

(2021) 07 DEL CK 0040

In the Delhi High Court

Case No : Civil Writ Petition No. 8601 Of 2010, 3426 Of 2012, 6747 Of 2014,
Civil Miscellaneous No. 40597, 50302, 52917 Of 2019, 7147, 29745
Of 2020, 2155, 3415 Of 2021

Rajiv Raizada

APPELLANT

Vs

UOI And Ors

RESPONDENT

Date of Decision : 05-07-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 226

Export (Quality Control and Inspection) Act, 1963 — Section 3, 17

Citation : (2021) 07 DEL CK 0040

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : R.K. Saini, Ankit Singh, Anil Soni, L. R. Khatana, Paritosh Budhiraja,
Dev P. Bhardwaj, Jatin Teotia, L. R. Khatana, Kripa Shankar Prasad, Ritu
Rajkumari, Ekta Rani

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J

CM. No. 2155/2021 in W.P.(C) 6747/2014

This application has been filed by the respondent No.2 herein for brining on record additional documents. For the reasons stated in the application, the additional documents are taken on record.

Application is allowed and disposed of.

CM. No. 3415/2021 in W.P.(C) 3426/2012

This application has been filed by the respondent Nos.2 & 3 herein for brining on record additional documents. For the reasons stated in the application, the additional documents are taken on record.

Application is allowed and disposed of.

W.P.(C) 6747/2014

W.P.(C) 8601/2010

W.P.(C) 3426/2012

1. Though, the writ petitions were heard on different dates, as identical issue arises for consideration, they are being disposed of by this common order, by referring to the facts of each writ petition separately.

2. The petitioners are employees of the Export Inspection Council of India (â??EICâ??, for short), a statutory organisation under the Department of

Commerce, Ministry of Commerce & Industry, duly arrayed as a respondent in all three Writ Petitions. EIC was established under Section 3 of the

Export (Quality Control and Inspection) Act, 1963 to ensure sound development of export trade in India through quality control and inspection prior to

shipment/export and for matters connected therewith. For furtherance of the objectives of the Act, five Export Inspection Agencies (â??EIAâ??, for

short) were also established at Bombay, Calcutta, Cochin, Delhi and Madras in the year 1966. EIAs are under direct technical and administrative

control of EIC. Employees of EIC & EIAs are liable to serve in both EIC and EIAs. The present writ petitions revolve around the issue of whether or

not the petitioners are entitled to change over from the Contributory Provident Fund (â??CPFâ??, for short) to the General Provident Fund-cum-

Pension Scheme (â??Pension Schemeâ??, for short).

W.P.(C) 6747/2014

3. The present petition has been filed with the following prayers:

â??In the above facts and circumstances of the case, it is most respectfully prayed that this Hon'ble Court may be pleased to issue: -

(a) A writ of certiorari calling for the records of the case for perusal;

(b) A writ of certiorari quashing letter dated 07.11.2013 of Respondent EIC whereby the representation of the petitioner was rejected, being

illegal, arbitrary, discriminatory and against the principles of natural justice, equity and good conscience;

(c) A writ of Mandamus, commanding the respondents to treat the petitioner as having been automatically covered by the Pension Scheme

and GPF Scheme, once, the cut-off date of 31.10.1987, was crossed and settle

the case of the petitioner accordingly.

d) A writ of Mandamus commanding the Respondents to pay cost of this petition to the petitioner.

e) Any other writ or orders as this Hon'ble Court may deem fit in the facts and circumstances of this case and in the interest of justice.â??

4. It is contended by Mr. R.K. Saini, learned counsel appearing on behalf of the petitioner, that the petitioner is aggrieved by the letter dated

November 07, 2013 of EIC, the respondent no. 2 herein, whereby the representation of the petitioner for treating him as having automatically covered

by the Pension Scheme in view of the circular dated July 02, 1987 issued by the EIC, was rejected.

5. Petitioner initially joined the services of EIA Bombay on November 15, 1974 as Assistant Director (Tech) and since January 2010 is working as an

Additional Director in EIC.

6. It is the case of the petitioner that since inception of EIC and EIAs and up to October 23, 1981, the employees of EIC and EIAs were governed by

the CPF Scheme.

7. It is averred by the petitioner that, vide EIC Circular No. EIC/D(Q/C)/56/81 dated October 16, 1981, respondent no.2 informed the employees of

EIC and EIAs of the intended introduction of the Pension Scheme for their benefits through the Export Inspection Council, Pension and General

Provident Fund Rules, 1981. The employees were directed to exercise, by March 31, 1982, their option either in favour of the Pension Scheme or to

continue under the CPF Scheme.

8. The Central Civil Services (Pension) Rules, 1972 and the General Provident Fund (Central Services) Rules, 1960, as amended from time to time

were made applicable to the employees of EIC and EIAs vide Gazette Notification No. S.O. 2922 dated October 24, 1981, published in The Gazette

of India and attached to this petition as Annexure P-1, by virtue of which: -

â??(a) all employees of EIC and EIAs, entering service on or after 24.10.1981, were to be automatically governed by the Pension &

General Provident Fund Scheme;

(b) all employees who entered service prior to 24.10.1981 and were governed by CPF were to be given an option to continue with CPF

Scheme to be exercised by 31st March 1982; and

(c) all other employees who did not exercise option to continue under CPF by 31st March 1982 were deemed to be governed only by

Central Civil Services (Pension) Rules and the General Provident Fund (Central Services) Rules as amended from time to time.â??

9. It is stated that the last date of March 31, 1982 (fixed statutorily vide Gazette Notification) for employees of EIC and EIAs to exercise the option to

continue under the CPF Scheme was extended by the EIC from time to time and last such extension was granted vide Administrative Circular dated

November 02, 1985, giving time till March 31, 1986. It was contended by Mr. Saini that no Gazette Notification was issued to extend the deadline of

March 31, 1982 given in the statutory order of October 24, 1981. Hence, the EIC was not empowered to extend the deadline of March 31, 1982 by

way of administrative circulars and the legal implications that followed the administrative instructions extending the cut-off date for exercise of the

options and the options received after March 31, 1982, became null and void.

10. Mr. Saini contended that in view of the Gazette Notification the petitioner automatically became a member of the Pension Scheme upon crossing

of the cut-off date of March 31, 1982, regardless of the fact that a number of employees, including the petitioner had submitted their options to

continue under the CPF Scheme in December 1983 and March 1986. He further stated that the employees who did not submit their options for

continuing under the CPF Scheme by March 31, 1982 were deemed to have come over to the Pension Scheme.

11. It is further stated that the Government, accepting the recommendation made by the 4th Central Pay Commission (â??CPCâ??, for short) that all

CPF Scheme beneficiaries in service as on January 01, 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, issued orders vide O.M. No. 4/1/87-PIC-I (â??O.M.â??, for short) dated May 01, 1987 of the

Department of Pension and Pensioners' Welfare, Ministry of Personnel, Public Grievances and Pensions, for its implementation in the manner

indicated in the said O.M..

12. In effect, the said O.M. commanded that all CPF Scheme beneficiaries who were in service on January 01, 1986 and continued to be in service on

the date of issue of the O.M., viz. May 01, 1987, will be deemed to have come over to the Pension Scheme unless they specifically opted by

September 30, 1987 to continue under the CPF Scheme.

13. Mr. Saini stated that the action for switching over the employees to the Pension Scheme, transfer of employees' contribution together with

interest thereon at the credit of their CPF accounts to the GPF accounts allotted to the employees etc., were to be taken by the employer(s) without

any further action on the part of such employee(s).

14. It is stated that as per the O.M. dated May 01, 1987 issued by the government, the option which was to be exercised by the employees was of

opting to continue under the CPF Scheme and not joining the Pension Scheme, as was very clear from the format prescribed. The switchover to

Pension Scheme was deemed automatic in case the employees did not submit any option by the stipulated date. The format of the form of option as

prescribed in the O.M. dated May 01, 1987 is as shown as under: -

I, _____(name), employed as _____(designation) in the Ministry / Department / Office of _____(name of the Ministry /

Department / Office), do hereby opt to continue under the Contributory Pension Scheme in terms of the Dept. of Pension and Pensioners'

Welfare O.M. No. 4/1/87-PIC.I dated 1.5.1987.

