2022 INSC 543

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. ____________ OF 2022
(Arising out of Special Leave Petition (Civil) Nos. __________ of 2022)
(Arising out of Diary No. 13901 of 2017)

UNIVERSITY OF DELHI …Appellant

versus

SMT. SHASHI KIRAN & ORS. ETC. …Respondents

WITH

CIVIL APPEAL NO. ____________ OF 2022
(Arising out of Special Leave Petition (Civil) Nos._________of 2022)
(Arising out of Diary No. 36222 of 2018)

UNIVERSITY OF DELHI …Appellant

versus

C.L. KHANNA (RETD.) & ORS. …Respondents

WITH

CIVIL APPEAL NO. ____________ OF 2022
(Arising out of Special Leave Petition (Civil) Nos.________ of 2022)
(Arising out of Diary No. 36221 of 2018)

UNIVERSITY OF DELHI …Appellant

Signature Not Verified
Digitally signed by Dr. Mukesh Nasa
Date: 2022.05.10 15:19:03 IST
Reason:

versus

DR. S.N. SINGH …Respondent

WITH

CIVIL APPEAL NO. OF 2022
(Arising out of Special Leave Petition (Civil) No.29577 of 2018)

UNIVERSITY OF DELHI …Appellant

versus

DR. SANTOSH KAUR SANGARI & ORS. …Respondents

AND WITH

CIVIL APPEAL NO. OF 2022
(Arising out of Special Leave Petition (Civil) Nos.________ of 2022)
(Arising out of Diary No.17007 of 2017)

UNIVERSITY OF DELHI …Appellants

versus

N.C. BAKSHI & ORS. ETC. …Respondents

J U D G M E N T

Uday Umesh Lalit, J.

1. Delay condoned. Leave granted.

2. These appeals by the University of Delhi ('the University', for short) are directed against the judgment and order dated 24.08.2016 passed by the Division Bench of High Court of Delhi at New Delhi in Letters Patent

Appeals[1] which in turn had challenged the decisions of the learned Single Judge of the High Court dated 30.04.2014 in various Writ Petitions[2].

3. The basic facts leading to the filing of the Writ Petitions in the High Court are as under:

a. All the writ petitioners are members of the teaching staff working in various colleges and institutions which are either affiliated to, or are part of the University. The conditions of service of the teaching staff are somewhat analogous to the employees of the Central Government.

b. On 06.06.1985, the Central Government employees who were governed by the Contributory Provident Fund (for short, "CPF") were permitted to opt for General Provident Fund and Pension Scheme (for short, "GPF"). Thereafter a notification was issued by the Central Government with respect to the changeover of the

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[1] LPA Nos.410-414, 416-418, 558, 594, 667, 672 and 780 of 2014; 554, 606, 607, 608, 609, 610, 615, 616, 617, 618, 619, 622, 623, 624, 625, 626, 627, 628, 629, 632, 633, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 650, 651, 653, 654, 655 of 2014 and other connected appeals.

[2] Writ Petition No. 1490 of 2006 and connected matters, Writ Petition(C) Nos. 5631 of 2010, 1216 of 2011, 3631 of 2011, 3863 of 2011, 5495 of 2011, W.P.(C)No. 6009 of 2011 & CM No. 12140 of 2011, W.P.(C)No.5106 of 2011 & CM No. 10351 of 2011, W.P.(C)No.5975 of 2010 & CM No. 11775 of 2010, W.P.(C)No. 5979 of 2010 & CM No.11782 of 2010, W.P.(C)No.5980 of 2010 & CM No. 11784 of 2010, W.P.(C)No.5981 of 2010, W.P.(C)No.5982 of 2010 & CM No. 11787 of 2010, W.P.(C)No. 5985 of 2010 & CM No. 11793 of 2010; W.P.(C)No.2036 of 2010, W.P.(C)No.2037 of 2010, W.P.(C)No.3095 of 2010 & CM No. 7718 of 2011, W.P.(C)No. 5759 of 2010, W.P.(C)No.7310 of 2010 and W.P.(C)No.8560 of 2010.

employees from CPF to GPF. Said notification issued on 1.5.1987 contemplated that all CPF beneficiaries who were in service on 01.01.1986 and were still in service would be deemed to have "come over" to GPF unless a contrary option was exercised by them in writing by 30.09.1987 to continue to be under CPF. The relevant paragraphs of said notification were:

> "The Central Government employees who are governed by the Contributory Provident Fund Scheme (CPF Scheme) have been given repeated options in the past to come over to the Pension Scheme. The last such option was given in the Department of Personnel and Training. O.M. No. F 3 (1) - Pension Unit/85, dated the 6" June, 1985. However, some Central Government employees still continue under the CPF Scheme. The Fourth Central Pay Commission has recommended that all CPF beneficiaries in service on January 1, 1986, should be deemed to have come over to the Pension Scheme on that date unless they specifically opt out to continue under the CPF Scheme.
>
> 2. After careful consideration, it has been decided that the said recommendation shall be accepted and implemented in the manner hereinafter indicated.
>
> 3.1 All CPF beneficiaries, who were in service on 1st January, 1986, and who are still in service on the date of issue of these orders viz., 1st May, 1987) will be deemed to have come over to the Pension Scheme.
>
> 3.2 The employees of the category mentioned above will, however, have an option to continue under the CPF Scheme, if they so desire. The option will have to be exercised and conveyed to the concerned Head of Office by 30-9-1987, in the form enclosed if the employees wish to continue under the CPF Scheme. If no option is received by the Head of Office by the above date the employees will be deemed to have come over to the Pension Scheme.
>
> *** *** ***
>
> 3.6 The option once exercised shall be final.

*** *** ***

> 6.3 These orders do not also apply to scientific and technical personnel of the Department of Atomic Energy, Department of Space, Department of Electronics and such other Scientific Departments as have adopted the system prevailing in the Department of Atomic Energy. Separate orders will be issued in their respect in due course. [See Order (3) in this Appendix.]
>
> 8. These orders issue with the concurrence of the Ministry of Finance, Department of Expenditure, vide their U.O. No.2038/IS(Pers.)/87, dated 13-4-1987."

c. Around the same time, a communication was addressed on 05.05.1987 by the Central Government to the Registrar of the University stating that the Hon'ble President of India in his capacity as Visitor of the University was pleased to approve the proposal of the University for amending Statute 28A, giving benefits to its employees relating to GPF, CPF, gratuity etc. "which are more advantageous to the employees of the University in pursuance to similar order issued by the Central Government with respect to their own employees". The amended Statute 28-A read as under:

> "28-A: In this Statute unless there is anything repugnant in the subject or context:
> (1) * * * *
> (2) * * * *
> (3) * * * *
> (4) * * * *
> (5) The sanction and payment of retirement benefits admission under this Statute shall regulated by such procedural instructions as would be issued by the Executive Council.
> Amendment approved:
> Add the following as Clause 5 in Statute 28-A and Clause 5 and 6 may be renumbered as Clause 6 and 7 respectively.

> "(5) As and when the Central Government amends Rules giving more benefits to its employees relating to General Provident Fund, Contributory Provident Fund, Pension Gratuity, etc. which are advantageous to the employees of the University, the employees of the University will be entitled to the same benefits with effect from the date such amendment is brought into force by the Central Government with respect to its employees."
> (6) * * * *
>
> (7) * * * *"

d. Close on the heels, a notification was issued by the University on 25.05.1987 stating that all CPF beneficiaries in service on 01.01.1986 would be deemed to have "come over" to GPF under Statute 28-A unless such employees had opted to continue under CPF. Paragraph '5' of the notification was to the following effect:

> "5. Pensionary benefits to temporary employees - Temporary employees, who retire on superannuation or on being declared permanently incapacitated for further service by the appropriate medical authority after having rendered temporary service of not less than 10 years, shall be eligible for grant of superannuation/ invalid pension, retirement gratuity and family pension on the same scale as admissible to permanent employees.
>
> Further it has also been decided by the Government of India that pensioners who have commuted a portion of their pension and on 1.4.85 or thereafter have completed or will complete 15 years from their respective dates of retirement will have their commuted portion of pension restored.
>
> lt was also recommended by the Pay Commission that all CPF beneficiaries who are in service on 1.1.1986 should be deemed to have come over to the pension scheme on that dates unless they specifically opt out to continue under the CPF Scheme. This recommendation has also been accepted by the Government of India.
>
> Keeping in view the revised pensionary benefits, it has been approved by the Vice-Chancellor that the above decision of the

