**(2020) 01 DEL CK 0011**

**In the Delhi High Court**

**Case No :** Civil Writ Petition No. 2467 Of 2016

Chandrika Prashad Tiwari APPELLANT

Vs

Delhi Bhartiya Chikitsa Parishad & Anr RESPONDENT

**Date of Decision :** 06-01-2020

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16, 39
Delhi Bhartiya Chikitsa Parishad Rules, 2000 — Rule 9
Parishad Act, 1998 — Section 16, 16(5), 16(9), 16(10), 17, 23(6), 38
East Punjab Ayurvedic And Unani Practitioners Act, 1949 — Section 41
Indian Penal Code, 1860 — Section 21

**Citation :** (2020) 01 DEL CK 0011

**Hon'ble Judges :** A.K. Chawla, J

**Bench :** Single Bench

**Advocate :** O.P. Gehlaut, Sanjay Ghose, Urvi Mohan

**Final Decision :** Disposed Of

# Judgement

A.K. Chawla, J

By the instant writ petition, the petitioner has prayed for, as follows:

"A. extend the pension rules as applicable to employees of Delhi govt. to the employees of the Parishad, if these have not been extended/adopted as yet;

B. grant pension to the Petitioner and pay arrears on this account since his superannuation alongwith interest at bank rates;

C. pay cost of litigation thrust on the petitioner;

D. Court may issue any other direction/order to provide relief to the petitioner in the interests of justice."

2. Concisely, the facts emerging from the record are that initially the petitioner was appointed as a Peon by the Board of Ayurvedic and Unani System of Medicine in short 'AUSM', which was constituted under East-Punjab Ayurvedic

and Unani Practitioners Act, 1949 in short 'the Unani Practitioners Act, 1949, vide Memo dated 10.10.1968 in the pay-scale of Rs.70-1-80-EB-1-85 and other allowances as approved by Delhi Administration. On 20.08.1992 AUSM promoted the petitioner as LDC in the pay-scale of Rs. 950-20-1150-EB-25-1500 w.e.f. 23.04.1992. On coming into force of the Delhi Bhartiya Chikitsa Parishad Act, 1998 in short 'the Parishad Act, 1998', the Unani Practitioners Act, 1949 came to be repealed w.e.f. 01.01.2001. Resultantly, in and by virtue of the Parishad Act, 1998, the Delhi Bhartiya Chikitsa Parishad, in short, 'the Parishad', substituted AUSM. On 30.06.2005, the petitioner retired from the services of the Parishad. Later, the petitioner came to be employed by the Parishad as UDC on contract basis w.e.f. 21.02.2006 on a consolidated salary of Rs.17,060/- p.m. His such contractual employment was extended from time to time till the year 2015. It appears, in the year 2012, the petitioner and one another, made representations to the Registrar of the Parishad for being granted pensionary benefits. To that, no response is said to have been given. Thus, the instant writ petition.

3. The petition proceeds on the premise that on the Parishad Act, 1998 coming into effect and Delhi Bhartiya Chikitsa Parishad Rules, 2000 in short 'the Parishad Rules' having been notified thereunder w.e.f. 23.08.2001, the petitioner was entitled to pension. According to him, the rules and regulations governing the employees of Government of Delhi were applicable to Parishad staff in all service matters. It is the case of the petitioner that he has been denied pension in violation of the fundamental rights of equality as enshrined under Articles 14 and 16 of the Constitution of India inasmuch as while the employees of the Central Government and the State Government were extended the benefit of pension, the employees of the Parishad were denied such benefit arbitrarily. According to the petitioner, the Parishad forms part of the State and on account thereof, the conditions of service and the rules and the regulations governing the employees of Government of Delhi were applicable to the employees of the Parishad. As a corollary, it is pleaded that the pension in old age is essential for one's sustenance and the State, in the given case-the Parishad, was bound to provide for adequate means of livelihood to its employees as enshrined under Article 39 of the Constitution of India.

