

(2014) 06 SHI CK 0097

In the High Court Of Himachal Pradesh

Case No : LPA Nos. 89, 90, 91, 92 of 2012, 664, 665, 667, 668, 674 and 682 of 2011

Sainik Schools Society

APPELLANT

Vs

R.C. Sharma

RESPONDENT

Date of Decision : 17-06-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2014) 06 SHI CK 0097

Hon'ble Judges : Mansoor Ahmad Mir, Acting C.J.; Tarlok Singh Chauhan, J

Bench : Division Bench

Advocate : Sandeep Sharma, Assistant Solicitor General of India, Advocate for the Appellant; Surender Sharma, Advocate for the Respondent

Final Decision : Allowed

Judgement

Tarlok Singh Chauhan, J.—This batch of appeals is preferred against the judgment of the learned Single Judge dated 26.7.2011 passed in CWP No. 480 of 2009 along with other connected writ petitions whereby the learned Single Judge allowed the writ petitions.

2. The writ petitioners are the employees of the appellants and had filed the writ petitions claiming therein the following substantive reliefs:

(i) That the impugned Annexures PI and Annexure PN dated 24.8.2001 and 4.6.2008 may kindly be quashed and set aside by issuing a writ of certiorari.

(ii) That a writ of mandamus may kindly be issued, directing the respondents to permit the petitioner and other similarly situate persons to give fresh options to opt for the Pension Scheme keeping in view the amendment made in the scheme by the respondent No. 1 Board in the year 1991 and the petitioner and other similarly situate persons be held entitled to the consequential benefits under the Pension Scheme.

(iii) That in case during the pendency of the writ petition the petitioner or other similarly situate person retire, such person(s) may also be held entitled to the benefits flowing from the decision of the present writ petition.

3. The appellant No. 1 is a registered Society registered under the Societies Registration Act, 1860. The Society has opened number of Sainik Schools in different States throughout the country and one of such school is situated at Sujampur Tihra, District Hamirpur, Himachal Pradesh in the year 1978. The writ petitioners were working in different capacities in the school at Sujampur Tihra are shown hereunder:

4. The employees of the appellant-School were entitled for the "Contributory Provident Fund" under the CPF Scheme w.e.f. 1.4.1988. The governing body of the appellant No. 1 decided to apply pension scheme as applicable to the employees of Central Government to the employees of Sainik Schools. As such, the appellant No. 1 sought option from its employees vide letter dated 3.3.1989 (Annexure PA) so that the employees who were in service of the appellants as on 1.4.1988 may exercise their option either for continuing with the existing CPF scheme or to switch over to the pension scheme along with General Provident Fund (hereinafter referred to as "GPF"). As regards the employees who were appointed on or after 1.4.1988 they were to be governed by the pension scheme and GPF only. Thus, the employees aforesaid were required to submit their option to the office Superintendent of the school before 10.3.1989.

5. In terms of the aforesaid School Routine Order (for short "SRO") dated 3.3.1989, the majority of the employees save and except the petitioners and few others exercised their options and opted to continue with the existing CPF scheme. After the expiry of cut off date i.e. 10.3.1989 for exercising options to switch over from the CPF scheme to pension scheme alongwith GPF, the employees of various Sainik Schools, who had failed to exercise option in terms of the earlier order passed by different Sainik Schools, represented to the Sainik School Society requesting therein for being offered one more chance to exercise the option. Accordingly, the Board of Governors, Sainik School Society decided to afford fresh chance to employees to enable them to exercise their option on or before 31.1.1992. In this regard, Sainik School Society vide letter No. 2(2)/90.D(SSC) dated 19.12.1999 directed Principals of all Sainik Schools to call for fresh option on or before 31.1.1992. Clause 3 of the letter specifically mentioned that:

.....There have been some representations from the Sainik School employees for allowing them another chance to change their own option for pension CPF in view of the extension of benefits of Family Pension and commutation of pension. It has, accordingly, been decided that Sainik School Employees shall be allowed a fresh opportunity for exercising option or to change their option to pension scheme CPF. This shall be done by 31 January, 1992.

Accordingly, in compliance to the aforesaid order, the Principal, Sainik School,

Sujanpur Tihra vide SRO dated 10.1.1992 apprised all Sainik School employees with regard to fresh opportunity to exercise their option in terms of letter dated 19.12.1991. In Clause 4 of SRO, it was provided that the employees who had earlier not exercised their option were advised to exercise their option to switch over from CPF to pension scheme and GPF latest by 31.1.1992. But despite the aforesaid fresh opportunity offered vide SRO dated 10.1.1992, the writ petitioners failed to exercise their option and consequently continued to be governed by CPF scheme.

6. Subsequently, the writ petitioners alongwith similar situated persons filed representations with the authorities for allowing him/them to opt for GPF pension scheme but such requests were not acceded to. Finally, vide order dated 24.8.2001 the Board of Governors, Sainik School Society conveyed their decision with regard to the representation for change of option from CPF to GPF pension scheme and passed the following orders:

The matter has been examined in consultation with the Ministry of Finance (Department of Expenditure). The Ministry of Finance Department of Expenditures has stated that the 5th Central Pay Commission has not recommended for grant of another option to those who by themselves opted to be governed under the CPF Scheme in implementation of the recommendations of the 4th Pay Commission to switch over to the Pension Scheme. As such, the proposal to allow another option to the employees who by themselves opted to be governed under CPF Scheme for switching over to the GPF pattern has not been agreed to.

