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

% **Reserved on : 3rd August, 2023**
**Pronounced on: 20th October, 2023**

\+ W.P.(C) 1125/2022 & CM APPL. 12727/2023

PROF NEERAJ KHARE ..... Petitioner
Through: Ms. Mukti Chaudhry and Ms. Nishi Rathore, Advocates.

versus

INDIAN INSTITUTE OF TECHNOLOGY IIT DELHI & ORS. ..... Respondents
Through: Mr. T. Singhdev, Mr. Tanishq Srivastava, Mr. Abhijit Chakravarty, Mr. Aabhaas Sukhramani and Ms. Anum Hussain, Advocates for R-1.
Mr. Jayesh Unni Krishnan, Mr. Bhuvnesh Satija and Mr. Udit Sharma, Advocates for R-2 and 3.

**CORAM:**
**HON'BLE MR. JUSTICE CHANDRA DHARI SINGH**

# J U D G M E N T

**CHANDRA DHARI SINGH, J.**

1. The present petition has been filed by the petitioner under Articles 226/227 of the Constitution of India, being aggrieved by the action of the respondents' for denying switching over from Contributory Provident Fund ("CPF") to General Provident Fund ("GPF"). By way of the present petition, the petitioner is praying for the following:

*"A. Issue a writ of mandamus or any other appropriate writ or direction to the IIT Delhi / Respondent No. 1 and NPL/Respondent No. 2 to allow Petitioner to switch over from CPF scheme to GPF scheme.*

*B. Issue a writ of mandamus or any other appropriate writ or direction to the IIT Delhi / Respondent No. 1 to allow switching over of the Petitioner from CPF to GPF, while counting his continued service since his appointment with NPL / Respondent No. 2 in 1988 for pension purposes.*

*C. Issue a writ of mandamus or any other appropriate writ or direction to NPL/Respondent No.2 to pass on retirement benefits (GPF) for the period of his service in NPL/Respondent No. 2 for counting past service of 17 years for pension purposes with Respondent No. 1.*

*D. Pass such other and further order(s) as this Hon'ble Court may deem just and expedient in the facts and circumstances of the case."*

**FACTUAL MATRIX**

2. The petitioner was employed at the National Physics Laboratory (NPL) (hereinafter "respondent No.2") as a Scientist 'B' to Scientists-EII (Group IV (4)) w.e.f. 2nd December 1988, till 13th January 2005. The appointment conditions required the petitioner to serve on probation for a period of two years, subsequent to which the petitioner's position with respondent No.2 was confirmed on the pre-existing terms and conditions of appointment. During the course of his employment, the petitioner was covered under the CPF scheme.

3. The respondent No.2 is supervised by the CSIR (hereinafter "respondent No. 3") which is an autonomous body, supervising 37 other laboratories across India.

4. In the year 2005, the petitioner joined IIT Delhi (hereinafter "respondent no. 1"), in the Physics Department at the post of an associate

professor, thereby he tendered a technical resignation to respondent no. 2 *vide* letter dated 10th October 2005.The said resignation was approved by respondent No.2 *vide* order dated 10th October 2005.

5. Thereafter, *vide* office memorandum dated 20th October 2005, respondent No.1 approved the post of the petitioner, wherein the petitioner was covered under the Contributory Provident Fund-cum Gratuity Scheme (hereinafter "CPG"), which is synonymously used with the CPF scheme, by the respondent No.1.

6. The petitioner, *vide* application dated 28th March 2007, requested the respondent No. 2 to allow him to switchover from the CPF scheme to the GPF scheme. The said request was denied by respondent No.2 *vide* Office Memorandum dated 5th October 2007, on the ground that the option for Pension Scheme has not been extended after 25th January 1999. Subsequently, on 26th April 2010, the respondent No.2 approved the transfer of Rs. 15,24,206/- , which is the amount accumulated in the CPF account of the petitioner, to respondent No.1.

7. Since there were many requests made by scientists working within the supervision of respondent No. 2 and 3, to switchover from CPF to GPF scheme, the respondent No.3 constituted a committee to settle the issue of switching over. The Committee converged to the view that scientists confirmed w.e.f. 28th November 1984, or after should be covered by the New Pension Scheme i.e., GPF scheme by default, from the date of their respective confirmations.

8. In view of the recommendations made by the said committee, the respondent No.3 issued circular dated 6th April 2011, whereby all scientists appointed before 1st January 2004, and confirmed w.e.f. 28th

November 1984, or after would be covered by the New Pension Scheme i.e., GPF scheme, automatically, from the date of their confirmation.

9. Thereafter, the petitioner issued a letter dated 4th April 2019, to respondent No.2 in view of the new guidelines issued by the respondent No. 3 *vide* the said circular and the Office Memorandum dated 5th October 2007, thereby stating that the petitioner was entitled to switch over from CPF to GPF scheme and thus, requested respondent No.2 to pass on retirement benefits of the petitioner to respondent No.1.