4. The respondents refute the claim of the petitioner, on all counts. According to the respondents, the Parishad was an autonomous body and governed by its own rules and regulations, and, presently, it was a self sustaining body, which was not beneficiary of Grants-in-aid from the Government of NCT of Delhi since FY 2012-13 inasmuch as it was able to generate funds for carrying out the mandate of the Parishad Act, 1998 through notified fees charged on account of registration / renewal of registration of Ayurvedic and Unani Practitioners of Delhi. The respondents also state that as per the Delhi Ayurvedic and Unani Practitioners Rules, 1950, the terms and conditions of the service of the staff were same as were applicable to the staff of Delhi Administration but for entitlement towards pension. Simultaneously however, the respondents also state that the petitioner has been the beneficiary of Contributory Provident Fund

 

Scheme and had received the proceeds thereof. Thus, according to the respondents, the petition was unmerited.

5. In the rejoinder, the petitioner has also pleaded that sub-section (10) of Section 16 of the Parishad Act, 1998 requires the Parishad to adopt the Central Civil Services Rules mutatis mutandis and that, Section 38 prohibits framing of the Regulations inconsistent with the said Rules. To reinforce such plea, the petitioner seeks to advert to Rule 9 of the Parishad Rules which provides that in general all rules and regulations governing the employees of Government of Delhi shall be applicable to Parishad staff in all service matters.

6. In the submissions of Mr. Gehlaut, ld. counsel for the petitioner, the Parishad was the creation of a Statute i.e. the Parishad Act, 1998, and, as provided for under the said Act, the affairs of the Parishad were under substantial control of the Government of NCT and therefore, it could not be disputed that the Parishad was a part of the State or to say, its own agency. More so, in his submissions, sub-section (10) of Section 16 of the Parishad Act, 1998 specifically provides that the Parishad shall adopt the Central Civil Services Rules mutatis mutandis and in pursuance of such statutory provisions, the Parishad Rules, 2001, especially, Rule 9 thereof, stipulates the conditions of service of the Registrar and the other staff to be governed by the rules and regulations governing the employees of Government of NCT of Delhi. The petitioner also asserts that the "conditions of service" as stipulated in Rule 9 would mean all conditions which regulate the holding of post by the person right from the time of appointment till his retirement and even beyond. In his submissions, therefore, when the Central Civil Services Rules were to be applied mutatis mutandis for the Registrar and the other staff/employees of the Parishad, the CCS (Pension) Rules would be equally applicable. In Mr.Gehlaut's submissions, D.P. & P.W., OM No.4/1/87-P.I.C.-I dated 01.05.1987, which came to be issued in pursuance of the 4th Central Pay Commission also provides that the employees, who were governed by the Contributory Provident Fund Scheme in short ' the CPF Scheme', would be covered by the Pension Scheme instead of CPF Scheme and all those, who did not consciously opt out of the Pension Scheme, were deemed to have opted for the Pension Scheme. In support of such submissions, Mr.Gehlaut placed reliance upon 'State of Madhya Pradesh vs. Sardul Singh' 1970 (3) SCR 302; 'I.N. Subba Reddy vs. Andhra University and others' AIR 1976 Supreme Court 2049; 'Asger Ibrahim Amin vs. Life Insurance Corporation of India' 2015 XI AD (S.C.) 384; and 'Sachchidanand Singh vs. Bihar State Food & Civil Sup. Corp. Ltd. and others' 2017 (2) SLR 667 (S.C.).

7. In the submissions of Mr. Ghose, ld. counsel for the respondents, the Parishad is an autonomous body and was therefore entitled to frame its own rules and regulations, though, subject to approval of the Government of NCT of Delhi. In his submissions, the matters of pension have serious financial implications, which, ordinarily require concurrence of Union of India and therefore, in the absence of a specific rule or regulation framed by the Parishad and the approval

