2025:PHHC:014416

IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

202-1 **CWP-15546-2015**

KAMAL KUMAR SALLY

... Petitioner

VERSUS

UNION OF INDIA & ORS

... Respondents

202-2 **CWP-18175-2007**

SANTOSH BHANOT

... Petitioner

VERSUS

INDIAN COUNCIL OF SOCIAL SCIENCE RESEARCH & ANR.

... Respondents

202-3 **CWP-988-2009**

JAGATJIT SINGH

... Petitioner

VERSUS

INDIAN COUNCIL OF SOCIAL SCIENCE RESEARCH & ANR.

... Respondents

202-4 **CWP-20497-2018**

MADAN LAL

... Petitioner

VERSUS

INDIAN COUNCIL OF SOCIAL SCIENCE RESEARCH & OTHERS

... Respondents

202-5 **CWP-20166-2018**

RAM PARSHAD

... Petitioner

VERSUS

INDIAN COUNCIL OF SOCIAL SCIENCE RESEARCH & OTHERS

... Respondents

<u>A N D</u>

202-6 **CWP-20808-2018**

Date of Decision: 30.01.2025

PAWAN KUMAR SAINI

... Petitioner

VERSUS

INDIAN COUNCIL OF SOCIAL SCIENCE RESEARCH & OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

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Present: Mr. Manish Prabhakar, Advocate for the petitioner in CWP-15546-2015.

Mr. R.K. Malik, Sr. Advocate with Mr. Pradeep Dhull, Advocate for the Petitioner(s) in CWP-18175-2007 and CWP-988-2009.

Mr. R.D. Anand, Advocate for the Petitioners in CWPs-20497, 20166 and 20808 of 2018.

Mr. Pankaj Gupta, Sr. Panel Counsel for respondent No.1 in CWP-15546-2015.

Mr. Ashe Kumar Goyal, Advocate for respondents No.2 and 3 in CWP-15546-2015 and for respondents No.1 and 2 in remaining all cases.

Mr. Subhash Ahuja, Advocate for respondent No.4- CWP-15546-2015 and for respondent No.3 in CWPs-20497, 20166 and 20808 of 2018.

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VINOD S. BHARDWAJ, J. (ORAL)

The present batch of writ petitions involve common questions of law and similar questions of facts, hence, with the consent of counsel for the respective parties, they are being decided by this common judgment. The facts necessary for adjudication of the controversy in question are, however, extracted from CWP-988-2009 titled as 'Jagatjit Singh Versus Indian Council of Social Science Research and Another' in reference to the petitioner(s) and from CWP-15546-2015 titled as 'Kamal Kumar Sally Versus Union of India and Others' in reference to the respondents.

The prayer made in the abovesaid writ petitions is for issuance of directions to the respondent-Indian Council of Social Science Research (hereinafter to be referred to as 'ICSSR') to release the pension to the petitioners as per the Panjab University Employees (Pension) Regulations 1991 (effective from 24.10.2005) (hereinafter referred to as 'Regulations of 1991') which such benefit has been declined to the petitioner in the said writ petition vide letter/order dated 01.01.2009 on the ground that in the absence of pension scheme at the Centre, the petitioner be given the CPF benefits and other retiral benefits as per the last salary drawn by him.

Learned counsel for the petitioner contends that the petitioner was appointed as a Library Assistant in the respondent-ICSSR North Western Regional Centre in Panjab University, Chandigarh on 28.08.1981. Reference is made by the counsel for the petitioner to the specific terms and conditions as incorporated in the letter of appointment. Condition No.8 thereof is extracted hereinafter below:-

> *"8. Other conditions of service will be governed under the Panjab University Rules in force from time to time."*

It is submitted that the pay and allowances and all other service benefits to the employees of North Western Regional Centre, Chandigarh working with the respondent-ICSSR are to be governed as per the service benefits admissible to the employees of the Panjab University, Chandigarh. Reference is also made to the revision of the grade of Library Assistants, which such benefits had been extended to the petitioner(s). The relevant extract of the order passed by the respondent-ICSSR on 02.03.1989 is reproduced hereinafter below:

> *"As per ICSSR Rules for its Regional Centres the scale of the pay and allowances and other service benefits to the employees in the Regional Centre are to be the same as for corresponding posts of the collaborating institutions i.e. Panjab University in case of the ICSSR North Western Regional Centre."*