10. In light of the request made by the petitioner, the respondent No.2 *vide* office memorandum dated 9th October 2012, approved the transfer of reimbursement of leave encashment of 300 leaves of the petitioner to respondent No.1.

11. Further, *vide* letter dated 5th July 2016 and 22nd November 2018, the petitioner requested respondent No.1 to permit him to switchover from the CPF to the GPF scheme, submitting to the effect that the option of GPF was never extended to him due to his earlier status under CPF scheme at respondent No. 2 at the time of joining respondent No. 1 and thereby, requested to be allowed to switchover from CPF to GPF scheme.

12. Subsequent to the aforesaid representations, the respondent No.1 issued letter dated 25th March 2019, to respondent No.2, thereby confirming whether respondent No.2 would pass on the retirement benefits of the petitioner under GPF scheme for the period of his service and for taking into consideration the past service of the petitioner for pension purposes, to respondent No.1. However, no response was received from the respondent No.2.

13. Due to non-response at the hands of the respondent No.2, the petitioner issued another reminder to respondent No.2 seeking the switchover from the CPF to the GPF scheme and passing on the retirement benefits from respondent No. 2 to respondent No. 1.

14. On 11th and 12th November 2020, respondent No.2 informed the petitioner that his request to switchover could not be granted since his CPF fund had already been forwarded to respondent No.1 thereby, the petitioner was no longer on the payroll of respondent No. 2.

15. The petitioner served upon a Legal Notice dated 9th September 2021, to respondent No.2, thereby seeking necessary directions and orders to pass on the retirement benefits under GPF scheme for a period of 17 years of his service with respondent No.2 for pension purposes, however, no response to the same has been received by the petitioner till the date of filing of the present petition.

16. Aggrieved by the non-response to the legal notice dated 9th September 2021 and the denial of switchover from the CPF to GPF scheme, the petitioner has preferred the instant petition.

**SUBMISSIONS**

**(*Qua* the petitioner)**

17. Learned counsel appearing on behalf of the petitioner submitted that the services of the petitioner were confirmed by the respondent No.2 on 1st December 1990, and the petitioner continued to serve for 17 years in the respondent No.2 department, therefore, the date of confirmation is the only deciding factor in a case wherein switchover from the CPF to GPF scheme has been prayed for.

18. It is submitted that since the petitioner was relieved from his services with respondent No.2 via 'technical resignation', he is entitled to the retirement benefits as under the GPF scheme for the period from 2nd December 1988, till 13th October 2005.

19. It is submitted that since the case of the petitioner is that of a 'technical resignation', his services remain continuous in nature i.e., the petitioner is entitled to avail the benefit of switching over and hence, respondent No.2 cannot be absolved of its responsibility to pass on the benefits.

20. It is submitted that *vide* Board Resolution dated 7th August 2013, respondent No.1 allowed its employees to switch from CPF to GPF scheme but since the petitioners' case was that of technical resignation, the petitioner was not given the opportunity to switch over at the relevant time.

21. It is contended that despite several representations made by the petitioner, the respondents have failed to accede to the request of the petitioner, to switchover from the CPF to the GPF scheme.

22. It is further submitted that the respondent No.1 allowed its employees to switchover from CPF to GPF scheme and respondent no. 2 also allowed group IV Scientists to switchover from CPF to GPF scheme, and despite the multiple switchover opportunities, the case of the petitioner has been kept in limbo by respondent No.1 and 2, arbitrarily and discriminatorily.

23. It is submitted that the respondents have failed to appreciate that the Circular dated 6th April 2011, issued by respondent No.3 is still in

force and applies to the case of the petitioner, therefore non-passing of pension benefits by the respondent No.2, is without any basis.

24. The petitioner has relied on case titled ***Smt. Shashi Kiran and Ors. v. Union of India and Ors*., 2016 SCC OnLine Del 4819,** to substantiate the aforesaid argument. By way of the said case, this Court has held that the denial of option to switchover to pension scheme is arbitrary and discriminatory in nature.

25. It is submitted that the Government of India has been providing the options for switchover to Central Government employees from time to time. The Department of Pension and PW, Government of India on 17th February 2020, *inter alia* allowed coverage of the Central Government employees under GPF scheme instead of the CPF scheme whose selection for appointment was finalised before 1st January 2004, but joined service on or after1st January 2004.

26. It is submitted that the petitioner was confirmed w.e.f. 1st December 1990, by respondent No.2, which falls within the period envisaged under Circular dated 6th April 2011, whereby it was stated that scientists who were appointed before 1st January 2004, when the new pension scheme came in force and confirmed w.e.f. 28th November 1984, or thereafter should be covered by pension scheme automatically from the date of their confirmation. In light of the same, the case of the petitioner falls under the said Circular.