 

thereof having been granted by the appropriate Government(s), the benefit of pension sought by the petitioner was not permissible. Mr. Ghose also contended that the Parishad Rules, which provide for the rules and regulations governing the employees of Government of Delhi being made applicable to Parishad staff in general, by itself, would not mean applicability of each and every rule and regulation governing the employees of Government of Delhi to the staff of the Parishad. In his submissions, Rule 9 in its opening words itself says that the rules and regulations governing the employees of Government of Delhi were to apply in general, which implied not in their entirety. In his submissions, had it been the intention that all the rules and regulations governing the employees of Government of Delhi were to be applicable, there was no necessity to use the expression 'in general' for their applicability to the staff of the Parishad and that, such leverage was provided to the Parishad to take its own call in such context. In his submissions, when the Parishad rules do not make provision for pension but for salary and allowances, leaves, retirement and provident fund, any claim therefor would not be sustainable. Also, according to him, the adoption of the Central Civil Services Rules mutatis mutandis, as provided for under sub-section (10) of Section 16 of the Parishad Act, 1998, does not imply the applicability of the CCS (Pension) Rules. To bring home such submission, Mr.Ghose drew attention to dictionary meaning in the Oxford's English reference dictionary and the Black's law dictionary. In the Oxford English Reference Dictionary mutatis mutandis is defined as 'with necessary changes in points of detail', and, in the Black's Law Dictionary, it is defined as 'with the necessary changes in points of detail, meaning that matters of things are generally the same, but to be altered where necessary as to names, offices and the like'. It was also contended that the Court cannot substitute a new pension plan in place of an existing one inasmuch as each service and each institution has its own set of service conditions by which the employees are governed. It was also contended by Mr.Ghose that the issue agitated by the petitioner was in relation to a stale claim inasmuch as the petitioner had filed the instant petition after a period of almost 12 years of his superannuation. In his submissions, the representations made by the petitioner in the year 2012 did not enure a fresh lease of life to a stale claim. In support of such submissions, reliance was placed upon 'State of Jammu & Kashmir vs. R.K. Zalpuri & Ors' AIR 26 SC 3006; 'Sanjay Plastic Industries vs. DSIDC & Ors' ILR (2010) Supp. (3) Delhi 153; 'State of Orissa vs. Pyarimohan Samantaray' AIR 1976 SC 267; 'Sanjay Plastic Industries vs. DSIDC & Ors.' ILR (2010) Sup. (3) Delhi 153; 'V.M. Gadre (Dead) by LRs and Ors vs. M.G. Diwan and Ors' (1996) 3 SCC 454 and 'M/s Ashok Service Centre and others vs. State of Orissa' (1983) 2 SCC 82.

8. The Parishad Act, 1998, which is an Act enacted by the Legislative Assembly of the National Capital Territory of Delhi, received the assent of the President on 04.03.1999. It came into being repealing the Unani Practitioners Act, 1949, in and by virtue of Section 41 thereof. As the petitioner seeks the reliefs provided for under the Parishad Act, 1998 and the Rules framed thereunder, the provisions

 

of the Unani Practitioners Act, 1949 or the Rules framed thereunder are not required to be gone into.

9. The Parishad is the creation of the Parishad Act, 1998, which elaborately prescribes the mode and the manner the Parishad is to be created and how its affairs are to be managed. In the said context, one may advert to a few of the statutory provisions thereof, as under:

"CHAPTER II

ESTABLISHMENT OF THE DELHI BHARATIYA CHIKITSA PARISHAD

3. Establishment, constitution and incorporation of the Parishad- (1) With effect from such date as the Government may, by notification in the official Gazette notify, there shall be constituted for the purposes of this Act a Parishad to be called "The Delhi Bharatiya Chikitsa Parishad".

(2) to (5) xxx xxx xxx xxx

4. Election of members- (1) The election of practitioners entitled to be members of the Parishad under clause (b) of sub-section (3) of section 3, shall be held at such time and place and in such manner as may be prescribed by rules and where any dispute arises regarding any such election, it shall be referred to the Government, whose decision shall be final.

(2) xxx xxx xxx xxx

5. Term of office- The term of office of elected and nominated members shall be for a period of five years commencing from the date on which the first meeting of the Parishad is held after the members are elected under sub-section (3) of section 3 ......................................................................

6. Casual Vacancies- (1) A casual vacancy in the office of the President, or the Vice-President or a member elected under clause (b) of sub-section (3) of section 3 shall be filled by election..............................................................

(2) xxx xxx xxx xxx

(3) xxx xxx xxx xxx

7. Resignation- Any member may at any time, resign his office by a letter addressed to the President. Such resignation shall take effect from the date on which it is accepted by the Parishad.

Provided that the President shall address his resignation to the Vice-President.