(Signature of the Optee)

15. It is the contention of Mr. Saini that, therefore the option which had to be exercised, was only with regard to continuation by an employee under

the CPF Scheme and not otherwise. There was no requirement for employees to submit an option if they wanted to be covered under the Pension

Scheme as that was automatic, in view of the deeming provisions incorporated in paragraph 3.1 and 3.2 of the O.M. dated May 01, 1987.

16. The EIC, on the basis of the recommendation of the 4th CPC and the O.M. dated May 01, 1987 issued a Circular dated July 02, 1987 conveying

its decision to extend the said orders to the CPF beneficiaries in EIC and EIAs on the same terms and conditions as stipulated by the Government in

the O.M. dated May 01, 1987 except that the last date of receipt of options to continue under the CPF Scheme was October 31, 1987.

17. That the salient features of the scheme, as contained in EIC Circular dated July 02, 1987 issued by the respondent no.2 - EIC are quoted

hereunder: -

(a) All those who are governed by the CPF scheme who were in service as on 1.1.1986 and who are still in service on the date of issue of

this circular shall be deemed to have come over to Export Inspection Council Pension and General Provident Fund Rules 1981 as notified

by the Ministry vide No. S.O. 2922 dated 24.10.1981.

(b) The Employees of the category mentioned above will, however, have an option to continue to remain under the CPF Scheme, if they so

desire. The option will have to be exercised and conveyed to the concerned head of office latest by 31 Oct. 1987 in the form enclosed to the

circular, if the employees wish to continue under the CPF Scheme. If no option is received by the head of office by 31.10.1987 the

employees will be deemed to have come over to the Pension Scheme.

(f) The option once exercised, shall be final.

18. It is the contention of Mr. Saini that the O.M. dated May 01, 1987 issued by the government, as recommended by the 4th CPC was adopted in

toto by the EIC in its Circular dated July 02, 1987, except that the cut-off date specified therein was October 31, 1987 as against September 30, 1987

mentioned in the aforesaid O.M.

19. It is the case of the petitioner as contended by his counsel that since he did not exercise any option in response to EIC circular dated July 02, 1987,

he was deemed to have come over to the Pension Scheme.

20. Pursuant to the O.M. dated May 01, 1987, all the CPF Scheme beneficiaries/ employees of EIC and EIAs who were in service on January 01,

1986 and were still in service on July 02, 1987 (the date of circular issued by respondent no.2/EIC) were necessarily required to exercise fresh written

options by the last date viz. October 31, 1987 to continue under CPF Scheme irrespective of the fact that they were already covered under that

Scheme as on July 02, 1987. Additionally, the employees who did not submit options to continue under the CPF Scheme were to be deemed to have

come over to the Pension Scheme, notwithstanding the fact that they were under the CPF Scheme as on July 02, 1987. Mr. Saini asserted that this

position was reconfirmed by the EIC in their letter dated October 09, 1987. To buttress his arguments, Mr. Saini has relied upon the judgment of the

Supreme Court in Union of India and Ors. vs. S.L. Verma and Ors. (2006) 12 SCC 53 and a decision of this Court on April 30, 2014 in W.P.(C)

5631/2010 titled N.C. Bakshi vs. Union of India and Ors.

21. It is also stated that as per the paragraphs 2(b), 3 & 4 of the Circular dated July 02, 1987 (which were analogous to paragraph 3.2, 4.2 and 4.3 of

GOI O.M. dated May 01, 1987) the EIC was required to take suo-moto action to bring over those employees to the Pension Scheme, to discontinue

subscriptions/contributions to their CPF accounts and to transfer employees contribution together with interest thereon at the credit of their CPF

accounts to the GPF account to be allotted, and transfer employer's contribution together with interest thereon at the credit of their CPF accounts

to EIC and EIAs account without any request or further action on the part of the employees.

22. It is stated that in response to an RTI application dated October 23, 2013, filed by the petitioner, the Department of Pension and Pensioner'

Welfare, Ministry of Personnel, Public Grievances and Pensions, vide its letter No. 38/9/2013-P&PW(F) dated November 08, 2013 has confirmed that

the Government had not given any relaxation to any Department/Organisation for not implementing orders contained in paragraph 3 and last line of

paragraph 3.2 of its O.M. dated May 01, 1987.

23. The EIC and EIAs in view of the Circular dated July 02, 1987 and the letter dated October 09, 1987 were required to make suitable entries in the

service books of the employees on their own whether the employees opted for continuation in CPF Scheme or were deemed to be covered by the

Pension Scheme. The respondent has on one hand made entries in the service books of some employees who have come over to the Pension Scheme

as 'deemed' Pension and GPF cases, on the other hand they have not made any such entries in many identical/similar cases. It is the averment

of the petitioner that he was continued to be treated as a CPF beneficiary, for no fault on his part.

24. Mr. Saini contended that there are many other similarly placed employees, who had earlier opted for CPF Scheme but did not submit any option,

pursuant to the Circular dated July 02, 1987 and were 'deemed to have come over to the pension scheme' by the respondent and their terminal

benefits were regularly being settled as per Pension Rules. Mr. Saini has also

submitted a list of the names of the people who according to him are similarly placed employees who were deemed to have gone over to the pension scheme. He argues that there is no justification in treating the petitioner as not to have come over to the Pension scheme, and that the treatment meted out to him suffers from the vice of arbitrariness and that Article 14 forbids any arbitrary action tantamount to denial of equality as guaranteed by the Constitution. In that regard he has placed reliance upon the decision of the Supreme Court in Sengara Singh and Ors. vs. State of Punjab and Ors., (1983) 4 SCC 225.

25. It is stated that the respondent No.2/EIC issued a Circular- No. EIC/D(Q/C)56/88 dated February 08, 1989 reading as under: -

With the approval of Ministry of Commerce, it has been decided that the officers and employees of the Export Inspection Council / Export

Inspection Agencies, if they so desire, may opt for Pension Scheme. Such option should reach the Head of the Export Inspection Agency by

31 March 1989. It may be made known to the officers / employees that no further opportunity will be extended to them in future for this

purpose and they will consequently be governed by CPF Scheme.

26. Mr. Saini submitted that the said circular issued by the respondent No.2/EIC dated February 08, 1989, is meant to aid those employees who had

desired/opted to continue under the CPF Scheme in response to the circular dated July 02, 1987. The said Circular dated February 08, 1989 cannot, in

any event, be misinterpreted to the disadvantage of employees who had automatically come over to Pension and GPF Scheme from CPF Scheme by

virtue of operation of the provisions of para 2 (b) of earlier circular dated July 02, 1987. He further submitted that as the case of the petitioner had

attained finality in as much as he did not opt to continue in the CPF Scheme in response to circular dated July 02, 1987, there was no need for the

petitioner to submit yet another option to continue under Pension Scheme.

27. Mr. Saini averred that affected employees, including the petitioner have been working individually and through Employees Association and through

various representatives towards rectifying the administrative lapse that happened in the issuance of the Circular dated February 08, 1989. He also

stated that the issue was referred to the Governing Body of EIC/EIAs several times in the past as was evidenced by the agenda papers pertaining to

its 84th, 86th, 87th, 88th, 97th, 98th etc., meetings held.

28. It is stated by Mr. Saini that the EIC has admitted on several occasions that there were administrative lapses in implementation of the decision

contained in Government O.M. dated May 01, 1987 which was adopted by the EIC for implementation vide its Circular dated July 02, 1987.