27. It is submitted that the case of petitioner is that of 'technical resignation' and hence, the respondent No.1 is bound to give the benefit of switching over option from CPF (CPG at respondent no. 1) to GPF scheme, as per the Guidelines governing technical resignation.

28. It is further submitted that the Office Memorandum dated 11th November 2020, is bad in law and does not take into account the settled principles of law.The judgments passed by this Court in ***Smt. Shashi Kiran (Supra)*** **and in** ***Dr. Santosh Kaur Sangari v. University of Delhi &Ors.,*** **2018 SCC OnLine Del 9921** squarely apply to the facts of the present case.

29. It is submitted that denial of the benefits of GPF scheme to the petitioner, on the ground that he was not on roll of respondent No.2 on 6th April 2011, when respondent No.3 has extended the option for switchover and completely ignoring the fact that petitioner was confirmed by respondent no. 2 on 1st February 1990, and therefore, falls between the period of confirmation, is a travesty of justice.

30. It is submitted that the respondents have failed to appreciate the fact that the notification dated 6th April 2011, issued by respondent No. 3 was to enable the scientists still in service to switchover to the GPF scheme either because they had opted for CPF scheme or for various reasons could not exercise any option.

31. It is submitted that the respondents have failed to appreciate the fact that the petitioner was permanently absorbed in service with respondent No. 1 after rendering a 'technical resignation' to respondent No. 2, hence the continuity of service for pension benefits has to be shown from his service with respondent No. 2.

32. It is submitted that the respondents have failed to appreciate the fact that the petitioner has been in continuous service as a Central Government Employee since 1988 till date (33 years) out of which most of his 17 years of service were with respondent No. 2.

33. Learned counsel of the petitioner relies on case titled ***T.S.R. Prasada Rao vs Council for Scientific and Industrial Research*** **W.P. (C) 6322 of 2011 dated 2nd September 2016**, in order to establish that the respondents have failed to appreciate the fact that the place of scientists is in their laboratory and not in Courts.

34. It is submitted that the respondents failed to appreciate the fact that the petitioner was relieved from respondent No. 2 only on 'technical resignation' to join respondent no. 1 and is not a retired scientist as on date.

35. It is submitted that the respondents failed to appreciate the fact that the petitioner has been requesting to switch over from the CPG to the GPF scheme for over 13 years and has been placed in a disadvantageous position in comparison to other scientists.

36. Hence, in view of the foregoing submissions, it is prayed on behalf of the petitioner, that the present petition may be allowed.

**(*Qua* the respondents)**

37. *Per contra*, learned counsels appearing on behalf of the respondents No.2 and 3 vehemently opposed the present petition submitting to the effect that the petitioner joined respondent No. 2 as Scientist 'B' on 2nd December 1988, under the CSIR CPF scheme. The petitioner has exercised the option to continue to be governed under the existing CPF scheme in lieu of CSIR circular dated 25th January 1999.

38. It is submitted that petitioner was relieved from respondent No. 2 w.e.f. 13th October 2005, to join respondent No. 1 as an associate professor after retaining lien for two years under the answering

respondents. Thereafter, petitioner has requested for conversion of pension scheme from the CPF to GPF scheme on 28th March 2007.

39. It is submitted that the switchover request of the petitioner was forwarded to respondent No. 3 along with the status of the petitioner at that time. Thereafter, respondent No. 3 rejected petitioner's request and same was communicated to the petitioner *vide* Office Memorandum dated 5th October 2007. It is also submitted that *vide* the said Office Memorandum, the petitioner was apprised of the fact that, his request was denied as he had previously exercised his option for CPF scheme in pursuance of respondent No. 3's letter dated 25thJanuary 1999, and the option choosing a pension scheme was not extended thereafter.

40. It is further submitted that, at the time of joining, the petitioner exercised his option for opting CPF scheme in pursuance of respondent No.3's circular/ letter no. 17/ 197/ 90/ E.II dated 25th January 1999.

41. It is submitted that *vide* letter dated 4th April 2019, the petitioner extended another request thereby seeking conversion from CPF scheme to GPF scheme and *vide* letter dated 11th and 12th November 2020, the respondent No.1 clarified to the petitioner that, during his tenure at respondent No.2, petitioner was governed under CPF scheme as per the option exercised by him. It is further stated that as per the said letter, the respondent No.1 again reiterated that, option for pension scheme was not extended by the CSIR after 25th January 1999. Moreover, the petitioner resigned w.e.f. 13th October 2005 and absorbed permanently with respondent No. 1 and his CPF accumulation fund was forwarded to respondent No. 1 and further, when the respondent No. 3 extended the option for switchover of pension scheme on 6th April 2011, the petitioner

was not working under the respondent No.2. Therefore, the petitioner cannot seek the option to switchover from respondent No.2.