8. Disabilities for continuing as member- If any member during the period for which he has been nominated or elected-

(a) xxx xxx xxx xxx

(b) xxx xxx xxx xxx

 

9. Disqualifications- (1) A person shall be disqualified for being elected or nominated as, and for continuing as, a member-

(a) to (f) xxx xxx xxx

(2) xxx xxx xxx

10. Powers, duties and functions of the Parishad- Subject to such conditions as may be prescribed by or under the provisions of this Act, the powers, duties and functions of the Parishad shall be-

(a) to maintain the live register, and to provide for the registration of medical practitioners;

(b) to hear and decide appeals against any decision of the Registrar;

(c) to prescribe a code of ethics for regulating the professional conduct of the practitioners;

(d) to reprimand a practitioner, or to suspend or remove his name from the register, or to take such other disciplinary action against him as may, in the opinion of the Parishad, be necessary or expedient;

(e) xxx xxx xxx xxx

(f) xxx xxx xxx xxx

(g) xxx xxx xxx xxx

(h) xxx xxx xxx xxx

11. Executive Committee- (1) The Parishad shall, as soon as may be, constitute an Executive Committee consisting of the President as ex-officio member, and such other member (number not exceeding six), elected by the Parishad from among its members, as may be prescribed.

(2) xxx xxx xxx xxx

(3) xxx xxx xxx xxx

(4) xxx xxx xxx xxx

12. Fee and allowances to members of the Parishad and of the Executive Committee- There shall be paid to the President, the Vice President and other members of the Parishad, and to the members of its Executive Committee, such fees and allowances for attendance at meetings, and such travelling allowance, as shall from time to time be prescribed.

13. Validity of proceedings-

xxx xxx xxx xxx

14. Time and place of meeting of the Parishad-

 

xxx xxx xxx xxx

15. Procedure meetings of the Parishad-

xxx xxx xxx xxx

16. Registrar- (1) (a) The Parishad shall, with the previous sanction of the Government appoint a Registrar who shall be a qualified graduate of the Bharatiya Chikitsa (Indian System of Medicine). The Registrar shall be the Secretary and who may also, if deemed expedient, act as Treasurer.

(b) The Parishad may also employ such other persons as may be approved by the Government and possess the qualification prescribed by regulations to carry out the purposes of this act.

(2) xxx xxx xxx xxx

(3) xxx xxx xxx xxx

(4) The Parishad may, with the previous sanction of the Government, suspend, dismiss or remove any person appointed as the Registrar or impose any other penalty upon him in the manner as may be prescribed.

(5) Save as otherwise provided by this Act, the salary and allowances and other conditions of service of the Registrar and employees of the Parishad shall be such as may be approved by the Government.

(6) The Registrar shall be the Secretary and the Executive Officer of the Parishad. He shall attend all meetings of the Parishad and of its Executive Committee, and shall keep minutes of the meetings and names of members present and of the proceedings of such meetings.

(7) xxx xxx xxx xxx

(8) xxx xxx xxx xxx

(9) The Registrar and employees of the Parishad shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (Central Act 45 of 1860).

(10) The Parishad shall adopt the Central Civil Services Rules mutatis mutandis."

10. Chapter-III of the Parishad Act, 1998 from Section 17 onwards also lays down the mode and the manner in which the Registrar shall prepare and maintain the registers. It inter alia also lays down the powers of the Parishad as also the Executive Committee with regard to the disciplinary action including removal of names from the register and sub-section (6) of Section 23, lays down as follows:

"(6) All the inquiries under this section shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code, 1960 (Central Act 45 of 1860)."

 

11. A bare glance at the foregoing statutory provisions of the Parishad Act, 1998 does show that the Parishad is not only a creation of the Statute, the control of the Government over its affairs be it its name, its constitution, the process of election of its members and their powers or the duties and functions to be discharged by the Registrar or be it the salary and allowances and other conditions of service of the Registrar and employees of the Parishad, which require approval of the Government, is extensively pervasive. The statutory provision as contained in sub-section (5) of Section 16 of the Parishad Act, which lays down that the salary and allowances and other conditions of service of the Registrar and employees of the Parishad shall be such as may be approved by the Government save as otherwise provided by the Parishad Act, equally leaves no doubt that the service conditions of the Registrar and the other employees of the Parishad were substantially under the control of the Government. Nothing emerges from the Parishad Act to form an opinion otherwise nor has it come to be pointed out either in the written submissions or during the course of hearing. More so, when the Parishad itself is a creation of the Statute i.e. the Parishad Act, 1998, which inter alia provides for the approval as regards the salary and allowances and other conditions of service of the Registrar and the employees, who are to be governed by CCS Rules, it gets clear that the employees of the Parishad are fundamentally at par with the employees of the Government.

