feels that since this current predicament of some of the serving employees of JNU still on CPF, has resulted from administrative lapses on the part of JNU administration, this should be rectified administratively.”

13. The Nayak Committee ultimately framed the following recommendations: -

“(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.”

14. The report of the Nayak Committee came to be placed before the Finance Committee of JNU and the recommendations framed by that committee came up for consideration before the Executive Council in its meeting held on 20 November 2006. The Executive Council proceeded to pass the following resolution: -

“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.”



15. As is evident from a reading of the resolution which was passed by the Executive Council on that date, the grant of one more opportunity to the remainder employees was subject to appropriate approvals being obtained from the Union Government. The Ministry of Finance in the Union Government in terms of its Office Memorandum dated 10 December 2008, however, proceeded to refuse to accede to the request for extension as resolved by the Executive Council. The said Office Memorandum reads thus: -

“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.”

16. Faced with the refusal of the concerned Ministry to accord permission, the remainder employees were not accorded permission to change from CPF to GPF Scheme. It is this action which ultimately led to the filing of the present writ petition.



17. It would be pertinent to also note the various particulars pertaining to the petitioners which have been appended along with the short affidavit filed by JNU. Those particulars indicate the dates when the petitioners joined the University, the date of submission of options and their respective dates of retirement. A perusal of those details establishes that various petitioners submitted their options to be under the CPF scheme within the original time frame which had been fixed by the Circular dated 21 December 1987. It also discloses the details of some of the petitioners who submitted options to be part of the CPF Scheme before the issuance of the 1993 and 1995 Circulars. These petitioners appear to have submitted their options in terms of the provisions made in Statute 40 and at the time of their entry into service. Undisputedly, no employee was permitted to change over from CPF to GPF after the 2006 resolution of the Executive Council failed to meet the approval of the concerned Ministry. It is in the aforesaid backdrop that the petitioners have presented the instant writ petition seeking the issuance of a direction commanding JNU to act in terms of the decision of the Executive Council, and in the alternative, for the petitioners being permitted to exercise an option as per the recommendations made by the Nayak Committee and in accordance with the Executive Council's Resolution of 29 November 2006.

18. Mr. Rai learned Senior Counsel who addressed submissions on behalf of some of the petitioners contended that the terms and provisions of the 1987 O.M. explicitly provided for an automatic conversion from CPF to



GPF once the stipulated last date had come to pass. According to Mr. Rai, once JNU proceeded to adopt that office memorandum in terms of the Executive Council's Resolution of 20 July 1987, any options for extension of CPF benefits made after 30 September 1987 are liable to be ignored. Mr. Rai would contend that the date of 30 September 1987 as embodied in the 1987 O.M. could not have been modified or varied by JNU. It was his submission that the aforesaid cut-off date was clearly sacrosanct and consequently after 30 September 1987, all employees were liable to be treated as having switched over to the GPF Scheme notwithstanding any options that may have been submitted by them post that date.

19. The submission of Mr. Rai essentially flows from the principles laid down by the Supreme Court in **Union of India & Anr. vs. S.L. Verma & Ors.**,⁸ where the provisions of the concerned 1987 O.M. directly fell for consideration. In **S.L. Verma**, the Supreme Court was considering the validity of the action of the Union Government as well as the Bureau of Indian Standards which had called upon its employees to give a positive option to migrate to the GPF Scheme. Finding fault with the decision of the Ministry and the Bureau, the Supreme Court held thus: -

7. The Central Government, in our opinion, proceeded on a basic misconception. By reason of the said office memorandum dated 1-5-1987 a legal fiction was created. Only when an employee consciously opted for to continue with the CPF Scheme, he would not become a member of the Pension Scheme. It is not disputed that the said respondents did not give their options by 30-9-1987. In that view of the matter Respondents 1 to

⁸ (2006) 12 SCC 53



13 in view of the legal fiction created, became the members of the Pension Scheme. Once they became the members of the Pension Scheme, Regulation 16 of the Bureau of Indian Standards (Terms and Conditions of Service of Employees Regulations, 1988) had become ipso facto applicable in their case also. It may be that they had made an option to continue with the CPF Scheme at a later stage but if by reason of the legal fiction created, they became members of the Pension Scheme, the question of their reverting to the CPF would not arise. Respondent 14 has correctly arrived at a conclusion that an anomaly would be created and in fact the said purported option on the part of Respondents 1 to 13 was illegal when a request was made by Respondent 14 to the Union of India for grant of approval so that all those employees shall come within the purview of the Pension Scheme. In our opinion, the Ministry of Finance proceeded on a wrong premise that the Pension Scheme was not in existence and it was a new one. Two legal fictions, as noticed hereinbefore, were created, one by reason of the memorandum, and another by reason of the acceptance of the recommendations of the Fourth Central Pay Commission with effect from 1-1-1986. In terms of such legal fictions, it will bear repetition to state, Respondents 1 to 13 would be deemed to have switched over to the Pension Scheme, which a fortiori would mean that they no longer remained in the CPF scheme.”

