



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

% Judgment reserved on : 04.04.2024

Judgment pronounced on : 10.04.2024

+ W.P.(C) 8583/2015

NEERJA TIKU

.... Petitioner

versus

SCHOOL OF PLANNING AND ARCHITECTURE & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Rakesh Tiku, Senior Advocate with Mr. Lokesh Bharadwaj, Mr. Sandeep Kumar, Mr. Ashish and Mr. Monu Kumar, Advocates.

For the Respondent : Mr. S.K. Bhaduri, Mr. Prem Prakash, Mr. Sumit Kumar and Ms. Sneh Lata Jha, Advocates for R-1.
Ms. Bharathi Raju, Senior Panel Counsel for R-2 and R-3.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

TUSHAR RAO GEDELA, J.

1. The present writ petition under Article 226 of the Constitution of India, 1950 has been filed by the petitioner seeking following reliefs:

“In view of the facts and circumstances mentioned hereinabove, this Hon’ble Court may be kind enough to issue an appropriate writ of certiorari thereby quashing the Impugned Communication dated 22.04.2015 and be further kind enough to issue a writ of mandamus thereby directing the respondent No. 1 to grant the benefit to the Petitioner under GPF cum Pension cum Gratuity Scheme instead of CPF cum Gratuity scheme.”

2. The facts germane to the present dispute are as under:-



- (a) The petitioner had joined respondent no.1 – School of Planning and Architecture (hereinafter referred to as ‘SPA’) on 01.08.1980. At the time of joining, the terms and conditions of employment were stated to have been governed by the Contributory Provident Fund cum Gratuity Scheme (hereinafter referred to as “CPF Scheme”).
- (b) By Circular dated 01.05.1987, the respondent no.2 had floated an option to its employees to exercise an option to either continue under the then existing CPF Scheme or to change over to General Provident Fund cum Pension cum Gratuity Scheme (hereinafter referred to as “Pension Scheme”). Pursuant to the Circular dated 01.05.1987, respondent no.1/SPA had also issued a Circular dated 17.08.1987 incorporating such procedure for exercising an option by its employees, within a stipulated time. The said option was to be exercised on or before the cutoff date i.e. 30.09.1987. In case no such option is exercised, the Circular provided that such employees would be deemed to have switched over to the Pension Scheme, which option would be treated as final.
- (c) The petitioner is stated to have submitted her option after the cut-off date, on 07.12.1987, whereby she submitted her option to continue with the CPF Scheme, instead of the GPF cum Pension Scheme.
- (d) The aforesaid state of affairs continued until the judgement dated 30.04.2014 was delivered by learned Single Judge of this Court in W.P. (C) No. 5631/2010 titled as *N.C. Bakshi Versus*



Union of India and Others, reported in 2014 SCC OnLine Del 2798, which was tagged along with other batch of writ petitions.

- (e) By a representation dated 20.02.2015, the petitioner requested that in terms of the judgment passed by this Court in *N.C. Bakshi (supra)*, the petitioner would be deemed to have been automatically covered under the Pension Scheme.
- (f) By the impugned communication dated 22.04.2015, the respondent no.1 rejected the representation of the petitioner dated 20.02.2015 and informed the petitioner that since she had specifically stated *vide* her letter dated 07.12.1987 that she would like to continue under the CPF Scheme instead of GPF cum Pension Scheme, the request for change over now cannot be acceded to, having once been accepted by the respondent.
- (g) Earlier also, the matter of such employees who in 1987 opted to continue under the CPF Scheme, and later had sought change over from CPF Scheme to GPF cum Pension Scheme was placed before the Finance Committee of respondent no.1, which referred the matter to the Ministry of Human Resource Development for clarification.
- (h) The Ministry of Human Resource Development, *vide* letters dated 23.03.1999 and 18.01.2000 considered the request in consultation with the Department of Pension and Pensioners' Welfare and the Department of Expenditure. It is stated that the Department of Expenditure did not agree to such request and rejected the same on the principle that the option once



exercised would be treated as final and cannot be deviated from. On the aforesaid reason, the impugned communication dated 22.04.2015 was passed by the respondent No.1, rejecting the request of the petitioner to change over from CPF Scheme to the GPF cum Pension Scheme. Hence, the present writ petition is filed.