29. The petitioner had made a representation dated October 14, 2013 to the authorities for incorporating in his service book, the missing entry

pertaining to his deemed switchover to Pension Scheme since he did not exercise the option in 1987 for opting to continue in CPF Scheme. His request

was turned down by the respondent no.2/ EIC vide letter No. EIC/ D(Q/C) PF (RR) / 2013 dated November 07th, 2013 on the following grounds: -

(a) The petitioner had given options on December 24, 1983 and on March 24, 1986 to be covered under CPF Scheme. Being an educated senior

officer, the petitioner was fully aware of the implications and consequences of the final option given by him on March 04, 1986 in favour of CPF

Scheme;

(b) The petitioner had been getting CPF statements every year and therefore was fully aware that he was covered under that Scheme. The CPF

statements provided for making representations, if anything was wrong therein and since he did not make any such representation he continued to be

under the Scheme in his own volition; and

(c) Another option to switch over to Pension Scheme was given to the employees in February 1989 but the same was not availed by the Petitioner.

30. It is submitted that the petitioner approached the Chairperson, EIC and Additional Secretary, Department of Commerce vide letters dated

December 12, 2013 and June 12, 2014 for redressal of his grievance. On September 16, 2014 he was informed that his appeal has been rejected.

31. A counter-affidavit has been duly filed by the respondents. It is the case of the respondent no.2/EIC, and contended by Mr. L.R. Khatana, learned

counsel appearing on their behalf, that the petition is barred by delay and laches inasmuch as the petitioner had continued under the CPF Scheme of

his free will and volition since the year 1981- 82 when the respondent no.1 had issued the Notification S.O. No. 2922 dated October 24, 1981 framing

the Pension and General Provident Fund Rules, 1981. The petition is barred by delay of 32 years if the petitioner claims the cause of action with

reference to the notification dated October 24, 1981 or delay of 27 years if the petitioner claims cause of action with reference to the O.M. dated May

01, 1987.

32. It is stated that the petitioner has all of a sudden changed his mind at the fag end of his career and filed the present writ petition barely three/four

days before his date of retirement/superannuation on September 30, 2014.

33. Mr. Khatana stated that the petitioner received his salary slips every month wherein, deduction of CPF contribution was duly mentioned and the

petitioner had never disputed the same. Further he also received annual CPF statements wherein the details of his CPF account, the amount of CPF

contribution made by him, as well as the amount of matching CPF contribution made by the employer were duly mentioned, which clearly shows that

the petitioner was all along aware that he was continuing under the CPF but never objected to or represented against the same.

34. He also stated that the petitioner had specifically exercised his options twice, on December 24, 1983 and March 24, 1986 in favour of continuing

under the CPF Scheme which he thought was more beneficial to him at that time.

35. It is submitted that those persons/employees who switched over from the CPF Scheme to the Pension Scheme had entries to this effect made in

their service book more than 27 years back. They surrendered the CPF contribution to the employer and they were allotted a GPF Number

immediately, whereas the petitioner continued to enjoy the benefits of the CPF Scheme of his free will and volition for about 27 years till the date of

retirement on September 30, 2014.

36. Mr. Khatana also submitted that the petitioner was equivalent to Class -I (Group A) officer and held the senior position as Additional Director,

which is the highest position in the organisation after the Director and was fully aware of the consequences and implications of his service conditions.

It is contended that the petitioner had specifically opted to continue under the CPF Scheme and therefore, he consciously acquiesced into the action of

the respondents and continued under the CPF Scheme for more than thirty years and hence cannot be allowed to approbate and reprobate at the same

time and change his position.

37. He asserted that the petitioner was an employee of a statutory body and his service conditions were governed by the statutory rules and he cannot

claim any benefit de hors the rules. It is further stated that even if some persons/ employees have got the benefit illegally and de hors the statutory

rules, the petitioner cannot base his claim on the said illegality and cannot maintain a writ petition under Article 226 of the Constitution alleging

discrimination vis a vis those persons to perpetuate a wrong or illegality committed in some other case(s).

38. It is the case of respondent no.2/EIC that it is governed by its own rules, which are statutory in nature and the executive instructions such as

O.M./Circular etc. cannot be applied or enforced in derogation of the said statutory rules.

39. Mr. Khatana further stated that, the Export Inspection Council Pension and General Provident Fund Rules, 1981, which, having been formulated

by the Central Government in exercise of the powers conferred by Section 17 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963),

are statutory in nature. It is contended that the subject matter of the writ petition is covered by the said statutory rules and that the petitioner has failed

to show as to how he is entitled to pension under the said rules, particularly after having specifically opted to continue under the CPF and that

therefore the writ petition under Article 226 is not maintainable.

40. It is submitted that mere issuance of O.M. by the Government did not entitle the petitioner to the â??deemedâ? switch over without the

consequential action such as entry in service records to that effect; surrendering the accruals in the CPF with interest to the employer, thereafter

allotment of GPF number and issuance of GPF statements instead of CPF statements. Even after 1987, the petitioner did not object to the issuance of

CPF statements, CPF contribution deduction from his salary every month and the matching contribution made by the employer and credited to his CPF

account. It is further contended that this shows that the petitioner of his own volition continued under the CPF scheme and therefore is estopped from

claiming a deemed switchover after about twenty-seven years. Mr. Khatana argues that the judgment of the Supreme Court in the case of S.L.

Verma(supra) and the judgment of this Court in the case of N.C. Bakshi(supra), as relied upon by the petitioner are not applicable in the facts and

circumstances of the present case because there was no statutory bar of finality of option in those cases as is in the present case and that no

executive instruction could be applied in derogation of statutory rules.

41. Mr. Khatana submitted that even in the cases where entries were made to that effect in the service records of the persons concerned, those

persons had immediately surrendered the CPF accruals with interest to the employer about twenty-seven years back, their matching CPF contribution

was stopped and GPF account numbers were issued.

42. It is the averment of respondent no.2/EIC and contended by Mr. Khatana that the petitioner made a representation towards the fag end of his

service career with mala fide intentions, which too was duly replied with a reasoned and speaking order. The said reply could not be considered cause

of action to agitate a closed issue after 27 years.

43. It is also specifically stated by that the consideration of the issue by the organisation does not bestow upon the employee an enforceable right until

and unless the same culminate into a decision or an order which the petitioner failed to produce.

44. A rejoinder has been duly filed by the petitioner wherein it is claimed that he was wrongly and illegally continued by the EIC under the CPF

Scheme due to failure on their part to perform certain administrative functions which were required to be performed. He claims that Pension Scheme

was introduced in the organization vide Statutory Order of October 24, 1981, as per which the employees who were in service on that date and did not

specifically exercise option to continue under the CPF Scheme by the cut off date of March 31, 1982 were automatically covered under the Pension

Scheme.

45. The petitioner also averred that he did not exercise any option by the statutorily fixed cutoff date of March 31, 1982 in Notification No. S.O. 2922

of October 24, 1981, as affirmed by the respondent no.2/EIC in their counter affidavit. Hence, the petitioner automatically became a member of the

Pension Scheme after the cut-off date of March 31, 1982. The action to terminate membership of the petitioner under the CPF Scheme and to include

him in the Pension Scheme rested with the EIC. Therefore, the EIC cannot be allowed to take advantage of their own wrong.

46. It is also submitted by Mr. Saini that the petitioner is deemed to be under the Pension Scheme as per the Circular dated July 02, 1987 of

respondent no. 2/EIC as he did not exercise the option envisaged therein to

continue under the CPF Scheme.

47. It is submitted that the administrative lapses in the implementation of government orders in EIC and EIAs have already been admitted by

respondent no.2/EIC in their letter no. VIP â?" 10/2009-2010/6681 dated March 12, 2010 addressed to respondent no.1 that coercive action was being

taken. Administrative lapses in implementation of paragraphs 1 (b), 3 and 4 of Circular dated July 02, 1987 have also been admitted by respondent

no.2 â?"EIC in various letters/documents (i) Letter 56(Pt.)/2004/7018 dated November 23, 2004 to respondent no.1, and (ii) Letter

EIC/D(Q/C)/56/2009-10/7193 dated March 30, 2010 to an ex-employee of respondent no.2/EIC.

48. It is further stated that pursuant to the assurance given by the respondent no. 2/EIC to respondent no.1 through letter dated March 12, 2010 in a

number of cases, the administrative lapses in implementation of the Pension Scheme were corrected at the time of retirement of employees and

pensionary benefits were extended to them.