42. It is submitted that in view of the above it is clear that, the petitioner resigned from respondent No.2 w.e.f 13th October 2005, and absorbed permanently with respondent No.1. It is also submitted that the petitioner at the time of joining respondent No.2 opted CPF scheme and thereafter, at the time of resignation, from respondent No.2 petitioner's CPF accumulation funds were transferred to respondent no.1. Further, when respondent No.3 again extended the option for their employees for switchover of pension scheme, the petitioner was working with respondent No.1, therefore the said scheme was not applicable to the petitioner.

43. The learned counsel for respondent No. 1 submitted that while working with respondent No.2, the petitioner was covered under the CPF scheme and the same option was exercised by him on 30th March 1999, and after joining the respondent No.1 on 14th October 2005, the petitioner was originally covered under the NPS (New Pension Scheme). It was only upon his request dated 19th September 2008, that he was switched to the CPG scheme. Subsequently, the petitioner started making representations to permit him to switch now from CPG scheme to the GPF scheme. It is apparent that the petitioner at various points of time has made varied requests and presently at this belated stage, the petitioner cannot be permitted to switch from CPG to GPF scheme when he has attained the age of 64 years, and the age of superannuation is 65 years.

44. It is submitted at the very outset that the present petition is barred by delay, laches and acquiescence since, the petitioner while working

with respondent No.2 had on 30th March 1999, voluntarily opted for CPF scheme in reference to the Circular issued by respondent No.3. Subsequently, his technical registration had been accepted by respondent No. 2 w.e.f. 13th October 2005, so as to join the respondent No. 1 as an associate professor. Thereafter, the respondent No.2 had rejected the representation sent by the petitioner for switching over from CPF to GPF scheme. The said request was denied since the petitioner had voluntarily exercised his option for opting CPF scheme and the said option had not been extended by respondent No.3 after 25th January 1999. Moreover, the accumulated CPF fund had already been forwarded to the respondent No.1 alongwith the leave balance, as well as, gratuity amount i.e., past service benefits. Thus, it is more than evident that the present petition has been preferred after more than 23 years from 30th March 1999, of opting for the CPF scheme by the petitioner.

45. It is submitted that the Ministry of Finance, Government of India, *vide* Office Memorandum dated 13th November 2003, declared that all persons appointed after 1st January 2004, were falling within the purview of the NPS scheme and hence, the petitioner upon joining the respondent No.1 on 14th October 2005, was automatically covered under the NPS scheme. However, upon his request, he was switched from NPS to CPG scheme. The GPF scheme was not applicable beyond 1st January 2004, and thus respondent no. 2 had correctly rejected the request of the petitioner. In pursuance of the Office Memorandum dated 13th November 2003, various ministries including the Ministry of Human Resource Development, Department of Higher Education, also clarified that the

individuals could not be permitted to switchover from CPG scheme to NPS scheme, at a belated stage.

46. It is further submitted that the present petition has been filed after more than a period of 17 years from 13th October 2005, when his technical resignation from respondent No.2 had been accepted and after more than 15 years from 5th October 2007, when respondent No.2 had first rejected the request of the petitioner in this regard.

47. It is submitted that in view of the various representations made by the petitioner for switching from CPF /CPG scheme to GPF scheme, the respondent No.1 *vide* letter dated 25th March 2019, had requested respondent No.2 to clarify as to whether it would pass on the retirement benefits under GPF scheme for the period of his service with respondent No.2 to the respondent No.1 for the purpose of counting his past service for calculation of pension at respondent No.1. Subsequently, respondent No.2 categorically informed the respondent No.1 that the petitioner while in service with them (2nd December 1988 to 13th October 2005) on 30th March 1999, had voluntarily opted for CPF scheme and his CPF accumulation fund has already been forwarded to the respondent No.1, as well as, the petitioner was not on the roll of respondent No. 2 on 6th April 2011, when respondent no. 3 had again extended the option for switching over of the pension schemes. Therefore, the respondent No.1 cannot grant such a benefit which is entirely linked to the past service of the petitioner.

**REJOINDER OF PETITIONER**

48. It is submitted with regard to the contents of Paragraph 1 of the Preliminary Objections, it is clear from Office Memorandum dated 6th April 2011, of the respondent No. 3 that the option which was sought

from Scientists to move from CPF to GPF applies only with reference to contractual period served prior to the date of confirmation. In the case of petitioner, there is no question of contractual period. Thus, the option exercised by petitioner on 25th January 1999, is redundant and non-effective as per the Office Memorandum of respondent no. 3 containing instructions to switchover from the CPF to GPF scheme.

