IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.11.2024

DELIVERED ON: 20.11.2024

CORAM :

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HON'BLE MR.JUSTICE P.B.BALAJI

W.A.Nos.1480, 1500,1501 and 1502 of 2024
and CMP Nos.10617, 10527, 10603 and 10606 of 2024

1. The Chairman/Additional Secretary
Export Inspection Council
Department of Commerce,
Ministry of Commerce and Industry,
Government of India,
Room No.162-B, Udyog Bhavan,
New Delhi – 110 107.

2. The Director (Inspection and Quality Control)
Export Inspection Council
Department of Commerce
Ministry of Commerce and Industry,
Government of India,
2nd Floor, B-Plate, Block-I,
Commercial Complex,
East Kidwai Nagar,
New Delhi – 110 023.

3. The Deputy Director-In-Charge,

Export Inspection Agency – Chennai,
6th Floor, CMDA Tower II
No.1 Gandhi Irwon Road,
Egmore, Chennai-600 008.

4. Union of India
Represented by the Secretary,
Department of Commerce,
Ministry of Commerce and Industry,
Government of India,
Udyog Bhavan,
New Delhi
(R.2 is transposed as 4th appellant
vide order of Court dated 28.10.2024
made in CMPs 24276, 24266, 24269 and
24277 of 2024 in WA Nos.1480, 1500,
1501 and 1502 of 2024)

... Appellants in WA Nos.1480 and 1502 of 2024

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24277 of 2024 in WA Nos.1480, 1500,
1501 and 1502 of 2024)

... Appellants in WA Nos.1500 and 1501 of 2024

vs

1. Shantha Kannan

2. R.2 is transposed as 4th appellant in WA No.1480 of 2024

.. Respondents in WA No.1480 of 2024

1.N.Trinadhulu

2. R.2 is transposed as 4th appellant in WA No.1500 of 2024

... Respondent in WA No.1500 of 2024

1. P.T.Lakshmanan

2. R.2 is transposed as 4th appellant in WA No.1501 of 2024

... Respondent in WA No.1501 of 2024

1.R.Venkataraman

2. R.2 is transposed as 4th appellant in WA No.1502 of 2024

.. Respondent in WA No.1502 of 202

Prayer: Appeals filed under Clause 15 of the Letters patent against the order dated 13.12.2023 passed in W.P.Nos.1444, 1441, 1437 and 1431 of 2021 on the file of this Court.

For the Appellants	:	Ms.Gopika Nambiar For Appellants 1 to 3 Mr.AR.L.Sundaresan Additional Solicitor General Assisted by Mr.K.Subbu Ranga Bharathi CGC For 4th appellant in all the appeals
For the Respondents	:	Mr.Balan Haridas For 1st respondent in all the appeals

COMMON JUDGMENT

(Judgment of the Court delivered by

P.B.BALAJI, J.

These intra court appeals have been preferred by Export Inspection Council, Department of Commerce, Ministry of Commerce and Industry, Government of India and the Union of India, aggrieved by the common order passed by the writ court in W.P.Nos. 1431, 1437, 1441 and 1444, 1441, of 2021 dated 13.12.2023.

2. The case of the writ petitioners being identical, the Writ Court has taken all the writ petitions together and passed a common order. In view of the same, we have also heard all the writ appeals together and proceeded to deliver a common judgment.

3. The brief facts of the case is as follows:-

All the writ petitioners, viz., the respondents in these writ appeals are the

employees of the appellant Export Inspection Council, which is a statutory body established by Government of India under Section 3 of the Export (Quality

Control and Inspection) Act, 1963. The details of the writ petitioners joining the services of the Export Inspection Council are hereunder:-

S.No	*Name & Date of Birth*	*Date of Joining &Post*	*Promotions earned during the service* *Name of Post*	*Yr of Promotion*	*Date of Superannuation & Post*
1	Shri.R.Venkataraman 15.05.1953	26.07.1976 Clerk Grade - II	Clerk Grade-I Office Assistant	1978 1982	31.05.2013 Office Assistant
2	Smt.Shantha Kannan 15.09.1951	22.07.1986 Clerk Grade-II	Store Keeper Grade-II Accountant	1979 1983	30.09.2011 Accountant
3	Shri.N.Trinadhulu 15.02.1952	26.07.1976Clerk Grade-II	Clerk Grade-I Accountant	1979 1983	29.02.2012 Accountant
4	Shri.P.T.Lakshmanan 09.02.1945	10.03.1969 Clerk Grade-II	Clerk Grade-I Office Assistant Section Officer	1974 1979 2004	28.02.2005 Section Officer

