



2024:DHC:8867-DB



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

+ **LPA 1116/2024, CM APPLs. 66018-19/2024**

SCHOOL OF PLANNING & ARCHITECTUREAppellant

Through: Mr.Anshuman Mehrotra and
Mr. Ankur Chhibber, Advocates

versus

NEERJA TIKU AND ORSRespondents

Through: Mr.Sandeep Kumar and
Ms. Aarushi Tiku, Advs. for R-1
Mr. Subham Prasad, G.P. for UOI

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

JUDGMENT (ORAL)

% **12.11.2024**

C.HARI SHANKAR, J.

1. The School of Planning and Architecture¹ assails, in this Letters Patent Appeal, judgement dated 10 April 2024 in WP (C) 8583/2015² passed by the learned Single Judge, as modified by order dated 9 August 2024 passed in CM Appl 25138/2024.

2. The case is fully covered by Circular dated 17 August 1987 issued by the SPA itself, as well as by the judgement of the Supreme Court in *University of Delhi v Shashi Kiran*³. We cannot but help

¹ "SPA" hereinafter

² Neerja Tiku v School of Planning and Architecture

³ (2022) 15 SCC 325



feeling that filing such appeals, in covered cases, merely results in multiplicity of litigation and burdens the court docket.

3. Respondent 1 joined the SPA as a teacher on 1 August 1980. at the time of her joining, pensionary benefits, of SPA employees, were governed by the Contributory Provident Fund cum Gratuity Scheme⁴. On 1 May 1987, the Department of Personnel and Training⁵, Ministry of Personnel, Public Grievances and Pensions issued an Office Memorandum⁶, by way of implementation of the recommendations of the 4th Central Pay Commission, whereunder Central Government employees, who were governed by the CPF Scheme were deemed to have switched over to the General Provident Fund cum Pension cum Gratuity Scheme⁷, unless they specifically opted out of the Pension Scheme and elected to continue under the CPF Scheme. The relevant paragraphs of the OM read thus:

“3. All CPF beneficiaries, who were in service on 1.1.1986 and who are still in service on the date of issue of these orders will be deemed to have come over to the Pension Scheme.

3.2. The employees of the category mentioned above will, however, have an option to continue under the CPF Scheme, if they so desire. The option will have 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 under the CPF Scheme. 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.

3.3. The CPF beneficiaries, who were in service on 1.1.1986, but have since retired and in whose case retirement benefits have

⁴ "the CPF Scheme" hereinafter

⁵ DOPT

⁶ OM

⁷ "the Pension Scheme" hereinafter



also been paid under the CPF Scheme, will have an option to have their retirement benefits calculated under the Pension Scheme provided they refund to the Government, the Government contribution to the Contributory Provident Fund and the interest thereon, drawn by them at the time of settlement of the CPF Account. Such option shall be exercised latest by 30.09.1987.

3.6. The option once exercised shall be final.

3.7. In the types of cases covered by paragraph 3.3 and 3.5 involving refund of Government's contribution to the contributory provident fund together with interest drawn at the time of retirement, the amount will have to be refunded latest by the 30th September, 1987. If the amount is not refunded by the said date, simple interest thereon will be payable at 10% per annum for period of delay beyond 30.9.1987.

6.1. These orders apply to all Civilian Central Government employees who are subscribing to the Contributory Provident Fund under the Contributory Provident Fund Rules (India), 1962. In the case of other contributory provident funds, such as Special Railway Provident Fund or Indian Ordinance Factory Workers Provident Fund or Indian Naval Dockyard Workers Provident Fund, etc., the necessary orders will be issued by the respective administrative authorities.”

4. Following this, the SPA also issued Circular dated 17 August 1987, regarding switching over from the CPF to the Pension Scheme:

**“SCHOOL OF PLANNING AND ARCHITECTURE: NW
DELHI-110002**

Ref. No. F.24-44/85-SPA (Estt. I)

17 August 1987

**SUB: Change over from Contributory Provident Fund
Scheme to Pension Scheme – Implementation of the
recommendations of the 4th Central Pay Commission.**



A copy of the Government of India G.I., M.P.P.G. and Dept. of Pen. & Pen. Welfare OM No 4/1/87-PIC-I, dated 1 May 1987 on the above subject, is forwarded for reference by all members of staff of school, who were governed by the Contributory Provident Fund Scheme, to exercise an option to continue under the CPF Scheme or to change over from Contributory Provident Fund-cum-Gratuity scheme to GPF-cum-Pension-cum-Gratuity Scheme.

The option is to be exercised before 30 September 1987, failing which they will be deemed to have come over to the Pension Scheme i.e. GPF-cum-Pension-cum-Gratuity Scheme. The option once exercised shall be final. The option for may be obtained from Establishment Section.

The contents of the circular be brought to the notice of all members of staff working under their supervision and control.