49. It is submitted that the with regard to contents of Paragraph 2 of the Preliminary Objections, it is stated that petitioner applied through a proper channel to respondent No.1 which is covered under Ministry of Education by rendering a 'technical resignation' to respondent No.2 to join respondent No.1. The Central Government has from time-to-time issued guidelines for 'technical resignations' and from those guidelines it is very clear that the resignation is only for administrative purposes and the benefit of past service is also available and the services are continuous in nature. Past services in such cases are counted towards pension. Both the posts i.e., Scientist with respondent No.2 and Professor with the respondent No.1, are pensionable posts. It is stated that the money accumulated in CPF Account with respondent No.2 and leave benefits were all transferred from respondent No.2 to respondent No.1 which, itself indicates that the services of the petitioner were continuous in nature. It is stated that the petitioner had been requesting since 5th October 2007, to switchover from CPF to GPF Scheme. The Office Memorandum dated 6th April 2011, itself states that from time-to-time instructions were issued to enable them to switchover to GPF Scheme.

50. It is submitted with regard to the contents of Paragraph 3 of the Preliminary Objections, that *vide* Office Memorandum issued by the

respondent No.3, dated 25th January 1999, providing an option to switchover from the CPF to GPF scheme and the same was applicable only towards the probationary period served prior to the date of confirmation, thus, the same is non-effective and redundant in the case of petitioner who was confirmed w.e.f. 20th December 1990. Even otherwise as per the Circular dated 6th April 2011, issued by the respondent No.3, scientists working in Group IV were allowed to switchover to GPF scheme from time-to-time. It is also submitted that by virtue of both Circular dated 6th April 2011, and the Board Resolution dated 7th August 2013, the petitioner was automatically entitled to be switched over to GPF cum Pension cum Gratuity Scheme from CPF as the petitioner has served the respondent Nos.1 and 2 cumulatively for a period of 33 (thirty-three) years and even if the petitioner had rendered a technical resignation, his services remained continuous in nature.

**FINDINGS AND ANALYSIS**

51. Heard the learned counsels appearing on behalf of the parties and perused the record. This Court has given its thoughtful consideration to the arguments presented in this instant petition.

52. In order to adjudicate the instant petition, it is pertinent to establish the following facts:

| | |
|---|---|
| Petitioner's date of joining respondent No.2 | 2nd December 1988 |
| Petitioner's date of rendering technical resignation | 10th October 2005 |
| Petitioner's date of joining | 20th October 2005 |

| | |
|---|---|
| respondent No.1 | |
| Petitioner's date of first representation requesting switchover from CPF to GPF | 5th October 2007 |

53. Considering the facts and discussions outlined above, the Court will address the current writ petition with the specific aim of determining the following question:

i. **Whether the case of the petitioner is covered by Circular No.5-1(58)/2008-PD issued by respondent No.3, thereby being automatically covered under the GPF scheme in lieu of the date of appointment with respondent No.2.**

ii. **Whether the petitioner is entitled to receive the benefits of GPF scheme from respondent No.1, at a belated stage.**

54. It is the case of the petitioner that he was initially appointed with respondent No.2 organisation w.e.f. 1988 and in the year 2005 rendered his 'technical resignation' thereby commencing his role as assistant professor at respondent No.1 organisation. While serving his period of employment at respondent No.2 organisation, the petitioner was covered under the CPF scheme and the same scheme was carried forward at the respondent No.1 organisation. It was only in the year 2007 that the petitioner made a representation and wished to exercise his option to switch over from the CPF scheme to the GPF scheme.

55. *Vide* letter dated 5th October 2007, the respondent No.2 rejected the petitioner's request to switchover from the CPF to the GPF scheme. It

was stated that the same cannot be granted since the petitioner had opted for the CPF scheme is pursuance of the letter dated 25th January 1990 issued by respondent No.3. Further, respondent No.1 provided an option to its employees to switchover from the CPF scheme to the GPF scheme, however, the same option was not extended to the petitioner as he had rendered a 'technical resignation'.

56. In rival contentions, the respondents submitted that even though, the petitioner claims to not have exercised any option regarding CPF or GPF scheme , however it has been disclosed that the petitioner was initially covered under the CPF scheme and had exercised the option for the same on 30th March 1999, at the respondent No.2, subsequently at the respondent No.1 institution, the petitioner was initially covered under the NPS scheme and requested to shift to the CPG scheme, which is equivalent to the CPF scheme, following which the petitioner made several representations in order to switchover from CPF to GPF scheme. The request to switchover from CPF to GPF scheme was done at a belated stage, thereby is not permissible.

57. It is further contended that the petitioner was automatically covered under the NPS scheme at the respondent No.1 and it was only after a request made by him that he was switched from NPS to CPG scheme, *vide* decision dated 15th February 2013. It is further contended that the GPF scheme is not applicable beyond 1st January 2004 and therefore respondent No.2 has rightly rejected the petitioner's request to switchover from the CPF to GPF scheme.