4.It is the case of the writ petitioners before the writ Court that all of them were governed by the Contributory Provident Fund Scheme ("CPFS" in short hereafter). During their service with the appellant Council, pension was introduced under Gazette Notification No.S.O.2922 dated 24.10.1981 under the provisions of the Export Inspection Council, Pension and General Provident Fund Rules, 1981. The said Rules were amended from time to time and it was extended to all employees of the appellant Council. By a proviso to the said Rule, the employees, who had already been in service prior to the date of the above Notification, were given an option to continue under the old Contributory Provident Fund Scheme. A cut-off date 31.03.1982 was fixed to exercise the said option in writing, making it clear that the employees, who do not exercise the option, will continue to be governed by General Provident Fund Scheme viz., new Pension Scheme. According to the writ petitioners, none of them exercised their option on or before the cut-off date viz., 31.03.1982 and in view of the mandate of the proviso to the Rules, the writ petitioners were all deemed to be governed only by the new Pension Scheme.

5. Subsequently, in view of the IV Central Pay Commission recommendations, the second appellant issued an Office Memorandum dated 01.05.1987, in and where by, pension was made compulsory to all government employees who were in service as on 01.01.1986 and were still in service on 01.05.1987 viz., the date of Office Memorandum, irrespective of any option exercised by them prior to 01.05.1987. A Circular dated 02.07.1987 was issued by the Council extending the last date for exercising the option to continue to be governed by CPFS upto 31.10.1987. It is the specific contention of all the writ

petitioners that they have not exercised the said option in terms of the Circular dated 02.07.1987 issued by the first appellant Council.

6. It is the further case of the writ petitioners that since they did not opt to be governed by CPFS and despite the same, the Council continue to make deductions in the Contributory Provident Fund, the writ petitioners made representations to continue to govern them under the new Scheme and pay them pension accordingly. It is the grievance of the writ petitioners that the Council did not act on the representations of the writ petitioners, which has forced them to file the writ petitions.

7. Before the writ Court, there being no representation for any of the appellants/respondents therein for two hearings and the matter being posted for orders, the writ court proceeded to hear the writ petitioners and decided the writ petitions without hearing the arguments of the respondents therein viz., the appellants herein and the writ court proceeded to allow all the writ petitions as prayed for.

8. At the time of filing the writ appeals, the Union of India was arrayed as second respondent. However, by order dated 28.10.2024 in CMP Nos. 24276, 24266, 24269 and 24277 of 2024, the second respondent viz., Union of India was transposed as the fourth appellant.

9. We have heard Ms.Gopika Nambiar, learned counsel for the appellants 1 to 3 in all the writ appeals, Mr.AR.L.Sundaresan, the learned Additional Solicitor General, assisted by Mr.K.Subbu Ranga Bharathi, Central Government Counsel for the Union of India and Mr.Balan Haridas, learned counsel for the first respondent in all these writ appeals.

10. Learned counsel for the appellants 1 to 3 would submit that the writ court did not have the benefit of the arguments of the appellants herein and without material particulars being placed before the writ court, the writ court allowed the writ petitions based on the arguments advanced by the writ petitioners. Learned counsel would submit that the claim of the writ petitioners that they never exercised any option to be governed by the old scheme and therefore, they are deemed to be governed by regular pension was factually incorrect. According to

the learned counsel for the appellants all the writ petitioners had exercised their option even in 1987. The writ petitioner in W.P.No.1431 of 2021 exercised his option on 18.08.1987; the writ petitioner in W.P.No.1444 of 2021, though the exact date of exercising option not known to the appellant, his name was included in the list on 20.11.1987; the writ petitioner in W.P.No.1441 of 2021 exercised his option on 21.08.1987 and the writ petitioner in W.P.No.1437 of 2021 exercised his option on 08.08.1987. In order to establish the said contentions, the learned counsel would place reliance on the additional common typed set of papers filed by the appellants 1 to 3, more specifically, a Communication dated 23.11.2004 which emanated from the Adviser to the Director, Ministry of Commerce and Industry, Department of Commerce to which, a list of employees, who had opted to continue under CPFS during 1987 and 1989, has been appended. The learned counsel for the appellants referring to the said Annexure-I would point out that the names of all the writ petitioners were found in the said Annexure-I and therefore, it is clear that all the writ petitioners had opted to continue under CPFS without seeking switchover to pension. Learned counsel for the appellants would therefore submit that having exercised an option even in the year 1987 to be governed by the CPFS, it was not necessary for the appellants to alter the status of the writ petitioners, despite further opportunity is being given to the employees of the Council in 1989 to come over to the pension scheme.