49. Mr. Saini denied the claim of the respondent no.2/EIC that even on receiving salary slips and annual CPF statements wherein details of his own

contribution and that of the employer, the petitioner never represented against the same despite specific provisions in the statement.

50. Mr. Saini submitted that the petitioner had exercised options on two occasions, December 24, 1983 and March 24, 1986, in favour of the CPF

Scheme. However, the petitioner has legally been deemed to have come over to the Pension Scheme ever since the same was introduced in the

organization, as he did not submit any option to continue under the CPF Scheme by the statutory cut-off date of March 31, 1982. It is further

contended by him that as per the decision of EIC to implement the direction of the Government as articulated in O.M. dated May 01, 1987 of Ministry

of Personnel, Public Grievances and Pensions, all CPF beneficiaries of EIC and EIAs, including the petitioner who were in service on July 02, 1987

were necessarily required to exercise fresh written options by the stipulated date to continue under the CPF Scheme and those who did not exercise

the option were automatically deemed to have come over to the Pension Scheme, as stated in the said Circular. It is also submitted by Mr. Saini that

the petitioner did not exercise any option in response to the circular dated July

02, 1987 or at any time thereafter and accordingly he was deemed to be under the Pension Scheme of the respondents.

51. That vide letter dated October 9, 1987 the EIC again clarified that those who did not exercise option by the stipulated date to continue under the CPF Scheme shall automatically be governed by the Pension Scheme. Thus, any/all options given by employees in favour of CPF Scheme prior to July 02, 1987, including that of the petitioner became null and void and therefore, inoperative with effect from November 01, 1987 i.e., the date following the cut-off date of October 31, 1987 fixed for submitting such options.

52. Mr. Saini contended that the respondent No. 2/EIC cleverly and mischievously suppressed the fact that the statutory cut-off date fixed vide Notification S.O. 2922 dated October 24, 1981 was March 31, 1982 and that date was never modified through another statutory order and therefore the circulars issued by the EIC after the statutory cut-off date were irregular and the options given by the petitioner had no validity and they should not have been acted upon.

53. Similarly, Mr. R. Venkiteswaran (retired as Deputy Director) had exercised options dated March 24, 1983 and March 13, 1986 in favour of CPF Scheme but did not exercise any option in response to circular dated July 02, 1987 of respondents, like the petitioner. However, Mr. Venkiteswaran was deemed by the respondents to have come over to the Pension Scheme and was sanctioned pension at the time of his superannuation while the same treatment was denied to the petitioner. The entries made in the service Book of Mr. Venkiteswaran read as under:

â??Deem to have opted to be under PENSION / GPF SCHEME AS provided under EICs circular No. EIC/D/Q/C/56 /87 dated 2-7-87. Sd/-

Deputy Director

W.P.(C) 8601/2010

54. This present petition has been filed with the following prayers:

â??The petitioner, therefore respectfully prays that this Hon'ble Court may be pleased to:-

(a) issue orders/directions. Writ in the nature of Mandamus, directing the respondents to place the petitioner in pension scheme in view of

circular E.LC/D (Q/C) 56/87 dated 2.7.1987; and set aside/quash the Letter

dated 24.6.2010.

(b) direct the Respondents to pay the arrears of pension with interest to the petitioner, in relation to granting of Pension to similarly situated officers.

(c) direct the respondents to produce the record/documents relating to granting pension to similarly situated officers before this Hon'ble Court.

(d) treat the petitioner at par with other pensionary Beneficiaries viz. Shri Parikshit Gupta, (2) Smt. P.L Indira Devi, (3) Shri C.C. Thoma,

(4) Shri C.K. Krishnan, (5) Shri Jankiraman, (6) Shri K.A. Swamy Prakash (7) Shri Dilip Kumar, and (6) Shri Samrendra Nath Gupta.

(e) for such further and other order(s) as the nature and circumstances of the case may require.â??

55. It is submitted by the petitioner herein that he joined the EIA under the Ministry of Commerce & Industry at Mumbai on November 15, 1974 as

Assistant Director and till his superannuation, he had worked in various capacities from time to time and he retired as Joint Director on October 30, 2009.

56. It is the case of the petitioner, that the respondents have proceeded on wrong premise that it was obligatory on the part of the CPF beneficiaries of

the respondent/ EIC and EIAs to give a positive option in case they desired to switch over to Pension Scheme. However, as per GoI Gazette

Notification No. S.O. 2922 dated October 24, 1981, O.M. No. 4/1/87-PIC-I dated May 01, 1987 of the Ministry of Personnel, Public Grievances and

Pensions and circulars No. EIC/D(Q/C)/56/87 dated July 02, 1987 and EIC/D(Q/C)/56/88 dated October 09, 1987 of the EIC, the option was to be

exercised by employees only if they desired to continue to remain under CPF and in case no option is received by the Head of the Office by the

prescribed date, the employee would be deemed to have switched over to the Pension Scheme.

57. According to Mr. Paritosh Budhiraja, learned counsel appearing on behalf of the petitioner, the manner of implementation of the recommendation

of the 4th CPC, as articulated by the Government in O.M. dated May 01, 1987, was adopted in-toto by the EIC in its Circular dated July 02, 1987

except that of the cut-off date, was prescribed as October 31, 1987.

58. He stated that as per paragraph 3.2, 4.2 and 4.3 of O.M. dated May 01, 1987 of the Ministry of Personnel Public Grievances and Pensions and

paragraphs 2(b), 3 and 4 of EIC Circular dated July 02, 1987 it was the responsibility of EIC:

(i) To take suo-moto action to bring over the such employee(s) to Pension/GPF Scheme who had not exercised the option of staying back under CPF

scheme,

(ii) To discontinue subscription / contribution to CPF Account and to transfer employee's contribution together with interest thereon in the credit of

his/her CPF account to the GPF Account to be allotted, and

(iii) To resume the employer's contribution together with interest thereon in the credit of CPF Accounts without any request or further action on the

part of the employee.

59. Mr. Budhiraja submitted that, the petitioner and other 138 similarly situated employees did not give option to retain CPF Scheme and therefore, in

view of the respondent No.2/EIC's letter dated July 02, 1987, he is deemed to have been automatically shifted to the Pension Scheme and this is

evident from the records in the service books of some of the officers of the respondent department. Emphasis is placed by Mr. Budhiraja on the

judgment of the Supreme Court in S.L. Verma (supra).

60. Mr. Budhiraja stated that the petitioner superannuated on October 21, 2009 and was shocked to receive the full and final settlement pay bill which

he had to receive under protest.

61. It is stated that the petitioner filed a representation dated October 12, 2009 which the respondent replied to, pursuant to the directions of this Court

in W.P.(C) 1295/2010 dated March 04, 2010. The respondent stated in a letter to the petitioner dated March 30, 2010 that the petitioner should have

been deemed to have come over to the Pension Scheme. It is further stated by Mr. Budhiraja that the respondents arbitrarily granted

pension/pensionary benefits to similarly situated officers vide their order dated June 22, 2010, however, the petitioner was wilfully and illegally denied

the same.

62. The counsel for the petitioner also averred that the respondents herein vide letter dated 24 June, 2010, without applying judicial mind, arbitrarily

rejected the representation of the petitioner, particularly when other similarly situated officers have been placed under the pension scheme.

63. A counter-affidavit has been duly filed by the respondents in which they have taken a similar stand as taken in W.P.(C) 6747/2014. Additionally, it

is contended that the petition is barred by delay and laches of more than twenty-two years and that the petitioner had continued under the CPF

Scheme of his own volition and free will from 1981 to the date of his superannuation.

64. It is submitted by Mr. L.R. Khatana, learned counsel appearing on behalf of respondent nos. 1 and 2, that in terms of the provisions of the

aforesaid rules, the petitioner specifically opted to continue under the CPF Scheme for the obvious reason that the said CPF Scheme was more

beneficial to him at the time. He added that the option was first exercised by the petitioner on December 24, 1983 and then during the period between

January 01, 1985 to October 20, 1987.