58. In order to adjudicate the instant petition, it seems fitting to establish the key differences between the CPF and GPF scheme. The

General Provident Fund (GPF) was introduced to provide government employees with a means of saving for their own financial security and retirement. The primary reasons for its introduction were to help government employees accumulate savings during their service years, which they could then use as a source of income after retirement. It ensures that employees have a financial cushion in their post-working years. The GPF scheme is not just a savings scheme but also a tool to promote financial responsibility and long-term planning among government employees. Its introduction aimed to benefit both employees and the government by ensuring that employees have the means to secure their financial future while reducing the state's pension obligations.

59. A CPF is a type of provident fund where both the employee and the employer make regular contributions towards the fund. It is a form of social security and retirement savings system, common in many countries, where a portion of an employee's salary is set aside and invested for their future benefit. In a Contributory Provident Fund, both the employee and the employer contribute to the fund. These contributions are typically a fixed percentage of the employee's salary and are meant to accumulate over time. The primary purpose of a contributory provident fund is to help employees save for their retirement. The funds accumulate over the years and are often used as a source of income after retirement. Contributory provident funds are important tools for helping individuals save for their retirement and providing them with financial security in their post-working years. The specific rules, regulations, and benefits associated with these funds can

vary significantly from one country to another and are often subject to changes over time.

60. In most cases, Government employees are required to opt for the GPF scheme when they join Government Services, and contributions typically begin from the date of their employment. However, in some situations, individuals may be allowed to subscribe to the GPF scheme, at a belated stage, subject to specific conditions and approval by the concerned authorities. These conditions can vary depending on the rules and regulations of the particular government department or organization. Scenarios such as change in employment status from a non-GPF organisation to a GPF covered organisation, policy changes etc may warrant such change in the pension scheme. Nevertheless, it is essential to check with the specific Government Department, Organization, or employer for detailed information on their GPF rules and any provisions for joining the GPF scheme at a later stage. The eligibility criteria, contribution rates, and other terms may differ between different departments and organizations, and any decision to join GPF scheme, at a belated stage would typically require official approval.

61. The petitioner has contended that he is covered under the CSIR notification dated 6th April 2011. The relevant paragraph of the said notification is reproduced herein:

> "*The DC, CSIR in consultation with FA, CSJR and Legal Advisor, CSIR approved the recommendations of the Committee as under:*
> *1. Options sought from Scientists vide CSIR circular letters No. 17(197)/90-E.H dated 14.5.1991 and 25/01/99 to move from CPF to GPF should apply only with reference to the contractual period (served prior to the date of confirmation.)*

*2.All Scientists who were appointed before 01/01/2004 (when the New Pension Scheme came in vogue) and confirmed w.e.f. 28/11/1984 or thereafter should be covered by the Pension Scheme automatically from, the date of their confirmation.*
*3. Option exercised by Scientists in 1991 or 1999 should be applicable only in respect of the period of service rendered under the contract prior to their confirmation.*
*4. Those Scientists who have not exercised any option till date will be deemed to have opted for CPF for the period of service rendered under contract prior to their confirmation in accordance with the CCS (Pension) Rules, 1972.*
*The above instructions to switchover from CPF to Pension Scheme may kindly beimplementedwith immediate effect.*"

62. A bare perusal of the aforesaid letter issued by respondent No.3/CSIR makes it evident that the option to switchover from CPF to GPF scheme only applies to the individuals who were appointed before 1st January 2004, and to those who were confirmed before 28th November 1984. These individuals should be deemed to be covered by the GPF scheme. Subsequently, in the event that an individual has exercised their option between the two schemes in the year 1991 or 1999, the said option should only be applicable for the period of service rendered under the contract prior to their confirmation. Further, the notification also provides for individuals who have not opted for either scheme. Such individuals shall be deemed to be covered under the CPF scheme by default.

63. Bearing in mind the aforesaid, even if this Court takes into consideration the submission made by the petitioner that he has not exercised any option between CPF and GPF scheme, the petitioner shall be duly covered by point four of the abovesaid notification i.e., the

petitioner is by default covered by the CPF scheme. However, it has been submitted by respondent No.1 that the petitioner himself opted for the CPF scheme *vide* option form dated 30th March 1999, marked as annexure R-2 to the instant petition.

64. It has been alleged by the respondents that the petitioner while commencing his employment with respondent No.2 was covered under the CPF scheme as opted for by the petitioner himself. Upon joining the respondent No.1, the petitioner was initially covered under the NPL scheme (same as NPS scheme at respondent No.1) and voluntarily switched over to the CPG scheme which is equivalent to the CPF scheme.

65. Further, it is evident from the letter dated 6th May 2013, that the petitioner had made a special request to be accommodated in the CPG scheme and the same had been sanctioned by the Board of Governors in their meeting held on 15th February 2013. In view of the notification dated 6th April 2011, the option form of the petitioner dated 30th March 1999, and the letter dated 6th May 2013, it becomes clear that the petitioner himself made requests to switchover from different schemes to the CPF scheme and now wants to switchover to the GPF scheme, which seems like an afterthought.

