

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA No. 16869 of 2023

Samir Bhowmik & Ors.
Vs.
The Union of India & Ors.

For the writ petitioners	:-	Mr. Mukul Lahiri, Sr. Adv. Mr. Durga Prasad Dutta, Adv. Mr. Souvik Sen, Adv.
For the respondents/DVC	:-	Mr. Pradip Tarafdar, Sr. Adv. Mr. Subir Pal, Adv.
Hearing concluded on	:-	24.04.2026
Judgment on	:-	28.04.2026

Amrita Sinha, J.:-

1. The order dated 2nd May, 2025, passed by the Executive Director, Damodar Valley Corporation (hereinafter referred to as 'DVC') rejecting the prayer of the petitioners to switch over from the Contributory Provident Fund Scheme (hereinafter referred to as 'CPF') to the General Provident Fund Scheme (hereinafter referred to as 'GPF') is impugned in the instant writ petition.
2. The petitioners are all retired employees of DVC. Their date of retirement ranges between 2008 and 2020. During their service tenure all the employees of DVC were given opportunity to exercise their option, either to continue with CPF or to switch over to GPF scheme. The petitioners

did not exercise their option to join the GPF scheme. After their superannuation they received all the terminal dues as per their choice. No objection was raised by any of the petitioners alleging that the terminal dues which they received were not in accordance with the option exercised by them.

3. On 22nd October, 2020, DVC published an Office Memorandum seeking option from the existing employees of DVC for conversion from CPF to GPF scheme. The last date for exercising option in terms of the aforesaid memorandum was 21st January, 2021.
4. On 23rd June, 2022, the petitioners made a legal representation requesting the authority to permit them to switch over from CPF to GPF scheme. Their prayer not being considered by the authority, the petitioners filed a writ petition before this Court being WPA No - 492 of 2023 which was considered and disposed of by the Court on 7th February, 2023 directing the Executive Director (HRD), DVC, to consider the representation made on behalf of the petitioners within a stipulated time period. The authority complied with the Court's order and passed a reasoned order which is impugned herein.
5. The petitioners allege that the Court formulated a guideline according to which the authority ought to have considered the prayer of the petitioners. The authority could not have digressed from the manner in which the Court directed consideration. The ground on which the prayer of the petitioners has been rejected was not open to the authority. The

Court did not give an open hand to the authority for consideration of their prayer, rather streamlined the mode of consideration.

6. It has been submitted that the authority was directed to restrict the benefits to be granted to the petitioners entitling them to switch over from CPF to the GPF scheme for a period of three years prior to the date of filing the writ petition. The Court upon hearing both the parties opined that the prayer of the petitioners for switching over may be allowed provided the petitioners restrict their claim for a period of three years prior to filing the writ petition. The Court never directed the authority to revisit the entire issue of switching over once again.
7. The respondent authority illegally and arbitrarily acted as an appellate forum of the order passed by the Hon'ble Court. The authority ought not to have distinguished the manner of application of the judgment of the Hon'ble Supreme Court in the matter of ***Union of India and others - versus- Tarsem Singh*** reported in ***(2008) 8 SCC 648***. The authority ought to have made the calculation of the amount which the petitioners would be required to refund for switching over from CPF to GPF scheme.
8. Learned senior counsel representing the petitioners places heavy reliance on the judgment delivered by the Hon'ble Supreme Court in the matter of Tarsem Singh (supra) and submits that the benefit of pension ought not to be denied to the petitioners.
9. It has been contended that the authority cannot fall back on the ground of delay on the part of the petitioners in approaching the Hon'ble Court

seeking permission for switching over from CPF to GPF scheme, as in the earlier writ petition filed by the petitioners, the said issue was already considered by the Court and necessary order passed therein. There is hardly any scope to reopen the issue and reject the prayer of the petitioners on the ground of delay.

10. Prayer has been made to set aside the impugned order of rejection and direct the authority to permit the petitioners to switch over from CPF to GPF scheme.
11. The learned senior counsel representing DVC opposes the prayer made by the petitioners. It has been submitted that the petitioners, while in service, were given opportunity to exercise their option to switch over from CPF to GPF scheme. The petitioners did not exercise their option in proper time. The authority calculated the terminal benefits of the petitioners in accordance with the option exercised by them.
12. The scheme pursuant to which the petitioners currently seek benefit, was available when all the petitioners were in service. At present, the subject scheme is no longer open and, accordingly, the petitioners cannot be given the benefit as per the said scheme.
13. It has been submitted that the petitioners, as long as they were in service, neither made any objection nor filed any representation permitting them to exercise fresh option for switching over from CPF to GPF scheme. The petitioners retired on diverse dates starting from the year 2008 till the year 2020.