65. Mr. Khatana also stated that the petitioner was an employee of a statutory body and his service conditions were governed by statutory rules and

he cannot claim any benefit de hors the rules. He further contended that even if some persons have got some benefit illegally and de hors the statutory

rules, the petitioner cannot base his claim on the said illegality.

66. He further submitted that the case of the petitioner is not similar to those who had come under the Pension Scheme in 1987 because they had

surrendered the CPF benefits to the employer and came over to the scheme whereas the petitioner had continued to enjoy the benefits of the CPF

Scheme.

67. It is submitted by Mr. Khatana that the respondent's organisation is spread over different parts of the country. At some places some of the

employees appear to have availed the benefit of the letter dated July 02, 1987 and switched over the Pension Scheme by surrendering the benefits

which had accrued to them till then under the CPF Scheme and entries to that effect were made in their service records. But same is not the case of

the petitioner, who continued to enjoy the benefits of the CPF Scheme for more than twenty-two years till his retirement on October 31, 2009. It is

contended that he was paying his CPF contribution and enjoying the accrual on account of the employer's share of contribution every month along

with interest on much higher rate throughout the said twenty-two years and was receiving Annual CPF Statements every year, but never claimed any parity with other persons during the period.

68. A rejoinder has been duly filed by the petitioner, wherein it is stated that he would return the CPF amount paid by the respondents with interest

thereon, so that he can get the pension, as pension which is a constitutional right guaranteed to the employees so that, they may not suffer in their old

age. To support his argument, Mr. Budhiraja has placed reliance upon the judgment of the Supreme Court in Deokinandan Prasad v. State of Bihar &

Ors., AIR 1971 SC 1409.

W.P.(C) 3426/2012

69. The present petition has been filed with the following prayers:

â??In the above facts and circumstances of the case, this Honâ??ble Court may graciously be pleased to:-

(a) Hold and declare that the Petitioner is deemed to have been brought over to Export Inspection Council Pension and General Provident

Fund Rules, 1981 in view of the Circular, dated 2nd July 1987.

(b) issue a writ of mandamus directing the respondents to give all the pensionary and retiral benefits admissible under Export Inspection

Council Pension and General Provident Fund Rules, 1981 w.e.f. 01-01-2012 along with interest @ 12% p.a. on the amount of arrears of

pension and amount of commutation of pension.

(c) Direct the Respondent No. 3 to adjust the amount of employer's contribution to CPF of the Petitioner from amongst the amounts payable

to the Export Inspection Council Pension and General Provident Fund Rules, 1981.

(d) pass any other order or orders as this Hon'ble Court may deem fit in the facts and circumstances of this case.â??

70. The petitioner in the current petition joined the EIC/Agency office in Bombay on November 15, 1974 in the post of Assistant Director (Chemical).

The facts as submitted by the petitioner are similar to the facts stated in the above-mentioned writ petitions being W.P.(C) 6747/14 and W.P.(C)

8601/10.

71. Additionally, Mr. Kripa Shankar Prasad, learned counsel appearing on behalf of the petitioner stated that the effect of the EIC Circular dated July

02, 1987 was that all the previous options exercised by the CPF optees had become invalid and that a legal fiction was created by which all the CPF optees were brought to the pension scheme unless they specifically opted to remain under CPF scheme on or before October 31, 1987. On failure to submit option to remain under CPF scheme on or before October 31, 1987, the employees were compulsorily to be switched over to the Pension Scheme.

72. He further submitted that notwithstanding the fact that the petitioner was deemed to have come over to the pension scheme, the erstwhile In-Charge of the petitioner failed to make an entry in the service book of the petitioner to the effect. Such entries were made in case of several other similarly placed officers. It is contended that the presence or absence of such entries in the service book were irrelevant as the effect created by the Circular dated July 02, 1987 was a deeming fiction.

73. Mr. Prasad submitted that the Circular dated February 08, 1989 stated that the employees/officers of EIC/EIA, if they so desire, may opt for the Pension Scheme by submitting such option by March 31, 1989, was issued in a clandestine manner. The same was not circulated or brought to the notice of all the employees/officers. It is contended that the said Circular does not hold any legal sanctity in view of the fact that all the employees/officers who had not opted for CPF by October 31, 1987 were automatically and compulsorily brought over to the Pension Scheme by the Circular dated July 02, 1987.

74. That apart, Mr. Prasad submitted that the respondents illegally and erroneously continued deducting CPF subscription from his salary, thereby creating a doubt about the status of the petitioner. By the erroneous interpretation of the subsequent circular dated February 08, 1989, the respondents treated the petitioner as CPF optee on account of his failure to opt for pension on or before March 31, 1989. This error was sought to be corrected by the Advisor, Export Inspection Council of India, New Delhi who wrote a letter dated November 23, 2004 to the Director, Ministry of Commerce and Industries, informing that, 138 employees did not exercise any option as per circular dated July 02, 1987 and recommended that these 138 employees who did not opt for continuation in CPF in 1987 should be allowed to be covered

under Pension Scheme in view of stipulation mentioned in the circular itself. It is submitted that the petitioner is one of such 138 employees.

75. According to Mr. Prasad, the Deputy Secretary, Govt. of India, Ministry of Commerce and Industries, Department of Commerce issued DO.

NO.3/21/1999-EI&EP dated February 07, 2007 addressed to the Director, Export Inspection Council stating therein that as EIC/EIAs are self-

financed, the employees of EIC/EIAs are not governed by CPF Rules (India) 1962 or the GPF (Central Rules), 1960 and it is for EIC to take their

own administrative decisions on the issue. The petitioner raised these issues in representations dated August 11, 2011, October 05, 2011 and

November 18, 2011 but received no response from the respondent.

76. It is noted that the petitioner had filed W.P.(C) 8018/2011 before this Court and the same was disposed of, directing the respondents to dispose of

the formal request made by the petitioner within six weeks. It is contended by Mr. Prasad that the EIC intentionally delayed the disposal of the request

beyond the date of retirement of the petitioner. In a letter dated March 30, 2012, the respondents stated that keeping in mind there were employees

similarly placed like the petitioner, the issue was referred to the Department of Commerce and that the Department was not inclined to allow the

request for switch-over.

77. It is also pointed out that in response to seeking views of the EIC, Ministry of Commerce and Industry vide their OM NO.2/40/2011-Export

Inspection dated March 28, 2011, the Additional Director, EIC, New Delhi vide letter dated August 29, 2011 gave his view on the representation dated

November 22, 2010 submitted on behalf of Employees Solidarity of Export Inspection, Kolkata and conveyed to the Director, EI, Department

of Commerce stating therein that they are of the view that pension and general provident fund ought to be extended to such employees of EIC/EIAs as

requested by the Association. It is noted that the Additional Director EIC, New Delhi who issued the said letter dated August 29, 2011 is also the

petitioner in W.P.(C) 6747/14.

78. Mr. Prasad stated that the petitioner wrote a letter dated January 02, 2012 to the Director (I&Q/C)- EIC making a request for payment of self-

subscription including voluntary contribution and interest thereof and requested him to advise EIA-Delhi accordingly and intimate the breakup of self

and the employer's portions. The petitioner came to know that he is entitled for Rs. 11,58,589/- towards his own contribution and interest thereof in

respect of his Provident Fund dues on superannuation and made a request to the Joint Director, EIA-Delhi to release the same vide letter dated

January 18, 2012. It is submitted that the department consequently sent a cheque of Rs.25,20,684/-including contribution of the department towards his

CPF. It is the contention of the petitioner that he had only requested his contribution with interest and the department by releasing a combined amount

of both his and the contribution of the Department was deliberately attempting to frustrate the present Writ Petition and to deny him the benefits of the

pension scheme. It is submitted by Mr. Prasad that the petitioner is willing to refund the contribution of the respondent amounting to approx. 13.6 lacs.

79. A counter-affidavit has been duly filed wherein the respondents have taken a similar stand as in W.P.(C) 6747/2014 and W.P.(C) 8601/10.