66. Therefore, this Court is of the view that the case of the petitioner is not covered by the circular issued by the respondent No.3, dated 6th April 2011, since the petitioner exercised his option to switchover himself and hence cannot claim that the option to switchover was never extended to him.

67. Accordingly, the first issue is decided against the petitioner.

68. Adverting to issue No.2 i.e., whether the petitioner permitted to make switchover requests at a belated stage. It is well settled that such benefits cannot be claimed at a belated stage and at a stage convenient to the petitioner. The same option is extended to all similarly placed individuals and the same switchover option is to be exercised in a timely manner by the person so making the switch from one scheme to another. The option to switchover cannot be exercised at the whims and fancies of the person availing said option.

69. The above stated principle has been dealt with by the Hon'ble Supreme Court in a catena of judgments. The Hon'ble Supreme Court in case titled **Rajasthan *Rajya Vidyut Vitran Nigam Ltd. v. Dwarka Prasad Koolwal*, (2015) 12 SCC 51,** held that where a prescribed time limit exists, it is the responsibility of the employees to act within the prescribed time period.The relevant paragraphs of the said judgment are reproduced herein:

> "***56.*** *The Employees Pension Regulations, 1988 also defines "option" in Regulation 3(l) thereof. "Option" means a written consent of the existing employee for either availing the pension and gratuity benefits or to continue to be a member of the CPF Scheme. In other words, a switch-over option was made available to the employee under the Pension Regulations as well.*
> ***57.*** *Regulation 3(l) of the Employees Pension Regulations, 1988 reads as follows:*
> *"**3. (l) 'Option'** means a written consent of the existing regular employee for pensionary and gratuity benefits on the same lines/rules as are being allowed to the employees of erstwhile employees of the E & M Department opted Board's service with Pensionary benefits or to continue to be the*

*member of the CPF/EPF with benefits of RSEB Gratuity Rules, 1972 or Jodhpur CPF Scheme with benefit of gratuity under the Gratuity Act, 1972.*

*Note.—Any person who is not covered under the definition of employee shall not be entitled to opt for pensionary and gratuity benefits as per Board's/Government Rules/Regulations."*

***58.*** *When the Pension Regulations and the GPF Scheme are read together, the necessary conclusion is that an employee must give his option for either continuing to be a member of the CPF Scheme or to switch over to the Pension and GPF Scheme. This option had to be exercised within a period of 90 days from the cut-off date, that is, 28-11-1988. But RSEB, in its wisdom, chose to extend the time for exercising the switch-over option over a period of 8 years by giving several opportunities to the employees through its notices. The right of an employee to switch over was, therefore, limited in time by the Pension and GPF Scheme. However, administrative orders issued by RSEB from time to time extended the period for exercising the option. No employee had any inherent right to either demand an extension of the period for exercising the switch-over option or claim a right to exercise the switch-over option at any time prior to his retirement, and no such right has been shown to us.*

***59.*** *But, the learned counsel for the respondents finally submitted that pension is not a charity or a bounty and an employee is entitled to earn his pension. There can be no doubt about this proposition but when two schemes are available to an employee, one being the CPF Scheme and the other being the Pension Scheme, it is for the employee to choose the scheme that he feels more comfortable with and appropriate for his purposes. No employee can switch over back and forth from one scheme to another as per his convenience. Once an employee has chosen to be a part of a particular scheme, he continues to remain a member of that scheme unless an option to switch over to another scheme is given to him.*

> ***60.*** *Insofar as the present appeals are concerned, the respondents who are members of the CPF Scheme were given several opportunities of switching over to the Pension Scheme and the GPF Scheme under the Pension Regulations and the GPF Scheme respectively but they chose not to do so. The question whether under these circumstances pension is a bounty or a charity becomes completely irrelevant. The entitlement to pension was available to the respondents but they chose not to avail the entitlement for reasons personal to them. Having taken a decision in this regard the respondents cannot now raise an argument of pension not being a bounty and therefore requiring RSEB to give them another option to switch over to the Pension and GPF Scheme."*

70. Similarly in case titled ***Union of India v. M.K. Sarkar*, (2010) 2 SCC 59,** the Hon'ble Supreme Court observed that when an option has been extended for a switchover, it is obvious that the benefit of the said option is only available to individuals who exercise the option on time. The relevant paragraphs of the abovesaid judgments are reproduced herein:

> *"**9.** When a scheme extending the benefit of option for switch over, stipulates that the benefit will be available only to those who exercise the option within a specified time, the option should obviously be exercised within such time. The option scheme* made *it clear that no option could be exercised after the last date. In this case, the respondent chose not to exercise the option and continued to remain under the Contributory Provident Fund Scheme, and more importantly, received the entire PF amount on his retirement.*
> ***10.*** *The fact that the respondent was the Head of his Department and all communications relating to the offer of the Eighth Option and the several communications extending the validity period for exercising the option for pension*