He contends that the respondent-ICSSR has two separate Cadres, one for the Head Office while other for the Regional Centres. The respondent-ICSSR already has a pension scheme in place for the employees in the Head Office while the services at the Regional Centres were to be treated at par with the employment of the particular Regional Centre and they were not transferable to any other Centre and their scales of pay and allowance and all other service benefits were to be same as for the corresponding posts of the collaborating institutions. The service conditions of the employees of regional Centre were also made subject to the service regulations of the collaborating institutions. The guidelines issued by the respondent-ICSSR in this regard have also been appended alongwith the present petition as Annexure P-9, dated 01.07.1974. The relevant part thereof is extracted as under: -

*"**6. STAFF:-***

(i) The employees of the Regional Centre shall be treated as the employees of that particular Centre not transferable to any other Centre. Their scales of pay and allowances and other service benefits be the same as for corresponding posts of the collaborating institutions. They will also be subject to the service regulations of the collaborating institutions.

(ii) The prior approval of the ICSSR will be necessary for creation of all posts in the Regional Centre, whether on a permanent or a temporary basis or whether full time or part time. However, the Chairman of the Regional Centre shall have the power to create any post required for the implementation of the programmes for a period, not exceeding six months, subject to availability of funds in the approved budget. Posts so created will be reported to the ICSSR.

(iii) For the administrative control of the staff of the Regional Centre, the Director of the Centre shall exercise the power as are exercised by the Registrar (or other comparable officer named by the ICSSR) and the Chairman of the Regional Centre shall have the same powers as the Vice-Chancellor (or Head) of the collaborating institution."

Learned counsel for the petitioner contends that the petitioner superannuated on 31.12.2008, however, prior thereto, the Panjab University, Chandigarh notified the Regulations viz. the Regulations of 1991 for extending the benefit of the pension to all its employees who had joined the services before 01.01.2004 and also covered the employees who retired prior to the date of notification of the said Regulations of 1991. The relevant part of the notification is extracted as under: -

> *"1.2 The provisions of these Regulations shall apply to:-*
>
> *(a) all employees who joined service under the University before 1.1.2004,*
>
> (b) *the employees who retired prior to the date of notification of these Regulations if they specifically elect to be governed by these Regulations by exercising an option as provided in Regulation 1.8 infra.*
>
> *XXX XXX XXX*
>
> *1.8.(a) The employees who joined the service of the University before the date of notification of these Regulations shall have the option-*
>
> *(i) to continue to be governed by the Contributory Provident Fund-cum-Gratuity Scheme contained in Chapter VI "Conditions of Service of University Employees" of the Panjab University Calendar, Vol. I, 1994.*
>
> *OR*
>
> *(ii) to elect to be governed by the Pensionary Scheme contained in these Regulations.*
>
> *(b) (i) In the case of an employee who elects the alternative under sub-clause (a)(ii) above, the total contribution of the University to his C.P. Fund Account as on 24-10-2005 or the date of retirement whichever is earlier, alongwith interest thereon, shall be transferred from his C.P. Fund Account for being credited to the University Pension Fund (Corpus).*
>
> *(ii) The employee's share of C.P. Fund, as on 24-10-2005, alongwith interest thereon, shall be transferred to his General Provident Fund*

Account to which he shall subscribe compulsorily under the rules of that fund as prescribed by the University from time to time

(c) The option shall have to be exercised within such period as may be decided by the Syndicate and once exercised shall be final and irrevocable.

(d) Those who fail to exercise the option within the period prescribed under Clause (c) above shall be deemed to have elected for continuing under the C.P. Fund and Gratuity schemes mentioned in sub-clause a (i) above

(e) The employees who retired prior to 24-10-2005 may, if they so desire, elect to be governed by these Pension Regulations, subject to the condition that they refund the University's C.P. Fund contribution, including interest thereon, as received by them from the University for being credited to the University Pension Fund (Corpus). The University would neither charge any interest on this amount of the University share of C.P. Fund <u>received by the retiree for the period from the date of his retirement upto the date of his joining the Pension Scheme nor would pay any arrear of pension. The pension may be made available to the employees from the date they deposit their University share of CP. Fund, including interest thereon</u>.