80. Mr. Khatana, learned counsel appearing for the respondents reiterated the contentions put forth by him in W.P.(C) 6747/2014 and W.P.(C)

8601/10. Additionally, he contended that the petitioner had specifically exercised his option on March 29, 1983 to continue under the CPF benefits and

it was only when the date of superannuation of the petitioner, December 31, 2011, drew nearer that he started demanding pension.

81. Mr. Khatana submitted that the claim of the petitioner that by virtue of the O.M. dated May 01, 1987 he became a pension optee is misplaced as

he continued to be under CPF scheme for more than twenty-four years. He specifically denied the averments made by the petitioner about the

Circular dated February 08, 1989, by stating that the petitioner was fully aware of the same and did not exercise his option to switch over to the

pension scheme as he had already taken a conscious decision in 1983 and exercised option to continue under the CPF under the statutory rules. It is

also submitted that, furthermore, the option exercised under the statutory rules could not be negated by the O.M. dated May 01, 1987, which is merely

an executive order, and the same could not be given effect to until the relevant rules were amended.

82. It is also stated that there was no question of the petitioner receiving the retiral dues under protest, as the same were released as per the relevant

rules.

83. A rejoinder has been duly filed by the petitioner wherein he has recapitulated his averments and has opposed the contentions put forth by the respondent.

84. Additionally, Mr. Prasad submitted that the contention of the respondents that the option exercised under the statutory rules could not be negated

by an O.M., which is merely an executive order and could not be given effect to until relevant rules were amended, is completely baseless. The

Circular dated July 02, 1987 is not contrary or inconsistent with the provisions of the EIC Pension and General Provident Fund Rules, 1981 and it was

issued towards implementation of the directives of the Government of India, Department of Pension and Pensionersâ?? Welfare vide O.M. dated

May 01, 1987. It is further submitted that the respondents themselves permitted change of options vide their circular dated February 08, 1989, which is

admittedly an executive decision and had the effect of negating the options exercised under statutory rules.

85. It is also submitted that the Circular dated July 02, 1987, supplements the Rules of 1981 for the purpose of bringing all the employees on the

Pension Scheme and does not, in any manner, tend to act inconsistent with the Rules of 1981. The said Circular was issued for the purpose of

implementation of recommendations of the 4th CPC for bringing all employees under Pension Scheme. Mr. Prasad contended that this noble objective

behind issuance of the said circular cannot be defeated by permitting the respondents to take a hyper technical stand that the option exercised under

the statutory rules cannot be negated by an executive order.

86. Having heard the learned counsels for the parties and perused the record, the issue which arises for consideration is whether or not the petitioners

are entitled to change over from CPF to Pension Scheme. Before the year 1981, the employees of the EIC were governed by the CPF Scheme.

Thereafter, vide notification dated October 24, 1981, the CCS (Pension) Rules 1972 and GPF (Central Services) Rule 1960 were adopted with a

stipulation that the employees who have entered the service before October 24, 1981 have to exercise option to continue with CPF Scheme before

March 31, 1982. The employees who did not exercise the option were deemed to be governed by the Pension Scheme.

87. It may be stated here that the date of March 31, 1982 for exercising option

was extended from time to time and the last being vide circular dated November 02, 1985 giving time till March 31, 1986. It is a fact that all the petitioners in these petitions had exercised their option between the years 1983-1986 to remain in the CPF Scheme.

88. On July 02, 1987 the respondent No.2/ EIC had issued a circular whereby it had adopted O.M. dated May 01, 1987 of the Central Government

issued pursuant to the recommendations of the 4th CPC. Vide the said Circular, the respondent No.2 had called for fresh options from the employees

expressing themselves to continue under the CPF Scheme. If no option is received by October 31, 1987 an employee would be deemed to have come

over to the Pension Scheme. It appears that on February 08, 1989 a further Circular was issued but in the manner that the employees / Officers may

opt for Pension Scheme on or before March 31, 1989. It also appears that no such option was exercised by the petitioners. It was contended by the

Counsel (collective reference) for the petitioners that in view of circular dated July 02, 1987 since an express option had to be exercised for continuing

in the CPF Scheme and because of deeming provision to switchover to Pension Scheme, they are deemed to be in the Pension Scheme.

89. Mr. Khatana, learned counsel appearing for the respondent No.2 had raised an objection on the maintainability of the petitions, as the same are hit

by delay and laches, and also, the petitioners having continued under the CPF Scheme on their free will and volition since the years 1981-83 when the

respondents issued Notification dated October 24, 1981 calling upon them to exercise options and 32 years have gone by thereafter or 27 years if the

reliance is placed on Circular dated July 02, 1987 and also allowing deduction of CPF contribution every month from their salary slip, the petitions need

to be dismissed. The said submission of Mr. Khatana is not appealing. This I say so, insofar as the petitioner Rajiv Raizada, in W.P.(C) 6747/2014, is

concerned, he had made representation on October 14, 2013 before his retirement. The representation was rejected only on September 16, 2014 just a

few days before his date of retirement on September 30, 2014 and he has filed the petition immediately thereafter on September 27, 2014 i.e., even

before his retirement and the petition has been pending before this Court since then.

90. Similarly, the petitioner Deepak Shekhar, in W.P.(C) 3426/2012, initially

made representations on August 11, 2011, October 05, 2011 and November 18, 2011 but there was no response from the authority. Thereafter, he had filed Writ Petition being W.P. (C) 8018/2011 and the same had come up for hearing on November 15, 2011 i.e., before his date of retirement on December 30, 2011. The said petition was disposed of November 15, 2011 itself directing the respondents to dispose of the request of the petitioner. It was only on March 30, 2012 the respondent No.2 rejected the request. The petition has been filed by the petitioner immediately thereafter on May 25, 2012 and is pending consideration since then.

91. Similarly, the third petitioner in this batch of petitions namely Anand Kishore, in W.P.(C) 8601/2010 had, though, retired on October 31, 2009, filed a writ petition being W.P.(C) 1295/2010 which was disposed of March 04, 2010 directing the respondents to dispose of his representation. The representation was rejected on June 24, 2010 which is under challenge in these proceedings and since then the petition is pending consideration in this Court.

92. The plea of delay and laches with regard to a similar issue decided by this Court was also taken by the respondents therein in a similar manner as has been contended by Mr. Khatana, in the case of Dr. R.N. Virmani and Ors. University of Delhi and Anr., W.P.(C) 1490/2006 and connected petitions, decided on April 30, 2014. The Court while considering such a plea has, in paragraphs 17.1 and 17.3, held as under:

17.1 In my opinion, the petitions in the instant case cannot be dismissed on the ground of delay and laches for the following reasons.

Firstly, consistent with the provisions of O.M. dated 01.05.1987, the petitioners were not required to carry out an overt act to get cover

under the Pension Scheme. The fallacy, if any, was that of the respondents who sought a positive option in that behalf. The respondents, in

my view, misconstrued the contributions towards CPF Scheme as an act which could unilaterally alter the provisions of O.M. dated

01.05.1987. Therefore, in that sense, the argument of delay cannot be advanced by the respondents.

xxx xxx xxx

17.3 The delay, thus, in approaching the court is largely explained. The respondents, who were otherwise sympathetic to the cause of the

petitioners, cannot take this plea in court when they were, in a sense, complicit in the cause of the petitioners as outside, the litigation

periphery they supported demand for variation of the provisions of O.M. dated 01.05.1987, wholeheartedly. The cause for grievance,

therefore, continued to remain operative vis-a-vis the petitioners. The failure on the part of the respondents to cover the petitioners under

the Pension Scheme, if not a continuing wrong, certainly fell within the realm of a successive wrong, when each time the respondents failed

to correct the record. [See observations of the Supreme Court in Union of India & Ors. vs Tarsem Singh (2008) 8 SCC 648 and State of

Madhya Pradesh & Ors. vs Yogendra Shrivastava (2010 12 SCC 538)]. The cause of action will, however, not survive where employees

have collected their dues under the CPF Scheme without protest whether by institution of an action in court or otherwise. In so far as

arrears of pension are concerned in Tarsem Singh case (which was the case of disability pension), in paragraph 8 at pages 651-652, the

following principle is enunciated. For the sake of convenience, the relevant portion is extracted hereinbelow:

“..... In this case, the delay of sixteen years would affect the consequential claim for arrears. The High Court was not justified in

directing payment of arrears relating to sixteen years, and that too with interest. It ought to have restricted the relief relating to arrears to

only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to

have granted interest on arrears in such circumstances.....