20. Mr. Rai has further contended that the issues raised here stand conclusively settled in favor of the petitioners in light of the judgments rendered in **R.N. Virmani vs. University of Delhi**,⁹ and **Kanta Batra vs. Union of India**¹⁰. Both these decisions rendered by a learned Judge of this Court fell for consideration in appeal before the Division Bench of this Court. That judgement stands reported as **Smt. Shashi Kiran & Ors. vs. Union of India & Ors.**¹¹ Referring to the principles laid down in the aforementioned judgements, Mr. Rai submitted that on a construction of the

⁹ 2014 SCC OnLine Del 2799

¹⁰ 2014 SCC OnLine Del 2797

¹¹ 2016 SCC OnLine Del 4819



1987 O.M., it was clearly held by this Court that the change over to the GPF scheme came about by operation of law and on account of the deeming fiction as embodied in that office memorandum. Mr. Rai would highlight the fact that the office memorandum required an option to be exercised only in case an employee chose to remain or be a part of the CPF Scheme. Learned senior counsel laid emphasis on the fact that the change over to the GPF scheme was liable to be presumed once an employee had failed to furnish an option to continue under the CPF Scheme by 30 September 1987. Mr. Rai refers to the following passages as occurring in the judgment rendered by the Court in **Virmani:-**

“14. In my view, the answer to the question: as to whether employees, who had not issued any overt communication with regard to his/her desire to continue with the CPF Scheme, stood covered by the Pension Scheme; would largely depend upon the provisions of O.M. dated 01.05.1987, itself.

14.2. A perusal of the aforesaid form would show that the only option which had to be exercised was with regard to continuation by an employee under the CPF Scheme. The employee was not required to submit any form if, he or she wanted to be covered under the Pension Scheme, as that was automatic, in view of the deeming provision incorporated in clause 3.1 and 3.2 of O.M. dated 01.05.1987. This is precisely the reasoning given by the Supreme Court in no uncertain terms in *S.L. Verma's* case. The relevant observations of the Supreme Court are contained in paragraphs 4 and 7, which for the sake of convenience, are extracted hereinbelow.

“..4. The Central Government as also the respondent No. 14-Bureau of Indian Standards have proceeded on some legal misconception that it was obligatory on the part of the said employees to give a positive option for the said purpose. For the first time on 2.2.1999, the respondent No. 14 requested the Union of India for grant of another chance to the respondents to switch over to pension scheme stating that they purported to have exercised their option for CPF Scheme on the cut-off date.



7. The Central Government, in our opinion, proceeded on a basic misconception. By reason of the said Office Memorandum dated 1.5.1987 a legal fiction was created. Only when an employee consciously opted for to continue with the CPF Scheme, he would not become a member of the Pension Scheme. It is not disputed that the said respondents did not give their options by 30.9.1987. In that view of the matter respondent Nos. 1 to 13 in view of the legal fiction created, became members of the Pension Scheme. Once they became the member of the Pension Scheme, Regulation 16 of the Bureau of Indian Standards (Terms and Conditions of Service of Employees Regulations, 1988) had become ipso-facto applicable in their case also. It may be that they had made an option to continue with the CPF Scheme at a later stage but if by reason of the legal fiction created, they became members of the Pension Scheme, the question of their reverting to the CPF would not arise. The respondent No. 14 has correctly arrived at a conclusion that an anomaly would be created and in fact the said purported option on the part of respondent No. 1 to 13 was illegal when a request was made by respondent No. 14 to the Union of India for grant of approval so that all those employees shall come within the purview of the Pension Scheme. In our opinion, the Ministry of Finance proceeded on a wrong premise that the Pension Scheme was not in existence and it was a new one. Two legal fictions, as noticed hereinbefore, were created, one by reason of the memorandum, and another by reason of the acceptance of the recommendations of the Fourth Central Pay Commission with effect from 1.1.1986. In terms of such legal fictions, it will bear repetition to state, the respondent nos. 1 to 13 would be deemed to have switched over to the pension scheme, which a fortiori would mean that they no longer remained in the CPF scheme..." (emphasis is mine)

14.9. O.M. dated 01.05.1987, gave no such choice to the employees. A plain reading of the provisions show that employees automatically stood covered under the Pension Scheme.