12. The foregoing statutory provisions leave no doubt that the Registrar and the employees of the Parishad in relation to their service matters are to be governed by the CCS Rules. The predominant feature of Section 16 especially sub-section (10) is to that effect only. The contention of Mr.Ghose that the mutatis mutandis application of CCS Rules as provided for under Section 16(10) would imply leverage to the Parishad to not to adopt so, would be contrary to the meaning and the intent thereof. The expression mutatis mutandis as used in Section 16(10) cannot have the effect of negating the very provision made. The meaning of mutatis mutandis in Oxford's English dictionary and Black's law dictionary much relied upon by Mr.Ghose in support of his submission in fact and in effect, conveys otherwise. The dictionary meanings of mutatis mutandis are 'with necessary changes in points of detail' or 'with the necessary changes in points of detail, meaning that matters of things are generally the same, but to be altered where necessary as to names, offices and the like'. The meanings so provided in the dictionaries and the ratio of the judgment of the Supreme Court in Ashok Service Centre's case (supra) relied upon by Mr.Ghose, by no means even suggest that the basic fibre of the material to which any changes can be made can be ignored or put to oblivion. Contentions made to the contrary are therefore, misconceived and misplaced.

13. The salary and allowances and other conditions of service of the Registrar and employees of the Parishad had the approval of the Government being not in issue, the Court also cannot ignore the general proposition of law that the pension to the eligible employees is in the nature of compensation for the service rendered in the past. In the said context, one may advert to the observations

 

made by the Supreme Court in 'Kerala State Road Transport Corporation vs. K.O. Varghese and Ors.' (2003) 12 SCC 293, as under:

"17. Pension to civil employees of the Government and the defence personnel as administered in India appear to be a compensation for service rendered in the past. However, as held in Dodge v. Board of Education a pension is closely akin to wages in that it consists of payment provided by an employer, is paid in consideration of past service and the purpose of helping the recipient meet the expenses of living. This appears to be the nearest to our approach to pension with the added qualification that it should ordinarily ensure freedom from underserved want."

14. Taking note of the foregoing, when the Court adverts to sub-Section (10) of Section 16 which stipulates that the Parishad shall adopt the CCS Rules mutatis mutandis, it only lends support to the view that the employees of the Parishad were required to be bound by all the CCS Rules. The words 'shall adopt', when read in juxtaposition with the words 'mutatis mutandis', unambiguously stipulate that the CCS Rules were to apply to the employees of the Parishad, without any exception. When, the subject provision provides for adoption of the Civil Services Rules by the Parishad, it is in the nature of a statutory mandate. The adoption thereof, as laid in the subject provision, it does not require much emphasis to say, it is so, as the Parishad by its creation is an autonomous body and nothing beyond. It does not require elaboration that the statutory provision and the mandate provided thereunder is to prevail not over the autonomous body created under it but the rules framed thereunder as well. The language used in Section 16(10) of the Parishad Act is unambiguous and its plain reading leaves no doubt of the intention thereof. It stipulates the application of the Central Civil Service Rules to the Registrar and the employees of the Parishad, who, as per the provisions of the subject Act especially, sub-Section (9) of Section 16 are equally deemed to be public servants within the meaning of Section 21 of the Indian Penal Code, 1860 (Central Act 45 of 1860). When a plain reading of Section 16(10) is unambiguously so clear, there is no need to traverse beyond. In Union of India and Anr. vs. National Federation of the Blind and Ors. (2013) 10 SCC 772, the Supreme Court referring to the basic rules of interpretation of statutes, has held as under:

"45. It is clear that when the provision is plainly worded and unambiguous, it has to be interpreted in such a way that the court must avoid the danger of a prior determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somehow fitted. While interpreting the provisions, the court only interprets the law and cannot legislate it. It is the function of the legislature to amend, modify or repeal it, if deemed necessary.

