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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision:- 24.01.2024***

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W.P.(C) 49/2023**GOVERNMENT OF NCT OF DELHI & ORS.****..... Petitioner****Through: Ms.Avnish Ahlawat, S.C. with
Mr.Nitesh Kumar Singh, Adv.****versus****SUBHASH CHANDER GARG & ANR.****..... Respondent****Through: Mr.Rakesh Kumar, Adv.****CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE RAJNISH BHATNAGAR****REKHA PALLI, J (ORAL)****CM APPL. 4528/2024**

1. This is an application filed by the respondent no.1 seeking dismissal of the writ petition with directions to the petitioners to extend the benefit of the Pension Scheme under the CCS (Pension) Rules, 1972 (commonly known as the Old Pension Scheme) to him.
2. Learned counsel for the applicant/respondent no.1 submits that the present petition has been filed assailing the order dated 29.09.2022, passed by the learned Central Administrative Tribunal. Vide the impugned order,



the petitioners have been directed to extend the benefit of the pension scheme under the CCS (CCA) Pension Rules 1972, (commonly known as “the Old Pension Scheme”) to the respondent no.1. He submits that in view of O.M. dated 03.03.2023, issued by the Ministry of Personnel, Public Grievances and Pensions, given an option to all such employees, who were appointed against posts notified before 01.01.2004 to opt for the Old Pension Scheme, the present petition has been rendered infructuous. He, therefore, prays that the petition be dismissed.

3. Issue notice. Learned counsel for the petitioners accepts notice and is not in a position to dispute that vide the aforesaid O.M., the Ministry of Personnel, Public Grievances and Pensions has taken a decision to extend the benefit of the Old Pension Scheme to all such employees who were appointed against posts which were advertised/notified before 01.01.2004. She, however, submits that as per the aforesaid O.M. the concerned employee was required to submit an option form specifically opting for the Old Pension Scheme. The respondent having not submitted any such option within the prescribed time, he would not be eligible for the benefits under the Old Pension Scheme. She, therefore, prays for time to obtain instructions as to whether without submitting the option form, the respondent can be extended the benefit of Old Pension Scheme.

4. Having considered the submissions of the learned counsel for the parties and perused the impugned order along with the aforesaid O.M. dated 03.03.2023, we see absolutely no reason to keep the present petition pending any further. Once the Ministry of Personnel, Public Grievances and Pensions, which had introduced the New Pension Scheme, has itself come up with the a circular extending the benefit of the Old Pension Scheme to



the employees who were appointed to posts which were advertised/notified before 01.01.2004, we find no infirmity with the impugned order passed by the learned Tribunal, which has been passed by taking into account that the respondent no.1 was appointed against a post notified well before 01.01.2004 i.e., when the National Pension System came into force.

5. Even though the learned counsel for the petitioner is correct in urging that the respondent did not submit any specific option in response to the O.M. dated 03.03.2023, the fact remains that the relief sought by him had already been granted to him by the learned Tribunal under the impugned order. Once the respondent had succeeded before the learned Tribunal in his claim for being governed by the Old Pension Scheme, we can appreciate his reluctance to submit another option form for the same relief as invited vide O.M. dated 03.03.2023. We are, therefore, of the considered view that in the light of these peculiar circumstances, when the learned Tribunal had already accepted the respondent's claim for extending the benefit of Old Pension Scheme to him, it will be unfair to deprive him of the benefit extended by the Ministry of Personnel, Public Grievances and Pensions, merely because he had not opted under the O.M. dated 03.03.2023. The application, therefore, deserves to be allowed. The same is, accordingly, allowed by dismissing the writ petition and directing the petitioners to extend the benefit of the Old Pension Scheme to the respondent after making necessary adjustments of payments, if any.

6. The application is, accordingly, allowed and the writ petition stands dismissed in the aforesaid terms.



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7. The next date fixed in the matter stands cancelled.

(REKHA PALLI)
JUDGE

(RAJNISH BHATNAGAR)
JUDGE

JANUARY 24, 2024
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