



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 07 November 2024**
Judgment pronounced on : 15 January 2025
+ **W.P.(C) 6201/2022**

RITU RAJ JAIN & ORS.Petitioners
Through: **Mr. Rajat Aneja, Ms. Shivangi Chawla and Ms. Chandrika Gupta, Advs.**

versus

NETAJI SUBHAS UNIVERSITY OF TECHNOLOGY & ANR.Respondents
Through: **Ms. Rashmi Chopra and Mr. Parikshit Singh Bhati, Advs. for R-1/NSUT.**
Mrs. Avnish Ahlawat, Standing Counsel (Service) GNCTD with Mr. Nitesh Kumar Singh, Ms. Laavanya Kaushik, Ms. Aliza Alam and Mr. Mohnish Sehrawat, Advs.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The petitioners herein invoke the extra ordinary writ jurisdiction of this Court under Article 226 of the Constitution of India, 1950, seeking the following reliefs against the respondents herein:

“(i) Issue a Writ in the nature of MANDAMUS and/or any other appropriate Writ, Order or direction of like nature thereby commanding the Respondents to forthwith implement and apply the General Provident Fund (GPF)-cum-Pension Scheme to the Petitioners working with the Respondent No. 1 University, having



been appointed prior to 01.01.2004, and as already approved by the 46th Meeting of the Board of Governors of the Respondent No. 1 held on 20.02.2017 and also duly approved by the Government of NCT of Delhi i.e. the Respondent No.2 in terms of its letter/direction dated 18.05.2020 to the Respondent No. 1; and (ii) Issue a Writ of PROHIBITION thereby restraining the Respondent No. 1 to thrust upon the Petitioners the Contributory Provident Fund Scheme as an interim measure and to consequently direct the Respondent No. 1 to provide to the Petitioners with the opportunity to opt for GPF-cum-Pension; and to pass appropriate orders thereby giving effect to the GPF scheme forthwith; in the light of the facts and circumstances as narrated hereinabove. Any other Order(s) which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may also be passed in favour of the Petitioners and against the Respondents."

FACTUAL MATRIX

2. Shorn of unnecessary details, admittedly the petitioners herein, who are five in number, were appointed as regular employees of the respondent No.1 i.e., Netaji Subhas University of Technology (formerly, Delhi Institute of Technology) ['NSUT'] prior to 01.01.2004 and have since been serving as the permanent employees of respondent No.1/NSUT, an autonomous body/institution established and fully funded by the respondent No.2 i.e., Government of NCT of Delhi ['GNCTD'] and registered under the Societies Registration Act, 1860 as on 12.06.1987.

3. The principal issue raised by the writ petitioners herein is whether they are entitled to get retirement benefits under the General Provident Fund-cum-Pension-cum-Gratuity Scheme ['GPF Scheme'] in view of the fact that their respective dates of appointment fall prior to 01.01.2004. The said date finds relevance by virtue of the Office Memorandum ['OM'] dated 15.03.2004 (Annexure P-7) issued by the Ministry of Finance, Government of India, which is stated to have



limited the applicability of the GPF Scheme to only those employees who had joined the autonomous body before 01.01.2004. The letter dated 15.03.2004 is reproduced hereinunder:

“OFFICE MEMORANDUM

Subject: Applicability of new pension scheme to the employees of autonomous bodies/PSUs under the administrative control of different Central Ministries/Departments.

The undersigned is directed to refer to this Departments OM No. 1/(13)/EV/2001 dated 13th November 2003, on the subject mentioned above.

Over the past few months, this Department has been receiving letters directly from autonomous institutions/PSUs seeking clarifications regarding the date of implementation of the new pension scheme and its applicability to the new entrants joining autonomous bodies/PSUs. The desired clarifications have been considered in consultation with Department of Economic Affairs, Ministry of Finance and Department of Pension & Pensioners' Welfare.

It is clarified that irrespective of any factor, the applicability of existing pension scheme or new pension scheme to the new entrants will be determined solely with reference to the date of their joining. **Accordingly, all persons joining any autonomous body/ PSU under the administrative control of different Ministries/ Departments on or after 01.01.2004 will compulsorily be covered by the new pension scheme with the GPF-cum-pension Scheme being limited to employees who had joined before 01.01.2004.** This will also hold good for all new entrants in the Central Government.” (bold emphasis supplied)

4. Attention of this Court has been drawn to a letter dated 16.03.2000 issued by the Joint Secretary, Government of India, Ministry of Finance, Department of Expenditure, New Delhi addressed to the Financial Advisor, Ministry of Home Affairs, New Delhi, *inter alia* directing as under:



“4. In view of the above, we have been advising the autonomous bodies under various Ministries/Departments of the Government of India to continue to follow the CPF Scheme or that the autonomous bodies, if so desire, may work out an annuity scheme through the Life Insurance Corporation of India based on voluntary contributions by the employees and without any contribution from the Government or the employees may join the pension scheme introduced by the Ministry of Labour for the PF subscribers. It may please be noted that introduction of the pension scheme on the GOI pattern to the employees of autonomous bodies should not be agreed to as a rule; any exception in this regard should be referred to this Department.”

5. The reasons accorded by the Ministry for issuing such advice, as found in the letter dated 16.03.2000, are reproduced hereinunder: -

“The Department of Expenditure has been receiving a number of proposals regarding introduction of pension scheme on GOI pattern for the employees of autonomous bodies under various Ministries/Departments of the Government of India. Such proposals have not been approved mainly for the reasons given below:-

- (i) The cost of introduction of pension scheme is much higher than the CPF Scheme. The cost of pension scheme keeps on increasing with every increase/ revision in the scales of pay/ pensionary benefits recommended by the successive Pay Commissions set up by the Government.
- (ii) While the CPF is a one-time payment, pension is the life long commitment on the part of the Government.
- (iii) For serving a pension scheme, a Pension Fund has to be set up to be managed by a Trust. Difficulties may be experienced in the judicious administration of the Fund.
- (iv) In case of winding up of the organization, the Government may have to take over the entire liability of the Pension Fund.
- (v) Any cut-off date fixed by the Government is not likely to be accepted by the employees who retired prior to the cut-off date.