14. Prior to filing the legal representation in June 2022, there was no effort on the part of the petitioners to approach the authority with their prayer to switch over from CPF to GPF scheme. For the first time, long after their superannuation, legal representation on behalf of the petitioners was filed in June 2022. The petitioners have not annexed a single scrap of paper in support of their statement that they made representation earlier. The petitioners have deliberately made false averment on oath.
15. It has been contended that the writ petition is liable to be dismissed on the ground of inordinate unexplained delay in approaching the Court seeking remedy. The authority rightly considered the prayer of the petitioners and rejected the same.
16. It has been denied that the Court framed any guideline according to which the prayer of the petitioners was directed to be considered. The authority duly considered the prayer in compliance of the order passed by the Court and found the same to be not tenable as the scheme for conversion expired long back and there is no scope for reopening the same at this stage all over again. Had the petitioners exercised their option in proper time, then their prayer could have been accepted and there would not have been any requirement to approach the Court for relief.
17. It has been submitted that if the prayer of the petitioners is accepted, then there is a possibility of opening of a floodgate as several other retired employees, similarly situated as that of the petitioners, may

approach the Court for relief. The employer is not in a position to seek fresh option for conversion from CPF to GPF scheme in respect of the employees who retired prior to the year 2020. Fresh scheme was floated by the authority in the year 2020 which also expired in early 2021. At present there is no scheme pursuant to which the prayer of the petitioners for switching over from CPF to GPF scheme can be accepted.

18. The respondents argue that the principle of Tarsem Singh (supra) cannot be made applicable in the facts and circumstances of the instant case.
19. Learned senior counsel representing the respondents rely on the decision passed by the Hon'ble Supreme Court in the matter of ***State of Orissa and Another -versus- Mamata Mohanty*** reported in ***(2011) 3 SCC 436*** wherein the Court held that writ petitions filed without furnishing explanation for inordinate delay is to be dismissed. The doctrine of limitation, being based on public policy, is applicable to writ petitions.
20. Reliance has also been placed on the judgment delivered by the Hon'ble Supreme Court in the matter of ***Bharat Singh and Others -versus- State of Haryana and Others*** reported in ***(1988) 4 SCC 534*** in support of the submission that in a writ petition, evidence of proof of facts has to be pleaded and document in support thereof is to be annexed.
21. In the instant case, there is no supporting document evidencing submission of representation(s) by or on behalf of the petitioners prior to the one annexed to the earlier writ petition filed by the petitioners dated 23rd June, 2022. According to the authority, the said representation was

the first one made on behalf of the petitioners and no other representation was ever filed by the petitioners with their prayer to switch over from CPF to GPF scheme.

22. The respondents pray for dismissal of the writ petition.
23. I have heard and considered the rival submissions made on behalf of both the parties and have perused the materials placed before the Court. It is seen that all the petitioners did not retire on the same date. Their date of superannuation starts from the year 2008 and continues till the year 2020.
24. The employer, in the year 2002, issued an Office Order allowing the existing employees who were covered by the CPF scheme to exercise one last option to switch over from CPF to GPF scheme. Time was provided till 31st December, 2002 to exercise the said option. It was specifically mentioned in the subject Office Order that CPF beneficiaries would continue to be covered under the said scheme if option is not exercised to switch over to the GPF scheme. None of the petitioners exercised their option implying that they chose to stick to the CPF scheme.
25. In fact, even after their retirement, none of the petitioners expressed their view to convert from the CPF to the GPF scheme. In the year 2020, the employer published a similar scheme permitting the then existing employees to exercise option to join the GPF scheme. Such option could have been exercised only by the existing employees within January 2021. Long thereafter in June 2022, the petitioners, through their legal

representative, filed a representation seeking permission to convert from the CPF to the GPF scheme. It is for the first time in June 2022 that the petitioners expressed their view to switch over to the GPF scheme.

26. In the legal representation it has been urged that parity ought to be maintained amongst the employees who have joined service prior to 1st January, 2004 and retired before the Office Order was issued in the year 2020. It has also been highlighted that as the Government of India decided to give option for change over from CPF to GPF scheme, accordingly, all employees, irrespective of whether option has been exercised or not, should be brought in the fold of the GPF scheme.
27. As regards maintaining parity as claimed by the petitioners it appears that, parity had indeed been maintained by the employer. Option was granted uniformly to all the existing employees of DVC to exercise their option to change over to the GPF scheme. There has not been any discrimination amongst the employees as regards the opportunity to switch over from the CPF to the GPF scheme. It is the petitioners who voluntarily chose to remain in the existing CPF scheme and never exercised their option to change over to the GPF scheme. Had it been a miss or ignorance of the petitioners, then the same ought to have been rectified soon after it is detected.
28. An employee retiring in the year 2008 or thereafter cannot suddenly be expected to wake up from their deep slumber in June 2022 and pray for revival of a scheme which expired in the year 2002 and allow them to

switch over from and join the said scheme. In the meantime, a similar scheme was offered by the employer in the year 2020 which also expired in the year 2021. The petitioners still remained asleep. The reason for the shift in inertia from dormancy to activeness is not disclosed in the writ petition.