> Government of India regarding option also be adopted in the University. It has, therefore, been decided that all Contributory Provident Fund beneficiaries who are in service on 1.1.1986 in the University should be deemed to have come over to the pension scheme under Statute 28-A Appendix 'A' unless they specifically opt out to continue under CPF Scheme (Statute 28-A, Appendix 'B').
>
> It has further been decided that in respect of categories B, C & D beneficiaries for whom the revised grades have been announced and implemented, they be given three months' time from the date of this notification for opting out to continue under CPF Scheme (Statute 28-A Appendix 'B'). For category A - CPF beneficiaries the period of three months' time for the same purpose will be reckoned from the date of adoption by the University of the revised pay scales based on the IVth Pay Commission's recommendations, UGC committee's Report. Employees who have already opted for the scheme under Statute 28-A Appendix 'A' will not be eligible for any further option. These orders 'would also -be applicable to the employees of the Colleges affiliated to the University of Delhi and receiving maintenance grant from 'the 'University Grants Commission. The contents of this notification shall be brought to the notice of each employee and his/ her acknowledgement for having noted these orders obtained and opt in the office record."

e. By cut-off date, that is to say by 30.09.1987, 2611 employees of the University had opted to continue under CPF while the rest of the employees, by virtue of deeming provision of the concerned notification referred to above, were deemed to have "come over" to GPF.

f. However, the University kept granting extensions for exercise of option to remain under CPF. First two extensions were, thus, granted vide communications dated 5.10.1987 and 21.01.1988 for

exercising the option to remain under CPF. About 626 employees exercised such option to continue under CPF during two extensions granted by the University.

g. Thereafter 11 further options were granted by the University whereunder there could be a switchover from CPF to GPF. These options were granted vide Notifications dated 9.2.1989, 4.6.1989, 17.9.1989, 12.07.1991, 20.12.1991, 16.07.1993, 12.07.1994, 15.03.1996, 09.01.1998, 04.03.1998 and 16.11.1998. The cutoff date for exercise of option under the last notification was 31.1.1999. About 2469 employees exercised option during periods covered by these 11 notifications to switchover from CPF to GPF.

h. On 25.5.1999, a letter was addressed by the University Grants Commission ("the UGC", for short) to the Registrar of the University stating that the option in terms of the notification dated 01.05.1987 issued by the Central Government could be exercised only upto 30.09.1987; and if no option was received by said date the employees were deemed to have "come over" to the pension scheme and thus, option once exercised, was final. Further, the revised option given by the University to the concerned employees to switch

over from CPF to GPF after the deadline was incorrect and therefore, the cost of benefit, if any, to such employees must be met by the University from its own sources. The relevant portion of the communication was:

> "As you are already aware, the employees of University of Delhi are governed by Central Government GPF/CPF rules. The Government of India vide their O.M.No.4/I/87-P.I.C, dated the 1st May, 1937 (copy enclosed) had given a cut-off date as 30.09.87 to the employees for exercising their option in case they desired to continue to be governed by the CPF Scheme, and in case no such option was exercised by the above date all the employees were deemed to have come over to the GPF Scheme of the Government of India. It was also made clear that no extension for exercising option for continuing in the CPF scheme will be admissible as per Government of India's rules after 30.9.87.
>
> As per guidelines of Government of India, all CPF who were In service on 1st January,1986, and who are still in service on the date of issue of these orders (viz. 1st May, 1987) have therefore automatically come over to the Pension scheme. However, the employees who have exercised an option to continue under the CPF scheme, if they so desired have done so after due consideration by the specific date i.e. 30.09.87. As the option was given upto 30.9.87 and it was clearly stated in the order that if no option is received by the above date the employees will be deemed to have come over to the Pension Scheme and the option once exercised shall be final. The revised option again given by the employees to come back to GPF Scheme from CPF Scheme and accepted by the University is absolutely incorrect and against the rule. I would therefore request you to please furnish a list of employees who have been given the extension of change over from CPF to GPF after 30.9.87 and the benefit of retirement liabilities for such employees may be met by the University from their own sources and the same would only be treated as unapproved expenditure while determining the maintenance grant of the University. The next installment of maintenance grant would only be released after the receipt of above information."

i. In response to a communication dated 18.09.1999 addressed by the UGC with respect to the subject regarding option of shifting from CPF to GPF, the Ministry of Human Resource Development, Department of Secondary Education and Higher Education, Government of India ("MHRD" for short) responded on 19.06.2000 and stated:

> "…. That Ministry has regretted its inability to allow one more option to change over from CPF Scheme to the GPF Scheme to the employees of UGC and the institutions maintained by it."

j. On 8.08.2001, the UGC again requested MHRD to allow one extension for exercise of option to switch over from CPF to GPF. The proposal was, however, rejected by the Finance Ministry of the Central Government on the ground that the cost of introduction of pension scheme was much higher than the CPF and that such cost would continuously increase with every revision in the scale of pay and further that acceptance of such proposal would have wide repercussions with many similarly placed autonomous bodies demanding similar extension.

4. In these circumstances, Writ Petitions were filed in the High Court claiming diverse reliefs. These petitions, by order dated 21.05.2012 passed

by the learned Single Judge of the High Court, were categorized into three categories.

a. Employees who had not exercised any option at all and thus by virtue of the deeming provisions contemplated in the notification dated 01.05.1987, were deemed to have "come over" to GPF; but having continued to make contributions under the old CPF scheme were being treated to be under CPF. This batch was subsequently referred to as "*R.N. Virmani* batch of cases" in the decisions rendered by the High Court.

b. Employees who had not exercised the option by the cutoff date contemplated under the notification dated 01.05.1987 and were thus deemed to have "come over" to GPF; however, such employees had exercised the option to remain under CPF scheme during first two extensions granted by the University between 01.10.1987 to 29.02.1988; and were now praying that they be allowed to be under GPF. This batch of cases was described to be "*N.C. Bakshi* batch of cases" in the decisions rendered by the High Court.

c. Employees who had exercised positive option by 30.09.1987 *i.e.* by the original cutoff date contemplated under notification dated

1.5.1987 and had chosen to remain under CPF Scheme; but were now demanding that they be given further option and were therefore praying for extension of the cut-off date to enable them to "come over" to GPF. This group of matters was referred to as "*Shashi Kiran* batch of cases" in the decisions rendered by the High Court.

5. Thus, the employees in all three batches of cases desired to be under GPF rather than under CPF and were therefore praying for a chance to facilitate such switchover. The reason for such attempts was spelt out with clarity in one of the letters[3] addressed by the University to the UGC as under:

> "...I have received representations from 376 teachers of constituent colleges and departments of this University addressed to the Chairperson, UGC, requesting for the grant of a fresh option to switch over from the CPF to the GPF cum pension scheme. All of them were appointed before 1.1.1986. The representations have drawn attention to the huge disparity between those on the GPF cum pension scheme and those on the CPF scheme. This is because over the years and especially in the last few years - Government decisions have led to a situation where those entitled to pensionary benefits have been placed in a far more advantageous position that those entitled to CPF schemes. As a result of the Fifth Pay Commission's recommendations, 40% of pensions can now be commuted, giving a huge lump payment to pensioners. The communication is restored after fifteen years. Those on CPF get only a lump payment which includes their own contribution. Pensions are now fully indexed to inflation and their nominal value rises twice every year, in the case of those on CPF, the Government - keeping in view its overall fiscal and macro-economic strategy has reduced interest from a high of 12% in 1998 to 8% today. While the high interest rates which made CPF schemes attractive have come down, the nominal value of pensions keeping going up

[3] Letter dated 21.12.2006, which was extracted in the decisions of the learned Single Judge as well as the Division Bench of the High Court.

> because of inflation indexing. All this has created a significant disparity between those on GPF-cum-pension and those on CPF schemes. According to a rough calculation, this could run into several lakh rupees over a period of time in the case of two identically placed professors. I think there is merit in the request that those who continue to be on the CPF scheme should be given a fresh option to switch over to the GPF cum pension scheme instead of taking the legalistic stand that those on CPF opted for the scheme. The Government, as a fair employer, may kindly take action to remove the growing inequality between those on CPF and those on GPF cum pension schemes. I would, therefore, request you to please take up the matter with the Ministry of HRD and the Ministry of Finance to allow a fresh option to those on the CPF scheme to come over to the GPF-cum-pension scheme..."