16. The argument raised before me by the respondents, which veered towards approbation, was based on the fact that petitioners had continued to contribute under the CPF Scheme. This submission would not cut much ice with me, having regard to the plain terms of O.M. dated 01.05.1987. If, the cover under the Pension Scheme, gets triggered with effect from 30.09.1987, the contribution by an employee and its receipt by the employer clearly proceeds on a misconception of the provisions of O.M. dated 01.05.1987.



As a matter of fact, this very argument was repelled by the Supreme Court, in *S.L. Verma's* case, and I think, for good reason. Consequently, there is no room for entertaining such an argument. The relevant observations made in paragraph 7, specific to this aspect, are, once again, extracted hereinafter.

“...It may be right they had made an option to continue with the CPF Scheme at a later stage but if by reason of the legal fiction created, they became members of the Pension Scheme, the question of their reverting to the CPF would not arise...” (emphasis supplied)

17.1. In my opinion, the petitions in the instant case cannot be dismissed on the ground of delay and laches for the following reasons. Firstly, consistent with the provisions of O.M. dated 01.05.1987, the petitioners were not required to carry out an overt act to get cover under the Pension Scheme. The fallacy, if any, was that of the respondents who sought a positive option in that behalf. The respondents, in my view, misconstrued the contributions towards CPF Scheme as an act which could unilaterally alter the provisions of O.M. dated 01.05.1987. Therefore, in that sense, the argument of delay cannot be advanced by the respondents.

19. The captioned writ petitions are accordingly allowed. I must, however, clarify as to why, despite the petitioner, in WP(C) 2028/2012 seeking his deletion from array of parties, while being part of WP(C) 1490-507/2006, is being given the same relief. I have carefully perused the averments made in CM No. 4814/2011, whereby it is indicated that the said petitioner sought deletion on the ground that he had gathered information through the RTI route that his case was being considered by the respondents under the Pension Scheme. Since, the petitioner was retiring on 31.03.2011, he was apparently, motivated to file the said application on 30.03.2011. It was not as if the petitioner wanted to continue under the CPF Scheme which is what, albeit, erroneously, was sought to be portrayed by the concerned College in its counter affidavit. There is no dispute with respect to the fact, even in case of this petitioner, that he had not exercised an option to continue under the CPF Scheme. As a matter of fact, though the benefit owed to the petitioner under the CPF Scheme, had been received by Shivaji college, the same was not collected by him, as is reflected in his communication dated 16.12.2011, addressed to the said college.

20. Having regard to the above discussion, the respondents - University of Delhi/concerned Colleges will be entitled to recoup their contribution



under the CPF Scheme, if not already recouped, with simple interest at the rate of 8% p.a.”

21. In the batch of writ petitions led by **Kanta Batra** [to which “**Shashi Kiran**” was also a party and would be so referred hereinafter], the learned Judge proceeded to hold thus: -

“12.1. Suffice it to say that I have come to the conclusion that O.M. dated 01.05.1987, created a deeming legal fiction, which envisaged that if, a positive option was not given by employees, who were in service on 01.01.1986, to continue in the CPF Scheme by 30.09.1987, then, they automatically stood covered by the Pension Scheme. Admittedly, the present set of cases are those in which the petitioners did give a positive option for continuation in the CPF Scheme prior to 30.09.1987.

14. The other argument, as indicated above, was that the right to pension flowed from provisions of Statute 28-A and therefore, neither O.M. dated 01.05.1987 nor the notification dated 04.06.1987 could bind the petitioners. According to me, the submissions of Ms. Palli are flawed for various reasons:-

(i). first, the petitioners have made no such averment in their petitions. When this aspect was put to the counsels appearing for petitioners, which included Ms. Palli, Mr. Khurana and Ms. Sahni, they resorted to a simplistic answer, which is, that, it was a question of law and therefore, the court could consider it. The counsel for the petitioners seeking to clutch at straws sought to draw my attention to the circular dated 09.02.1989, which makes a reference to Statute 28-A. According to me, a mere reference to a provision in a circular would not suffice as the petitioners are required to make a specific pleading to demonstrate as to how the facts obtaining in each of their respective cases, if at all, are covered by a particular provision of the Act or the Statute. Such a pleading, if made, would have enabled the opposing parties to deal with the factual and legal aspects of the submissions made by the petitioners. In the absence of pleadings, this contention deserves to be rejected on this short ground alone;



(ii). Second, since, petitioners are those persons, who had joined the University of Delhi after 01.04.1964 and were in service on 01.01.1986, they were clearly covered by sub-clause (a) Clause 2 of Statute 28-A which gave them an alternative to either subscribe to the GPF-cum-Pension-cum-Gratuity Scheme or the CPF-cum-Gratuity Scheme. The petitioners in this case were obviously optees of CPF-cum-Gratuity Scheme.