Upon notification of the aforesaid Regulations of 1991 to the employees who joined the service under Panjab University, Chandigarh before 1.1.2004 and taking into consideration that the terms and conditions of the letter of appointment of the petitioner as also the guidelines issued by the respondent-ICSSR to the effect that the employees of the Regional Centres would be governed by the terms and conditions of service in employment of the collaborating institutions, an application was submitted by the petitioner for grant of the pensionary benefits in terms of the Regulations of 1991 that had been made effective from 24.10.2005. The said application was forwarded by the Director with a recommendation to extend the benefit to the employees. The relevant extract of the letter bearing memo No.1496 dated 10.04.2007 for implementation of the pension scheme for the ICSSR North Western Regional Centre, Chandigarh is extracted as under:

> ***"3. Pension:***
>
> *The employees of the Regional Centre were given appointment letters which interalia provides that pay-scales and allowances as admissible under the Panjab University will be paid to the incumbents. The appointment letters also state "other conditions of service will be governed under the Panjab University rules enforce from time to time". The Panjab University has implemented a pension scheme for its employees (a copy of which is enclosed). The ICSSR New Delhi has also a pension scheme for its employees. So, it is suggested that the employees of the Regional Centre should be given pension on the Panjab University pattern or on pattern of the ICSSR New Delhi.*
>
> *(i) If the pension scheme is implemented, the pension liability will commence from the date of retirement and the employees have to refund the employer's contribution of P.F. with interest. The scheme will be extended from the date of commencement of Pension scheme in the Panjab University ie 24.10.2005. It will go up to the year 2034-35 when the last of the existing employees retires. A statement showing the pension liability involved is shown in Annexure IV. The employer's share of P.F. with interest which will be refunded by the employees, has been calculated and is shown in Annexure V*

The ICSSR should give an undertaking that they will fully fund the liability of the Regional Centre till the last man's commitment is over.

(ii) Operation of the Pension Scheme:

The Chairman of the Centre be authorized to operate the pension scheme. The maintenance of records and remittances of monthly pension will be operated by the Director of the Centre with the approval of the Chairman. The sanction of pensionery benefit be made by the Chairman duly obtaining the verification done by the Pension Section of the University. For rendering such verification, suitable service charges will be paid to the University every year. A budget provision may be made in the Regional Centre Annual Budget under this Head for payment of pension and service charges.

(iii) Alternatively, the Regional Centre suggests to build a pension Corpus Fund for this Regional Centre and the ICSSR New Delhi may contribute at least two crores for investment. The Centre will operate the pension scheme with the corpus fund and interest earned on it as per Annexure VI. It will be operated through the Pension Cell of P.U. as we have been operating P.F. Scheme. We will, however, prefer to operate the scheme by annual provision in the Budget instead of building a separate corpus."

The said matter was put up before the Director, ICSSR, who vide Folio No.NWRC-15-5/2003 dated 1.1.2009 directed the Honorary Director of the North Western Regional Centre, Chandigarh to release the benefits as per the CPF scheme instead of pensionary benefits on the ground that there was no pension scheme applicable at the Regional Centres. The said letter dated 1.1.2009 reads thus:

"Dr. S.N.M. Kopparty
Director

F.No.NWRC-15-5/2003 *Dated: 1.1.2009*

Dear Professor Brar

This is with reference to your letter No.2349/C dated 3rd December 2008 regarding retirement benefits payable to Shri Jagjit Singh, Assistant Librarian, who will be retiring on 2nd January 2009.

We have considered this case if the ICSSR North Western Regional Centre, Chandigarh has followed the rules and regulations of the host institution for providing him higher scales of pay from time to time in letter and spirit, the Council has no objection to provide retirement benefits on the pay scale last drawn by him. Kindly ensure that the files relating to his case are audited by a senior officer of the host University before extending any retirement benefits to him.

In the absence of pension scheme at the centre, he may be provided the CPF benefits and other retiral benefits as per the last salary drawn by him."

Aggrieved thereof, the present writ petition has been filed.

Learned Sr. Counsel appearing on behalf of the petitioner has vehemently argued that the denial of the pensionary benefits to the petitioner(s) was clearly in violation of the terms and conditions of the letter(s) of appointment applicable to the petitioner(s). Since all other conditions of service were to be governed under the Panjab University Rules in force from time to time and which such facts have neither been disputed nor denied by the respondent-ICSSR, there was no occasion for the respondent-ICSSR to decline the admissible pension to the petitioner after the same had become due with effect from 24.10.2005. It was incumbent upon the respondent-ICSSR to have taken appropriate steps to implement the said Regulations of 1991 and to have put a mechanism in place, more so, when such a mechanism had already been put in place by the respondent-ICSSR for the employees at the Head Office level.