Apart from the above, the recurring financial implications of introduction of pension scheme in autonomous bodies are likely to be very substantial, particularly after acceptance of the recommendations of the Fifth Central Pay Commission, involving a significant liberalization of the provisions relating to pension, gratuity, commutation of pension, family pension, etc.



We have however, come across a number of cases where pension scheme on Government of India pattern has been allowed for the employees of the autonomous bodies either with the approval of the Internal Finance Division or with the approval of the Financial Adviser of the Ministry / Department concerned without obtaining this department's concurrence. In one such case, the Department concerned is now faced with a situation where the Pension Fund set up for the employees of an autonomous body has become unviable, there being no possibility of disbursing pension to the pensioners without seeking Government's support in the form of grants-in-aid.”

6. It is borne from the record that upon receipt of the letter dated 16.03.2000, the Board of Governors of the respondent No.1/NSUT [‘BOG’] in its 22nd Meeting held on 29.06.2001, decided to seek a clarification from the respondent No.2/GNCTD regarding the same, besides proposing that pending final decision on the said issue, the new entrants joining the service of the NSUT on or after 01.01.2001 be allowed to opt only for the Contributory Provident Fund-cum-Gratuity Scheme [‘CPF Scheme’], as an interim measure. The relevant extract of the Agenda as well as the Minutes of the 22nd meeting of the Board of Governors of the respondent No.1/NSUT, held on 29.06.2001, are reproduced hereinunder:

“4. In view of the above position, **it is for consideration as to whether the Institute should adopt CPF-cum-Gratuity Scheme for its employees and discourage / discontinue GPF-cum-Pension-cum-Gratuity Scheme for its employees.** In this context, it may be stated that AICTE Notification regarding the revised pay scales and service conditions of the teachers recently approved by the Board of Governors at its last meeting provides that “Teachers, if entitled may be given pension and other retirement benefits at rates applicable to the Central/ State Government Employees, whenever pension scheme is in operation”.

5. In the event of a decision being taken to adopt the CPF-cum-Gratuity Scheme for the Institute Employees, it is proposed that:



- (i) The status quo may be maintained for the existing employees of the institute. However, if any of the employees wishes to change over the CPF-cum- Gratuity Scheme, he / she may be allowed to do so by exercising his/her option in its favour;
- (ii) **The new entrants joining the service of the Institute after December, 2000, i.e. the date of the Letter of the Govt. of NCT of Delhi, may be allowed to opt only for the CPF Scheme; and**
- (iii) Those who join the Institute service from other Government Departments/ Organizations where they were governed by the GPF Scheme, may be allowed to opt for either of the Schemes.

6. With the above position, the matter is placed before the Board of Governors for consideration and decision.”

.....

“Minutes

iii) Adoption of Contributory Provident Fund Scheme for the Institute Employees

Presenting the item, the Director informed the Board that the Service Rules approved by Board of Governors of the institute provide for two schemes; namely Contributory Provident Fund-cum- Gratuity Scheme (CPF Scheme) and General Provident-cum-Pension-cum-Gratuity Scheme (GPF Scheme) for the employees of the Institute and employees could opt for either of the two schemes. These Service Rules were vetted by the Department of Training and Technical Education and had the concurrence of the then Secretary (Finance), Govt. of NCT of Delhi. The representative of the Principal Secretary (TE) informed that the directive contained in the Govt. Letters referred to in the agenda note had been implemented in all the autonomous organizations under the Govt. of NCT of Delhi. A member brought to the Notice of the Board that the similar circular had been received in Jawahar Lai Nehru University also and the same had not been implemented as yet and was under examination. The Director pointed out that switching over to the CPF Scheme may not find favour with those existing employees who were already being governed by the GPF Scheme and it may entail legal implications. A similar view was also held by other members present. It was also pointed out that in order to attract good faculty, it was desirable to have GPF Scheme at the Institute as it was a motivation for the prospective candidates to join the Institute.



After protracted deliberations, it was agreed that the issue being of sensitive nature with repercussion, maybe examined in totality particulars to the light of the procedural and legal implications, besides the commitment made to the existing employees in the event the existing employees being asked to change over to CPF Scheme as envisaged in the Government Letters referred to in the Agenda note. It was desired that a clarification may also be sought from the Government of NCT of Delhi, as to whether the directives contained in the Government Letters under reference were applicable to this Institute also. The matter may be brought before the Board after examination as aforesaid and pending final decision on the matter, the new entrants may be required to opt for the CPF scheme only.”
(bold emphasis supplied)

7. Pertinently, the petitioners herein contend that the interpretation of the letter dated 16.03.2000 by the Board of Governors of respondent No.1/NSUT in its 22nd meeting held on 29.06.2001 is misdirected and erroneous inasmuch as the respondent No.1/NSUT failed to appreciate that the advice contained in the letter dated 16.03.2000 was for those organizations which offered only the CPF Scheme to its employees, and not for organizations such as the Respondent No. 1/NSUT which had been providing the option of both GPF and CPF Schemes to its employees since its inception in 1987. Further, it is contended that even if, for the sake of the argument, it is believed that the interpretation of the respondent No.1/NSUT is correct, the decision of the respondent No.1/NSUT of selectively rescinding/withholding the GPF Scheme from those employees who were recruited on or after 01.01.2001 is in itself arbitrary and discriminatory in nature, thereby liable to be quashed and set aside.
8. Anyhow, the case set up by the petitioners is that notwithstanding the compulsory implementation of the new pension



scheme with effect from 01.01.2004, such employees of the respondent No.1/NSUT who have been recruited prior to 01.01.2004 (i.e., the petitioners herein), are entitled to exercise the option to choose between the GPF Scheme and the CPF Scheme for themselves. To crystallise the said proposition, the petitioners herein have relied upon several authorities which have been collated for the sake of convenience, in the following manner:

- i. Paragraph (4.16) of the Service Rules for Delhi Institute of Technology (respondent No.1 herein) as approved by the erstwhile Delhi Administration on 11.02.1991 and adopted by the respondent No.1/NSUT on 14.01.1994 in the 11th Meeting of its Board of Governors, which *inter alia* lay down provisions pertaining to the General Provident Fund Scheme and Contributory Provident Fund Scheme besides other retirement benefits. Paragraph (4.16) of the Service Rules reads as under:

“**4.16** The employees of the Institute can opt for either CPF-cum-Gratuity Scheme or for GPF-cum-Pension-cum-Gratuity Scheme as set out in Schedules D & E. While the employees who opt for CPF-cum-Gratuity Scheme, are not entitled to pension and other retirement benefits, those who opt of GPF-cum-Pension- Gratuity Scheme are entitled to the scheme as set out in Schedule D.”

- ii. Clause (x) of the Terms and Conditions mentioned in the Office Order/Letter of Appointment issued to the petitioner Nos. 1 and 5 by the respondent No.1/NSUT (Annexure P-5), which provides as follows:

“(x) **RETIREMENT BENEFIT:** The Institute has two schemes viz.

(i) Contributory Provident Fund-cum-Gratuity Scheme; and



(ii) General Provident Fund-cum-Pension-cum-Gratuity Scheme.

However, you will be governed by the CPF-cum-gratuity Scheme of the Institute. In case the GPF-cum-Gratuity-cum-Pension Scheme becomes operational a later date, you may be required to exercise option to elect either of the schemes.”

It would be apposite to mention here that it has been brought out by the respondent No.2/GNCTD that the GPF Scheme never became operational at a later stage rather the Finance Department, GNCTD rejected the proposal of the Board of Governors of the respondent No.1/NSUT to make the same operational for the petitioners and its other similarly placed employees.

- iii. The Resolution proposed to be passed in the Agenda placed before the 46th Meeting of the Board of Governors of the respondent No. 1/NSUT, held on 20.02.2017, in respect of its employees who joined between 01.01.2001 and 31.12.2003 (including the petitioners herein) to be considered for being given the option of the GPF Scheme. The relevant extract of the Minutes of the 46th Meeting held on 20.02.2017 and the Resolution passed therein (Annexure P-9) is as follows:

“(9) Option for allocating GPF Scheme for the employees who joined NSIT from 1/1/2001 to 31/12/03

The Board was informed that since the Institute was granted autonomy in 1987, all the instructions/guidelines issued by GNCTD are applicable to employees of NSIT. Later, a letter No. F4(525)/2001-SB/91-92 dt. 22.12.2000 was received from the Jt. Secretary (TTE), communicating that “(i) all acts/statutes/rules/regulations having a bearing on service conditions should be approved by the Govt.: & (ii) as regards pensions, letter No.25(i)/E V/2000 dt. 16.3.2000



of GOI, MHRD will be followed". Subsequently, the matter was taken to the BOG in its 22nd meeting held on 29.6.2001. **The BOG resolved that the matter may be brought before it after examination and pending final decision in the matter, the new entrants may be required to opt the CPF Scheme only. In accordance with the decision of the BOG, the Institute has allowed only CPF Scheme to all new entrants who joined on or after 1.1.2001.**

The Board was also informed that already a proposal has been submitted to the Finance Deptt., Govt. of NCT of Delhi for continuation of GPF Scheme to those employees of NSIT who were appointed during the period from 13/06/87 to 31/12/2000.

Since, the Institute is 100% guarantee institution and the Govt. of India has implemented a New Pension Scheme to all the government servants compulsorily w.e.f. 1/1/04 onwards, it was proposed to agree to forward the proposal to the Govt. to consider extending the option of GPF Scheme to those employees of NSIT who joined during the period from 1/1/2001 to 31/12/2003 on the same analogy as per the directives of Govt. of India.

RESOLUTION:

Resolved to forward the proposal to the Government to reconsider extending the option of GPF Scheme to those employees of NSIT who joined during the period from 1.1.2001 to 31.12.2003 on the same analogy as per the directives of the Govt. of India." **(bold emphasis supplied)**

- iv. Office Memorandum dated 17.02.2020 and letter dated 18.05.2020 duly endorsing the said Memorandum, besides Office Memorandum dated 31.03.2021 (Annexures P-9 and P-10) issued by the respondent no.2/GNCTD and addressed to the respondent No.1/NSUT and other similarly placed institutions, directing that those Government Servants who were declared successful for recruitment in the results declared on or before



31.12.2003 against vacancies occurring before 01.01.2004, be given a one-time opportunity to get covered under the Central Civil Services (Pension) Rules, 1972 and subscribe to the GPF Scheme, in place of the National Pension Scheme, if they so desire, though not later than the time stipulated therein.

- v. Office Order/Memorandum dated 04.01.2022 (Annexure P-13) issued by the Under Secretary to the Government of India, reiterating the earlier memorandums dated 17.02.2020 and 31.03.2021.
- vi. Notification dated 21.10.2021 (Annexure P-11) issued by the Guru Gobind Singh Indraprastha University [‘GGSIPU’], an autonomous institution similarly placed as the respondent No.1/NSUT, *vide* which notification, the GGSIPU has partially amended its Statutes 31 and 32 so as to allow all its employees appointed prior to 01.01.2004 to opt for the GPF Scheme if they so desire.
- vii. The decision in the case of **Dr. Ravindra Narayan Mishra v. Sri Guru Tegh Bahadur Khalsa College**¹ wherein this Court *inter alia* held that the petitioners therein, having been deemed to be appointed prior to 01.01.2004, shall be governed by the GPF Scheme and not the New Pension Scheme.
- viii. The decision in the case of **Rajiv Raizada v. Union of India**² wherein this Court has held that only if an employee consciously opts to continue with the CPF Scheme, he/she would not be

¹ 2023 SCC OnLine Del 3057

² 2021 SCC OnLine Del 3633



entitled to the GPF Scheme. Accordingly, it is contended that since none of the petitioners herein voluntarily opted for the CPF Scheme, they should be held deemed to be covered under the GPF Scheme.