ARGUMENTS OF THE PETITIONER:-

3. Mr. Rakesh Tiku, learned Senior Counsel for the petitioner at the outset submits that the dispute before this Court falls within a narrow compass and relies upon the judgment of the Supreme Court in *University of Delhi vs. Smt. Shashi Kiran and Others*, reported in (2022) 15 SCC 325 in order to support his contentions.

4. Mr. Tiku, learned Senior Counsel submits that the Supreme Court in the aforesaid judgment had upheld the contention that the option of continuing under the Contributory Provident Fund Scheme if not exercised within the time stipulated by the concerned Department, the option exercised thereafter would be *non est* in law and the employees would be relegated to the default option i.e. the GPF cum Pension Scheme.

5. Using the aforesaid ratio in the negative, Mr. Tiku, learned Senior Counsel submits that the option so exercised by the petitioner dated 07.12.1987 being clearly beyond the cutoff date of 30.09.1987, ought to be considered as *non est* in law. If the said option is considered as *non est*, the default option of the petitioner for Pension Scheme instead of CPF Scheme would automatically enure to her benefit.



6. Mr. Tiku, learned Senior Counsel submits that following the ratio laid down by the Supreme Court in *Shashi Kiran (supra)*, the petitioner would be entitled to the reliefs sought in the writ petition and prays that the present petition be allowed.

7. On facts, learned Senior Counsel drew attention of this Court to the Officer Memorandum dated 01.05.1987, to submit that the said notification of the Central Government was made applicable to all the employees who were beneficiaries to the CPF Scheme. He submits that by virtue of the said O.M., the Central Government had afforded an option to its employees, who were hitherto before governed by the CPF Scheme to either continue to remain under the CPF Scheme, if they so desire, or in case no such option is exercised, the CPF Scheme beneficiaries would be deemed to have come over to the Pension Scheme. Mr. Tiku, learned Senior Counsel submits that it is the interplay of this provision of exercising the option, which is the subject matter of the present petition.

8. Learned Senior Counsel invited attention to the letter/notification dated 17.08.1987 issued by the respondent No.1/School of Planning and Architecture, offering the option to its employees to change over from CPF Scheme to the Pension Scheme in pursuance of the implementation of the recommendations of 4th Central Pay Commission and in pursuance of the O.M. dated 01.05.1987 issued by the DoPT.

9. Mr. Tiku, learned Senior Counsel submits that the petitioner originally did not exercise any option to continue under the CPF Scheme till the cut-off date i.e., 30.09.1987. He submits that after the cut-off date, the petitioner had, by her letter dated 07.12.1987, given an option



to continue under the CPF Scheme. Mr. Tiku, learned Senior Counsel submits that but for such option, the petitioner would have ordinarily been deemed to have come over to the GPF cum Pension Scheme. He vehemently argues that the option exercised by the petitioner fell beyond the cut-off date, and as such, would be no option in law. If so read, learned Senior Counsel submits that the ratio laid down by the Supreme Court in *Shashi Kiran* (*supra*) would be squarely applicable to the petitioner, and as such, the petitioner would be entitled to the benefit under the GPF cum Pension Scheme.

10. Mr. Tiku, learned Senior Counsel also referred to the letter dated 02.01.2019 of the respondent No.1/SPA to submit that the petitioner had not availed of her C.P. Fund amounting to Rs. 20,84,793/- which included interest, on her superannuation. The non-acceptance is stated to be on the basis of the order passed by this Court on 11.09.2015 in the present case. By reference to the said document, learned Senior Counsel submits that the petitioner would fall within the second category of employees in the case of *N.C. Bakshi* (*supra*), which was considered by the Supreme Court in a batch of matters along with *Shashi Kiran's* case (*supra*).