(emphasis supplied)

93. Even the Division Bench of this Court while considering the challenge from the order of the learned Single Judge in the case of Smt. Shashi Kiran

and Ors. v. Union of India and Ors., LPA 410/2014 and connected appeals, decided on August 24, 2016 has in paragraph 8, referred to a similar plea

on behalf of the University of Delhi in the following manner:

“8. The Delhi University, which is in appeal against the judgment in the Virmani batch of cases, contends that the learned Single Judge

fell into error in allowing the writ petitions. It is argued that those who continued to remain in the CPF Scheme, either by opting for it within

the period of extension or continued without protest, by contributing to the scheme, as established by periodic annual statements, cannot be

permitted to argue that the Pension Scheme applied. It is urged that the learned Single Judge made an invidious distinction between

employees who continued without protest and those who continued in the CPF Scheme but chose their remedy very late in the day after

decades of continuing in the Scheme despite the lapse of date. It is urged that the judgment ignores a salient fact that an undue financial

burden had been cast on the Delhi University and the Central Government. Having regard to the fact that the petitioners, by their conduct,

continued in the CPF Scheme, almost 20 years later, cannot turn around and rely upon the OM dated 01.05.1987.

94. The plea has been rejected by the Court in terms of paragraphs 19 and 20 thereof, which I reproduce as under:

19. It is argued by the learned counsel for the University that once the learned Single Judge held that extension of the option was not

authorized, there was no question of granting relief. Furthermore, in respect of those who had not opted for CPF, but whose contributions

continued in the scheme, the court should not have granted relief, given the passage of time and the voluntary conduct of the teaching staff

and officials. It was urged that the learned Single Judge erred in relying on *Union of India v. S.L. Verma* (2006) 12 SCC 53; in any case,

the observations relied on were mere passing remarks, in the nature of obiter and clearly had no binding effect. On the other hand, the

learned Single Judge, urged the Appellants' counsel, fell into error in not relying on *Kendriya Vidyalaya Sangathan & Ors v Jaspal*

Kaur & Anr. (2007) 6 SCC 13 and *Union of India and Ors v M.K. Sarkar* (2010) 2 SCC 59.

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 LPA 410/14 and connected matters Page 30 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.

95. In the petitions, which are under consideration, petitioners had made a claim before their retirement when the benefits, either under the CPF or

under the Pension Scheme are actually payable. Even the impugned orders rejecting the representations made by them were before their date of

retirement.

96. Insofar as the third petitioner is concerned, though he had represented on October 12, 2009 to the Authorities for grant of benefits under the

Pension Scheme, he had retired from service only on October 31, 2009. It appears that he had filed a writ petition being W.P.(C) 1295/2010, which

was disposed of on March 04, 2010 with a direction to the respondents to dispose of the representation of the petitioner. Pursuant thereto, the

representation was rejected on June 24, 2010, which is under challenge in the petition. So, it is clear that the petitioners had made a claim for covering

them under the Pension Scheme before their retirement i.e., before they have actually received their dues under the CPF Scheme and as such, it can

be said that they have received benefits under the CPF Scheme under protest.

97. Mr. Khatana, in support of his plea has relied upon the Apex Court Judgment in the case of KVS & Ors v. Jaspal Kaur & Ors., (2007) 6 SCC 13.

The said Judgment has been dealt with by the Coordinate Bench of this Court in the case of Dr. R.N. Virmani (supra) as under: -

14.8 Similarly, the facts in KVS's case are also distinguishable as, the Supreme Court found that the Scheme provided for an option to the

employees to switch over from CPF Scheme to Pension Scheme. The court also found that even though the appellant was not able to

produce the original option form which was indicative of the fact that the

employee was desirous of continuing under the CPF Scheme, the attendant circumstances showed that she chose to remain under the CPF Scheme. As indicated above, much would turn on the terms of the Scheme in issue.â??

98. In view of the above, it must be held that the Circular dated July 02, 1987 had deeming effect that in the eventuality, an express option is not exercised by an employee for his continuance in the CPF Scheme then he is deemed to have switched over to the Pension Scheme. Nothing has been placed on record that the petitioners have pursuant to Circular dated July 02, 1987 had opted to continue in CPF Scheme. Even the subsequent Circular of 1989 calling for options to switch over to Pension Scheme would not make any difference in the case of the petitioners, as the petitioners had not opted to continue under the CPF Scheme in terms of Circular dated July 02, 1987 and would be deemed to be governed under the Pension Scheme. It appears that the Circular of 1989 had been issued to enable those employees, who, under the Circular dated July 02, 1987, had expressly desired to continue under the CPF Scheme.

99. That apart, the Counsel for the petitioners is also justified in relying upon the judgment of the Bombay High Court with regard to the same respondent namely EIC in the case of Amita Ajit Desai & Ors. v. Union of India & Ors., W.P. No. 1331/2017, decided on January 17, 2019, wherein the Bombay High Court was concerned with the petitioners, who had retired in the years 2006, 2009, 2011-2015 and had granted relief directing that the petitioners therein to be governed by the CCS (Pension) Rules 1972. A Special Leave Petition preferred before the Apex Court against the said judgment has also been rejected. So, the plea of delay and laches is rejected.

100. Now, insofar as the plea of Mr. Khatana that the employees of the respondent No.2 being governed by the Rules of 1981 which are Statutory Rules and any Circular issued thereafter have no effect, is also not appealing. The respondents had adopted the CCS Pension Rules, 1972 and GPF (Central Services) Rules 1960 vide notification dated October 24, 1982 framing the Pension and General Provident Fund Rules, 1981 and called options from the employees to shift from CPF Scheme to GPF Scheme, which option was exercised by the petitioners for their continuance in CPF Scheme but the fact remains after the recommendations of the 4th CPC, a fresh

Circular dated July 02, 1987 was issued by the respondent No.2

calling for a fresh / explicit option to continue in CPF Scheme with deeming effect that in the absence of any express option for changing over to CPF

Scheme, the employee shall be changed over to Pension Scheme and the respondent No.2 having acted upon such an option exercised by many

employees in the respondent No.2 organization and allowed those employees (except the petitioners) to switchover from CPF to Pension Scheme, the

plea now being advanced by Mr. Khatana is contrary to its own conduct and cannot be permitted to be raised.

101. Now coming on merits of the case that whether the petitioners need to be allowed to change over from CPF Scheme to Pension Scheme. This

Court is of the view, the issue is no more res integra in view of the judgment of this Court in Dr. R.N. Virmani and Ors. (supra) and Smt. Shashi

Kiran and Ors. (supra) wherein the Division Bench has upheld the judgment of the learned Single Judge in Dr. R.N. Virmani and Ors. (supra) and

also in view of recent judgment of the Bombay High Court in the case of Amita Ajit Desai & Ors. (supra). I would reproduce the relevant part of the

judgment in Dr. R.N. Virmani and Ors. (supra) more specifically in paragraphs 14 to 14.9 as under:

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. If there was any doubt with regard to the language of clause 3.2, when read with clause 3.1,

the prescribed option form puts at rest all such thoughts. For the sake of convenience, the prescribed form is extracted hereinbelow :-

Form of Option

I _____(name), employed as _____(designation) in the Ministry / Department/Office of

_____(name of the Ministry/Department/Office), do hereby opt to continue under the Contributory Provident Fund

Scheme in terms of the Department of Pension and Pensioners' Welfare, O.M. No.4/1/87-P.1.C.-1, dated 01.05.1987. Place

Date _____

(Signature of the Optee)

(emphasis is mine)

14.2 A perusal of the aforesaid form would show that the only option which had to be exercised was with regard to continuation by an

employee under the CPF Scheme. The employee was not required to submit any form if, he or she wanted to be covered under the Pension

Scheme, as that was automatic, in view of the deeming provision incorporated in clause 3.1 and 3.2 of O.M. dated 01.05.1987. This is

precisely the reasoning given by the Supreme Court in no uncertain terms in S.L. Verma's case. The relevant observations of the

Supreme Court are contained in paragraphs 4 and 7, which for the sake of convenience, are extracted hereinbelow.