6. These three batches of cases were disposed by the learned Single Judge of the High Court by three separate decisions dated 30.04.2014

A) ***R.N. Virmani*** batch of cases

i) The reasoning that weighed with the learned Single Judge was:-

> "14. In my view, the answer to the question: as to whether employees, who had not issued any overt communication with regard to his / her desire to continue with the CPF Scheme, stood covered by the Pension Scheme; would largely depend upon the provisions of O.M. dated 01.05.1987, itself.
>
> 14.1 It is not in dispute before me that O.M. dated 01.05.1987 was adopted by the University of Delhi vide notification dated 25.05.1987 read with notification dated 04.06.1987, pursuant to an approval received in that behalf from its Vice Chancellor. Therefore, much would depend, in my opinion, upon the language of the relevant clause of O.M. dated 01.05.1987. The said O.M. clearly applies to all employees who were CPF beneficiaries on 01.01.1986. Clause 3.1 read with clause 3.2 is plainly indicative of the fact that all such employees, who are CPF beneficiaries, shall be deemed, to have, come over to Pension Scheme unless the employee(s) concerned submitted his or her option to continue with the CPF Scheme. This option had to be submitted in the prescribed form to the concerned Head of Office by 30.09.1987. In case, no option was received by the Head of Office by 30.09.1987, employees were deemed to have come over to the

> Pension Scheme. Therefore, by legal fiction once, the deeming clause kicked-in, those who did not submit their option form for continuation under the CPF Scheme stood covered by the Pension Scheme."

ii) To arrive at the conclusion as mentioned above, the learned Single Judge relied *inter alia* upon the following passages from the decision of this Court in ***Union of India and another*** v. ***S.L. Verma and others***[4]:

> "..4. The Central Government as also the respondent No.14-Bureau of Indian Standards have proceeded on some legal misconception that it was obligatory on the part of the said employees to give a positive option for the said purpose. For the first time on 2.2.1999, the respondent No.14 requested the Union of India for grant of another chance to the respondents to switch over to pension scheme stating that they purported to have exercised their option for CPF Scheme on the cut-off date.
>
> 7. The Central Government, in our opinion, proceeded on a basic misconception. By reason of the said Office Memorandum dated 1.5.1987 a legal fiction was created. Only when an employee consciously opted for to continue with the CPF Scheme, he would not become a member of the Pension Scheme. It is not disputed that the said respondents did not give their options by 30.9.1987. In that view of the matter respondent Nos. 1 to 13 in view of the legal fiction created, became members of the Pension Scheme. Once they became the member of the Pension Scheme, Regulation 16 of the Bureau of Indian Standards (Terms and Conditions of Service of Employees Regulations, 1988) had become ipso-facto applicable in their case also. It may be that they had made an option to continue with the CPF Scheme at a later stage but if by reason of the legal fiction created, they became members of the Pension Scheme, the question of their reverting to the CPF would not arise. The respondent No.14 has correctly arrived at a conclusion that an anomaly would be created and in fact the said purported option on the part of respondent No.1 to 13 was illegal when a request was made by respondent No.14 to the Union of India for grant of approval so that all those employees shall come within the purview of the Pension Scheme. In our opinion, the Ministry of Finance proceeded on a wrong premise that the Pension Scheme was not in existence and it was

[4] (2006) 12 SCC 53

a new one. Two legal fictions, as noticed hereinbefore, were created, one by reason of the memorandum, and another by reason of the acceptance of the recommendations of the Fourth Central Pay Commission with effect from 1.1.1986. In terms of such legal fictions, it will bear repetition to state, the respondent nos.1 to 13 would be deemed to have switched over to the pension WP(C) 1490-1507/2006 & connected matters Page 26 of 33 scheme, which a fortiori would mean that they no longer remained in the CPF scheme..."

(Emphasis supplied by the learned Single Judge)

iii) The argument made by the respondents was dealt with as under

"16. The argument raised before me by the respondents, which veered towards approbation, was based on the fact that petitioners had continued to contribute under the CPF Scheme. This submission would not cut much ice with me, having regard to the plain terms of O.M. dated 01.05.1987. If, the cover under the Pension Scheme, gets triggered with effect from 30.09.1987, the contribution by an employee and its receipt by the employer clearly proceeds on a misconception of the provisions of O.M. dated 01.05.1987. WP(C) 1490-1507/2006 & connected matters Page 29 of 33 As a matter of fact, this very argument was repelled by the Supreme Court, in S.L. Verma's case, and I think, for good reason. Consequently, there is no room for entertaining such an argument. The relevant observations made in paragraph 7, specific to this aspect, are, once again, extracted hereinafter.

"..It may be right they had made an option to continue with the CPF Scheme at a later stage but if by reason of the legal fiction created, they became members of the Pension Scheme, the question of their reverting to the CPF would not arise.."

iv) It was therefore directed :-

"20. Having regard to the above discussion, the respondents-University of Delhi/concerned Colleges will be entitled to recoup their contribution under the CPF Scheme, if not already recouped, with simple interest at the rate of 8% p.a."

v) The petitions were thus allowed.

B) ***N.C. Bakshi*** batch of cases

i) While deciding this batch of cases, reliance was placed on the decision in ***R.N. Virmani*** batch of cases to conclude that the option to remain under CPF was exercised by the petitioners after the cut-off date and only during extensions granted by the University, which extensions were without any authority. It was observed:-

> "In the judgment delivered by me in the batch of writ petitions, in which the lead petition was numbered as : WP(C) 1490/2006-1507/2006, titled as: Dr. R.N. Virmani and Ors. Vs. University of Delhi and Anr., I have held that the provisions of the O.M. dated 01.05.1987 required a positive option to be given only if, an employee was desirous of continuing with the CPF Scheme and that too by 30.09.1987. In the event, no positive option was received from an employee expressing his or her desire to continue with the CPF Scheme then, the employee stood automatically covered by the Pension Scheme by virtue of the deeming legal fiction created under the provisions of the O.M. dated 01.05.1987. This conclusion, I had reached after examining the provisions of O.M. dated 01.05.1987, in particular, clauses 3.1 and 3.2 and the form appended to it. As noted in the said judgement, this is also the view taken by the Supreme Court in the case of Union of India and Anr. Vs. S.L. Verma and Ors., (2006) 12 SCC 53. For the sake of brevity, I am not detailing out in extenso the rationale provided in the said judgement. The observations made in the said judgment be read as part of the present judgement……..
>
> *** *** ***
>
> 4.2 Having regard to the aforesaid stand of the counsels for the UGC, University of Delhi and concerned Colleges, the only conclusion that I can come to is that notwithstanding the fact that the petitioners in this batch of petitions had overtly expressed their desire to continue in the CPF Scheme, they got automatically covered by the Pension Scheme, once, the cut-off date of 30.09.1987, was crossed. Therefore, the objection qua delay and latches cannot be sustained in case of these writ petitioners, save and except, in those cases where the petitioners received, upon

> retirement, without protest (either by filing an action in court or otherwise) their benefits under the CPF Scheme. As explained in Dr. R.N. Virmani's judgement delay and latches will not get attracted as the cause of action in these cases if not continuing, is certainly recurring, each time the record was not corrected. (read paragraphs 17.3 & 17.4 of Dr. R.N. Virmani's judgment delivered by me today along with this judgement). The availability of relief to such petitioners, who collected their CPF benefit without protest, one would deny, not on the interpretation of the provisions of O.M. dated 01.05.1987, but on the grounds of equity. The exercise of jurisdiction under Article 226 of the Constitution being a discretionary remedy in such like cases, I would not be persuaded to exercise my discretion. Furthermore, once CPF benefits are collected without protest cause of action will decidedly come to an end. Therefore, the captioned writ petitions are allowed qua all the petitioners except vis-a-vis the petitioner in WP(C) No. 5981/2010 and, in respect of petitioner No.11 in WP(C) No.1216/2011."

ii) Thus, with the exception of cases where CPF benefits were collected by the concerned petitioners, all the petitions in this batch of cases were allowed.

C) ***Shashi Kiran*** batch of cases

i) The relevant facts and submissions were set out as under:-

> "(iv) that as per the additional affidavit filed by the University of Delhi, which is impleaded as respondent no.4 in WP(C) 5759/2010, twelve (12) extensions were given by the said University to the employees between 09.02.1989 to $16^{th}/17^{th}$ .11.1998 and 20.11.1998 to 16.12.1998, to change over, from CPF Scheme to the Pension Scheme. During this period, a total number of 2469 employees both from University of Delhi and from 52 of 86 colleges affiliated to the said University had availed of the option of switch over to the Pension Scheme. Of these 2469 employees, 1368 had retired and were now in receipt of pension from University of Delhi, out of the funds made available by the UGC.

(v) The present petitioners and those who are part of the other two batches of the petitions, heard by this court, thus, constituted a small percentage of the total number of employees, who have been allowed to switch over after the cut-off date of 30.09.1987, was crossed over. …

*** *** ***

11.1 On being asked, as to what would be the position of the GOI with regard to the pension liability already undertaken by the University of Delhi vis-à-vis 2469 employees, Mr. Bajaj said that the liability in that behalf would have to be born and adjusted by the University of Delhi under the had 'unapproved expenditure'.