11. Mr. Tiku, learned Senior Counsel relies upon the judgment of *Shashi Kiran* (*supra*), particularly to para Nos. 12 and 15, to submit that the issue raised in the present petition is no more *res integra* and the ratio laid down therein is squarely applicable to the present case. He submits that the petitioner is willing to deposit the amount of CPF that the petitioner was found entitled to, with the concerned authority with the interest which has accrued till date and prays for considering the



petitioner's case for grant of pension under the GPF cum Pension Scheme.

ARGUMENTS OF THE RESPONDENT NOS. 2 and 3:-

12. Ms. Bharathi Raju, learned senior panel counsel appears for the respondent No.2 – Ministry of Personnel, Public Grievances and Pension, Department of Pension and Pensioners Welfare, North Block, New Delhi – 110001 and respondent No.3 – Ministry of Education, Government of India.

13. Ms. Raju, learned SPC at the outset submits that the ratio laid down by the Supreme Court in *Shashi Kiran (supra)* including *N.C. Bakshi (supra)* was a judgment in *personam* applicable only to the employees of the University of Delhi. According to her, since the judgment was not in *rem*, the same cannot be made applicable to the employees of any University other than University of Delhi. Thus, the reliance placed by the petitioner on *Shashi Kiran (supra)* is misconceived and misplaced. She submits that there is no observation in the said judgment of the Supreme Court which would even remotely suggest that the Supreme Court was making general observations and in fact, the issue raised and considered in the aforementioned judgment pertained only to the employees of the University of Delhi. That apart, even the Central Government did not come out with any notification to suggest that the said ratio is applicable to the employees of any other Central University. In fact, according to Ms. Raju, by the letter dated 03.04.2023, the Ministry of Education, Department of Higher Education, Government of India, had specifically issued direction that the judgment of *Shashi Kiran (supra)* would be applicable only to the



employees of University of Delhi and not applicable to other Central Universities. This letter was issued by the said Ministry in consultation with the integrated Finance Division. Ms. Raju submits that this letter has never been challenged by the petitioner till date. Having not done so, the petitioner cannot seek parity with the employees of the University of Delhi, nor seek reliance on the ratio laid down by the Supreme Court in *Shashi Kiran (supra)*.

14. Apart from the aforesaid, Ms. Raju drew attention of this Court to the second category of employees in *Shashi Kiran (supra)* referred to by the Supreme Court as *N.C. Bakshi* batch of cases, to submit that the Supreme Court did not disagree with the ratio laid down by the learned Single Judge of this Court wherein it was noted that all those employees who have received the benefits of the CPF Scheme cannot later on seek conversion to the Pension Scheme since it would be contrary to the principles of equity. On that basis, learned SPC submits that the petitioner would be one such employee, and as such, not entitled to the benefits flowing from the ratio laid down by the Supreme Court in *Shashi Kiran (supra)*.

15. That apart, learned SPC brought attention of this Court to the fact that the petitioner had raked up this issue after 28 years of exercising her option in the year 1987. According to her, not only is the petition barred by delay and laches on facts, but also would be barred as the petitioner was a fence sitter and did not voice out her grievance and waited till the judgment of the learned Single Judge in *N.C. Bakshi (supra)* was delivered. Learned SPC also submits that the petitioner had exercised the informed option to opt for CPF Scheme *vide* her letter dated 07.12.1987, which was much after the cut-off date of 30.09.1987 as



stipulated by the O.M. dated 01.05.1987. The exercise of such option would also bind the petitioner and ought to be considered as issue estoppel, precluding the petitioner from seeking any relief as sought under the present writ petition. She prays that the present petition be dismissed with exemplary costs.

ARGUMENTS OF THE RESPONDENT NO.1:-

16. Mr. S.K. Bhaduri, learned counsel appearing for respondent No.1 – SPA submits that he would adopt the submissions rendered by Ms. Raju, learned SPC. In addition, he also reiterates that the ratio of the judgment of the *Shashi Kiran (supra)* is applicable only to the employees of the Delhi University and not to those of respondent No. 1, and that the respondent no.1 is bound by the letter dated 03.04.2023 of the Ministry of Education, Department of Higher Education, Government of India.