9. In view of the aforesaid, it is averred that the apparent failure on the part of the respondent No.1/NSUT to implement the GPF Scheme with respect to its employees recruited prior to 01.01.2004, violates the rights of the petitioners protected under Articles 14 and 21 of the Constitution of India, 1950, as it illegally denies the petitioners the option to receive pension as per the GPF Scheme, especially when other similarly placed autonomous bodies operating under the aegis and directions of the Respondent No. 2/GNCTD, such as the GGSIPU, have offered it to similarly placed employees as the petitioners herein who were recruited prior to 01.01.2004. It is claimed that due to lack of proper action and clarity on the part of the respondents with respect to applicability and implementation of the GPF Scheme, the petitioners are suffering insofar as they are unnecessarily being thrust with the CPF Scheme which is not favourable due to its relatively lower benefits.

10. Under the aforesaid circumstances, the petitioners herein were constrained to send several representations dated 22.05.2020, 26.05.2020, 09.08.2021, 07.02.2022, 15.02.2022, 18.02.2022, 22.02.2022 and lastly 01.03.2022, to the respondent No.1/NSUT, praying that they be considered for the GPF Scheme, however to no avail. Aggrieved thereby, the petitioners moved this Court by instituting the present writ petition seeking appropriate reliefs.



PROCEEDINGS BEFORE THIS COURT

11. During the pendency of the present writ petition, the petitioner No.4, namely Mrs. Alka Rai, voluntarily retired from the respondent No.1/NSUT with effect from 04.05.2023. Accordingly, she filed CM APPL. 15327/2023 seeking directions to the respondent No.1/NSUT not to disburse her retirement benefits to the extent of the CPF contribution, until this Court disposes of the present writ petition.

12. When the application came up for hearing on 28.04.2023, this Court, upon recording the categorical statement of the petitioner No.4 that she does not wish to receive the CPF contribution during the pendency of the present petition, allowed CM APPL. 15327/2023 in the aforesaid terms.

LEGAL SUBMISSIONS ON BEHALF OF THE PARTIES

13. Learned counsels for the respondents herein have raised a preliminary objection *qua* delay and laches, contending that the present petition has been filed after an unexplained and considerable delay of 20 years since the appointment of the Petitioner is between 01.01.2001 to 31.12.2003 and the present petition claiming benefits under the GPF Scheme benefit has come to be filed only on 26.03.2022. Reliance in this regard has been placed on **Union of India v. M.K. Sarkar**³ wherein the Supreme court rejected the claim of the employees for exercising the option of choosing a Pension Scheme, on the ground that the claimants had approached the Court after a delay of 22 years.

³ (2010) 2 SCC 59



14. Controverting the aforesaid submissions, learned counsel for the petitioners have contended that though their claim is based on a violation of their rights at the time of their appointment i.e., 2001 and 2002, the said violation is currently ongoing, and the cause of action is “continuing” in nature inasmuch as the directions of the respondent no.2/GNCTD accruing the right to opt for the GPF Scheme upon the petitioners, have not been given effect to, till date. Further, it is submitted that the representations made by the petitioners between the years 2020 and 2022 have gone completely unanswered. Under the said circumstances, it is urged that there is no question of the claim of the petitioners being barred by delay and laches. Reliance has been placed on the decision of the Karnataka High Court in **Union of India v. Smt. Anu Thomas**⁴ as well as the decision of the Supreme Court in **Rushibhai Jagdishbhai Pathak v. Bhavnagar Municipal Corporation**⁵ to substantiate its case that a cause of action in salary or pension is “recurring” in nature and the right of a government servant to claim service benefits cannot be defeated on the ground of delay and laches.

SUBMISSIONS ON BEHALF OF THE RESPONDENT NO.1/ NSUT ON MERITS

15. Pursuant to orders of this Court, the Assistant Registrar, NSUT filed a counter affidavit dated 25.11.2022 on behalf of the respondent No.1/NSUT acknowledging the broad facts of the matter, besides deposing that the appointment letters which have been issued by the

⁴ 2024:KHC:10733-DB

⁵ (2022) 18 SCC 144



respondent No.1/NSUT to the employees recruited after the decision of the Board of Governors taken in its 22nd Meeting held on 29.06.2001, specifically contain a stipulation that only one scheme, i.e. CPF Scheme, shall be available to such employees. In its defence, the respondent No.1/NSUT state that all the petitioners herein acquiesced to and are bound by such terms and conditions of appointment as envisaged in their service contracts, therefore, they are not in a position to now challenge the same by way of the present writ petition. Reliance in this regard has been placed on the decision of this Court in the case titled **Prof. Neeraj Khare v. Indian Institute of Technology, Delhi**⁶.

16. Relying upon the letter dated 16.03.2000 issued by the Ministry of Finance, Government of India as also the Resolution passed by the Board of Governors of the respondent No.1/NSUT in its 22nd Meeting held on 29.06.2001, it is stated by the respondent No.1/NSUT that the petitioners' entire premise to approach this Court i.e., the alleged approval for the relief as sought herein by the 46th meeting of the Board of Governors held on 20.12.2017, is misconceived and untenable in law.