He further submits that a perusal of the aforesaid Regulations of 1991 clearly shows that even the employees who had retired prior to the date of notification of Regulations of 1991 were also entitled to exercise an option as to whether they would like disbursement of benefits under the erstwhile CPF scheme or they would like to be governed under the GPF scheme for the pensionary benefits and that in the event of employees opting to avail benefits of pensionary scheme, they were required to deposit the CPF and other benefits availed by them alongwith interest. The pensionary benefits would become admissible to the employees after the date of making good such deposit. He further contends that the petitioner(s) had already been ready and are still ready and willing to deposit the share of CPF and other benefits received by them at the time of their superannuation and that the benefits as are admissible to them under the aforesaid Regulations of 1991 be released forthwith without any further delay.

Learned counsel further contends that in the absence of any denial of the application of the terms and conditions of Regulations of 1991 governing the service conditions of the institutions where such persons are serving and the benefit of pension having been extended to the employees of Panjab University, Chandigarh, there was no reason why same arrangement ought not to have been made by the respondent-ICSSR, more so, when the

Regional Director had already forwarded the matter to the Authorities for taking an appropriate decision and to implement the said scheme. Instead of taking any decision thereupon they have arbitrarily rejected the claim of the petitioner(s), thus depriving them of their entitlement in law and as per the terms and conditions of their engagement.

Responding to the above, counsel for the respondents has defended the order of rejecting the claim of the petitioners for grant of pensionary benefits and has contended that no pension scheme was applicable to the employees of North Western Regional Centre, Chandigarh and in the absence of any such terms and conditions or the scheme having been approved by the Competent Authority, the petitioners cannot claim the benefit of pension. He further submits that the petitioners have already received the benefits of CPF and on receipt of such benefits, their status as employee stands severed and they cannot thus submit that they would still have an existing relationship on deposit of the contribution/benefits received by them under the CPF scheme.

A reference is also made by him to the affidavit of Dr. Richa Sharma, posted as Deputy Director, ICSSR, New Delhi, to contend that the Head Office as well the Regional Centres have different cadres. It is submitted that as per the prevailing practice in the Regional Centres, right from their inception, the employees at the Centres are entitled to get the benefits of Contributory Provident Fund Scheme, which is managed by the concerned Centre and that the North Western Regional Centre cannot claim any superior benefit. A further reference is made that the petitioners are employees of the North Western Regional Centre, Chandigarh and their letters of appointment were also issued by the North Western Regional Centre, Chandigarh; hence they cannot be termed as regular employees of ICSSR and are thus not eligible for grant of pension. Much emphasis has been laid on the ICSSR Service Regulations 1970 that had been passed and approved by the Government of India to contend that the pensionary benefits had been extended only to the employees at the head office level and not to the employees of Regional Centres. He emphatically argues that since there is difference in the nature of appointment between the staff/employees of North Western Regional Centre, Chandigarh and the employees of Head Office and they are subject to governance under different set of rules and that while the sanctioned position at ICSSR Head Quarter is related to the Government of India, no such approval has been granted by the Competent Authority for the functioning of the Regional Centres, hence, the benefits cannot be released to the employees of the Regional Centres, since it involves financial implications and the ICSSR Head Quarter, New Delhi does not have its own financial resourses to meet such long term financial liabilities. It is further averred in the abovesaid affidavit that the Government of India, in the Department of Pensioners, notified the scheme pertaining to change from CPF to Pension Scheme for employees who were in service on 01.01.1986 and continued to be in service. An option was extended to the employees whether they intended to continue under the CPF scheme or wanted to be converted to the GPF Scheme. It is submitted that the petitioners did not opt to be governed by GPF Scheme and as such, the admissible benefits under the CPF Scheme were released to them. It is further reiterated that all benefits under the CPF Scheme already stand released in favour of the petitioners.

Reliance is also placed on the judgment of the Hon'ble Supreme Court in the matter of ***All India Reserve Bank Retired Officers Association and Others Versus Union of India and Others*** reported as ***AIR 1992 SC 767.*** The relevant extract of the same is reproduced hereinafter below:

> *"1. In exercise of powers conferred by Clause (j) of Sub-section (2) of Section 58 of the Reserve Bank of India Act, 1934 (Act II of 1934) (hereinafter called 'the Act'), the Central Board of the Reserve Bank of India with the prior approval of the Central Government framed Regulations known as the Reserve Bank of India Pension Regulations, 1990 (hereinafter called 'the Regulations'). By the said Regulations brought into force with effect from 1st November, 1990 a pension scheme was introduced in substitution of the existing Contributory Provident Fund Scheme (hereinafter alluded to as the 'CPF Scheme'). The newly introduced pension scheme was made applicable to all employees entering Bank service on or after 1st November, 1990; for them the CPF scheme did not exist. The in-service employees i.e. those employees who were actually in service at the date of introduction of the scheme were given an option to opt out of the pension scheme and continue to be governed by the CPF scheme. The third category is of those who retired from Bank's service between 1st January, 1986 and 1st November 1990. Regulation 3(3) which deals with the applicability of the scheme to the said category of retired employees reads as under:*
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> > *3(3)-Employees who were in service as on 1st January 1986 (excluding those on leave preparatory to retirement) and had retired before 1st November, 1990, provided they exercise option to be governed by these Regulations and refund within such period as may be specified, the Bank's contribution to provident fund including interest received by them from the Bank together with simple interest at six*

> *percent per annum from the date of withdrawal till the date of repayment. Pension shall be payable to them in accordance with Regulation 31.*

Regulation 31 reads as under :

> *31-Employees who have retired from the Bank's service on or after 1st January, 1986 and before 1st November, 1990 shall be eligible for pension from 1st November, 1990 or after expiry of leave preparatory to retirement subject to Regulation 22. The payment of pension shall be subject to their refunding Bank's contribution to provident fund including interest received by them from the bank, together with simple interest at the rate of six percent per annum from the date of withdrawal till the date of repayment. Such employees will be permitted to commute their pension also with effect from 1st November, 1990, after due medical examination.*

It, therefore, appears on a conjoint reading of Regulation 3(3) and Regulation 31 that Bank employees who retired from service between 1st January, 1986 and 1st November, 1990 could opt for the benefit of the pension scheme with effect from 1st November, 1990 provided they refunded the Bank's contribution to the provident fund together with interest received thereon and together with further interest calculated at 6 percent per annum from the date of withdrawal till the date of repayment. Bank employees who retired from service before 1st January, 1986 were not eligible to opt for the newly introduced pension scheme.

XXX XXX XXX

9. The scheme introduced by the Regulations is a totally new one. It was not in existence prior to its introduction with effect from 1st November, 1990. The employees of the Reserve Bank who had retired prior to that date were admittedly governed by *the CPF scheme. They had received the benefit of employer's contribution under that scheme and on superannuation the amount to their account was disbursed to them and they had put it to use also. There can, therefore, be no doubt that the retiral benefits admissible to them under the extant Rules of the Bank had been paid to them. That was the social security plan available to them at the date of their retirement. The Bank employees were, however, clamouring for a pension scheme, firstly on a restricted basis as a third retiral benefit and later in lieu of the CPF scheme. The Central Government had not approved of a pension scheme, as a third retiral benefit. After that proposal was spurned it appears that the employees of the Bank demanded a pension scheme on the pattern of the scheme available to Central Government employees in lieu of the CPF Scheme. This was approved by the Central Government and consequently it was introduced with effect from 1st November, 1990 under the Regulations. There can, therefore, be no doubt that if the CPF retirees were not admitted to this new scheme they could not make any grievance in that behalf. They had no right to claim coverage under the new pension scheme since they had already retired and had collected their retiral benefits from the employer. But the moot question is whether it was open to the employer to grant the benefit of the pension scheme to one group of CPF retirees who had retired from Bank service on or after 1st January, 1986 and deny the same to all those who had retired on or before 31st December, 1985. Is this division of CPF retirees discriminatory and violative of Article 14 of the Constitution?*

10. Nakara's judgment has itself drawn a distinction between an existing scheme and a new scheme. Where an existing scheme is revised or liberalised all those who are governed by the said scheme must ordinarily receive the benefit of such revision or liberalisation and if the State desires to deny it to a group thereof, it must justify its action on the touchstone of Article