11.2 I may note at this stage that a similar query was put to Mr. Amitesh Kumar, the learned counsel appearing for UGC who, took an identical stand on the issue. Mr. Bajaj, thus, made it a point to draw my attention to the observations made in paragraph 8 at page 56 of the judgment of the Supreme Court in the case of ***Union of India and Anr. vs. S.L. Verma and Ors., (2006) 12 SCC 53*** in support of its stand that the GOI, could not be called upon to bear the financial burden of the decision taken by the University of Delhi, to extend the date of change over. Reliance in this regard was also placed on the judgement of the Division Bench of this court in the case of ***Union of India vs. UGC Class 1 Officers Association and Ors., (2006) 87 DRJ 783.***"

ii) The effect of notifications issued by the University giving extensions was considered as under:-

"15. This would bring me to the next argument advanced by the counsel for the petitioners that no notice was given to the petitioners in the manner prescribed in circular dated 09.02.1989 and notification dated 11.02.1998. This argument, in my opinion, is once again mis-conceived for the following reasons:-

(i) First and foremost, having reached the conclusion that no extensions could have been given by the University of Delhi without due approval of the UGC or the GOI, the entire argument is, in a sense, a non-started.

(ii) Second, the petitioners having given their positive options to continue under the CPF Scheme in terms of O.M. dated

> 01.05.1987, as adopted by the University of Delhi, cannot now resile from the said position.
>
> (ii)(a) assuming without accepting that University of Delhi could grant extensions, a careful reading of the circular dated 09.02.1989 would demonstrate that even as per the University the circular was intended to give one more opportunity to those employees of the University of Delhi or colleges affiliated to it, which were, receiving maintenance grant from the UGC to ***"come over to the pension Scheme."*** The circular was not directed towards those employees, who had consciously opted to remain in the CPF Scheme. In other words, no come back situation was contemplated in the said circular. …"

iii) The petitioners having consciously exercised the option to be under CPF, the prayer that they be given opportunity to switchover was not accepted and the petitions were dismissed.

D) The case of 2469 employees who were given chance to switchover after the cut-off was dealt with as under:-

> "17. Before I conclude I must only clarify that the argument of the petitioners that 2469 employees had been allowed to switch over even after they had their given their option to continue under the CPF scheme and, thus, the respondents had discriminated against this set of petitioners is, an argument, which cannot be countenanced in law. As is well settled, by several judgements of the Supreme Court that there is no equality in illegality (see M.K. Sarkar's case, paragraph 25 at page 69). If, the University of Delhi, has wrongly permitted switch over to some of its employees to the Pension Scheme contrary to the provisions of O.M. dated 01.05.1987 as adopted by it, it cannot be the ground to grant relief to the petitioners. Since, the case of those 2469 employees is not before me, I am not required to return a finding on them. As indicated by counsel for UGC and the Union of India, the expenditure, if any, on account of the said 2469 employees can only be classified under the head, 'unapproved expenditure' and, therefore, the financial burden if at all, in that behalf would lie only on the University of Delhi."

7. These decisions in all three batches of cases were appealed against by the University before the Division Bench, which dealt with each of these batches as under:-

A) ***R.N. Virmani*** batch of cases:

> "17. This court is of opinion that the submissions of the University, the appellant, in regard to the Virmani's order, have no force. There is no denial and there can be none- that the nature of the scheme contemplated by the 01.05.1987 notification was to ensure that only those wishing to continue in the CPF scheme had to opt to do so. A default in that regard, meant that the employee not filling his option (to continue in CPF) was deemed to have "come over" or migrated to the Pension Scheme. The University and the official respondents (UGC, Central Government etc) had urged that the petitioners in the Virmani group are deemed to have accepted the CPF benefits, because they allowed deductions from their monthly salaries during the interregnum and permitting Pension Scheme benefits would not be fair; in the same breath it was urged that there was delay. This court is of opinion that the University – and the respondents are relying on contradictory pleas. If they urge that the true interpretation of the 1987 circular meant that anyone not furnishing an option to continue in the CPF scheme is deemed to have opted for the Pension Scheme (as the Virmani group undoubtedly did) there is no way they can succeed on the ground of laches or estoppel. If plain grammatical meaning of the language of the May 1987 OM were to be given, all those who do not opt would automatically be borne in the Pension Scheme. Such being the position, the argument that the petitioners in Virmani allowed deduction of CPF amounts from their salary, cannot be argued against them. CPF schemes typically require employees to commit greater amounts than in GPF scheme, on a monthly basis. That these staff members allowed higher amounts, which were held under a scheme (and which earned interest), the benefit of which had not accrued and was not available to them till the date of superannuation, cannot be urged against them. Likewise, the question of laches would not arise, because at the most, pension would not be allowed for the entire period, given that in matters of pension (see Union of India & Ors. V. Tarsem Singh (2008) 8 SCC 648) there is a continuing cause of action. Therefore, we find no infirmity with the learned Single Judge's order, in Virmani's case."

The appeals were thus dismissed.

B) ***N.C. Bakshi*** batch of cases:

> "20. This court is of the opinion that no infirmity can be found with the approach or reasoning of the learned Single Judge, in allowing the respondents' petitions. The learned Single Judge made a factual analysis, in this category of teaching staff. The chart, prepared for the purpose, and extracted at Para 3.1 of the judgment in this batch (N.C. Bakshi v Union of India WP 5310/2010) shows that all the employees opted for the CPF benefits, after the cut-off date. It was because of this and the expressed stand of the UGC- and the University that the learned Single Judge concluded that notwithstanding the so called option, exercised in terms of the extensions given, the writ petitioners could not be denied the benefit of the Pension Scheme because they were deemed, by the OM of 01.05.1987 to have opted for it, by default. Having regard to these facts, the appellants could not have urged that the benefit of the Pension Scheme should have been denied to these class of petitioners/teaching staff. Therefore, we are of opinion that there is no infirmity with the impugned judgment of the learned Single Judge. The University's appeals, therefore, deserve to fail."

The appeals in this batch of cases were thus dismissed.

C) ***Shashi Kiran*** batch of cases:-

i) The distinction between cases in this batch as against the other batches was noted thus:-

> "21. The last category is the Shashi Kiran batch. Here, the University staff, who constituted the writ petitioners, had consciously opted for the CPF benefits. Their grievance was that of discriminatory exclusion. They had approached the court, contending that when they sought for options, the respondents refused to extend it, saying that the previous extensions had ended and later, that the UGC and the Central Government had refused to grant approval.
>
> "23. The discrimination complained of by the appellants in Shashi Kiran's batch of cases is that even though the deadline of

30.09.1987 was not deemed sacrosanct by the University (and through omission and, therefore, tacit approval, by UGC and the Central Government) a large number of employees who had not opted either way were allowed to switch-over to the Pension Scheme through options given over 14 years, by 12 different extensions. Given that the ground realities had undergone a sea change, the CPF scheme was unfeasible and had lost viability; on the other hand, the Pension Scheme was more beneficial. These appellants argue that in such a situation, when 2469 staff members opted for pension on various dates during these extensions, when they wished to do so, the respondents unfairly refused the benefit.

24. The learned Single Judge's view has some logic in it because the University refused the Pension Scheme benefits in case of those who had chosen it: in Virmani's case, by default (i.e. no option, which meant deemed option) and in the other cases, because of the option for CPF, given after the date prescribed. While the logic for directing relief in the first category (Virmani) is sound, the second category was given relief by ignoring that they consciously wished to switch-over to the CPF scheme, but after the cutoff date. Thus, the learned Single Judge ignored the conscious choice made only on the ground that the choice or option for CPF was after the cut-off date. Now, this has led to a peculiar situation where those who opted for CPF benefits have been divided into two categories: one, who opted before the cut-off date and two, those who opted after the cut-off date. The latter have been given relief. That is also the basis for refusing relief to the former, who are appellants in this batch.

25. As noticed earlier, 2469 staff members are enjoying the benefit of the Pension Scheme, on account of the choice or option made by them……"

ii) It was thus observed:

"26. If these facts are taken together with the Central Government's conceded stand in permitting staff members and employees in other institutions, including educational institutions such as IIT Kanpur, the Department of Atomic Energy and Council for Scientific and Industrial Research to opt in extended dates for switch-over qua its employees, the rejection of UGC's request that the conversion date be extended till 31.12.2003, reveals the arbitrariness and non-application of mind by the Central Government.

