

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

**REVIEW PETITION NO.20 OF 2024
IN
WRIT PETITION NO.12855 OF 2022**

The Joint Director ... Review Petitioner

IN THE MATTER BETWEEN

Ramchandra Ragnath Patil ... Petitioner

Versus

Union of India & Ors. ... Respondents

Mr. Sachin Chandan, for Review Petitioner.

Mr. Sandeep Barve, i/b. B. K. Barve & Co. for Petitioner in Writ Petition.

**WITH
REVIEW PETITION NO.47 OF 2023
IN
WRIT PETITION NO.249 OF 2020**

The Joint Director ... Review Petitioner

IN THE MATTER BETWEEN

Prakash Tukaram Pawaskar & Ors. ... Petitioners

Versus

Union of India & Ors. ... Respondents

Mr. Sachin Chandan, for Review Petitioner.

Mr. Ramesh Ramamurthy, a/w. Mr. Saikumar Ramamurthy, Ms. Kavita Anchan, Ms. Seema Sorte, Mr. Kartik Pillai, for Petitioner in Writ Petition.

**WITH
REVIEW PETITION NO.48 OF 2023
IN
WRIT PETITION NO.457 OF 2020**

The Joint Director ... Review Petitioner

IN THE MATTER BETWEEN

Anil Kumar Saxena & Ors.

... Petitioners

Versus

Union of India & Ors.

... Respondents

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Mr. Sachin Chandan, for Review Petitioner.

Mr. Ramesh Ramamurthy, a/w. Mr. Saikumar Ramamurthy, Ms. Kavita Anchan, Ms. Seema Sorte, Mr. Kartik Pillai, for Petitioner in Writ Petition.

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CORAM : A. S. GADKARI &
SANDEEP V. MARNE, JJ.
DATED : 06 MARCH 2024.

Oral Judgment (Per Sandeep V. Marne, J.) :-

1) The Joint Director, Export Inspection Council, Government of India has filed these petitions seeking review of Orders dated 30 January 2023 passed in Writ Petition Nos.249 of 2020 and 457 of 2020 and of Order dated 27 April 2023 passed in Writ Petition No.12855 of 2022. The 3 Writ Petitions were filed by the concerned employees for application of Pension Scheme as per the Office Memorandum dated 01 May 1987 in view of Division Bench Judgment of this Court in **Amita Ajit Desai**, Writ Petition No.1331 of 2017 decided on 17 January 2019. This Court has allowed the Writ Petition after noting that all the Petitioners (except Petitioner No.13 in Writ Petition No.249 of 2020) were similarly situated to the Petitioners in Writ Petition No.1331 of 2017.

2) By its Judgment in *Amita Ajit Desai*, this Court held that Office Memorandum dated 01 May 1987 created a legal fiction under which, any employee who did not consciously opt to continue with the CPF Scheme, was automatically brought over to the Pension Scheme. When present Writ Petitions came up before this Court, the learned counsel appearing for Review Petitioner made a statement that all the

Petitioners in the 3 Petitions (except Petitioner No.13 in Writ Petition No.249 of 2020) were similarly situated as that of Petitioners in *Amita Ajit Desai*. Accordingly, this Court has allowed all the 3 Writ Petitions except in case of Petitioner No.13 in Writ Petition No.249 of 2020. Now Review Petitions are filed contending that the Petitioners in these 3 Revision Petitions are not similarly situated as that of Petitioners in *Amita Ajit Desai*. It is sought to be contended that the Petitioners in *Amita Ajit Desai* had never opted for CPF Scheme whereas Petitioners in 3 Writ Petitioners had opted for CPF Scheme. That the details of options exercised by Petitioners were placed in the paragraph No.5.10 of affidavit in reply. On this ground, Review of the Orders passed by this Court on 30 January 2023 and 27 April 2023 is sought.

3) In our view, Review Petitions are totally misconceived. Perusal of paragraph No.5.10 of the reply of Petitioners would indicate that, none of the Petitioners exercised any option to continue with CPF Scheme after issuance of the Office Memorandum dated 01 May 1987. In *Amita Ajit Desai* this Court held that the employees who did not consciously exercise option to continue with CPF Scheme after 01 May 1987, was to be automatically brought over on the Pension Scheme. Perusal of the details of options given by Review Petitioners would undoubtedly show that none of the Petitioners (except Petitioner No.13 in Writ Petition No.249 of 2020) had exercised any option to continue with CPF Scheme after 1st May 1987.

4) Mr. Chandan, during the course of his submissions, sought to suggest that Office Memorandum dated 01 May 1987 nowhere provides for automatic shifting of CPF optees on to Pension Scheme. He has submitted that Office Memorandum is applicable only in respect of employees who had never exercised any option before 01 May 1987. We

afraid, by submitting so, Mr. Chandan actually seeks to question the correctness of the Judgment in *Amita Ajit Desai*. On the contrary, Review petitioner consented for passing of order in accordance with Judgment in *Amita Ajit Desai* by contending that, the Writ Petitions are similarly placed as that of Petitioners in *Amita Ajit Desai*. Something that was never argued, cannot be permitted to be raised by filing Review Petition. It must also be observed here that, the Judgment in *Amita Ajit Desai* has attained finality on account of dismissal of Special Leave Petition preferred by Union of India by the Supreme Court. It is also not in dispute that, the Judgment in *Amita Ajit Desai* has been implemented *qua* the Petitioners therein. Therefore, Review Petitioner cannot seek to question the correctness of Judgment in *Amita Ajit Desai* in the present Review Petitions.

5) We do not find that, there is any error apparent on the face of record in the Orders under review. The Review Petitions are totally misconceived and deserve to be rejected.

The Review Petitions are accordingly rejected.

(SANDEEP V. MARNE, J.)

(A. S. GADKARI, J.)

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