(ii)(a). With the constitution of the Fourth (4th) Central Pay Commission and the acceptance of its recommendations by the Central Government the optees of the CPF Scheme, in the Central Government, were given an opportunity to switch over to the Pension Scheme, subject to conditions stipulated in O.M. dated 01.05.1987. The condition being: that only those who opted to continue under the CPF Scheme that too by 30.09.1987 would be governed by the CPF Scheme, while the others by a deeming legal fiction would get covered after 30.09.1987 by the Pension Scheme.

(ii)(a)(1). This decision of the Central Government was accepted by the University of Delhi as well. Consequently, approval was sought by the University of Delhi to amend Statute 28-A, by inserting clause (b) in Statute 28-A. The fact that the GOI gave its approval to the amendment, which inter alia, brought the employees of the University of Delhi at par with the Central Government employees vis-a-vis benefits concerning GPF, CPF and pension is reflected in the letter dated 05.05.1987, addressed by MHRD, GOI to the University of Delhi. It is precisely for this reason that clause (5), which is been extracted hereinabove, was inserted in Statute 28-A. The said approval was followed evidently by issuance of notification dated 25.05.1987 which, inter alia, set out the salient features of the revised benefits of pension and family pension as accepted by the GOI, pursuant to the recommendations of the Fourth (4th) Central Pay Commission.

(ii)(a)(2). What is important is that this notification also adverted to the fact that all those employees of the University who were beneficiaries of the CPF and were in service on 01.01.1986 would be deemed to have come over to the Pension Scheme under Statute 28-A appendix 'A' unless they specifically opt out to continue under the CPF Scheme i.e.,



Statue 28-A appendix 'B'. Both, the insertion of clause 5 in Statute 28-A and the notification dated 25.05.1987, on which, Ms. Palli, also chose to place reliance in the course of her arguments, are consistent with the decision, which is reflected in the notification dated 04.06.1987. Therefore, the argument of Ms. Palli, that the OM. Dated 01.05.1987 or the notification dated 04.06.1987, had no legal basis is according to me, misconceived.

(iii). The other argument of Ms. Palli that the extensions granted by Circular dated 09.02.1989 and notification dated 11.02.1998 were valid as they had the imprimatur of the Executive Council while this was not the case in respect of notification dated 04.06.1987, fails to recognize the following facts:-

(a). as noted above, the notification dated 04.06.1987 was preceded by communication dated 05.05.1987 and a notification dated 25.05.1987 both of which were demonstrative of the fact that these decisions had the imprimatur of the Executive Council;

(b). the argument that extensions were valid and the initial decision of adoption of O.M. dated 01.05.1987, as reflected in notification dated 04.06.1987 was not valid since it referred to the approval of the Vice Chancellor, in my view, fails to recognize the fact that Executive Council could have proceeded to decide on extensions only if, the initial decision had the requisite approval, in place, which included itself, the UGC and the GOI. This is, however, not to say that extensions which the Executive Council granted, are valid. The reason for the same, in my view, as correctly submitted by counsels for the respondents is that, the extensions did not have the approval either of the UGC or the MHRD, GOI.

15. This would bring me to the next argument advanced by the counsel for the petitioners that no notice was given to the petitioners in the manner prescribed in circular dated 09.02.1989 and notification dated 11.02.1998. This argument, in my opinion, is once again mis-conceived for the following reasons:-

(i). first and foremost, having reached the conclusion that no extensions could have been given by the University of Delhi without due approval of the UGC or the GOI, the entire argument is, in a sense, a non-starter;



(ii). second, the petitioners having given their positive options to continue under the CPF Scheme in terms of O.M. dated 01.05.1987, as adopted by the University of Delhi, cannot now resile from the said position;

(ii)(a). assuming without accepting that University of Delhi could grant extensions, a careful reading of the circular dated 09.02.1989 would demonstrate that even as per the University the circular was intended to give one more opportunity to those employees of the University of Delhi or colleges affiliated to it, which were, receiving maintenance grant from the UGC to “*come over to the pension Scheme.*” The circular was not directed towards those employees, who had consciously opted to remain in the CPF Scheme. In other words, no come back situation was contemplated in the said circular. Therefore, the argument that the extensions had to be brought to the notice of the employees in the manner prescribed in the said circular which required the employer to obtain acknowledgements and keep a record of the same, had no applicability to employees, such as, the present petitioners. The employers were, in such like cases, in my opinion, not required to issue any further notice assuming that the extensions were valid, as they had already exercised their option, to remain under the CPF Scheme.