27. That the Central Government permitted change over as late as till 31.12.2003, i.e before the sixth pay commission recommendations (introducing CPF benefits to all those employed later, universally with effect from 01.01.2004). This aspect assumes critical importance, because the Central Government (and UGC) admit that all those who opted after the cutoff date (and many of them having opted for CPF earlier) have been granted benefits under the Pension Scheme. The ground realities with respect to the nature of benefits that accrue to CPF optees in comparison with GPF/Pension optees paints a stark picture. One should keep in mind that while opting for such schemes, employees cannot gaze into the crystal ball, as it were, and speculate whether the existing state of affairs would continue. At the time when these options were sought and given, those opting for CPF were reasonably certain that having regard to the nature of contributions and the rate of interest, the end package would compare favourably with Pension optees, with respect to returns earned at the stage of superannuation. In other words, when the options were given, these appellants were in employment; neither they, nor for that matter the respondents could have visualized a drastic fall in the interest rates, which severely undermined the CPF option and shrunk the ultimate lump sum CPF benefit available to these appellants. While examining whether a statute once valid and upheld as such on the ground of Article 14 ceases to be so due to later developments and with passage of time, the Supreme Court has declared in a number of judgments that the earlier declaration of validity or basis of classification cannot be the basis to deny the arbitrariness of the law, if it is proved to be so later (Refer to State of Madhya Pradesh Vs. Bhopal Sugar Industries (1964) 6 S.C.R. 846; Narottam Kishore Dev Varma and Ors. Vs. Union of India and Anr. (1964) 7 S.C.R. 55 ; H.H. Shri Swamiji of Shri Admar Mutt etc. vs. The Commissioner, Hindu Religious & Charitable Endowments Department and Ors. (1980) 1 S.C.R. 368; Motor General Traders and Anr. Etc. etc. vs. State of Andhra Pradesh and Ors. etc. 1984 (1) S.C.R. 594.) In H.H. Shri Swamiji of Shri Admar Mutt etc (supra) it was held that:

> "there is a firm foundation laid in support of the proposition that what was once a non-discriminatory piece of legislation may in course of time become discriminatory and be exposed to a successful challenge on the ground that it violated Article 14 of the Constitution."

28. In this case, clearly when the appellants opted for CPF benefits, they did so without premonition of future developments.

> The net result was that as between two individuals in the same grade and post, carrying the same pay scale, one who opted for the Pension Scheme was entitled to a substantial amount and future adjustments in pension whenever Dearness Allowance were to be enhanced. However, for the appellants, there was no such advantage; they saw a shrinking package on account of later developments – notably the drop in interest rates. Now, interest at the rate or anyway, somewhere near the rates, which prevailed when the scheme was introduced, was one of the significant basis for the CPF scheme. With a drastic change in the rates, those opting for CPF were at a grave disadvantage. To compound their problems, the University's interpretation of a fairly clear Office Memorandum (dated 01.05.1987) injected much confusion. The third factor is that even amongst University staffers, 12 extensions were given and a large number of options for the Pension Scheme were furnished – both in respect of those who opted for CPF earlier and those who did not. Taking the totality of circumstances, the University's insistence to pin the appellants to the options they originally exercised is discriminatory.
>
> 29. The other reason why this court is inclined to allow this appeal is that neither the Central Government nor the UGC have furnished a single reason for why option to switch-over to the Pension Scheme was permitted up-to 31.12.2003 to several other autonomous institutions and denied to the appellants. This singular omission to say what compelled the Central Government to deny the petitioners the benefit of switch-over, while permitting those in other institutions, in the opinion of the court, clearly amounts to discrimination. The mere fact that the petitioners are working in the University whereas the other employees work in other institutions is not sufficient, given that the consistent stand is that options once given cannot be altered. Therefore, it is held that denying the right to opt to the Pension Scheme in the case of the Shashi Kiran batch is unsustainable; it has resulted in arbitrariness."

The appeals in this batch of cases were thus allowed.

8. The University accepted the decision in *R.N. Virmani* batch of cases and as such no appeal has been preferred. It, however, is in appeal in the other two batch of cases. At this stage, some of the documents which were not part

of the record before the High Court but were placed before us, must be adverted to:-

a) On 08.08.2001, a communication was addressed by the UGC to the Joint Secretary, MHRD. The relevant portion of the letter was:-

> "…Many autonomous bodies including the universities have adopted the basic policy of this circular but they have not restricted to the cut off date and allowed their own cut off dates to their employees for switchover from CP fund to GP fund. Some of the Institutions have allowed this changeover till 1998. However, some of the institutions under UGC who have shown better discipline and also some of the employees of UGC itself are representing now to allow their employees a chance to switchover from CP fund to GP fund. In UGC, this number is 5 or 6 only.
>
> Respective Ministries presumably have also not issued any circular allowing this benefit to the employees of autonomous bodies under their control. This has led to a situation where different disparity among the employees in different autonomous bodies as far as benefits under CP fund to GP fund is concerned. For example, IIT, Kanpur allowed conversion until 30.7.98 and kept this open for charge over for another fifteen years after continuous service, in case they do not switch over by that date. Copy of IIT, Kanpur letter dated Atomic Energy, Govt. of India vide their letter 2/1/99/SCS/665 dated 12.10.2000 have also extended another chance to opt for said switchover in case of Technical employees of DAE. Similarly, CISR have allowed one more option to all its employees to switchover. Their letter No. 17(197)/90-EII dated 25.1.99 is enclosed for reference.
>
> On demand of employees of UGC and also the employees of the Universities, the Commission considers it necessary to obtain consent of your Ministry to allow one more cut off date to stop this disparity in UGC and other autonomous institutions within UGC umbrella specially in all those institutions where the pension scheme already exists and only a few employees have been left out for switchover from CP fund to GP fund. The cost of extending the scheme in those left out cases will also be very little so as to be called an additional burden on the exchequer. Extension of the conversion scheme in institutions where pension scheme is already existing is also necessary as Government have

> extended the revised pay scales on the condition that these institutions will maintain parity in all terms and conditions that these institutions will maintain parity in terms and conditions of service of its employees with the corresponding category of employees in Govt. of India.
>
> I would therefore request you to please consider this suggestion and extend the schemes of conversion from CP fund to GP fund scheme to all employees of autonomous bodies (or to employees of UGC/Central & Deemed Universities) who already have pension scheme since inception, and notify some clear cut off future date, so that those institutions do not fix their own cut off date/dates and create disparities and confusion."

b) The stand of the MHRD is clear from one of the communications, namely letter dated 24.10.2002 addressed by the MHRD to the UGC which stated:-

> "2. Since the University Grants Commission is the funding agency and it itself had extended the Government policy on conversion from CPF to GPF to the Central Universities and Deemed Universities receiving 100% maintenance grant from the UGC, no specific Government instructions are warranted to decide the cases of those employees of the University of Delhi who had been permitted irregular conversion from CPF to GPF/Pension Scheme after the prescribed cut-off date.
>
> 3. You are, therefore, advised to decide the *issue* at your end without referring it to this Ministry."

c) Soon after the decision of the Division Bench of the High Court, a communication was addressed by the University on 13.10.2016 to MHRD that about 306 employees would be eligible to draw pension in terms of said decision.

d) A letter dated 23.1.2017 was written by the Under Secretary to Government of India, Ministry of Education, to the Registrar of the University. Paragraph 2 of the letter stated as under:-

> "2. The directions/observations in the matter are as under for compliance: -
>
> (i) To allow GPF/Pension of Government in respect of those employees who were in service as on 01/01/1986, unless they have specifically and in writing chosen the option to stay with CPF. However, in respect of the employees who have already retired, the question of surrender of the University's portion of the CPF as already taken by them, will have to be dealt with by the University of Delhi on consultation with the UGC/MHRD. Delhi University/Concerned Colleges will ensure to recoup their contributions under the CPF Scheme with simple interest of 8% per annum. Thus while seeking option from the employees this point will have to be appropriately taken care by the MHRD/UGC/DU and Concerned Colleges.
>
> (ii) In all other cases, University of Delhi is advised to file an appeal against the order of the Hon'ble Delhi High Court, in consultation with the UGC/MHRD.
>
> (iii) In case any other employee who was not in service as on 01.01.1986 and joined thereafter, the question of application of order of Department of pension dated 01.05.1987 shall not arise and as such if any order of any Court of Law allows pension in their cases, the University of Delhi may have to appropriately file appeal in the appropriate appellate Court in consultation with UGC and MHRD.
>
> 3. The University may take appropriate action in light of the above and also to defend the interest of Govt. of India in all such Court cases arising in the matter."

e) On 29.03.2019 a letter was written by MHRD to the Secretary, UGC. The relevant portion of the letter was:-

> "2. The matter of non-settlement of pension issue of such employees of University of Delhi and its Colleges who retired after the order was passed by the Single Bench of Delhi High Court on 30.4.2014 on the grounds that UGC counsel had mentioned in the court that the expenditure on pension was unapproved whereas those who retired prior to 30.4.2014 were allowed pension by the University.
>
> 3. The matter has since been examined in consultation with D/o Expenditure and it has been decided that if in this case pension was allowed to a group of employees by DU, out of which some have already been allowed pension on having retired after recovering their CPF accumulation approximate to the employer's contribution, then the employees in this case may be allowed pension, if they belong to the same group which was allowed switch over from CPF to GPF by DU and where a few employees have already been availing themselves of pension and if employer's contribution to CPF has been recovered in their case, provided they are not related in any way whatsoever to the case decided by the Delhi High Court on 24.8.2016."

f) Soon thereafter a communication was addressed by the UGC to the University, the subject being: -

> "Release of pension benefits in respect of employees – who have opted pension scheme from 1989 to 1998 and have retired after the judgment of High Court of Delhi – Regarding."