29. The petitioners ought to have appreciated that the switchover is not an automatic one. The employer respected the opinion expressed by the employees to remain in the CPF scheme. Switching over to the GPF scheme has several financial implications. It was a matter of policy that the employer floated the scheme to switchover and kept it valid only for a particular period of time. The scheme was not an open-ended one and none of the employees can compel the employer to accept their option at their own sweet time. There was a particular validity period mentioned within which option to switch over ought to have been exercised by an existing employee. The petitioners, for the reasons best known, thought it fit not to exercise their option for switchover.
30. Long after their retirement the employees cannot be permitted to agitate that the employer committed to a wrong in not permitting them to change over to another scheme. As soon as the employer accepts the prayer of the petitioners at such a belated point of time, then the other similarly circumstanced retired employees would certainly feel discriminated. Other retired employees, who did not exercise their option in proper time, will certainly harbour an expectation, that if they approach the Court then they may be granted similar relief. There is a

possibility that a floodgate of cases may land up before this Court by employees standing at par as the petitioners.

31. For issuance of a writ of Mandamus an aggrieved party has to prove that he suffered a legal wrong and any of his fundamental rights have been infringed by the authority. In the instant case, no wrong has been committed to the petitioners. On the contrary, the authorities would have committed a wrong if the prayer of the petitioners would have been accepted in the absence of a proper scheme or policy framed by the employer.
32. All the retired employees have to be treated equally or else the employer would be hauled up for violating the principle of equality. No case appears to have been made out for giving special benefit to the petitioners who failed to exercise their option within the prescribed time period of a scheme floated by the employer.
33. The fact that the petitioners did not exercise their option on time implies that they waived their right to join the new scheme, and chose the option to continue with the existing scheme. It was absolutely proper for the employees to remain and continue with the old and not embrace the new one. There was no compulsion on any of the employees to join the new scheme and it was perfectly within the right of the employees to follow the old existing one.
34. Permitting an employee who retired more than a decade back to exercise fresh option to shift from his earlier choice in the absence of a valid

scheme permitting the same, may not be proper. Whether at all such benefit is to be extended to a retired employee, is a decision to be taken solely by the employer. The Court ought not to issue any mandate directing the authority to accept the prayer of the petitioners. Whether to accept or refuse such prayer is the sole discretion of the employer and it is not for the Court to issue any mandatory direction for such purpose.

35. Submission of the petitioners that the authority acted contrary to the direction passed by the Hon'ble Court in the earlier writ petition filed by them cannot be accepted by the Court. It is clear that after hearing the submission made by both the parties in the said writ petition, the Court directed the authority to consider the legal representation filed on their behalf and to see whether the benefit sought for by them can be provided. The Court noticed that the petitioners approached at a very delayed period of time. The Court relied on Tarsem Singh (supra) and directed the authority to consider the prayer of the petitioners restricting their claim to only three years prior to the filing of the writ petition.
36. In Tarsem Singh (supra) the Court was dealing with the issue of entitlement of family pension at the instance of a claimant who approached the Court after a long delay. In the instant case, the entitlement of the petitioners to receive terminal benefits in terms of the option exercised by them is settled and not interfered with by the authority. The petitioners herein seek benefit in terms of a separate scheme for which they did not exercise option. No wrong, far less, continuing wrong has been caused to them.

37. As, granting benefit in the GPF scheme from the respective date of superannuation of each of the parties would have far reaching financial implications, accordingly, the Court on the earlier occasion restricted the claim of the petitioners to only three years prior to the date of filing the writ petition. Had the authorities allowed the prayer of the petitioners, then the starting date of the benefit would have been three years prior to the filing of the writ petition and not from their respective date of superannuation.
38. The Court never passed any mandatory order for grant of benefit under the GPF scheme to the petitioners. In fact, the Court could not have assumed jurisdiction of the employer and granted benefit leading to financial consequences without ascertaining the stand of the employer. The writ petition was disposed of at the motion stage and the employer did not have an opportunity to file affidavit disclosing their stand. After all the payment has to be made by the employer and, accordingly, a decision by the employer, as to whether it would agree to grant of such benefit to the petitioners, is required.
39. The Court neither accepted the prayer of the petitioners nor decided the issue on merits. Direction was passed merely for consideration of the legal representation filed on behalf of the petitioners. Had the Court decided the claim of the petitioners, then there was no reason to direct further consideration by the respondents.

40. A writ petition is liable to be dismissed on the ground of inordinate unexplained delay is the settled principle of law. Mamata Mohanty (supra) is in the same line. Admittedly, there is nothing on record to suggest that the petitioners approached the authority ever prior to filing the legal representation in June 2022. Hence, the Court disbelieves the averment made in paragraph 17 of the writ petition that representation on diverse occasions were made by the petitioners prior to filing the legal representation in June 2022. Bharat Singh (supra) supports such conclusion.
41. Here the petitioners approached the Court long after the scheme in question lapsed. No legal provision has been placed before this Court relying on which a writ of Mandamus can be issued for reviving the right of an employee to seek benefit under a lapsed scheme. For granting the relief as sought for by the petitioners, either a fresh scheme has to be published by the employer or the earlier scheme is required to be revived. Such is not the case here. No legal right of the petitioners appears to have been infringed by the authority necessitating interference by the writ Court.
42. The writ petition accordingly fails and is hereby dismissed.
43. No costs.
44. All parties to act on the basis of the server copy of this judgment duly downloaded from the official website of this Court.

45. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)