(ii)(b). As indicated above, this is not to say that the extensions were valid or that the petitioners could resile from the option given by them to remain under the CPF Scheme prior to 30.09.1987; pursuant to the issuance of O.M. dated 01.05.1987 and its adoption by University of Delhi on 04.06.1987.

16. Having come to the conclusion that extensions by themselves were not valid as they did not have the approval of the UGC or the Central Government, in my view, the ratio of the judgments of the Supreme Court in the case of *Dakshin Haryana Bijli Vitran Nigam* (supra), and that of a single Judge of this court in *K.S.R. Chari* (supra) would have no applicability.

17. Before I conclude I must only clarify that the argument of the petitioners that 2469 employees had been allowed to switch over even after they had their given their option to continue under the CPF scheme and, thus, the respondents had discriminated against this set of petitioners



is, an argument, which cannot be countenanced in law. As is well settled, by several judgements of the Supreme Court that there is no equality in illegality (see *M.K. Sarkar's* case, paragraph 25 at page 69). If, the University of Delhi, has wrongly permitted switch over to some of its employees to the Pension Scheme contrary to the provisions of O.M. dated 01.05.1987 as adopted by it, it cannot be the ground to grant relief to the petitioners. Since, the case of those 2469 employees is not before me, I am not required to return a finding on them. As indicated by counsel for UGC and the Union of India, the expenditure, if any, on account of the said 2469 employees can only be classified under the head, 'unapproved expenditure' and, therefore, the financial burden if at all, in that behalf would lie only on the University of Delhi."

22. It becomes relevant to note that the judgment rendered by the Court in **Virmani** was challenged by the University of Delhi before the Division Bench by way of an LPA. The petitioners in the **Shashi Kiran** matter also preferred appeals aggrieved by the separate judgment rendered by the learned Judge.

23. It was these two sets of appeals which fell for consideration before the Division Bench in **Shashi Kiran**. The Division Bench in **Shashi Kiran** observed as follows: -

"9. The Delhi University, which is in appeal against the judgment in the Virmani batch of cases, contends that the learned Single Judge fell into error in allowing the writ petitions. It is argued that those who continued to remain in the CPF Scheme, either by opting for it within the period of extension or continued without protest, by contributing to the scheme, as established by periodic annual statements, cannot be permitted to argue that the Pension Scheme applied. It is urged that the learned Single Judge made an invidious distinction between employees who continued without protest and those who continued in the CPF Scheme but chose their remedy very late in the day after decades of continuing in the Scheme despite the lapse of date. It is urged that the judgment ignores a salient



fact that an undue financial burden had been cast on the Delhi University and the Central Government. Having regard to the fact that the petitioners, by their conduct, continued in the CPF Scheme, almost 20 years later, cannot turn around and rely upon the OM dated 01.05.1987.

19. This court is of opinion that the submissions of the University, the appellant, in regard to the Virmani's order, have no force. There is no denial-and there can be none-that the nature of the scheme contemplated by the 01.05.1987 notification was to ensure that only those wishing to continue in the CPF scheme had to opt to do so. A default in that regard, meant that the employee not filling his option (to continue in CPF) was deemed to have “come over” or migrated to the Pension Scheme. The University and the official respondents (UGC, Central Government etc) had urged that the petitioners in the Virmani group are deemed to have accepted the CPF benefits, because they allowed deductions from their monthly salaries during the interregnum and permitting Pension Scheme benefits would not be fair; in the same breath it was urged that there was delay. This court is of opinion that the University - and the respondents are relying on contradictory pleas. If they urge that the true interpretation of the 1987 circular meant that anyone not furnishing an option to continue in the CPF scheme is deemed to have opted for the Pension Scheme (as the Virmani group undoubtedly did) there is no way they can succeed on the ground of laches or estoppel. If plain grammatical meaning of the language of the May 1987 OM were to be given, all those who *do not opt* would automatically be borne in the Pension Scheme. Such being the position, the argument that the petitioners in Virmani allowed deduction of CPF amounts from their salary, cannot be argued against them. CPF schemes typically require employees to commit greater amounts than in GPF scheme, on a monthly basis. That these staff members allowed higher amounts, which were held under a scheme (and which earned interest), the benefit of which had not accrued and was not available to them till the date of superannuation, cannot be urged against them. Likewise, the question of laches would not arise, because at the most, pension would not be allowed for the entire period, given that in matters of pension (see *Union of India v. Tarsem Singh* (2008) 8 SCC 648) there is a continuing cause of action. Therefore, we find no infirmity with the learned Single Judge's order, in *Virmani's case*.”