17. That apart, he also submits that the petitioner had taken an informed decision to opt for CPF Scheme *vide* her letter dated 07.12.1987, which was accepted by the respondent No.1 as an exception and the contribution towards CPF were continued till the date of superannuation of the petitioner, in the year 2016. This, according to learned counsel, would bind the petitioner on the doctrine of issue estoppel and she is precluded from resiling from her original option. He too prays that the present writ petition be dismissed.

ANALYSIS AND CONCLUSIONS:-

18. This Court has heard the arguments of Mr. Rakesh Tiku, learned senior counsel for the petitioner as also Ms. Bharathi Raju, learned SPC



and Mr. S.K. Bhaduri, learned counsel for respondent No.1 – SPA, perused the record and considered the judgments relied upon.

19. Though a lot of opposition was raised by the learned counsel for the respondents on the aspect as to whether the O.M. dated 01.05.1987 would be applicable to the employees of the respondent No.1 - SPA, however, during the arguments, it was conceded that the aforesaid O.M. is in fact applicable to the employees of respondent No.1 as well. Just to fill in any unnecessary gap, it is clear from the documents placed on record that the respondent No.1 has been declared as an institution of eminence, apart from the fact that the said institution was created by the Central Government under the School of Planning and Architecture Act, 2014. Apart from that, even according to the affidavit of respondent No.3/Ministry of Education, the respondent No.1 – SPA is fully funded by it. Thus, there is no doubt that the employees of the respondent No.1 were entitled to exercise option in terms of DoPT O.M. dated 01.05.1987.

20. In order to appreciate the terms of the O.M. dated 01.05.1987, it would be appropriate to extract the same hereunder :-

*“No.4/1/87 PIC-I
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Pension and Pensioners' Welfare*

New Delhi, the 1st May, 1987.

OFFICE MEMORANDUM

Subject:- Change over of the Central Government employees from the Contributory Provident Fund Scheme to Pension Scheme - Implementation of the recommendations of the Fourth Central Pay Commission.



The undersigned is directed to state that 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. F3(1)- Pension unit/85 dated the 6th June, 1985. However, some Central Government employees still continue under the CPF Scheme. The Fourth Central Pay Commission has now 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 the President is pleased to decide that the said recommendation shall be accepted and implemented in the manner hereinafter indicated.

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

3.2. The employees of the category mentioned above will, however, have an option to continue under the CPF Scheme, if they so desire. The option will have to be exercised and conveyed to the concerned Head of Office by 30.09.1987 in the form enclosed if the employees wish to continue under the CPF Scheme. If no option is received by the Head of Office by the above date the employees will be deemed to have come over to the Pension Scheme.

3.3. The CPF beneficiaries, who were in service on 1.1.1986, but have since retired and in whose case retirement benefits have also been paid under the CPF Scheme, will have an option to have their retirement benefits calculated under the Pension Scheme provided they refund to the Government, the Government contribution to the Contributory Provident Fund and the interest thereon, drawn by them at the time of settlement of the CPF Account. Such option shall be exercised latest by 30.09.1987.

3.4. In the case of CPF beneficiaries, who were in service on 1.1.1986 but have since retired, and in whose case the CPF Account has not already been paid, will be allowed retirement benefits as if they were borne on pensionable establishments unless they specifically opt by 30.09.1987 to have their retirement benefits settled under the CPF Scheme.

3.5 In the case of CPF beneficiaries, who were in service on 1.1.1986, but have since died, either before retirement or after retirement, the case will be settled in accordance with para 3.3 or 3.4 above as the case may be. Options in such cases will be exercised latest by 30.09.1987 by the widow/widower and in the absence of widow/widower by the eldest surviving member of the family who would have otherwise been eligible



to family pension under the Family Pension Scheme if such scheme were applicable.

3.6 The option once exercised shall be final.

3.7 In the types of cases covered by paragraph 3.3 and 3.5 involving refund of

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

4.1 In the case of employees who are deemed to come over or who opt to come over to the Pension Scheme in terms of paragraphs 3.3, 3.4 and 3.5, the retirement and death benefits will be regulated in the same manner as in case of temporary/quasi-permanent or permanent Government servants, as the case may be, borne on pensionable establishment.