(K.B. Singh)
Registrar”

5. Clearly, therefore, all civilian Central Government employees, as well as employees of the SPA, who did not opt to remain in the CPF Scheme on or before 30 September 1987 ipso facto switched over to the Pension Scheme. Nothing could be clearer.

6. On 7 December 1987, the respondent wrote to the SPA, stating that she preferred to continue in the CPF Scheme instead of the Pension Scheme.

7. Quite obviously, as this option had been exercised after 30 September 1987, the exercise of the option was of no use. By operation of the DOPT OM dated 1 May 1987 as well as the Circular dated 17 August 1987 issued by the SPA, the respondent would switch over, automatically, to the Pension Scheme.



8. In acknowledgement of this position, in fact, the name of the respondent was included at S. No. 9 of Circular dated 28 October 1987 issued by the SPA, notifying the names of the staff working with it, who were deemed to have switched over to the Pension Scheme, as they had not obtained to continue under the CPF Scheme.

9. On 20 February 2015, the respondent wrote to the SPA, pointing out that, by operation of the aforesaid Circulars of the DOPT and the SPA itself, she was deemed to have switched over to the Pension Scheme. The SPA, however, vide its reply dated 22 April 2015, informed the respondent that, as she had opted to continue under the CPF Scheme, albeit belatedly on 7 December 1987, she could not claim the benefit of the Pension Scheme.

10. Aggrieved thereby, the respondent approached this Court by way of WP (C) 8583/2015, for a direction to the SPA to extend, to her, the benefit of the Pension Scheme instead of the CPF Scheme.

11. By judgement dated 10 April 2024, a learned Single Judge of this Court has allowed WP (C) 8583/2015. The learned Single Judge relied on the judgement of the Supreme Court in *Shashi Kiran*. The SPA filed CM 25138/2024, seeking modification of the judgement dated 10 April 2024, insofar as the operative directions in the judgement were concerned. The learned Single Judge partially modified this judgement, *vide* order dated 9 August 2024, in view of the fact that the CPF contribution paid by the respondent during her service tenure had been returned to further the type of superannuation,



but the contribution of the SPA had been retained by it, which fact had not been brought to the notice of the learned Single Judge at the time of rendition of the judgement dated 10 April 2024.

12. The learned Single Judge, therefore, while allowing the writ petition, directed that the amount accrued on account of the contribution made by the SPA towards its obligation under the CPF Scheme be converted/deposited into the CPF Account of Respondent 1.

13. Aggrieved thereby, the SPA has filed the present appeal.

14. We have heard Mr. Anshuman Mehrotra and Mr. Ankur Chhibber for the appellant and Mr. Sandeep Kumar for Respondent 1.

15. To our mind, the provisions of the DOPT OM dated 1 May 1987 and the SPA Circular dated 17 August 1987 left no room for doubt or conjecture. An employee, who was governed by the CPF Scheme, and did not opt to remain in the CPF Scheme on or before 30 September 1987, was deemed to have switched over to the Pension Scheme.

16. The issue was, nonetheless, carried to the Supreme Court by the University of Delhi in *Shashi Kiran*. The learned Single Judge has dealt with the said decision at length, and we do not deem it necessary to reiterate the observations and findings in that regard. Suffice it to state that the Supreme Court, in *Shashi Kiran*, parenthesized the cases



before it into 3 categories, as had been done by the High Court itself., Employees who never exercised any option and were, therefore, ipso facto deemed to have switched over to the Pension Scheme were referred to as the “R.N. Virmani batch”; employees, such as Respondent 1, who exercised the option to remain in the CPF Scheme after 30 September 1987 were categorised as the “N.C. Bakshi batch” and employees who, on or before 30 September 1987, exercised the option to continue to remain under the CPF Scheme, were categorised as the “Shashi Kiran batch”.

17. Needless to say, we are concerned, in the present case, with the N.C. Bakshi batch, as Respondent 1 falls in that category.

18. Interestingly, in the petitions before it, the Delhi University had extended the time for exercise of option by the employees for continuing to remain under the CPF Scheme twice between 1 October 1987 and 29 February 1988. No such extension was granted by the SPA in the present case. Despite the grant of such extension by the Delhi University, the Supreme Court held that the High Court was corrected its conclusion that, even in respect of the N.C. Bakshi batch, the option to continue in the CPF Scheme was *non est* in law, and the concerned employee would *ipso facto* stand switched over to the Pension Scheme.

19. The learned Single Judge has, in the circumstances, held Respondent 1 to have switched over to the CPF Scheme consequent on failure, by her, to exercise the option for continuing in the CPF



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Scheme on or before 30 September 1987. The belated option exercised by the on 7 December 1987 was, applying *Shashi Kiran*, *non est* in law.

20. The decision is unexceptionable.

21. There is, therefore, no merit in this appeal, which is dismissed *in limine*.

C.HARI SHANKAR, J.

ANOOP KUMAR MENDIRATTA, J.

NOVEMBER 12, 2024/v

Click here to check corrigendum, if any