

Pdp

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 249 OF 2020

**Prakash Tukaram Pawaskar
& Ors.**

.. Petitioners

Vs.

Union of India & Ors.

.. Respondents

**WITH
WRIT PETITION NO. 457 OF 2020**

Anil Kumar Saxena & Ors.

.. Petitioners

Vs.

Union of India & Ors.

.. Respondents

Mr. Ramesh Ramamurthy a/w Mr. Saikumar Ramamurthy, Ms. Kavita Anchan, Ms. Seema Sorte and Mr. Akhilesh Deshmukh for petitioners in both the WPs.

Mr. Vijay H. Kantharia a/w Mr. Suresh Kumar for respondents in both the WPs.

**CORAM: S. V. GANGAPURWALA, ACTING CJ. &
SANDEEP V. MARNE, J.**

DATE: JANUARY 30, 2023

P.C.:

- 1.** Heard the learned advocate for the petitioners and the learned advocate for the respondents.
- 2.** The petitioners in both these writ petitions seek direction that they are covered by the Pension Scheme.
- 3.** On the date the petitioners were appointed, they were covered by CPF Scheme. All these petitioners are working prior to the circulars dated 13th October, 1982 and 1st May, 1987. These petitioners, after the Pension Scheme was introduced did not submit their option. According to these petitioners as the option was not submitted, deemed effect is to be given and they are to be

considered under the Pension Scheme.

4. Reliance is placed on the judgment of the Division Bench of this Court in Writ Petition No. 1331 of 2017 (Amita Ajit Desai & Ors. Vs. Union of India & Ors.) dated 17th January, 2019.

5. The learned advocate for the respondents/UoI does not dispute that the present petitioners are similarly situated as the petitioner in Writ Petition No. 1331 of 2017. However, he submits that petitioner no.13 in Writ Petition No. 249 of 2020 had exercised his option after 1st May, 1987, i.e., on 4th August, 1987 and he certainly would not be entitled for benefit of the Pension Scheme. The learned advocate for the petitioners submits that a circular was issued on or about 23rd November, 2004 in which names of the persons who had not opted for the Pension Scheme and who would be considered to be covered by the Pension Scheme was published and the name of petitioner no.13 in Writ Petition No. 249 of 2020 appeared in the list of persons who had not given the option and as such to be continued as deemed optees. There appears to be some dispute in respect of the same.

6. In light of that, as far as petitioner no.13 in Writ Petition No. 249 of 2020 is concerned, the said petitioner may take the course of action that may be available to him by representing the respondents and/or by filing a separate proceeding.

7. It is submitted that the judgment and order of this Court in Writ Petition No. 1331 of 2017 is also confirmed by the Apex Court and the SLP filed against the said judgment was dismissed on 23rd August, 2019.

8. In view of that, the present writ petitions are allowed in terms of order dated 17th January, 2019 in Writ Petition No. 1331 of 2017, except petitioner no.13 in Writ Petition No.249 of 2020. The petitioner no.13 in Writ Petition No. 249 of 2020 may make a representation to the respondents/authority and/or file a separate proceeding as permissible under law.

- 9.** The writ petitions are disposed of accordingly. No costs.
- 10.** The exercise, as directed above, shall be done expeditiously, preferably within two months.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)

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