17. The Respondent No.1/NSUT has placed on record a letter bearing No. F. 4(524)/2000-SB/1767 dated 22.12.2000(Annexure R-1) which is claimed to have been received from the Jt. Secretary (TTE), DTTE, GNCTD, *inter alia* communicating to the respondent No.1/NSUT that:

⁶ 2023 SCC OnLine Del 6784



“Under the provisions of aforesaid Rules it is incumbent upon the Institute to seek approval of Government of Delhi in all service matters of its employees.

You are, therefore requested to comply with the aforesaid and other provisions in GFR as applicable to grantee institutions and incorporate following provisions in the Memorandum of Association/ Rules and Regulations:

1. All acts/ statutes/rules/regulations having a bearing on service conditions should be approved by the Government.
2. **As regards pensions, letter No.25(1)/EV/2000 dated 16.03.2000 of Government of India, Ministry of Finance will be followed.**
3. In case of any dispute of difference the decision of Government of NCT of Delhi will prevail over any other body (University/Institute).”
(bold emphasis supplied)

SUBMISSIONS ON BEHALF OF THE RESPONDENT NO.2/ GNCTD ON MERITS

18. This Court *vide* order dated 26.07.2022 and on several occasions thereafter, recorded the statement of the learned counsel appearing for the respondent No2/GNCTD to the effect that the GNCTD shall not be filing a counter affidavit as it is has been impleaded in the present matter in the capacity of a proforma party. However, the stand of the respondent No.2/GNCTD which comes out from its written synopsis placed on record besides the arguments advanced by the learned standing counsel for the GNCTD at the Bar, is that the present writ petition is liable to dismissed for the following reasons:

- i. The OM dated 15.03.2004 relied upon by the petitioners does not come to the rescue of the petitioners as it only provides a clarification regarding the date of applicability of the New



Pension Scheme and does not impose any obligation on any autonomous organization to extend the benefit of the GPF Scheme to any other employees who are otherwise not eligible for the same.

- ii. The OM dated 17.02.2020 relied upon by the petitioners clearly indicates that it has no application to the employees already in service including the petitioners herein who were appointed between 01.01.2001 to 31.12.2003 and are covered under CPF Scheme. Thus, the question of giving the petitioners the option to elect the GPF Scheme by virtue of the OM dated 17.02.2020 does not arise. Moreover, it is contended that the said OM cannot be construed as a decision granting change-over of the employees covered under the CPF Scheme to the GPF Scheme.
- iii. The case of the petitioners seeking the implementation of the GPF Scheme claiming that it has already been approved by the Board of Governors of the respondent No.1/NSUT in its 46th meeting is factually incorrect in view of the fact that the Board merely resolved to forward the proposal to the GNCTD for consideration, which has not been accepted by the Finance Department, GNCTD.
- iv. The employees of autonomous bodies cannot, as a matter of right, claim the same service benefits at par with government employees, merely because such autonomous bodies may have adopted Government Service Rules or because such institution is funded by the State or Central Government.



v. Lastly, the decision to apply the CPF Scheme to the new entrants in all the autonomous bodies from 01.01.2001 is based on the directions issued by Government of India, Ministry of Finance, Department of Expenditure *vide* letter dated 16.03.2000 which is a policy decision that cannot be challenged in the Court of Law. Reliance in this regard has been placed on the decisions of the Supreme Court in **State of Maharashtra v. Bhagwan**⁷, **T.M. Sam path v. Ministry of Water Resources**⁸ and **Punjab State Coop. Milk Producers Federation Ltd. v. Balbir Kumar Walia**⁹, wherein the Apex Court has held that a policy decision cannot be challenged in the Court of law and autonomous bodies cannot be directed to follow the Rules, Regulations and Schemes of the Government.

ANALYSIS & DECISION

19. I have bestowed my thoughtful consideration to the submissions advanced by the learned counsels for the rival parties at the Bar. I have also perused the relevant record of the present case as also the case law cited at the Bar.

20. First things first, it would be apposite to bring to the fore the admitted dates of appointment of the respective petitioners which are tabularised hereinunder:

Petitioner No.	Name	Designation	Date of Initial Appointment
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⁷ 2022 (4) SCC 193

⁸ 2015 (5) SCC 333

⁹ 2021 (8) SCC 784



1.	Mr. Ritu Raj Jain	Senior Scientific Assistant	15.01.2001 (On <i>ad hoc</i> basis) 15.03.2002 (On regular basis)
2.	Prof. Ashok Kumar Dubey	Professor	20.06.2001
3.	Dr. Preeti Kaur	Associate Professor	22.06.2001
4.	Dr. Alka Rai	Presently serving as Finance Officer (on deputation with Shri Lal Bahadur Shastri Sanskrit National University) /Deputy Registrar at NSUT	14.01.2002
5.	Mr. Amar Nath Sharma	Section Officer	05.06.2002

21. In view of the above tabular detail, admittedly, the petitioners joined the services with the respondent No.1/NSUT prior to 01.01.2004. It would also be apposite to refer to the terms and conditions of their service at the time of joining and it is a matter of record that insofar as petitioner No.1 Mr. Ritu Raj Jain and petitioner No.5 Mr. Amar Nath Sharma, who joined the services on 15.01.2001 and 05.06.2002 respectively, the offer of appointment acceded to and executed by them contained the following stipulations:

“(x) **RETIREMENT BENEFIT:** The institute has two schemes viz.

(i) Contributory Provident Fund-cum-gratuity Scheme; and

(ii) General Provident Fund cum Pension cum Gratuity Scheme

However you will be governed by the CPF-cum-Gratuity Scheme of the Institute. In case the GPF-cum-Gratuity Pension Scheme becomes operational a later date, you may be required to exercise option to elect either of the schemes.”