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 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 scheme, which a fortiori would mean that they no longer remained in the CPF scheme...â??

(emphasis is mine)

14.3 The argument advanced on behalf of the respondents based on the judgement of the Supreme Court in the case of Union of India Vs.

M.K. Sarkarâ??s case in my view cannot be accepted. The reason for the same

are several: First, the facts as set out in the judgement indicate that the Pension Scheme as formulated by the Railways in that case perhaps required exercise of a positive option for switch over from CPF to Pension Scheme. Second, eight (8) extensions were given in that behalf to enable the employee to switch over. Third, the respondent employee in that case was in service, at a point in time when the last extension was still valid. The employee, however, voluntarily retired from service in October 1976 and, received his contributory pension. Lastly, the respondent-employee in that case sought to rake up the issue for the first time by way of a representation only in October 1998.

14.4 Having regard to these crucial facts, the Supreme Court reversed the view both of the Central Administrative Tribunal and the High Court since the petitioner had failed to exercise his option for switch over within the time accorded in that behalf by the applicable scheme.

14.5 Clearly, the Pension Scheme as reflected in O.M. dated 01.05.1987 and the facts under consideration, in the present case, are different. There is no requirement for a positive option being exercised for conversion to Pension Scheme. On the cut-off date i.e., 30.09.1987, employees by a deeming legal fiction got covered under the Pension Scheme, unless they chose to exercise a positive option to continue with the CPF Scheme by 30.09.1987.

14.6 Similarly, in Naresh Kumar's case as well, the employees were required to exercise a positive option by a given date. The appellant in that case, three days prior to the cut-off date i.e., 16.02.1998 exercised a positive option for drawing pro rata monthly pension and family pension benefits as against his claim thereafter to opt for combined benefits of civil and military pension. The appellant, in that case had rendered service both in military and civilian establishments, hence, his desire to change his option to the combined benefits of civil and military pension. This plea of the appellant was rejected, once again, on peculiar facts obtaining in that case having regard to the fact that a positive option was exercised by him way back in 1998 from which he chose to resile by filing a writ petition in January 2007.

14.7 Panchi Devi's case is also distinguishable on facts. This case pertains to

the claim of pensionary benefits by a widow of a work-charged employee. The husband of the appellant had died in 1978, while the right to claim pensionary benefit by widows generally, of work-charged employees, was made effective from 01.09.1982. The Supreme Court rejected the appeal of the appellant-widow of the work-charged employee, on the ground that benefit which came into existence after the death of her husband, could not be extended to her, as the amended rule in that behalf, was clearly prospective. The Supreme Court after discussing the merits of the matter sustained the view taken by the High Court that the petition could not be entertained on the grounds of delay and laches. In my view, the Panchi Devi's case is clearly distinguishable.

14.8 Similarly, the facts in KVS's case are also distinguishable as, the Supreme Court found that the Scheme provided for an option to the employees to switch over from CPF Scheme to Pension Scheme. The court also found that even though the appellant was not able to produce the original option form which was indicative of the fact that the employee was desirous of continuing under the CPF Scheme, the attendant circumstances showed that she chose to remain under the CPF Scheme. As indicated above, much would turn on the terms of the Scheme in issue.

14.9 O.M. dated 01.05.1987, gave no such choice to the employees. A plain reading of the provisions show that employees automatically stood covered under the Pension Scheme.

102. Even the Division Bench in Smt. Shashi Kiran and Ors. (supra) while upholding the Judgment of the learned Single Judge in Dr. R.N. Virmani and Ors. (supra) has, in paragraphs 16 and 17, held as under:

16. The reasoning, which persuaded the learned Single Judge to accept the claim for grant of pension, in the Virmani order, are as follows:

14.2 A perusal of the aforesaid form would show that the only option which had to be exercised was with regard to continuation by an employee under the CPF Scheme. The employee was not required to submit any form if, he or she wanted to be covered under the Pension

Scheme, as that was automatic, in view of the deeming provision incorporated in clause 3.1 and 3.2 of O.M. dated 01.05.1987.â??

Thereafter, the learned Single Judge considered the judgment in Union of India & Anr. v S.L. Verma & Ors., (2006) 12 SCC 53 and held as

follows:

â??14.5 Clearly, the Pension Scheme as reflected in O.M. dated 01.05.1987 and the facts under consideration, in the present case, are

different. There is no requirement for a positive option being exercised for conversion to Pension Scheme. On the cut-off date i.e.,

30.09.1987, employees by a deeming legal fiction got covered under the Pension Scheme, unless they chose to exercise a positive option to

continue with the CPF Scheme by 30.09.1987.â??

17. This court is of opinion that the submissions of the University, the appellant, in regard to the Virmaniâ??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 â??come overâ? 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 â?" 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.

103. Similarly, the Bombay High Court in the case of *Amita Ajit Desai & Ors.* (supra) has, in paragraphs 11, 12 and 13, held as under:

"11 The controversy is no longer res integra. In the case of *Union of India & Anr. Vs. S.L. Verma & Ors.*, the Hon'ble Supreme Court

had an occasion to consider the very same Office Memorandum. It will be helpful to refer to paragraph 7 of the said judgment of the Apex

Court which reads as under:-

"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 Condition of Service of Employees Regulation, 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 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 scheme, which a fortiori would mean that they no longer remained in the CPF scheme.â??

12 On perusal of the aforesaid observations of the Hon'ble Apex Court, it is clearly revealed that by reason of the said Office Memorandum dated 1st May 1987, a legal fiction was created. It has been held that only when an employee consciously opted to continue with the CPF Scheme, he would not become a member of the Pension Scheme. It has been held that if no option is exercised by an employee, prior to the date specified in the Office Memorandum dated 1st May 1987, the employee shall be deemed to have automatically come over to the Pension Scheme.

13 We find that the aforesaid directions of the Hon'ble Apex Court would clearly cover the case of the petitioners. Undisputedly, none of the petitioner has opted for the CPF Scheme under the Office Memorandum dated 1st May 1987. In that view of the matter, we find that in view of the Office Memorandum dated 1st May 1987, the petitioners would be deemed to be covered by the Pension Scheme.â??

104. A reading of the above paragraphs of the judgments of this Court and the Bombay High Court reveals that the Courts have followed the dicta of the Supreme Court in Union of India v. S.L. Verma (supra) wherein the Supreme Court held, in view of the legal fiction, in the absence of any express option to continue in CPF Scheme, an employee shall be deemed to have switched over to the Pension Scheme. Hence, it must be held that the petitioners in these petitions, deemed to have switched over to the Pension Scheme and as such, are entitled to the benefits thereunder.

Accordingly, the writ petitions are allowed. The impugned orders in these petitions are quashed. It is held that the petitioners shall be deemed to be covered under the Pension Scheme on the date of their retirement. They are entitled to the benefits thereof. The petitioners shall refund the employer's contribution of CPF received by them with interest @ 8% per annum within eight weeks from today to the respondents. The respondents shall compute the pension and arrears, if any, after making adjustment which shall be paid to them within eight weeks thereafter but without any interest. Petitions are disposed of. No costs.

CM Nos. 50302/2019 & 29745/2020 in W.P.(C) 6747/2014,

CM. Nos. 40597/2019 and 7147/2020 in W.P.(C) 8601/2010

CM. No. 52917/2019 in W.P.(C) 3426/2012

As these writ petitions have been heard and decided, the applications have become infructuous and are dismissed.