The relevant portion of the letter was :-

> "I am directed to inform you that the MHRD vide its letter no. 4-41/2014-Desk (U) dated 29th March, 2019 (copy enclosed) has informed that the matter has since been examined in consultation with D/o Expenditure and it has been decided that if in this case pension was allowed to a group of employees by DU, out of which some have already been allowed pension of having retired after recovering their CPF accumulation approximate to the employer's contribution, then the employees in this case may be allowed pension, if they belong to the same group which was allowed switch over from CPF to GPF by DU and where a few employees have already been availing themselves of pension and if employer's contribution to CPF has been recovered in their

> case, provided they are not related in any way whatsoever to the case decided by the Delhi High Court on 24.8.2016."

g) On 02.03.2019, a communication was addressed by the Under Secretary to Government of India, Ministry of Finance, Department of Financial Services to the Chairpersons of Life Insurance Corporation of India and other Insurance Corporations in public sector. The subject of the letter was:-

> "Final option for pension to leftover employees of Public Sector Insurance Companies (PSICs) namely Life Insurance Corporation of India, General Insurance Corporation of India, Oriental Insurance Company Limited, United India Insurance Company Limited, National Insurance Company Limited and New India Assurance Company Limited: Reg."

The communication stated:-

> "The issue of grant of final option for pension to leftover employees of Public Sector Insurance Companies (PSICs) was under examination with the Central Government. It has now been decided to allow a final option to those who joined service on or before 28.06.1995 to opt for pension as a retirement benefit.
>
> 2. PSICs are requested to submit to this Department a detailed scheme for approval and notification incorporating, inter alia, the following parameters:
>
> (i) In the case of serving employees who opt for pension, employer's contribution along with the interest to be transferred to the pension fund. In addition, they would also contribute a certain multiple of pay as was done in the case of public sector banks;
>
> (ii) For retired employees/families of deceased employees a certain multiple of employer's contribution to Provident Fund and interest thereon received by the employee on retirement to be refunded, as was done in the case of public sector banks.

> (iii) Pension/Family Pension to those who now opt to join the pension scheme, will be payable with effect from the date notification of the scheme. However, the employees retiring after that date will be eligible for pension with reference to their respective date of retirement."

9. After hearing learned counsel for the parties who *inter alia* invited attention of this Court to the documents adverted hereinabove, this Court passed the order dated 02.03.2020, which stated:-

> "Though their submissions are concluded, certain doubts have arisen after the learned counsel invited our attention to various documents on record.
>
> Some of those documents are (i) letter dated 8.8.2001 from University Grants Commission (for short "UGC") to the Joint Secretary, Government of India, Ministry of Human Resource Development (for short "MHRD",) placed on record at pages 46-47 of the Convenience Volume, (ii) the response dated 24.10.2002 appended at page 48 of the Convenience Volume, from the MHRD to the aforesaid letter dated 8.8.2001; (iii) the letter dated 13.10.2016 written by Delhi University to the Secretary, Department of Higher Education, MHRD appended at page 58 of the Convenience Volume) and (iv) the letter dated 2.3.2019 from the Government of India (Ministry of Finance), at page 63 of the Convenience Volume, in so far as certain institutions like LIC and other Insurance Companies are concerned.
>
> One of the basic issues that arises in the matter is whether in terms of Para 3.1 of O.M. dated 1.5.1987 was it competent for the concerned institutions/authorities to keep on extending the period within which options could be exercised by the concerned employees.
>
> It is in this light that the Division Bench of the High Court in paragraphs 26 and 27 referred to certain facts including the stand of the Central Government constituted in permitting several members and employees in other institutions including educational institutions such as IIT, Kanpur to give option by extending dates for switch over till 31.12.2003.

> All these communications do not spell out any consistent stand on the Central Government. Though the Central Government and the UGC are parties to the present list, no stand has been taken on record by filing any appropriate affidavit.
>
> In the circumstances, we call upon Central Government (Ministry of HRD) as well as the UGC to file affidavits within seven days from today and place their stand on record giving complete details.
>
> Delhi University is also called upon to place on record following information by way of an affidavit:
>
> (a) How many employees who were employed before 01.01.1986, had opted to be covered under CPF Scheme by 30.09.1987.
>
> (b) How many employees exercised the option to be part of CPF Scheme after 30.09.1987 but within first two extensions allowed by Delhi University.
>
> (c) How many employees who had opted to be part of CPF, exercised the reverse option granted to them and opted to be under GPF.
>
> (d) How many writ petitioners wanted similar benefit and extension of some facilities as was granted to the employees referred to in Para (c) above.
>
> (e) How many employees are presently in service who answer description that they are employees from before 1.1.1986 and are still part of CPF Scheme.
>
> Copies of the communications referred to in the earlier part of the order shall also be supplied alongwith a copy of this order to the Central Government and the UGC."

9.1 In response to the questions posed in the Order dated 02.03.2020, following information was supplied through the affidavit filed on behalf of the University.

"3. That in pursuance of the aforementioned directions, the petitioner is providing the following itemized response.

(a) *How many employees who were employed before 01.01.1986, had opted to be covered under CPF Scheme by 30.09.1987.*

RESPONSE:

Approximately 2611, who were employed before 01.01.1986, had opted for CPF Scheme by 30.09.1987

(b) *How many employees exercised the option to be part of CPF Scheme after 30.09.1987 but within first two extensions allowed by Delhi University.*

RESPONSE:

That approximately 626 employees exercised the option to be part of CPF Scheme after 30.09.1987 but within the initial two extensions allowed by the Delhi University.

(c) *How many employees who had opted to be part of CPF, exercised the reverse option granted to them and opted to be under GPF.*

RESPONSE:

That approximately 2469 employees who had opted to remain in CPF exercised the reverse option granted to them and opted to come over to GPF.

(d) *How many writ petitioners wanted similar benefit and extension of same facilities as was granted to the employees referred to in Para (c) above.*

RESPONSE:

Under category-1 i.e. N.C. Bakshi batch, 172 employees wanted similar benefit of extension as was granted to the employees referred to in Para-c above whereas the number of such employees falling under category-2 i.e. Shashi Kiran batch is 75.

(e) *How many employees are presently in service who answer the description that they are employees from before 1.1.1986 and are still part of CPF Scheme.*

> **RESPONSE:**
>
> 51 respondents belonging to category-1 i.e. N.C. Bakshi Batch and 86 respondents under category-2 i.e. Shashi Kiran batch were appointed before 01.01.1986 are presently in service and they are still part of CPF Scheme."

9.2 In the affidavit filed on behalf of Union of India, Ministry of Education, answer to question no.4 was given as under:-

> "The Department of Pension and Pensioners' welfare O.M. dated 01.05.1987 provides that all CPF beneficiaries, who were in service on 1.1.1986 and who are still in service on the date of issue of these orders will be deemed to have come over to the Pension Scheme. These orders apply to all Civilian Central Government employees who are subscribing to the Contributory Provident Fund under the Contributory Provident Fund Rules (India), 1962. Further, D/o Financial Services vide O.M. dated 02.03.2019 has allowed the employees of Public Sector Insurance Companies for a final option to those who joined service on or before 28.06.1995, to opt for pension as a retirement benefit. This O.M. is not applicable to Central Government as well as autonomous bodies employees."

It was further stated:-

> "4. At the very outset, it is informed that in case this Hon'ble Court decides the appeal against the University of Delhi and the Union of India, the financial implications of the same would have a snowball effect, as the same would become applicable to all the Central Universities throughout India, which would open a flood-gate of litigation."

10. The matter was thereafter extensively argued on behalf of the University. It was submitted:-

a) The difference between CPF and GPF was always in existence and as held by the Constitution Bench of this Court in ***Krishena Kumar vs. Union of India and others***[5], the rules governing the Provident Fund and its contribution would be entirely different from the rules governing the Pension Scheme.

b) Under the notification dated 01.05.1987, the choice was completely left to the employees and it was purely optional. An optional scheme involving financial decisions could not be converted into a compulsory scheme.

c) Comparison with employees of IITs, Department of Atomic Energy and Insurance Companies was impermissible as the employees of the University and these organizations did not form a homogeneous class. Their terms and conditions of service, financing pattern and financing departments were completely different.

11. Number of learned senior counsel and other learned counsel appeared on behalf the respondents-employees and submitted: -

[5] (1990) 4 SCC 207

a) Though, notification dated 01.05.1987 was to the knowledge of everyone, the subsequent extensions and chances to switchover granted by the University were not brought to the knowledge of all the employees and the respondents were thus prejudiced.

b) If the mandate under the notification dated 01.05.1987 was to be followed scrupulously, the University could not have granted subsequent option of switchover. But 2469 employees were allowed to 'come over' to GPF after the cut-off date. Going by various communications placed before the Court, such employees were allowed full benefits under GPF. The case of the present respondents-employees was not, in any way, different from such 2469 employees.

c) The University being a Central University, its employees would rank on similar footing as that of the organisations like IITs and AIIMS. If extensions were granted to employees of the IITs, the employees of the University were also entitled to similar benefit.

d) The Division Bench was, therefore, justified in setting aside the view taken by the learned Single Judge of the High Court in

Shashi Kiran batch of cases but affirming the view in other two batches.