22. As regards the petitioner No.2 Professor Ashok Kumar Dubey, petitioner No.3 Dr. Preeti Kaur, who joined on 20.06.2001 and



22.06.2001 respectively, and petitioner No.4 Dr. Alka Rai who joined on 14.01.2002, the offer of appointment that was acceded to and agreed upon by them provided as under:

“(ix) **RETIREMENT BENEFIT:** The institute has two schemes viz.

(i) Contributory Provident Fund-cum-gratuity Scheme; and

(ii) General Provident Fund cum Pension cum Gratuity Scheme

However, under the instructions from Govt. of NCT of Delhi/ Govt. of India, only one scheme, i.e. Contributory Provident Fund-cum-Gratuity Scheme will be available in future and you will be governed by the provisions of that Scheme only.”

23. The position that emerges is that insofar as petitioner No.1 and 5 are concerned, at the time of joining it was clearly stipulated that they would be governed by the CPF-cum-Gratuity Scheme of the Institution but at the same time it was also provided that in case GPF-cum-Gratuity-cum-Pension Scheme becomes operational at a later date, they may be required to exercise such option to elect either of the Schemes. In juxtaposition to above, in so far as petitioner No.2, 3 & 4 were only governed by one Scheme i.e. CPF-cum-Gratuity Scheme and their legal right to exercise an option to avail GPF-cum-Gratuity-cum-Pension Scheme was not reserved.

24. That being the case, I am afraid that the plea canvassed by the learned counsel for the petitioners that the petitioners would be governed by the GPF-cum-Gratuity-cum-Pension Scheme for the fact that they had been appointed prior to 01.01.2004 cannot be sustained in law. This is exemplified on a careful perusal of the letter dated 16.03.2000 referred to hereinabove in paragraph (4) of this Judgment that clearly mandates that insofar as autonomous bodies under various



Ministries/Department of Government of India were concerned, they were directed to follow the CPF Scheme, and if so desired, could have worked out an annuity Scheme through the LIC¹⁰. It was categorically provided that the introduction of the Pension Scheme on the GOI¹¹ pattern to employees of the autonomous bodies should not be agreed to as a rule and any exception should be referred to the Department of Expenditure, Ministry of Finance, Government of India.

25. It is borne out from the record that based on the underlying reasons and the mandate for introduction of the CPF Scheme in autonomous bodies as contained in the aforesaid letter dated 16.03.2000, the Board of Governors of respondent No.1/ NSUT in the 22nd meeting held on 29.06.2001 sought clarifications from the respondent No.2/GNCTD. Although it was principally agreed that the entrants joining service of the Institute after December, 2000 i.e. the date of the letter of the GNCTD, may be allowed to opt only for the CPF Scheme, however, the matter being sensitive in nature, a clarification was sought by respondent no. 1/NSUT from respondent no. 2/GNCTD regarding the same.

26. The plea by the learned counsel for the petitioners that the letter/circular dated 16.03.2000 was applicable to only those organizations where only the CPF Scheme was being offered to its employees and not to organizations such as respondent No.1/NSUT, which has been providing the option of both GPF and CPF Schemes to its employees since its inception in 1987, does not cut any ice. The

¹⁰ Life Insurance Corporation of India

¹¹ Government of India



petitioners, by their own admissions, refer to paragraph (4.16) of the Service Rules adopted by the respondent No.1/NSUT with effect from 14.01.1994, that explicitly provided for offering the option of either of the Schemes to its employees.

27. Now, the question that begs an answer is as to what options were exercised by the petitioners at the time of joining. There is placed on record no *iota* of documentary evidence that each of the petitioners or anyone thereof, immediately after joining the service of respondent No.1/NSUT, sought to modify the terms and conditions of the offer of appointment, viz., clause (ix) and (x), as referred to hereinabove.

28. Reliance by the learned counsel for the petitioners on the Minutes of the 46th meeting of the Board of Governors held on 20.02.2017 is misplaced since a careful perusal of such minutes would show that the BOG in reference to earlier deliberations held on 29.06.2001, had resolved that the new entrants may be required to opt for the CPF Scheme only. It reiterated an earlier decision of the BOG to the effect that the NSIT/NSUT has applied the CPF Scheme to all new entrants who joined on or after 01.01.2001. Indeed, the BOG in its 46th meeting held on 20.02.2017 ultimately resolved that a request be made to the Government to reconsider extending the option of the GPF Scheme to those employees of NSIT/NSUT who joined during the period between 01.01.2001 and 31.12.2003 on the same analogy as per the directive of the Government of India.

29. Without any further ado, reliance placed by the learned counsel for the petitioners on the OMs dated 17.02.2020 and 31.03.2021 so as



to substantiate that the GPF Scheme would be applicable to them for having been appointed before 01.01.2004 is also misplaced. In this regard, it would be expedient to refer to the Office Memorandum dated 17.02.2020 issued by the Department of Pension and Pensioners' Welfare, Government of India, the relevant extract of which reads as under:

“OFFICE MEMORANDUM

Subject: Coverage under Central Civil Services (Pension) Rules, 1972, in place of National Pension System, of those Central Government Employees whose selection for appointment was finalized before 01.01.2004 but who joined Government Service on or after 01.01.2004.

The undersigned is directed to say that consequent on introduction of National Pension System (NPS) vide Ministry of Finance (Department of Economic Affairs) Notification No. 5/7/2003-ECB & PR dated 22.12.2003, all Government Servants appointed on or after 01.01.2004 to the posts in the Central Government Servants appointed on or after 01.01.2004 to the posts in the Central Government Service (except armed forces) are mandatory covered under the said scheme. The Central Civil Services (Pension) Rules, 1972 and other connected rules were also amended vide Notification dated 30.12.2003 and, after the said amendment, those rules are not applicable to the Government Servants appointed to Government Service after 31.12.2003.