14 and must show that a certain group is denied the benefit of revision/liberalisation on sound reason and not entirely on the whim and caprice of the State. The underlying principle is that when the State decides to revise and liberalise an existing pension scheme with a view to augmenting the social security cover granted to pensioners, it cannot ordinarily grant the benefit to a section of the pensioners and deny the same to others by drawing an artificial cut-off line which cannot be justified on rational grounds and is wholly unconnected with the object intended to be achieved. But when an employer introduces an entirely new scheme which has no connection with the existing scheme, different considerations enter the decision making process. One such consideration may be the financial implications of the scheme and the extent of capacity of the employer to bear the burden. Keeping in view its capacity to absorb the financial burden that the scheme would throw, the employer would have to decide upon the extent of applicability of the scheme. That is why in Nakara's case this Court drew a distinction between continuance of an existing scheme in its liberalised form and introduction of a wholly new scheme; in the case of the former all the pensioners had a right to pension on uniform basis and any division which classified them into two groups by introducing a cutoff date would ordinarily violate the principle of equality in treatment unless there is strong rationale discernible for so doing and the same can be supported on the ground that it will subserve the object sought to be achieved. But in the case of a new scheme, in respect whereof the retired employees have no vested right, the employer can restrict the same to certain class of retirees, having regard to the fact-situation in which it came to be introduced, the extent of additional financial burden that it will throw, the capacity of the employer to bear the same, the feasibility of extending the scheme to all retirees regardless of the dates of their retirement, the *availability of records of every retiree, etc. It must be realised that in the case of an employee governed by the CPF scheme his relations with the employer came to an end on his retirement and receipt of the CPF amount but in the case of an employee governed under the pension scheme his relations with the employer merely undergo a change but do not snap altogether. That is the reason why this Court in Nakara's case drew a distinction between liberalisation of an existing benefit and introduction of a totally new scheme. In the case of pensioners it is necessary to revise the pension periodically as the continuous fall in the rupee value and the rise in prices of essential commodities necessitates an adjustment of the pension amount but that is not the case of employees governed under the CPF scheme, since they had received the lump sum payment which they were at liberty to invest in a manner that would yield optimum return which would take care of the inflationary trends. This distinction between those belonging to the pension scheme and those belonging to the CPF scheme has been rightly emphasized by this Court in Krishena's case (supra).”*

By placing reliance on the same, counsel reiterated his arguments that when a new scheme is introduced by an employer, there are various considerations that enter into a decision-making process including the financial implications. Hence, cutoff dates for exercise of an option are sacrosanct and after the said scheme has come to an end, the employee has no vested right to still claim conversion from one scheme to the other.

Neither any other argument has been raised by either of the counsel nor any other judgment cited before this Court.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file as also the judgment cited by the counsel for the respondent with their able assistance.

The core question which arises for consideration of this Court at this juncture is as to whether the petitioners, who were the employees of North Western Regional Centre, Chandigarh are entitled to exercise an option and claim benefits under the GPF Scheme (Regulations of 1991) as had been notified by the Panjab University, Chandigarh to be effected from 24.10.2005 in relation to the employees who had been appointed before 1.1.2004. The said Scheme also specifically covered the employees who had retired as on the date of notification of the Regulations of 1991.

While the claim of the petitioners herein is specifically based upon the terms and conditions incorporated in their appointment letters as also the guidelines and the recommendations made by the Regional Director of North Western Regional Centre, Chandigarh, which prescribes that the employees working in the Regional Centres were to be governed by the terms and conditions of service and allowance as were applicable to the host institution/collaborating institutions (which such fact is not disputed or denied by the respondent-ICSSR), the sole contention of the respondent-ICSSR is that since the pension scheme had not been approved for the North Western Regional Centre, Chandigarh, hence, only the admissible benefits under the CPF scheme could be released to them. The said response, I am afraid, is not a legally acceptable response in view of the terms and conditions that have been specifically incorporated in the letters of appointment of the petitioner. Once the letters of appointment specifically mention that the employees engaged in the North Western Regional Centre, Chandigarh shall be governed by the terms and conditions governing the employees of the Panjab University, Chandigarh from time to time, it was incumbent upon the respondent-ICSSR as an employer to take appropriate measures for ensuring that the admissible benefits are extended to the employees of Regional Centres in the same manner as have been extended by the host institutions/collaborating institutions (Panjab University, Chandigarh). It is worthwhile to mention herein that while the respondents-ICSSR are acknowledging and not disputing the applicability of the Regulations of 1991 notified by the Panjab University, Chandigarh, however, they are resorting to lack of any pensionary scheme having been notified by the Centre for denying the benefits to the petitioners herein. The submissions inherently contradict each other and it does not lie with the respondent-ICSSR to adopt a contradictory stand. While they have pleaded a distinction with respect to the terms and conditions of the employees of the Head Office vis-a-vis the employees of Regional Centres on the pretext that the employees working at the Regional Centres would be governed by the terms and conditions as are applicable to the respective collaborating institutions/unit, but while extending the benefits under the applicable regulations of the collaborating institutions, a somersault has been taken that since the scheme for pension had not been provided by the respondent-ICSSR for the regional Centres, hence, the same cannot be extended to the petitioners, and that such benefits have to be extended only to the employees of Head Office, for whom a separate scheme had been notified by the respondent-ICSSR.