12. The common thread which ran through the decisions of the learned Single Judge pertaining to three batches of cases, was that the text of the notification dated 01.05.1987 was clear that if no option was exercised by the concerned employees before the cut-off date, they would be deemed to have 'come over' to GPF. It was only a positive option exercised by the employees to continue to be under CPF which could have departed from such deeming provision. Once exercised, the option was final and as such, there could be no switchover from those who had consciously opted to be under CPF. Further, relying on the decision in ***S.L. Verma***[4]**,** it was observed that any exercise of option after the deadline or the cut-off would be inconsequential. It was on this premise that the cases in *R.N. Virmani* batch of cases and *N.K. Bakshi* batch of cases were allowed by the learned Single Judge.

As regards *Shashi Kiran* batch of cases, the learned Single Judge observed, that once the conscious decision was taken and option was exercised to continue to be under CPF, there was *"no room for any come back situation."* The cases in the third batch were therefore, rejected.

13. However, the learned Single Judge observed that 2469 employees who were given facility of such switchover after the cut-off date, though they had also consciously opted to be under CPF, were not before the Court, and as such, their cases had to be left untouched. It is a matter of record and which aspect is clear from the communications referred to in paragraph 8 hereinabove that most of those 2469 employees, at the time of retirement, were given all the benefits that were available to those who had opted to be under GPF. Thus, those 2649 employees were certainly allowed to avail the benefit of switchover which was not granted in favour of the employees in the third batch of cases.

14. Affirming the view taken by the learned Single Judge in the first two batches of cases, the Division Bench set aside the view of the learned Single Judge only in the third batch of cases *i.e.* in *Shashi Kiran* batch of cases. As the observations made by the Division Bench indicate, the matter was placed on the ground of discrimination and principles of equality.

15. According to the notification dated 01.05.1987 two situations were contemplated. First, the deeming provision in terms of which the concerned employee was taken to have 'come over' to GPF. The second situation being where a conscious option was exercised before the cut-off date to continue to

be under CPF. *R.N. Virmani* batch of cases was therefore rightly allowed by the learned Single Judge and the Division Bench of the High Court, as no conscious option was exercised by the cut-off date. Consequently, the concerned employees must be deemed to have 'come over' to GPF. Logically, it would be immaterial whether the concerned employee continued to make contribution assuming himself to be covered under CPF, even though contributions were made by the concerned authorities. The benefit was therefore rightly granted in favour of the employees and the entire contribution was directed to be refunded. The University has chosen not to appeal against that decision and thus the matter has attained finality.

Theoretically, extension of the same principle would be that if no option was exercised before the cut-off date, but an option was exercised after the cut-off date was extended; and if no switchover could be allowed after the cut-off date, the decisions rendered by the learned Single Judge and the Division Bench in the *N.C. Bakshi* batch of cases were also quite correct. Consequently, irrespective of the fact that the concerned employees had exercised the option to continue to be under CPF, such exercise of option would be *non est* in the eyes of law. That in fact is the ratio of the decision in ***S.L. Verma's***[4] case. Thus, both these batches of cases were rightly decided

by the learned Single Judge and the Division Bench. We, therefore, dismiss the appeal in *N.C. Bakshi* batch of cases.

16. We now turn to *Shashi Kiran* batch of cases.

17. As indicated by the University in its affidavit filed after the Order dated 02.03.2020 was passed by this Court, 2611 employees had opted to be under CPF Scheme by the cut-off date, *i.e.* by 30.09.1987. Additionally, 626 employees exercised the option to be under CPF after the original cut-off, but within initial two extensions granted by the University. Thus, as against the entire body of employees of the University, 3237 (2611+626) employees had exercised the option to be under CPF. Out of these 3237 employees, by virtue of further extensions granted by the University, about 2469 employees exercised the reverse option and opted to "come over" to GPF, leaving only 768 (3237-2469) employees to be under CPF. The answers to queries 'd' and 'e' given by the University in its affidavit indicate that the number of employees in CPF Scheme was 86 while the petitioners in *Shashi Kiran* batch were 75. We are, thus, concerned with 75 original petitioners in *Shashi Kiran* batch of cases.

18. In ***Krishena Kumar***[5], the distinction between the Provident Fund Scheme and the Pension Scheme was considered by the Constitution Bench

of this Court. In that case, the employees who had joined the service on or after 01.04.1957 were to get covered automatically by the Pension Scheme and insofar as employees who were already in service on 01.04.1957, they were given an option either to retain the Provident Fund benefits or to switchover to the pensionary benefits. About 12 extensions were thereafter granted so that the options could be exercised by the employees within the extended time. Those who had chosen not to exercise such option, were before this Court. The basic nature of the Scheme was discussed in paragraph 7 of the decision as under:-

> "**7.** We may now examine these options. The Railway Board's letter No. F(E) 50-RTI/6 dated November 16, 1957 introduced the pension scheme for railway servants. It said that the President had been pleased to decide that the pension rules, as liberalised vide Railway Board's Memo No. E-48 OPC-208 dated July 8, 1950 as amended or clarified from time to time should apply "(*a*) to all Railway servants who entered service on or after issue of that letter and (*b*) to all non-pensionable railway servants who were in service on April 1, 1957 or have joined railway service between that date and the date of issue of the order". The Railway servants referred to in para (*b*) were required to exercise an unconditional and unambiguous option on the prescribed form on or before March 31, 1958 electing for the pensionary benefits or retaining their existing retirement benefits under the State Railway Provident Fund Rules. It further said that any such employee from whom an option form prescribed for the employee's option was not received within the above time limit or whose option was incomplete or conditional or ambiguous shall be deemed to have opted for the pensionary benefits and if any such employee had died by that date or on or after April 1, 1957 without exercising option for the pensionary scheme, his dues would be paid on the provident fund system. The period of validity of this option was first extended up to June 30, 1958, December 31, 1958, March 31, 1959 and lastly up to September 30, 1959. There could, therefore, be no doubt that those who did not opt for the pension scheme had ample opportunity to choose between the two."

Reliance was placed by the petitioners before this Court on the decision in ***D.S. Nakara vs. Union of India***[6]. Paragraphs 16, 29 and 30 of the decision in ***Krishena Kumar***[5] dealt with the issue as under:-

> **"16.** As the basis or justification for striking or reading down paragraph 3.1 on *Nakara*[6] ratio, it is urged that all the Railway employees numbering about 22 lakhs comprising 16,22,000 in service and about 6 lakhs pensioners constitute one family and must be treated as one class as the government's obligation to look after the retired Railway employees both under the pension scheme and the provident fund scheme being the same, they could not be treated differently. Any differential treatment will be discriminatory and violative of Article 14 of the Constitution of India. In *Nakara cas*[6] the date arbitrarily chosen was struck down and as a result the revised formula for computing pension was made applicable to all the retired pensioners. The same principle, it is urged, has to be extended to the Provident Fund retirees also otherwise there would be discrimination. It is stated that though at the time of choosing between Provident Fund and Pension Scheme both the alternatives appeared to be more or less equal and the retired provident funders took their lump sum yet subsequently stage by stage the pensioners' benefits were increased in such ways and to such extent that it became more and more discriminatory against the provident funders old and new. It was because of this discrimination that successive options were given by the Railway Board for the provident funders to become pensioners. Hence the submission that this limitation must go, and all the provident funders must be deemed to have become pensioners subject to the condition that the government contribution received by them along with interest thereon is refunded or adjusted. Obviously this gives no importance to the condition in the notifications that option once exercised shall be final and binding and to the fact that in each option a cut-off date was there related to the purpose of giving that option.
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> **29.** The court in *Nakara*[6] was not satisfied with the explanation that the legislation had defined the class with clarity and precision and it would not be the function of this Court to enlarge the class. The court held in paragraph 65 of the report : (SCC pp. 344-45, para 65)

[6] (1983) 1 SCC 305

> "With the expanding horizons of socio-economic justice, the Socialist Republic and Welfare State which we endeavour to set up and largely influenced by the fact that the old men who retired when emoluments were comparatively low and are exposed to vagaries of continuously rising prices, the falling value of the rupee consequent upon inflationary inputs, we are satisfied that by introducing an arbitrary eligibility criterion : 'being in service and retiring subsequent to the specified date' for being eligible for the liberalised pension scheme and thereby dividing a homogeneous class, the classification being not based on any discernible rational principle and having been found wholly unrelated to the objects sought to be achieved by grant of liberalised pension and the eligibility criteria devised being thoroughly arbitrary, we are of the view that the eligibility for liberalised pension scheme of 'being in service on the specified date and retiring subsequent to that date' in impugned memoranda, Exs. P-1 and P-2, violates Article 14 and is unconstitutional and is struck down. Both the memoranda shall be enforced and implemented as read down as under : In other words, Ex. P-1, the words : 'that in respect of the government servants who were in service on March 31, 1979 and retiring from service on or after that date'; and in Ex. P-2, the words : 'the new rates of pension are effective from April 1, 1979 and will be applicable to all service officers who became/become non-effective on or after that date' are unconstitutional and are struck down with this specification that the date mentioned therein will be relevant as being one from which the liberalised pension scheme becomes operative to all pensioners governed by 1972 Rules irrespective of the date of retirement. Omitting the unconstitutional part it is declared that all pensioners governed by the 1972 Rules and Army Pension Regulations shall be entitled to pension as computed under the liberalised pension scheme from the specified date, irrespective of the date of retirement. Arrears of pension prior to the specified date as per fresh computation is not admissible."