46. The head of a section or marginal note may be relied upon to clear any doubt or ambiguity in the interpretation of the provision and to discern the legislative intent. However, when the section is clear and unambiguous, there is no need to

 

traverse beyond those words, hence, the headings or marginal notes cannot control the meaning of the body of the section. Therefore, the contention of Respondent 1 herein that the heading of Section 33 of the Act is 'Reservation of posts" will not play a crucial role, when the section is clear and unambiguous."

15. In the submissions of Mr.Ghose, the expression 'In general' used in the beginning of Rule 9 connotes that the Parishad, which was an autonomous body, was at liberty to not to apply any of the CCS Rules, which may be applicable to the Government employees. Prima facie, though his submission appears to be sound, on close examination one finds it to be without any legs to stand on. Nothing is borne out from the record-it may be the counter-affidavit or the written submission filed that the Parishad ever took a decision to not to apply any of the CCS Rules. It is apparent, it could not be so as it would be in violation of the mandate of Section 16(10)-a statutory provision.

16. Rules are in the nature of subordinate legislation, which are supplementary to the Statute providing for their creation rather than having an overriding or overreaching effect. Seen in that context, the expression 'In general' appearing in Rule 9 cannot be given a meaning which goes against the mandate of the Statute. Rule 9 of the Parishad Rules reads as under:

"9. CONDITIONS OF SERVICE OF REGISTRAR AND OTHER STAFF AND THE SUPERVISORY POWERS AND DUTIES OF REGISTRAR

In general, all rules and regulations governing the employees of Govt. of Delhi shall be applicable to Parishad staff in all service matters.

(1) xxx xxx xxx xxx

(2) Other employees of the Parishad

xxx xxx xxx xxx

(3) Attendance

(a) The Registrar and other employees of the Parishad shall attend office at the hours as notified by the Government for Government offices in Delhi, and at other times when considered necessary.

(b) xxx xxx xxx xxx

(4) Salary & Allowances in case of Registrar, Dy. Registrar & Other Staff:-

The Salary & Allowances in case of Registrar and Deputy Registrar may be allowed at par with the Salary and Allowances of Registrar and Deputy Registrar of Delhi Medical Council.

Salary & Allowances in case of other staff is allowed at the rates as applicable to the employees of Delhi Government.

(5) Leave

 

(a) xxx xxx xxx xxx

(b) Every employee of the Parishad (including the Registrar and temporary employees) may be granted leave according to the provisions of the Central Civil Services Rules as in force in the National Capital Territory of Delhi.

(6) Retirement

The normal age of retirement for all employees will be as applicable to Govt. of NCT of Delhi staff except for the posts of the Registrar/Deputy Registrar/ Assistant Registrar, where it shall be 62 years.

Provided the Parishad may, with the previous sanction of the Government, grant extension of service to any employee for periods not exceeding one year at a time.

(7) Resignation

(a) xxx xxx xxx xxx

(b) xxx xxx xxx xxx

(8) Termination of Services

(a) xxx xxx xxx

(b) xxx xxx xxx

(9) Provident Fund

The Parishad shall establish a Provident Fund, which shall be administered, maintained and used in accordance with the rules prescribed.

(10) to (19) xxx xxx xxx"

17. Rule 9 inter alia though stipulates establishing of a Provident Fund to be administered, maintained and used in accordance with the rules prescribed, these rules by itself do not provide for exclusion of any of the CCS Rules, nor, as observed to earlier, it has come to be asserted or pointed out that the Parishad on its part ever excluded application of any of the CCS Rules, assuming, it could be so done in the face of the mandate of Section 16(10). Provision made for establishing a Provident Fund by the Parishad by no means can be construed to mean exclusion of any Pension Scheme either on exercise of an option by the employees or otherwise.

18. On 01.05.1987 the Government of India issued OM No.4/1/87/PIC-I for implementation of the recommendations of the 4th Central Pay Commission and relevant to the subject in hand, it provided as under:

"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."