Such selective convenient interpretation of the applicable rules and regulations is impermissible. As per the letter of appointment neither there is any such saving clause nor any such rule has been cited by the counsel for respondent-ICSSR, that in matters pertaining to the terms and conditions or other allowances to be paid, if altered by the host institution/collaborating institutions, the same are required to be separately approved from any other Competent Authority. The very fact that extensions of all rules and regulations of the collaborating institution had already been incorporated not only in the letters of appointment but also in the guidelines notified by the respondent-ICSSR itself, there was no occasion for a separate decision to be taken w.r.t. extending the applicability of the Rules. The sole action required to be undertaken was to take appropriate steps to implement the Regulations of 1991 that had been notified by the concerned University. Despite the matter having been put up/forwarded by the Regional Director, there is nothing on record on the basis whereof, it can be said that a conscious decision has been taken by the Competent Authority (as is being claimed in the additional affidavit filed by Dr. Richa) to the aforesaid claim. Instead, the Director of respondent-ICSSR took a decision at his own level to decline the said benefit without making any reference to the terms and conditions of the letters of appointment and the benefits to which the employees therein were entitled to. If the contention of the counsel for respondent-ICSSR is accepted to the effect that the Government of India had to take a considered a decision before accepting any financial liability, it was incumbent upon the person concerned to put forth the case to the Competent Authority for taking a considered decision in view of the changed scenario. Having not done so, the decision taken by the respondent-ICSSR on 1.1.2009 directing the Director of Regional Centres to release the benefits under the CPF scheme is clearly without authority and is an overreach by the concerned Authority in taking a decision w.r.t. applicability of the rules and also to the entitlement of the employees to the benefits that became admissible to them notwithstanding the terms and conditions of their letters of appointment and terms and conditions of their engagement as approved by the Competent Authority itself.

Even though a distinction has been sought to be carved out by the respondent-ICSSR by claiming that there are different Regional Centres and all such Regional Centres are governed by their separate terms and conditions and that the benefit of pension was extended only to the employees of the Head Office, I find that the argument is only an attempt to make an artificial classification. The employees of each such Regional Centre are governed by a separate set of regulations, which are at par with the governing institutions/ collaborating institutions. Accordingly, the rules and regulations of the respective institution become inherently imbibed in the terms and conditions governing their appointment. Thus, the benefits as are admissible to them at par with the benefits admissible to the employees of the Regional Centres/ collaborating institutions/University, would stand automatically extended to them. There may always be instances where employees in a particular region may not get the benefit of pension since no such policy/regulations have been framed by the respective institutions/universities, however, the same cannot be a reason to contend that it would amount to any discrimination between the employees posted at different Regional Centres. The employees continue to be governed by separate set of regulations applicable to their collaborating institution. There can thus be no reason for denial of such benefits to the petitioners solely on a presumed assumption that it might be arbitrarily discriminatory towards the employees working in other Regional Centres.

So far as the argument of learned counsel for the respondent-ICSSR to the effect that in the absence of any pensionary scheme having been approved by the Competent Authority, involving huge financial implications, the same cannot be extended to the petitioners, is concerned, I am of the view that as a model employer, the respondent-ICSSR cannot be permitted to raise such an argument to deny payment of dues to which an employee becomes entitled to.

The respondent would not be justified in denying the benefit of GPF on the ground that under the collaborating institution rules, only C.P.F. is admissible and the employees are governed by the said rules and later when the collaborating institutions provide for pensions, to deny the same on the ground that ICSSR doesn’t provide for it. The governing statute cannot be shifted as a way to avoid liability and deprive the employees of the benevolent scheme.

Reference made by the counsel for the respondents to the judgment of the Hon'ble Supreme Court in the matter of ***All India Reserve Bank Retired Officers Association (supra),*** is based upon misappreciation of the governing facts of the present case. In the abovesaid judgment, a specific scheme for exercise of option had been framed by the Government of India and extended to all the employees and they were called upon to elect the scheme for availing the retirement benefits. The judgment was rendered by the Hon'ble Supreme Court in the context where certain employees did not opt for conversion from one scheme to another and were thereafter seeking an exercise of the option afresh. It was in the said context that the Hon'ble Supreme Court declined to interfere.