11. Learned counsel for the appellants would further submit that all the writ petitioners have received the entire amount of CPFS on their respective superannuation ((i). Shri R.Venkataraman – retired on 31.05.2013; (ii) Smt.Shantha Kannan – retired on 30.09.2011; (iii) Shri.N.Trinadhulu – retired on 29.02.2012 and (iv) Shri.P.T.Lakshmanan – retired on 28.02.2005) without any protest. It was not open to the writ petitioners to move the writ court after delay of 8, 10, 9 and 16 years respectively.

12. Learned counsel for the appellants would submit that the writ court placed reliance on the decision of the Bombay High Court in ***Amita Ajit Desai and Others vs Union of India and Others*** and this Court in ***Union of India vs S.Subbiah and Others*** and the Hon'ble Supreme Court in ***University of Delhi vs Shasi Kiran and Others*** reported in ***2022(5) SCC 325,*** on a misconception that the petitioners have not exercised any option, which was the basis on which the above referred cases had been decided in favour of the employees. Learned counsel for

the appellants would therefore pray that the order of the writ court is liable to be set aside and prayed for the writ appeals may be allowed.

13. Supporting the arguments of the learned counsel for the appellants 1 to 3, Mr.AR.L.Sundaresan, learned Additional Solicitor General would submit that as rightly pointed out by the learned counsel for the appellants 1 to 3, the writ petitioners had consciously exercised an option to be governed by CPFS, before 30.09.1987, the time granted under the Official Memorandum dated 01.05.1987. Therefore, according to the learned Additional Solicitor General, when the writ petitioners have not sought to change over to pension scheme in 1987, and also subsequently in 1989, when time was further extended, it was not open to the writ petitioners to plead that they are deemed to have come over to pension scheme. The learned Additional Solicitor General further submits that the official records maintained by the appellants 1 to 3, in the usual course of business clearly contains reference to all the writ petitioners having exercised their option to continue to remain in CPFS even in the year 1987 and thereafter, they have accepted all the retirement benefits based on CPF scheme alone, without any demur or objection. This clearly establishes the fact that the writ petitioners had waived their right and

on second thoughts, that too after a long delay about 11 to 19 years, the writ petitions were filed and therefore writ court ought to have dismissed the writ petitions even on the ground of delay and laches.

14. The learned Additional Solicitor General would also submit that the decisions on which the writ petitioners placed reliance viz., ***Union of India vs S.L.Verma and Others 2006 (12) SCC 53; Shashi Kiran and Others vs Union of India 2016 SCC Online Del 4819,*** confirmed by the Hon'ble Apex Court in ***University of Delhi vs Shashi Kiran and Others 2022 (15) SCC 325;*** and the decision of Bombay High Court in ***Amita Ajit Desai and Others vs Union of India and Others*** would not apply to the facts of the present appeals since in the present case all the writ petitioners had exercised their option well before the cut-off date viz., 31.10.1987. He would therefore pray for the writ appeals being allowed. Further he would also clarify that the 4^{th} appellant is not the employer and in the event of any direction being issued regarding payment, the same may be directed against the appellants 1 to 3 and not the fourth appellant.

15. Per contra, Mr.Balan Haridas, learned counsel appearing for the writ

petitioners referring to the Circular dated 02.07.1987 issued by the first appellant, adopting the Official Memorandum dated 01.05.1987 of the second appellant and fixing a cut-off date 31.10.1987, would submit that the Clause 2(b) of the Circular clearly mentions as follows:

> " (*B*) *The employees of the category mentioned above will, however, have an option to continue to remain under the CPF Scheme, if they so desire. The option will have to be exercised and conveyed to the concerned head of office latest by 31 Oct. 1987 in the form enclosed to the Circular, if the employees wish to continue under the CPF Scheme. If no option is received by the head of office by 31.10.1987 the employees will be deemed to have come over to the Pension Scheme."*

16. Further, he would refer to the model form which is annexed to the said Official Memorandum and contend that when admittedly none of the writ petitioners had exercised their option in terms of the Circular issued by the 1st appellant much less on the lines of the model form referred to in the Official Memorandum, the alleged claim of the appellants that the writ petitioners had

exercised their option can never be countenanced. He would further submit that when admittedly the appellants have not established that the writ petitioners had exercised their option as contemplated under the Official Memorandum, all of them would have become deemed pension optees and therefore be governed only by the General Provident Fund Rules and not CPFS.