2. Representatives have been received in this Department from the Government Servants on or after 01.01.2004 requesting for the benefit of the Pension Scheme under Central Civil Services (Pension) Rules, 1972 on the ground that their appointment was delayed on account of administrative reasons or lapses. Similar references have been received from Ministries / Departments seeking advice of this Department on the question whether the Government Servants who were appointed on or after 01.01.2004 could also be extended the benefit of pension scheme under CCS (Pension) Rules, if their appointment was delayed beyond 31.12.2003 on account of administrative reasons and the delay in appointment was beyond the control of the said Government Servants.

3. From the representations of the Government Employees and the reference received from Ministries / Departments, it has been observed that in many of the cases referred to this Department, selection process (including written examination, interview and declaration of result) for recruitment had been completed before 01.01.2004 but the employee joined the Government Service on or after 01.01.2004. A few illustrations where the selection was finalized before 01.01.2004 but actual joining took place on or before 01.01.2004 are as under:



- (i) The result for recruitment was declared before 01.01.2004 but the offer of appointment and actual joining of the Government Servants was delayed on account of police verification, medical examination etc.
- (ii) Some of the candidates selected through a common selection were issued offers of appointments and were also appointed before 01.01.2004 whereas the offers of appointment to other selected candidates were issued on or after 01.01.2004 due to administrative reasons /constraints including pending Court/CAT cases.
- (iii) Candidates selected before 01.01.2004 through a common competitive examination were allocated to different Departments/ organization. While recruitment process was completed by some Department(s)/ organizations on or before 31.12.2003 in respect of one or more candidates, the offers of appointment to the candidates allocated to the other Departments / organization were issued on or after 01.01.2004.
- (iv) Offers of appointment to selected candidates were made before 01.01.2004 with a direction to join on or after 01.01.2004.
- (v) Offers of appointment were issued to selected candidates before 01.01.2004, and many / most candidates joined service before 01.01.2004. However, some candidate (s) were allowed extension of joining time, and they joined service on or after 01.01.2004. However, their seniority was either unaffected or was depressed in the same batch or to a subsequent batch, the result for which subsequent batch was declared before 01.01.2004.
- (vi) The result of recruitment was declared before 01.01.2004 but one or more candidates were declared disqualified on the grounds of medical fitness or verification of character and antecedents, caste or income certificates. Subsequently, on review, they were found fit for appointment and were issued offers of appointment on or after 01.01.2004.

In all the above illustrative cases, since the result for recruitment, was declared before 01.07.2004, denial of the benefit of pension under CCS (Pension) Rules, 1972 to the affected Government Servants is not considered justified.

4. The matter has been examined in consultation with the Department of Personnel & Training, Department of Legal Affairs in the light of the various representations /references and decisions of the Courts in this regard. It has been decided that in all cases where the results for recruitment were declared before 01.01.2004 against vacancies occurring on or before 31.12.2003, the candidates declared successful for recruitment shall be eligible for coverage under the CCS (Pension) Rules, 1972. Accordingly, such Government Servants who were declared successful for recruitment in the results declared on or before 31.12.2003 against vacancies occurring before 01.01.2004 and are covered under the National Pension System on joining service on or after 01.01.2004, may be given a one-time



option to be covered under the CCS (Pension) Rules, 1972. This option may be exercised by the concerned Government Servants latest by 31.05.2020.

5. Those Government servants who are eligible to exercise option by the stipulated dated, shall continue to be covered by the National Pension System.

6. The option once exercised shall be final....”

(bold emphasis supplied)

30. A bare perusal of the OM dated 17.02.2020 would show that it caters to a different situation where a “one time option” was provided to the employees of the Central Government whose selection process for appointment (including written examination, interview and declaration of result) had been concluded before 01.01.2004 but who joined the service on or after such cut-off date i.e. 01.01.2004. The said OM addresses the anomaly created during a common selection process, wherein the candidates who joined service before 01.01.2004 were covered under the CCS (Pension) Rules, 1972 whereas the others who joined after 01.01.2004 came under the New Pension Scheme. In the said context, taking cognizance of the various representations/references as well as the decisions of the Courts, the Department of Pension and Pensioners’ Welfare, Government of India, in consultation with the Department of Personnel and Training, Department of Expenditure, and the Department of Legal Affairs, decided on 17.02.2020 that in cases where the results for recruitment were declared before 01.01.2004 against vacancies occurring on or before 31.12.2003, the candidate declared successful for recruitment would be eligible for coverage under CCS (Pension) Rules, 1972, which option was exercisable latest by 31.05.2020. However, in view of the country-wide lockdown initiated so as to tackle the outbreak of



the COVID-19 pandemic, this cut-off date was revised and extended till 31.05.2021 *vide* OM dated 31.03.2021.

31. Undoubtedly, the OMs dated 17.02.2020, 31.03.2021 besides OM dated 04.01.2022 have no application to employees already in service, including the petitioners, who were appointed between 01.01.2001 and 31.12.2003, and are covered under the CPF Scheme. The question of providing an option as per the said OMs does not arise, as it does not confer such a right on existing employees covered under the CPF Scheme. There is merit in the respondents' counsels' argument that the employees of autonomous bodies cannot, as a matter of legal right, claim service benefits identical to those of government employees solely because these autonomous bodies have adopted Government Service Rules or received funding from the State or Central Government.

32. It goes without saying that the recommendations of the BOG consequent to deliberations and resolutions passed in the 22nd meeting held on 29.06.2001 as well as 46th meeting held on 20.02.2017 were never accepted by the respondent No.2/GNCTD. The said position is further exemplified from the letter dated 18.05.2020 issued by the respondent No.2/GNCTD addressed to the officiating Principals of all Government Institutes of Technologies under the DTTE, Delhi, communicating that the OM dated 17.02.2020 issued by the Department of Pension and Pensioners' Welfare, Government of India, has been endorsed by the GNCTD and shall be followed in accordance with letter dated 17.03.2020 by all the concerned institutes.