30. Thus the court treated the pension retirees only as a homogeneous class. The PF retirees were not in mind. The court also clearly observed that while so reading down it was not dealing with any fund and there was no question of the same cake being divided amongst larger number of the pensioners than would have been under the notification with respect to the specified date. All the pensioners governed by the 1972

> Rules were treated as a class because payment of pension was a continuing obligation on the part of the State till the death of each of the pensioners and, unlike the case of Contributory Provident Fund, there was no question of a fund in liberalising pension."

The distinction between two Schemes was dealt with in Paragraph 32 of the decision as under:-

> "**32.** In *Nakara*[6] it was never held that both the pension retirees and the PF retirees formed a homogeneous class and that any further classification among them would be violative of Article 14. On the other hand the court clearly observed that it was not dealing with the problem of a "fund". The Railway Contributory Provident Fund is by definition a fund. Besides, the government's obligation towards an employee under CPF Scheme to give the matching contribution begins as soon as his account is opened and ends with his retirement when his rights qua the government in respect of the Provident Fund is finally crystallized and thereafter no statutory obligation continues. Whether there still remained a moral obligation is a different matter. On the other hand under the Pension Scheme the government's obligation does not begin until the employee retires when only it begins and it continues till the death of the employee. Thus, on the retirement of an employee government's legal obligation under the Provident Fund account ends while under the Pension Scheme it begins. The rules governing the Provident Fund and its contribution are entirely different from the rules governing pension. It would not, therefore, be reasonable to argue that what is applicable to the pension retirees must also equally be applicable to PF retirees. This being the legal position the rights of each individual PF retiree finally crystallized on his retirement whereafter no continuing obligation remained while, on the other hand, as regard Pension retirees, the obligation continued till their death. The continuing obligation of the State in respect of pension retirees is adversely affected by fall in rupee value and rising prices which, considering the corpus already received by the PF retirees they would not be so adversely affected ipso facto. It cannot, therefore, be said that it was the ratio decidendi in *Nakara*[6] that the State's obligation towards its PF retirees must be the same as that towards the pension retirees. An imaginary definition of obligation to include all the government retirees in a class was not decided and could not form the basis for any classification for the purpose of this case. *Nakara*[6] cannot, therefore, be an authority for this case."

Having observed that the Pension Scheme and the Provident Fund Scheme were structurally different, it was then concluded that the retirees in both categories did not belong to the same class and that there was no discrimination. The challenge was, therefore, rejected.

19. At this stage we must also consider that in ***Rajasthan Rajya Vidyut Vitran Nigam Limited vs. Dwarka Prasad Koolwal and others***[7]**,** a Bench of two Judges of this Court found that an employee had no inherent right to demand extension for exercising the switchover option. It was observed:-

> "**58.** When the Pension Regulations and the GPF Scheme are read together, the necessary conclusion is that an employee must give his option for either continuing to be a member of the CPF Scheme or to switch over to the Pension and GPF Scheme. This option had to be exercised within a period of 90 days from the cut-off date, that is, 28-11-1988. But RSEB, in its wisdom, chose to extend the time for exercising the switch-over option over a period of 8 years by giving several opportunities to the employees through its notices. The right of an employee to switch over was, therefore, limited in time by the Pension and GPF Scheme. However, administrative orders issued by RSEB from time to time extended the period for exercising the option. No employee had any inherent right to either demand an extension of the period for exercising the switch-over option or claim a right to exercise the switch-over option at any time prior to his retirement, and no such right has been shown to us."

20. ***Krishena Kumar***[5] was a case where the retirees from two categories namely Pension Fund and Provident Fund, were taken to be distinct and different and as such the plea on the ground of discrimination was rejected.

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[7] (2015) 12 SCC 51

As the Judgment of the Division Bench discloses, the matter was considered by it from the standpoint of discrimination between the same category of persons, that is to say, those who had opted to be under CPF. The different groups in the same category were:-

a) Those who had not exercised any option but continued to make payment of contribution towards CPF (*R.K. Virmani batch of cases).*

b) Those who exercised the option to be under CPF but the option was exercised after the cut-off. Since the option was exercised after the cut-off, they were deemed to have 'come over' to GPF and were granted benefit *(N.C. Bakshi* batch of cases*).*

c) Those who consciously exercised the option to be under CPF; but taking advantage of further options granted through 11 extensions to switchover, had been allowed to 'come over' to GPF *(*2469 employees).

21. It was against these three sub categories coming from the same category of employees that the argument of discrimination was considered by the Division Bench. Such was not the case in ***Krishena Kumar***[5] or ***Rajasthan Rajya Vidyut Vitran***[8]**.**

The matter was further considered by the Division Bench in the context of the employees of educational institutions such as IITs, who are directly under the Central Government, just as the employees of the University, which is a Central University. If the option was allowed to be exercised by granting extension to the employees of the other educational institutions, the Division Bench did not find any reason why similar choice/option could not be given to the employees in *Shashi Kiran* batch of cases.

Additionally, the feature that has been presented through the documents which have subsequently come on record is that even with respect to the employees of Insurance Corporations similar options and extensions were granted.

22. The differential treatment afforded to those 2469 employees as against the employees in *Shashi Kiran* batch of cases, was not founded on any rationale. No justifiable reason was coming forth. If those 2469 employees could be afforded chance to exercise an option of switchover to GPF, even though they had consciously opted to be under CPF, on principle of parity or equality, the case was certainly made out.

23. We may now consider the matter from the perspective of financial impact if the decision of the Division Bench is affirmed.

24. According to the notification dated 01.05.1987, the employees joining the service after 01.01.1986 would always be under GPF. With respect to those who were in service on 01.01.1986, said employees would be deemed to have "come over" to GPF unless an option to continue to be under CPF was consciously exercised before the cut-off date. Thus, when the Scheme was framed and was sought to be implemented, the concerned authorities must have taken into account the entire magnitude such as, the number of employees and the likelihood of impact on the management of the fund, so that reasonable returns can be effected by way of pension upon retirement of such persons. Going by the intent of the notification, those who were to opt for CPF, were an exception and the general rule was that everybody after 01.01.1986 would normally be covered by GPF. It is in this context that the number of original petitioners in *Shashi Kiran* batch of cases has to be seen. We are concerned with only 75 persons. On the other hand, the bulk of people namely 2469 employees were granted the choice of reverse switchover and they were allowed all the benefits under GPF. It can reasonably be said that when the notification dated 01.05.1987 was issued, the authorities were conscious of the possibility that all the employees may 'come over' to GPF.

With that possibility in mind, the fund was constituted and the affairs were arranged. The shift of those 75 employees would not in any way affect the strength and the character of the fund if a direction that the entire contribution made by the authorities be returned with reasonable rate of interest is issued. These 75 petitioners had approached the Court in the year 2010. At this length of time, it is not as if any floodgates are going to open and there will be drain on the resources of the State. A direction can, therefore, be issued, as was done by the learned Single Judge in paragraph 20 of his Judgment in *R.N. Virmani* batch of cases and which aspect was mentioned in the letter dated 23.01.2017 referred to in paragraph 8 hereinabove, for recouping the contribution under CPF with 8% simple interest per annum.

25. Considering the circumstances on record, in our view, the decision rendered by the Division Bench of the High Court in *Shashi Kiran* batch of cases does not call for any interference except to the extent of direction for recouping of the contribution under CPF with 8% simple interest per annum. It is possible that at this length of time, some of the employees in *Shashi Kiran* batch of cases may not be interested in switchover to GPF. But an option must be afforded to them in such manner as the authorities deem appropriate.

26. All these appeals are therefore disposed of in aforestated terms, with no order as to costs.

…………………………………..J.
[Uday Umesh Lalit]

…………………………………..J.
[Vineet Saran]

New Delhi;
May 10, 2022.