17. Mr.Balan Haridas would further submit that even prior to the Circular dated 01.05.1987, the Notification was issued by the Government of India much earlier on 24.10.1981 with a cut-off dated as 31.03.1982. This Notification also mentions that employees, who did not exercise the option to be governed by CPFS on or before 31.03.1982, would be deemed pensioners governed by new pension Rules. He would further refer to the Circular dated 02.07.1987 issued by the first appellant adopting the Official Memorandum issued by the Government of India dated 01.05.1987 of the second appellant and contend that the appellants have miserably failed to produce satisfactory and reliable documents to establish their claim that the writ petitioners had opted to continue to be governed by CPFS.

18. With regard to the Annexure-I and letter of one of the respondents/writ

petitioners admitting to have exercised an option to remain under CPFS, Mr.Balan Haridas would contend that the internal files and correspondence cannot be referred to by the appellants and any attempt to derive any benefit out of such internal correspondence/communication would never be acceptable in the absence of the production of the forms set out in the Memorandum, as contemplated in Clause 2(b) of the Circular dated 02.07.1987. Learned counsel further submits that the first appellant has already implemented the orders passed by Bombay High Court and Delhi High Court and now it is not open to to the appellants to take a contrary stand and deprive the benefits lawfully payable to the writ petitioners.

19. With regard to delay and laches, one of the main grounds on which the appellants have advanced their arguments, Mr.Balan Haridas would submit that once the writ petitioners are deemed pensioners in terms of the Official Memorandum dated 01.05.1987, no amount of delay or laches can be put against the writ petitioners.

20. The learned counsel for the respondents would also rely on the Division Bench of this Court in W.P.Nos.20091, 22287, 11436, 20854 of 2024 and 19109 of

2022 dated 29.10.2024, where, the Division Bench held that when the appellant had failed to cover the employees under the General Provident Fund, despite a deemed option being available in the Scheme, the employees cannot be made to suffer and delay and laches cannot be raised as a bar to seek relief, even though the same is belated.

21. We have carefully considered the submissions advanced by he learned counsel for the parties and we have also gone through the records including the typed set of papers as well as the additional typed set of papers placed before us by the learned counsel for the appellants 1 to 3. We have also carefully gone through the order of the writ Court as well as the decisions on which reliance is placed on by the counsel.

22. Admittedly, the writ petitioners have approached the writ court with a categorical specific contention that they had not exercised their option to be continued to be governed under the CPFS and therefore, they were all deemed to have come over to the pension scheme.

23. All the writ petitioners have already retired on various dates as already indicated above. It is the specific contention that they have received the amount of CPF standing to their credit, but their representations to be governed by the new pension scheme and accordingly be granted and paid pension, have all fallen on deaf ears. We are also able to see that identical issues arose before the Bombay High Court as well as the Delhi High Court and the decision of the Delhi High Court was also challenged before the Apex Court, unsuccessfully. Admittedly, the appellants 1 to 3 have paid pension to all those employees, who filed writ petitions before Bombay High Court as well as Delhi High Court. In those cases, the Courts finding that the employee concerned having not consciously opted to be continued under CPFS, such employee would be deemed to have automatically come over to the new pension scheme. The attempt to distinguish those judgments by the learned counsel for the appellants is only on the ground that in the present cases, all the writ petitioners had exercised their option before the cut-off date viz., 30.09.1987 and therefore, none of the decisions would apply to the facts of the present case.

24. In the light of the above, the moot point that requires to be seen is as to whether the writ petitioners have exercised their option to continue under CPFS

and not being switched over to the new Government Pension Scheme.

25. As already discussed herein above, the case of the writ petitioners is that they have never opted to continue under the CPFS.

26. Per contra, the case of the appellants is that all the writ petitioners have exercised their option and therefore, they are not entitled to turn around and belatedly seek for the benefits under the new pension scheme.

27. In this connection, the Office Memorandum dated 01.05.1987 regarding the change over of Central Government employees from CPFS to the pension scheme and implementation of recommendations of IV Pay Commission assumes significance. According to the said Official Memorandum, the central government employees governed by CPFS and being in service on 01.01.1986 and continue to be in service as on 01.05.1987 were all ordered to have deemed to have come over to the new pension scheme. However, an exception was carved out viz., such eligible employees who would be deemed to have come over to the pension scheme may opt to continue under CPFS, if they so desire. The option was to be

exercised and conveyed to the concerned Head of office by 30.09.1987 in the form enclosed, if the employees wish to continue in the CPF Scheme. It has been made clear that 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. Therefore, it is clear from the said Official Memorandum dated 01.05.1987 that if any of the employees wanted to opt to be continued to be governed by CPFS, then, they would have to exercise such option by filling up the form enclosed to the Official Memorandum and submit the same to the Head of Office.