4.2 In the case of employees referred to above, who come over or are deemed to come over to the Pension Scheme, the Government's contribution to the CPF together with the interest thereon credited to the CPF Account of the employee will be resumed by the Government. The employees contribution together with the interest thereon at his credit in the CPF Account will be transferred to the GPP Account to be allotted to him on his coming over to the Pension Scheme.

4.3 Action to discontinue subscriptions/contributions to CPF Account may be taken only after the last date specified for exercise of option, viz., 30.09.1987.

5. A proposal to grant ex gratia payment to the CPF beneficiaries, who Retired prior to 1.1.1986 and to the families of CPF beneficiaries who died prior to 1.1.1986, on the basis of the recommendations of the Fourth Central Pay Commission is separately under consideration of the Government. The said ex-gratia payment, if and when sanctioned, will not be admissible to the employees of their families who opt to continue under the CPF Scheme from 1.1.1986 onward.

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

6.2 These orders do not apply to Central Government employees who, on re-employment, are allowed to subscribe to Contributory Provident Fund. These orders also do not apply to Central Government employees



appointed on contract basis where the contribution to the Contributory Provident Fund is regulated in accordance with the terms of contract,

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.

7.1 Ministry of Agriculture etc., are requested to bring these orders to the notice of all CPF beneficiaries under them, including those who have retired since 1.1.1986 and to the families covered by paragraph 3.5 of these orders.

7.2 Administrative Ministries administering any of the Contributory Provident Fund Rules, other than Contributory Provident Fund Rules (India), 1962, are also advised to issue similar orders in respect of CPF beneficiaries covered by those rules in consultation with the Department of Pension and Pensioners' Welfare.

8. These orders issue with the concurrence of the Ministry of Finance Department of Expenditure vide their U.O. No.2038/JS (Pers)/87 dated 13.4.1987.

9. In their application to the persons belonging to Indian Audit and Accounts Department, these orders issue after consultation with the Comptroller and Auditor General of India.

10. Hindi version of these orders follows.

Sd/-

(I.K. Rasgotra)

Additional Secretary to the Government of India”

(emphasis supplied)

It is clear from the aforesaid terms of the O.M. that the employees who were hitherto before beneficiaries of the CPF Scheme in service on 01.01.1986 and were still in service on the date of issuance of the said O.M. were deemed to have come over to the Pension Scheme. It was only as an option that such employees were given an opportunity to continue with the CPF Scheme in case they did not wish to avail benefit under the Pension Scheme. In order to continue with the CPF Scheme, the Central Government had granted time up till 30.09.1987 to exercise such option. It was also clarified that in case no such option was



submitted by the employees in written, on or before 30.09.1987, it would be deemed that such employees have come over to the GPF cum Pension Scheme.

21. It is not disputed that in the present case, the petitioner originally had not exercised the option to continue with the CPF Scheme by the cutoff date i.e. 30.09.1987, meaning thereby that subsequent to the cut-off date, the petitioner would be deemed to have come over to the GPF cum Pension Scheme by default. It is also not disputed that the petitioner had submitted her option to continue with the CPF Scheme *vide* her letter dated 07.12.1987. It is also not disputed that following such option, contributions in terms of the CPF Scheme were continued to be deposited till the date of superannuation of the petitioner. It is this issue which has resulted in the present writ petition.

22. In the above backdrop, this Court has to consider as to how and in what manner, if at all, the ratio laid down by the Supreme Court in ***Shashi Kiran (supra)***, would be applicable to the present case. In order to appreciate this, it would be relevant to consider the facts which arose in ***Shashi Kiran (supra)***. The factual background, as noted by the Supreme Court in the said judgment is as under :-

“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 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 6th 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.

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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.

It 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 switchover 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.”

It would also be of significance to note the observation of the Supreme Court in regard to the categorization of the three batches of petitioners noted by the learned Single Judge of this Court. The same have been recorded in para No. 4 of its judgment, which is as under :-

“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.”

The essential issues considered by the Supreme Court are capitulated in para nos. 12 and 15 of the judgment. The same are as under:-

“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, 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.