24. The aforesaid observations were made by the Court with reference to appeals preferred by Delhi University. Proceeding then to consider the challenge laid in the **Shashi Kiran** appeals, the Court observed as follows:-

“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.”

25. The Division Bench ultimately proceeded to dismiss the appeals preferred by the Delhi University and allowed those filed by **Shashi Kiran** and other employees. It becomes pertinent to further note that the aforesaid judgment rendered by the Division Bench in **Shashi Kiran** forms subject matter of challenge at the instance of the University of Delhi in Special Leave Petition (Civil) Diary Nos. to Appeal 13901 and 17007 of 2017 titled as **University of Delhi vs. Shashi Kiran and Ors** which is pending before the Supreme Court. It becomes important to note that while the said petition remains pending before the Supreme Court, the impugned judgment has not been placed in abeyance. The Supreme Court has only stayed further proceedings in the contempt petitions which were filed with respect to the judgement rendered in **Shashi Kiran**. According to Mr. Rai, the decisions



in **Virmani** and **Shashi Kiran** clearly hold in favor of the petitioners here and consequently irrespective of any option that may have been submitted by them after the cut-off date of 30 September 1987, that cannot detract from their right to claim benefits under the GPF Scheme.

26. Mr. Abhik Chimni, learned counsel who has appeared for petitioner Nos. 4, 13, 18, 21, 31, 32, 35, 43 and 50, has addressed submissions on the following lines. Mr. Chimni has drawn the attention of the Court to the provisions made in Statute 40 which mandated all employees to furnish an option with regard to becoming members of the CPF or GPF schemes. It was pointed out that although some of the petitioners had submitted an option to continue under the CPF scheme, those options were submitted solely in the backdrop of the requirement as placed in terms of Statute 40. Mr. Chimni contends that the petitioners represented by him and bearing in mind the economic factors which had come to prevail resulting in the GPF scheme becoming more beneficial, sought to exercise the right of change over from CPF to GPF. Learned counsel has drawn the attention of the Court to the numerous employees who were able to change over from CPF to GPF in terms of the circulars issued in 1993 and 1995. Viewed in that backdrop Mr. Chimni would contend that holding the petitioners down to the original option exercised by them is clearly arbitrary and illegal. It was further submitted that the action of the respondents seeks to create two classes of employees- one being those who were able to review and thus changed over from CPF to GPF and those who had submitted options as per



Statute 40 at the time of their initial entry into service. According to learned counsel, the aforesaid act of the university is clearly discriminatory and violative of Article 14 of the Constitution. Mr. Chimni would contend that the aforesaid classification is not informed by any intelligible criteria.

27. Mr. Chimni has then laid emphasis on the findings returned by the Nayak Committee. He has submitted that the said committee clearly came to the conclusion that the failure on the part of JNU to ensure wide circulation of the 1993 and 1995 circulars amounted to maladministration. It was submitted that since the petitioners were not adequately informed of the right to change as contemplated under the 1993 and 1995 circulars, a valuable right has been denied to them. It was contended that once JNU of its own accord had proceeded to permit numerous employees to change over from CPF to GPF by virtue of the extensions granted, no reason existed to deny the petitioners the benefits flowing from the resolution of the Executive Council of 29 November 2006. In support of the aforesaid submissions Mr. Chimni has also pressed into aid the judgment of the Supreme Court in **All Manipur Pensioners Association Vs. State of Manipur**¹² and more particularly to paragraph 8 of the report which is extracted hereinbelow: -

“8. Even otherwise on merits also, we are of the firm opinion that there is no valid justification to create two classes viz. one who retired pre-1996 and another who retired post-1996, for the purpose of grant of revised pension. In our view, such a classification has no nexus