28. Though the appellants claim that the writ petitioners all have exercised their option in 1987 and have also chosen to give three specific dates in respect of three of the writ petitioners, they are not able to give the specific date of exercising their option in one of the cases viz., Shantha Kannan (in W.P.No.1444 of 2021), The appellants have not been able to produce the supporting documents viz., the service records, which would admittedly be available only with the appellants 1 to 3, to establish that the writ petitioners had exercised their option before 30.09.1987. Except producing the internal correspondence which had an annexure containing the names of the writ petitioners, no other document has been

produced on the side of the appellants.

29. As rightly contended by Mr.Balan Haridas, when the law expects an action to be performed in a particular manner, then such action has to be performed only in such a manner and not in any other way. Therefore, we are unable to place reliance on the internal correspondence on which heavy reliance has been placed by the learned counsel for the appellants 1 to 3. If at all according to the appellants, the writ petitioners had exercised their option and they were not eligible for the new pension scheme, the appellants ought to have produced the forms which were contemplated as per the Official Memorandum. In fact, even in the typed set of papers, the appellants have filed the forms which is normally given by the employees. The appellants have been able to produce the option forms given by the writ petitioners in the year 1982-1983. However, when they claim that option was exercised in the year 1987, the onus is on the appellants 1 to 3 to produce the relevant forms submitted by the writ petitioners opting to continue under CPFS.

30. Glaringly the forms in question have not been produced and reliance has

been placed on merely an internal correspondence between the Adviser and the Director. Further, we also find that even in 1981, the Government of India issued Notification, fixing a cut-off date as 31.03.1982. Again in 1987, the Circular dated 02.07.1987 was issued by the first appellant, adopting the Official Memorandum dated 01.05.1987 of the second appellant. The option was once again extended by Notification dated 08.02.1989 and the second appellant also extended the scheme upto 2003 to other Institutions like Universities and Insurance Corporations. Therefore, we are unable to attach any sanctity to the cut-off date harped upon by the appellants viz., 30.09.1987. In any event, when the appellants have not been able to produce the requisite and relevant form, which is the only recognised mode of making option to be continued to be governed by CPFS, the deeming clause would come into play and all the writ petitioners would automatically switch over to the pension scheme.

31. Coming to the question of laches, once the writ petitioners are admitted to have come over to the pension scheme, then, it is the bounden duty of the appellants to pay correct pension amount to the writ petitioners. Such benefit of pension can never be deprived citing delay and laches. In any event, in the present

case, the writ petitioners have made representations to grant them pension under the new scheme and only because no action was taken on such representations, the writ petitions came to be filed.

32. In such view of the matter, we are unable to hold that the belated filing of the writ petitions would be fatal to the case of the employees, who cannot be deprived of their lawful pension amount. The writ court has rightly gone into the above aspects and held that the writ petitioners having not exercised their option to come out of the benefits of the new pension scheme, they are entitled to the relief. Therefore, we do not find any grounds to interfere with the well reasoned order of the writ court. However, we have noticed a factual or probably an inadvertent error in the operative portion of the order directing adjustment of the employees' contribution towards CPF instead of employer's contribution which needs to be addressed/corrected.

33. In the result, all the writ appeals fail and the same are dismissed. The order of the writ court, entitling the writ petitioners to the benefits of the pension is upheld and the appellants 1 to 3 are directed to pay the pension amounts together

with all attendant and consequential benefits to the writ petitioners, from the date of their superannuation along with pay arrears if any, after adjusting the employer's contribution toward Contributory Provident Fund within a period of twelve weeks from the date of receipt of a copy of this order.

No costs. Consequently, connected miscellaneous petitions are closed.

(D.K.K., J.) (P.B.B., J.)
20.11.2024

Index : Yes/No
NC : Yes/No
sr
To

The Secretary,
Union of India,
Department of Commerce,
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D.KRISHNAKUMAR, J.
and
P.B.BALAJI, J.

(sr)

Pre-Delivery Common Judgment in
W.A.Nos.1480, 1500, 1501 and 1502 of 2024

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