19. The Parishad Act, 1998 came into force w.e.f 11.03.1999 and the Parishad Rules, 2000 framed thereunder came to be modified on 23.08.2001. The foregoing OM No.4/1/87/PIC-I dated 01.05.1987 issued by the Government of India ipso facto was of no avail to the petitioner or the other employees of the Parishad. The Court however takes judicial notice of the notification No. F.No. 5/7/2003-ECB & P2 dated 22.12.2003 issued by the Government of India providing for a new restructured defined contribution pension system for new entrants. It would be relevant to take note of for the reason that CCS Rules, which would inevitably include the CCS (Pension) Rules, are seen to be applicable to the employees of the Parishad.

20. Coming to the claim of the petitioner, he has been the beneficiary under the CPF Scheme. Facts and the circumstances of his case lead to irresistible conclusion for his acquiescence to such Scheme. There is nothing on record to show that during the period of his regular service or at the time of his superannuation on 30.06.2005 or shortly thereafter, he even sought to agitate any of his claims for being entitled to pension. May be, it suited him at that point of time. Having availed the terminal benefits inter alia under CPF Scheme at the time of superannuation on 30.06.2005, his claim besides being barred on account of the principles of acquiescence and waiver, is also hit by delay and laches. His making representations to assert for pension scheme as against the scheme in the year 2012 and filing the writ petition in 2016 founded on OM No.4/1/87/PIC-I dated 01.05.1987, are of no avail to him in the given factual conspectus. Though, according to the petitioner, the delay was unintentional and occurred on account of ill-advise of two Advocates-such plea even when assumed valid, the inordinate delay in approaching the Court cannot be seen in isolation of his conduct of acquiescence or waiver. More so, having availed the financial benefits under the Scheme-the application whereof he did not assail or extend any challenge either during the tenure of his service or shortly thereafter. The plea raised that the petitioner was given wrongful advise by two Advocates, and, that resulted in delay of more than 11 years in approaching the Court, by itself

 

reflects that as far as the petitioner was concerned, he was conscious of his legal rights throughout. On the aspect of delays and laches, placing reliance on Asger Ibrahim's case (supra), it has been contended on behalf of the petitioner that the claim towards pension was a continuous cause of action and the relief could be granted even when there was delay in seeking relief from the Court. There cannot be any dispute about the given proposition of law. However, each case has to be dealt with on its own facts and merits. The case of the petitioner is not a case of denial simplicitor of pension on the retirement. Rather, it is for shift from the applicability of one scheme to the other that too, having availed the financial benefits under the existing one at the time of his superannuation. The Court is thus of the considered view that the claim of the petitioner is also hit by delays and laches and would therefore, refrain to exercise its extra-ordinary jurisdiction on that count as well as far as his claim is concerned.

21. The reliefs sought in the writ petition however cannot be rejected in their entirety in view of the observations made in the preceding paragraphs. When the employees of the Parishad are shown to be the beneficiary under the CPF Scheme, why, they should not be considered to be extended the benefit of pension, does require due consideration. More so, when OM No.4/1/87-P.I.C.-I dated 01.05.1987 is shown to have been applicable to CPF beneficiaries. A consideration on the given aspect cannot be denied on the premise that the Parishad, as of now, was a self sustaining body, without being the beneficiary of grants-in-aid as contended on its behalf. The statutory provisions cannot be ignored on the given premise. In observing so, the Court is not oblivious of the fact that the subject matter equally invites due consideration of various financial aspects by the Parishad and/or the Government of NCT of Delhi, and, possibly, Central Government, the statutory rights of the employees however cannot be ignored either. In doing so, on the principles contained in OM No.4/1/87-P.I.C.-I dated 01.05.1987, a cut-off date can be fixed, when a provision comes to be made for extending benefits of pension to the CPF beneficiaries of the Parishad.
22. In view of the foregoing, a Writ of Mandamus is issued to the respondents to take a decision to introduce Pension Scheme to the employees of the Parishad from a date to be fixed and in doing so, the benefit of pension may be extended to the existing as also the retired / superannuated employees, as an exception. The decision be so taken within six months from today.

23. Writ petition stands disposed of in the above terms. No orders as to costs.

 