33. In summary, the CPF Scheme was already in effect, as part of the service conditions applicable to the employees of respondent No. 1/NSUT, at the time the petitioners joined service, and the petitioners herein accepted these conditions without raising any objections. The petitioners' claim that denying them the GPF-cum-Gratuity-cum-Pension Scheme violates Articles 14 and 21 of the Constitution of India is unfounded. Seeking parity with other similarly placed autonomous bodies, which have distinct rules and regulations despite receiving funding from the GNCTD, is inappropriate. The petitioners have not provided any documentary evidence to suggest that the terms and conditions of service for employees of similar autonomous bodies, such as Guru Gobind Singh Indraprastha University or Sri Guru Tegh Bahadur Khalsa College, are comparable to those of the present petitioners. It is unclear whether these institutions generate funds independently, aside from receiving government grants.

34. The situation in the instant matter is squarely covered by the decision in the case of ***Rajiv Raizada vs. Union of India (supra)*** wherein this Court has held that if an employee consciously opts to continue with the CPF Scheme, he/she would not be entitled to the GPF Scheme. There is merit in the plea raised by Ms. Ahlawat, learned Standing Counsel for respondent No.2/GNCTD that the petitioners have approached this Court after a delay of more than 20 years and they failed to espouse their legal rights at the earliest opportunity.

35. There is also merit in the plea advanced by Ms. Chopra, learned counsel for the respondent No.1/NSUT that the BOG of respondent



No.1/NSUT's mere act of forwarding a proposal to the respondent No.2/ GNCTD for sympathetic consideration of the representation made by the petitioners to afford them the benefit of the GPF Scheme, was obviously without prejudice and cannot be presumed to be an acquiescence or approval of any legal rights of the petitioners for being entitled to avail the GPF Scheme. This is fortified from the fact that the respondent No.1/NSUT is a 100% fully aided autonomous institution, meaning thereby that it cannot take financial decisions on its own except upon appropriate administrative and financial sanctions accorded by the respondent No.2/GNCTD.

36. Before drawing the curtains down on this matter, this Court finds that the case law relied upon by the learned counsel for the petitioners is clearly distinguishable and has no application to the issues raised in the instant matter. In the cited case of **Dr. Ravindra Narayan Mishra (supra)**, the petitioners were appointed on *ad hoc*/temporary posts in their respective colleges on different dates between 1995 to 2003 but were regularized/absorbed as permanent employees albeit post 01.01.2004, though till 2014, the petitioners were covered under the Old Pension Scheme. Since the Government of India introduced the New Pension Scheme with effect from 01.01.2004, they were sought to be brought under the New Pension Scheme. It was in the said context that a Coordinate Bench of this Court found that the action of the respondents was not sustainable in law and the petitioners were held entitled to the benefit of the Old Pension Scheme.



37. In the other cited case of *Union of India v. Smt. Anu Thomas (supra)*, it appears that an option was given to the officers/employees of the Central Government, who were in service prior to 01.01.1996, either to continue under the CPF Scheme or opt for the GPF Scheme. It was, however, stipulated in terms of the Office Memorandum No. 4/1/87-PIC-I dated 01.05.1987 that if they intended to continue with the CPF Scheme, then they were required to exercise such option by submitting an application in the prescribed format as annexed to the aforesaid OM. It appears that the officer/employees continued to contribute subscription to the CPF Scheme in spite of the aforesaid OM and in the said backdrop, it was held that when the Government sought to confer the benefit of the CPF Scheme to them, those officers/employees who had retired between 2006 to 2015 were entitled to the Scheme for conversion from GPF Scheme to CPF Scheme, and the appeal filed by the Government was dismissed *inter alia* holding that the plea of there being any delay of laches on the part of the officers/employees cannot be entertained.

38. In the case of *Rushibhai Jagdishbhai Pathak (supra)*, the issue was entirely different inasmuch as the appellants had been appointed to the post of Junior Clerk on *ad hoc* basis, and were made permanent on the post of 'Data Entry Operator' in the Computer Department of the respondent-corporation in the pay scale of Rs.4000-6000/- on different dates. The respondent corporation *vide* order dated 19.02.2007 adopted and implemented, in a modified form, the Scheme of the Government of Gujarat *inter alia* dealing with the problem of 'absence or restricted chances of promotion to the government



employees' which *inter alia* envisaged the grant of pay scale of the next promotional post on completion of 9 years, 18 years or 27 years of service. The Scheme also stipulated that in the case of 'employees on posts having more than one promotional post in different pay scales of pay', their pay of higher-grade scale shall be considered the pay of the pay scale of the lowest of the promotional post. Though the appellants were accordingly granted higher pay scale of the next promotional post of Rs. 5000-8000/- from different dates, the said benefit was sought to be revised *vide* order dated 28.10.2010, thereby observing that the appellants and other employees were erroneously granted the benefit of higher grade pay scale of the next promotional post instead of the next stage in the hierarchy of pay scales. It was in the said context that the subsequent action of the respondent *vide* order dated 28.10.2010 was frowned upon and the appellants were made entitled to arrears in pre-revised pay scale of Rs. 5000-8000/- for three years prior to the filing of the writ petition along with interest.

39. As a matter of fact, even the case of **Rajiv Raizada** (*supra*) is distinguishable as it was a case where the government accepted the recommendations made by the 4th Central Pay Commission to the effect that all CPF Scheme beneficiaries in service as on January 01, 1996 should be deemed to have come over to the pension scheme on that date unless they specifically opt-out to continue with the CPF Scheme. In the said context, it was held that although the employees had not specifically opted to continue under the CPF Scheme, by virtue of the aforesaid deeming clause, they would be entitled to shift from the CPF Scheme to the GPF Scheme.



40. In view of the foregoing discussion, this Court finds that the present writ petition is devoid of any merits. The same is accordingly dismissed.

41. The parties are left to bear their own costs.

DHARMESH SHARMA, J.

JANUARY 15, 2025

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