¹² (2020) 14 SCC 625



with the object and purpose of grant of benefit of revised pension. All the pensioners form one class who are entitled to pension as per the pension rules. Article 14 of the Constitution of India ensures to all equality before law and equal protection of laws. At this juncture it is also necessary to examine the concept of valid classification. A valid classification is truly a valid discrimination. It is true that Article 16 of the Constitution of India permits a valid classification. However, a valid classification must be based on a just objective. The result to be achieved by the just objective presupposes the choice of some for differential consideration/ treatment over others. A classification to be valid must necessarily satisfy two tests. Firstly, the distinguishing rationale has to be based on a just objective and secondly, the choice of differentiating one set of persons from another, must have a reasonable nexus to the objective sought to be achieved. The test for a valid classification may be summarised as a distinction based on classification founded on an intelligible differentia, which has a rational relationship with the object sought to be achieved. Therefore, whenever a cut-off date (as in the present controversy) is fixed to categorise one set of pensioners for favourable consideration over others, the twin test for valid classification or valid discrimination therefore must necessarily be satisfied.”

28. Mr. Chimni has then placed reliance upon the judgment rendered by the Supreme Court in **Kurukshetra University and Anr. vs. Ramesh Gupta**¹³ which reads as follows:-

“The University has assailed the decision of the High Court of Punjab and Haryana calling upon the University to enforce the resolution of the Executive Council dated 26-4-1994 by which resolution the Executive Council approved the recommendation of Justice Sodhi and decided the salary to be paid to an employee of the University. From the facts narrated, it appears that earlier the University itself did consider the question of salary to the employee concerned and by a resolution dated 16-11-1985 did not grant the relief in question. That resolution of the University dated 16-11-1985 became final inasmuch as the writ petition filed against the same was dismissed and special leave petition to this Court was also dismissed in 1986. Notwithstanding the finality to the aforesaid decision of the University

¹³ (2000) 10 SCC 97



a fresh representation on being filed by the employee in the year 1994, the Executive Council thought it fit to refer the said representation to a committee headed by Justice Sodhi, and that Committee on consideration of all the relevant materials decided as to what the salary of the employee ought to be and with effect from which date. The said recommendation of the Justice Sodhi Committee was given approval by the Executive Council by its resolution dated 26-4-1994. But notwithstanding the aforesaid resolution of the Executive Council, as the same was not implemented by the University, the employee concerned approached the High Court for issuance of writ of mandamus to the University to follow the directions contained in the resolution. The High Court by the impugned order having issued the necessary direction, the University has approached this Court. Mr Sanghi appearing for the University contends that the High Court had no jurisdiction to issue any mandamus to the University to grant relief to the employee concerned as per the resolution of the Executive Council dated 26-4-1994. He, further, contends that the said resolution of the Executive Council is non est, the same not being in accordance with the provisions of the Statute. On examining the relevant materials of the University Statute, we do not find any force in the same. The Executive Council is a part of the University itself under the University Statute. The Chancellor has the power to annul any proceedings of any authority of the University which in his opinion is not in conformity with the Act, Statute or the Ordinance. The resolution of the Executive Council being of the year 1994 and the Chancellor not having exercised that power in accordance with the Statute, it can well be assumed that the said resolution is in conformity with the provisions of the Statute or the Ordinance or at least the Chancellor himself never thought it fit to interfere with the said resolution of the Executive Council. Once the resolution of the Executive Council is not being annulled by the Chancellor in exercise of his powers, then the benefits flowing from that resolution can certainly be enforceable by a court of law by issuing a mandamus to the University, who is no other than an authority on whom a writ can be issued. We, therefore, see no infirmity with the impugned direction of the High Court so as to be interfered with by this Court. The special leave petition is dismissed.”

29. Ms. Monika Arora, learned counsel appearing for JNU has controverted the aforesaid submissions and has at the outset sought to



underline the fact that the 1987 O.M. did not ipso facto apply to employees of the university, since it is an autonomous body created by statute. Ms. Arora highlighted the fact that JNU is by virtue of its statutory position not a department or an adjunct of the Union Government. It is in the aforesaid backdrop that it is urged that the 1987 O.M. could not have applied till such time as it was adopted by the Executive Council. The prescription of the last date of 20 May 1988 as provided for in the circular of 21 December 1987 is explained by Ms. Arora as being a decision consciously taken by JNU and guided by the fact that the 1987 O.M. itself had granted five months time to all employees of the Union Government to exercise the requisite option. It would be apposite to recall that the said office memorandum which was published on 1 May 1987 had required all options to be submitted by 30 September 1987. According to Ms. Arora, taking a cue from the timelines prescribed in that office memorandum, JNU thought it fit to provide an adequate window of opportunity to enable its employees to exercise an informed choice and the university cannot possibly be faulted on this score.