Per contra, the circumstances of the present case specifically shows that no such option was given by the Government of India to the employees of the North Western Regional Centre, Chandigarh and as such there was no occasion for exercising an option by the petitioners herein. It is not set out in the affidavit of Dr. Richa that the abovesaid scheme notified by the Government of India had also been extended to the petitioners, who were the employees of the Regional Centres or that they could exercise an option of conversion. If the respondent-ICSSR, by its own act, had not been treating the employees of the Regional Centres as the employees covered under the financial benefits to be extended by the Government of India and did not give any option to the petitioners to elect the governing scheme vis. CPF or GPF Scheme on the pretext that they were governed by a separate set of regulations, it would not lie with the respondent-ICSSR to contend at this juncture that the petitioners did not exercise the option pursuant to the scheme notified by the Government of India in the year 1987.

It is hence evident that inherently contradictory stand and arguments are being adopted by the counsel for the respondent-ICSSR only to suit themselves. Such an argument of convenience cannot be permitted to be raised. Once the respondents have themselves specified the governing regulations under which service conditions of a certain set of employees would be governed, it would not be open for the respondents to contend that for denial of certain benefits to the employees that accrue in their favour under the governing set of regulations, they would be at liberty to refer to the regulations that deny such benefit to the employees.

Even otherwise, the decision of the Authority is contrary to the applicable rules wherein the benefits have become admissible. There is nothing on record to establish that the terms and conditions, governing the employees of the Centre had in any manner been modified or amended or that the Government of India had taken a conscious decision to decline the benefit of pension claimed by them pursuant to the Regulations of 1991 notified w.e.f. 24.10.2005. Position in law needs no reiteration that the administrative authority cannot override the applicable service regulations and that in the event of a conflict, the regulations shall prevail upon the office order.

The Hon'ble Supreme Court in the matter of ***Union of India Versus Ashok Kumar Aggarwal*** reported as ***(2013) 16SCC 147*** reiterated that an office order or office memorandum cannot contravene statutory rules. The relevant paragraph of the judgment is extracted as under:

> *"59. The law laid down above has consistently been followed and it is a settled proposition of law that an authority cannot issue orders/office memorandum/executive instructions in contravention of the statutory rules. However, instructions can be issued only to supplement the statutory rules but not to supplant it. Such instructions should be subservient to the statutory provisions.* ***(Vide Union of India v. Majji Jangamayya [(1977) 1 SCC 606: 1977 SCC (L&S) 191], P.D. Aggarwal v. State of U.P. [(1987) 3 SCC 622: 1987 SCC (L&S) 310: (1987) 4 ATC 272], Paluru Ramkrishnaiah v. Union of India [(1989) 2 SCC***

541: 1989 SCC (L&S) 375: (1989) 10 ATC 378: AIR 1990 SC 166], C. Rangaswamaiah v. Karnataka Lokayukta [(1998) 6 SCC 66: 1998 SCC (L&S) 1448] and Joint Action Committee of Air Line Pilots' Assn. of India v. DG of Civil Aviation [(2011) 5 SCC 435 : AIR 2011 SC 2220].”

Consequently, the present **writ petitions are allowed.** The respondents are accordingly directed to re-compute the benefits admissible to the petitioners in terms of the Regulations of 1991 (effective w.e.f. 24.10.2005).

Needless to mention that the petitioners would be at liberty to exercise an option of conversion from CPF Scheme to GPF Scheme/Pension Scheme and in the event of the petitioners opting conversion to the GPF/Pension Scheme, they would be required to deposit the amount received by them under the CPF Scheme at the time of their superannuation, which such amount shall be calculated by the respondents in the manner as prescribed under the Regulations of 1991. The respondents will compute the amount to be deposited by the petitioners herein and convey the same to them within a period of three months of receipt of certified copy of this order. Further, in the event of the petitioners/employees depositing the calculated amount, all consequential and admissible pensionary benefits under the Regulations of 1991 (w.e.f. 24.10.2005) shall be disbursed to them from the date of deposit of such amount, within a period of two months thereafter.

At this stage, it is pointed out that in CWP-20808 of 2018, the share of CPF contribution has not been withdrawn by the petitioner(s).

Accordingly, it is further directed that the respondent-Authorities shall take into consideration the said aspect while determining the benefits admissible to such employees and the dues to be released to them.

(VINOD S. BHARDWAJ)
JANUARY 30, 2025. **JUDGE**
Rajender

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No