

10.  
7.2.2023  
S.D.

**W.P.A. 492 of 2023**

**Samir Ranjan Bhowmick & Ors.**

**Vs.**

**Union of India & Ors.**

Mr. P. Chakraborty  
Mr. Aatarup Banerjee  
Mr. Bapin Baidya  
Ms. Ratnadipa Karmakar  
Mr. Rajdeep Pramanik

...For the petitioners

Mr. Pradi Kumar Tarafder  
Mr. Subir Pal

...For the DVC

Affidavit of service filed in Court today is retained with the records.

The petitioners are retired employees of the Damodar Valley Corporation (in short, DVC). Admittedly, when the petitioners were given the option for shifting/migrating from the Contributory Provident Fund (CPF) Scheme to the General Provident Fund (GPF) Scheme in 2002, the petitioners did not exercise option. The petitioners have retired on various dates in 2008 till 2020.

Mr. Chakraborty, learned counsel appearing on behalf of the petitioners submits that the prayer dated June 23, 2022 for switch over from CPF to GPF Scheme should be considered by the Director, (HRD) DVC.

Mr. Tarafder, learned counsel appearing on behalf of the respondents DVC relies on a judgment reported in **(1995) 4 SCC 683 (State of Maharashtra vs. Digamber)** in support of his contention that when the writ petitioner is guilty of laches or undue delay in approaching the High Court, the writ petitioner will be disentitled from claiming a discretionary relief under Article 226 of the Constitution of India.

Having considered the rival submissions of the parties and the materials placed on record, this Court is of the view that the facts of the judgment in **Digamber** (supra) is not applicable to the present case. In the said case, acute scarcity arose in 23000 villages in the State of Maharashtra and large scale relief works had to be undertaken by the State Government to provide employment to small agriculturists and agricultural labours for earning their livelihood. The State Government instructed the Collectors and other social workers to use their good offices to ensure that the land required for such relief works of the Government is to be donated to the Government without any claim for compensation.

The said relief work was carried out in 1971-72. In the year 1991, a writ petition was sought to be filed for the purpose of grant of compensation since the Government was

alleged to have used the land without any consent of the writ petitioner. Such a claim was not accepted by the Apex Court.

This Court relies on a judgment of the Supreme Court, **Union of India & Ors. Vs. Tarsem Singh** reported in (2008) 8 SCC 648. In that case, the Apex Court was of the view that the entitlement of family pension could not be denied even after 16 years as long as the writ petitioner was willing to restrict her claim for arrears to a period of three years prior to filing of the writ petition and no settled third party rights were disturbed.

In the light of the discussions above, this Court is of the view that in the event, the writ petitioners are willing to restrict the benefits of their claim that they would be entitled to upon shifting from CPF to GPF to 3 years prior to the date of filing of the writ petition, the same may be considered by the authorities concerned. Admittedly, there is no question of disturbance of any disturbance of settled rights of the 3<sup>rd</sup> parties if benefits of GPF Scheme are granted to the petitioners.

In the aforesaid circumstances, the representation dated June 13, 2022 be considered within six weeks from date by the respondent no. 4/the Executive Director (HRD) DVC.

Such representation is to be disposed of by giving a personal hearing to the petitioners. A reasoned order is to be passed and communicated to the petitioners within two weeks of passing thereof.

Since no affidavits have been directed to be exchanged in the present writ petition, all the allegations contained in the writ petition are deemed not to have been admitted by the parties.

With the direction aforesaid, the writ petition being **W.P.A. 492 of 2023** is **disposed of**.

All parties shall act on the server copy of this order duly downloaded from the **website** of this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all the formalities.

**(Lapita Banerji, J.)**