*scheme, were sent to the Heads of the Departments for being circulated to all eligible employees/retired employees, is not in dispute. Therefore, the respondent who himself was the Head of his Department could not feign ignorance of the Eighth Option or the extensions of the validity period of the Eighth Option.*

***xxx***

***13.*** *Having enjoyed the benefits and income from the provident fund amount for more than 22 years, the respondent could not seek switch over to pension scheme which would result in the respondent getting in addition to the PF amount already received, a large amount as arrears of pension for 22 years (which will be much more than the provident fund amount that will have to be refunded in the event of switch over) and also monthly pension for the rest of his life. If his request for such belated exercise of option is accepted, the effect would be to permit the respondent to secure the double benefit of both provident fund scheme as also pension scheme, which is unjust and impermissible. The validity period of the option to switch over to pension scheme expired on 31-12-1978 and there was no recurring or continuing cause of action. The respondent's representation dated 8-10-1998 seeking an option to shift to pension scheme with effect from 1976 ought to have been straightaway rejected as barred by limitation/delay and laches.*

***xxx***

***17.*** *Even on merits, the application has to fail. In Krishena Kumar v. Union of India [(1990) 4 SCC 207 : 1991 SCC (L&S) 112 : (1990) 14 ATC 846] a Constitution Bench of this Court considering the options given to the railway employees to shift to pension scheme, held that prescription of cut-off dates while giving each option was not arbitrary or lacking in nexus. This Court also held that provident fund retirees who failed to exercise option within the time were not entitled to be included in the pension scheme on any ground of parity. Therefore, the respondent who did not exercise the option available when he retired in 1976, was* *not entitled to seek an opportunity to exercise option to shift to the pension scheme, after the expiry of the validity period for option scheme, that too in the year 1998 after 22 years.”*

71. In light of the aforesaid discussions and facts of the instant petition, it is apposite to revisit the facts that the petitioner started his career with respondent No.2 wherein he was covered under the CPF scheme and on 30th March 1999, when an option was extended to the employees to make a choice between the two schemes, the petitioner voluntarily opted for the CPF scheme. Subsequently, the petitioner tendered a ‘technical resignation’ and was employed with respondent No.1, where he was initially covered under the NPS scheme.

72. Subsequently, *vide* letter dated 6th May 2013, the petitioner made a special request to be moved under the CPG scheme, which is equivalent to the CPF scheme. The same was approved by the respondent No.1. The petitioner then made several representations to both respondent No.1 and 2 requesting the petitioner to be accommodated under the GPF scheme. The same was denied as the last date of exercising the options had passed.

73. In view of the above stated judgments and the facts and scenarios of the instant petition, it is crystal clear that the petitioner’s case is more of an afterthought as he was nearing the age of superannuation, rather than an arbitrary act at the hands of the respondents. The same is evident since ample opportunities were available to the petitioner to exercise his option to choose between the two schemes, yet the petitioner chose to exercise his option well after the prescribed last date, therefore the same appear to be more of a reconsideration by the petitioner and not a violation of his right to switchover from the CPF to the GPF scheme.

74. Accordingly, the second issue is decided against the petitioner.

## CONCLUSION

75. In terms of the facts of the case, it is evident that the petitioner has on several occasions opted for the CPF scheme even when he was well covered under different schemes. It has been well settled that pension is not a matter of charity, it is not a "bounty" or a "gratuitous" payment but is a way to compensate the individual and their family for the years of service that has been rendered by them. In the present case, the petitioner has chosen to enjoy the benefits of the CPF scheme and subsequently, as an afterthought wished to switchover to the GPF scheme. The same cannot be permitted by this Court as the documents on record make it evident that the petitioner has opted for the CPF scheme on multiple occasions and as he is nearing the age of superannuation, he has chosen to exercise his option to switchover to the GPF scheme, at a belated stage.

76. This Court is therefore of the view that the petitioner seems to have exercised this option to switchover at a belated stage, and the same cannot be entertained by this Court primarily because there lies a prescribed time period, beyond which such option could not have been exercised by the petitioner.

77. In view of the above, this Court does not find it fit to issue a writ of mandamus or any other writ, as the petitioner's case lack merit on the grounds that he has belatedly chosen to opt for the GPF scheme and subsequently, he has been unable to satisfy this Court of the same.

78. In view thereof, the present petition stands disposed of.

79. Pending applications, if any, also stand dismissed.

80. The judgment be uploaded on the website forthwith.

**(CHANDRA DHARI SINGH)**
**JUDGE**

**OCTOBER 20, 2023**
**pa/ds/av**