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 cutoff 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** 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."*

After having considered the entire conspectus arising before it, the Supreme Court had made the following observations from the perspective of financial impact of the decision of the learned Division Bench of this Court, if affirmed, in para nos. 24 and 25. The same are extracted hereunder :-

"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 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.”

23. From an overall reading of the aforesaid judgment of the Supreme Court, it is clear that for those of the employees who had not exercised the option before the cut-off date i.e., 30.09.1987 and had opted beyond that date, such exercise of option would be *non est* in law. Meaning thereby, if the option was not exercised before the cut-off date or exercised after the cut-off date, the deeming provision of coming over to the GPF cum Pension Scheme would be applicable to the employees, in both the cases. In coming to such conclusion regarding the effect of deeming provision, this Court draws strength from a judgment of the Supreme Court in ***State of Bombay Vs. Pandurang Vinayak and others*** reported in **AIR 1953 SC 244**. The relevant paragraph is extracted hereunder:

“12. In East End Dwellings Co. Ltd. v. Finsbury Borough Council [East End Dwellings Co. Ltd. v. Finsbury Borough Council, 1952 AC 109 (HL)] , Lord Asquith while dealing with the provisions of the Town and



Country Planning Act, 1947, made reference to the same principle and observed as follows : (AC pp. 132-33)

“If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative, state of affairs had in fact existed, must inevitably have flowed from or accompanied it. ... The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.”

24. In the present case, if one were to apply the aforesaid principle, it is clear that the petitioner had exercised the option to continue with the CPF Scheme on 07.12.1987, which was beyond the cut-off date 30.09.1987. The exercise of such option, according to the Supreme Court in ***Shashi Kiran*** (*supra*), would be *non est* in law, in which case, the deeming provision of the O.M. dated 01.05.1987 should be given its logical conclusion. In that, the petitioner would be deemed to have come over to the GPF cum Pension Scheme.

25. That apart, Ms. Raju had submitted during arguments that the option so exercised by the petitioner to continue with the CPF Scheme *vide* her request letter dated 07.12.1987, was accepted by the respondent no.1/SPA without the approval of MHRD. Thus, this Court observes that apart from the fact that the said option was exercised by the petitioner beyond the cut-off date, it was also done without the approval of MHRD. Thus, in any case, the said exercise of option cannot bind the petitioner.

26. In that view of the matter, the arguments of learned SPC as also learned counsel for respondent No.1 would be untenable and contrary to the ratio laid down by the Supreme Court in ***Shashi Kiran*** (*supra*).



27. Another argument addressed by the respondents regarding non-applicability of the ratio in *Shashi Kiran (supra)* upon the petitioner and the judgment being delivered *in personam* is concerned, the same is noted to be rejected. This is for the reason that the Supreme Court while laying down the principles in *Shashi Kiran (supra)*, had clarified the terms and conditions stipulated in the O.M. dated 01.05.1987 and it is trite that clarification by the Supreme Court to any statute, enactment, notification or a circular, would ordinarily relate back to the date of such enactment or notification and unless the Supreme Court specifies expressly or impliedly that such ratio of principle shall apply prospectively, in such cases, it would be read retrospectively. The clarification relating back to the date of circular, it follows that the benefit thereof shall enure to all those employees who are found eligible. In that view of the matter, the submissions of the respondents are without any merit and are rejected.

28. In the present case, the contribution towards CPF Scheme has been undoubtedly continued till the date of superannuation of the petitioner. In terms of the judgment of the Supreme Court in *Shashi Kiran (supra)*, the amount accrued on account of such contribution towards CPF Scheme needs to be deposited by the petitioner with the Competent Authority along with the 8% simple interest, as directed in para 25 of the said judgment, with the option to be exercised by the petitioner upon being made available by the authorities.

29. In that view of the matter, the writ petition is allowed. The aforementioned exercised be carried out and completed within a period of eight weeks from today. Subsequent thereto, the benefits flowing to the petitioner under the GPF cum Pension Scheme would commence.



30. The present petition along with pending applications is disposed of in the above terms.

(TUSHAR RAO GEDELA)
JUDGE

APRIL 10, 2024/nd