30. Ms. Arora further asserts that out of the 61 petitioners, 42 were in service on 21st December 1987 and did exercise a positive option before the cut-off date fixed, namely, 20 May 1988 to continue under the CPF scheme. It was further submitted that 19 of the petitioners who joined the University after 20 May 1988 also opted for coverage under the CPF scheme. This is of some significance since according to Ms. Arora it would



establish that although these petitioners did have the option to opt for the GPF scheme, they consciously chose to become beneficiaries under the CPF scheme.

31. It is further submitted that the option to choose coverage under the CPF scheme was available only till 31 December 2003 since from 1 January 2004, the Union introduced the New Pension Scheme¹⁴. Ms. Arora submits that the terms of the office memorandum were faithfully implemented by JNU which in its original circular of 21 December 1987 had clearly specified that in case employees failed to exercise an option to continue in the CPF scheme, they would be deemed to have progressed to the GPF regime.

32. The position which fell for notice in **Virmani** and **Shashi Kiran** is explained by Ms. Arora to be distinct and completely different from the procedure as adopted by JNU. Ms. Arora highlights the fact that Delhi University had proceeded on the inverse logic of employees being required to positively opt for coverage under the GPF scheme by the cut-off date. This, learned counsel would contend, establishes that the said organization clearly proceeded contrary to the unambiguous terms of the office memorandum which envisaged an employee progressing to the GPF scheme by virtue of the deeming provision. It was also highlighted that the Delhi University itself had granted innumerable extensions and had

¹⁴ NPS



incorrectly understood and implemented the office memorandum by proceeding on the assumption that employees had to submit an option in case they sought coverage under the GPF scheme.

33. It was then submitted that JNU had permitted employees to change over from CPF to GPF in terms of the circulars issued in 1993 and 1995 pursuant to the requisite approvals and permissions being granted by UGC. It was contended that undisputedly none of the petitioners opted to change and progress to the GPF scheme in terms of the circulars which were issued in 1993 and 1995. Ms. Arora vehemently contended that all the petitioners held positions of responsibility in the university and it would be wholly incorrect for them to assert now that they were unaware of the decisions of JNU or the circulars issued in connection with the right to change to GPF.

34. It was further submitted that although the Executive Council had resolved to grant one more option in terms of its resolution passed in 2006, since the same was not approved by the Union Government, JNU was bound to bring the entire matter to a close. Ms. Arora lastly submits that no explanation has been proffered by the petitioners why they chose not to exercise their options in terms of the circulars issued in 1993 and 1995. It was submitted that none of the petitioners exercised an option even up to 31 December 2003 whereafter the NPS came into force. It was lastly contended that even the Nayak Committee in its recommendations had clearly observed that JNU would have to obtain the requisite permissions from the Union Government in order to address the grievance of the



remaining employees who had failed to progress to the GPF scheme. Learned counsel would contend that once the Union refused to accord approval to the last resolution of the Executive Council, it had no option but to bring the curtains down on the entire controversy. It is these rival submissions which fall for consideration.

35. In matters like the present, it is of seminal importance to not lose sight of the facts in the backdrop of which the Court is called upon to render its decision. It becomes relevant to note that in the Final Written Submissions filed on behalf of JNU, it is disclosed that 42 of the petitioners were in service at the time when the original circular of 21 December 1987 came to be issued and submitted a choice to continue under the CPF within the date prescribed. It is further disclosed that 19 of the petitioners who joined the University after 20 May 1988 [the original cut off date prescribed by JNU] also submitted a choice to be under the ambit of the CPF scheme. The fate of the petitioners is liable to be evaluated bearing the aforesaid facts foremost in mind.

36. At the outset, it may be noted that the Court finds itself unable to accept the submission of Mr. Rai, learned senior counsel, that JNU could not have changed or amended the cut off date of 30 September 1987 mentioned in the 1987 O.M. Though Mr. Rai has sought to rest this submission on the undisputed fact that the Executive Council had adopted the same in its meeting of 20 July 1987 and thus evidently prior to the last date of submission of options as prescribed in that office memorandum,



regard must be had to the fact that the decision of the Executive Council was circulated and made known to all for the first time on 21 December 1987. Secondly, the resolution itself specifically provided for options being invited within a period of five months from the date of notification of the decision of the Executive Council. The resolution in question has not been questioned or assailed by the petitioners in the writ petition.

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 negatived.

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 1” 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.

FEBRUARY 18, 2022

Bh/Neha/SU

YASHWANT VARMA, J.