7. Despite passing of the aforesaid orders by the Board of Governors, the writ petitioners alongwith similar situated persons kept on filing representations to the Principal, Sainik School Sujanpur Tihra, who in turn forwarded the same to the Board of Governors. But the Board of Governors did not change its earlier decision dated 24.8.2001 constraining the writ petitioners to prefer Civil Writ Petition before this Court which was disposed of by the learned Single Judge vide judgment dated 22.5.2007 whereby the appellants were directed to consider the case of the writ petitioner(s) afresh on his/their making representation by passing a speaking order.

8. In terms of the judgment dated 22.5.2007, the appellant No. 1 decided the matter afresh vide order dated 4.6.2008 and rejected the claim of the writ petitioner(s) as well as other similar situated persons. It was against this order dated 4.6.2008 that a number of writ petitions were filed before this Court, out of which the present batch of appeals have arisen.

9. The writ petitioners therein challenged the order dated 4.6.2008 and 24.8.2011 on the ground that initially the pension scheme had been made applicable w.e.f. 1.4.1988 onwards to the employees of the Sainik Schools by the Board of Governors of the appellant No. 1, two most advantageous benefits namely family pension and commutation of pension had not been included and it

was in such circumstances that the writ petitioners and some other employees of the appellant No. 2 had not exercised their option for the pension scheme and had decided to remain under CPF scheme. It was further alleged that once the Board of Governors of the appellant No. 1 Society had decided to amend Pension Scheme in the year 1991 retrospectively from 1.4.1988, so as to add the two additional benefits of family pension and commutation of pension, then it was incumbent upon the appellants to have sought fresh option from the employees after notifying to them the subsequent amendments made by the Board of Governors to extend these benefits. It was further averred that after the decision of the Board of Governors in the year 1991, the only communication conveyed to the writ petitioners and other similarly situate persons was in the form of SRO No. 1 dated 10.1.1992. In this communication, there was no mention of the decision of the Board of Governors regarding extension of entire pension scheme to the employees of the Sainik Schools retrospectively from 1.4.1988. Had this information been available, there was no occasion for the writ petitioners and similarly situated persons to have not given their fresh option in such changed circumstances. But when the writ petitioners and similarly situated persons did not have any knowledge about the change in the pension scheme, they just ignored the said communication and did not opt to change their option given in the year 1989 at the time of introduction of the scheme without above referred two additional benefits.

10. The writ petitioners claimed themselves to be constituting a separate class as they had no knowledge of the amendment in the original pension scheme and claimed that they have been discriminated inasmuch as the other employees of the Sainik Schools were given two chances of giving options. While, in the case of the writ petitioners and other similarly situated persons virtually only one chance at the initial stage had been given while the so called second chance was meaningless to them as the amendment made by the Board in the initial scheme was not brought to their notice. It was also claimed that since they did not have knowledge regarding any right having been created in their favour, the doctrine of waiver was not attracted or applicable to their cases. The action of the appellants in not giving second option to the writ petitioners and similarly situated persons, in these peculiar circumstances, was termed to be discriminatory, arbitrary, unreasonable, unjust and, therefore, violative of Articles 14 and 16 of the Constitution of India. Lastly it is contended that in the reply filed by the appellants to the earlier writ petition being CWP No. 1239 of 2002 a communication dated 5.3.2002 had been annexed which was addressed by appellant No. 2 to appellant No. 1 wherein the appellant No. 2 had clearly mentioned that the SRO published by the school did not unambiguously state the revised salient features of the GPF scheme incorporating the benefits of family pension and commutation of pension. Therefore, once the appellants had admitted the lapse on their part, they were estopped from taking a different stand.

11. The appellants herein contested the writ petition by filing a reply wherein it

was averred that in SRO No. 1 dated 10.1.1992 was published for giving fresh opportunity to the employees to exercise their option or change their options to pension scheme/CPF latest by 31.1.1992. It was also mentioned that in case no revised option is received within the stipulated date i.e. 31.1.1992, it shall be presumed that the concerned employees are not willing to revise/change their options. The employees were to obtain option proforma from the school office and deposit by 31.1.1992. It was also averred that as a matter of fact after the publication of the SROs giving gist of policy letters, all members of the staff regularly consult the office Superintendent on office matters and the Accountant on matters relating to pay, allowances, CPF, gratuity, pension and allied matters and have access to all unclassified policy letters issued by the Board of Governors. It was alleged that one of the petitioner i.e. S.K. Gupta was an Accountant and in fact the custodian of the file containing all policy letters pertaining to pay and allowances, CPF, GPF, gratuity, family pension, commutation of pension and allied matters including the Board of Governors, Sainik Schools Society. It was highlighted that the letter dated 9.12.1991 relied upon by the petitioners as Annexure P-3 bore the remarks of the Principal and had in fact been endorsed by S.K. Gupta. Therefore, his statement on affidavit that he was not aware of the provisions of extended benefits was false. It was further contended that the other petitioners S/Sh. S.P. Powari, Desh Raj, Ram Chand, Jogi Ram, Jagan Nath, Sambha Ram and Krishan Kumar are concerned, they are all ex-servicemen and have given a letter No. SSST/312/ACCTS/Vol. II dated 3.2.1993 giving extended date of the option for GPF/CPF by 28.2.1993. The sum and substance of the reply filed by the appellants herein, is that the writ petitioners were well aware of the extended benefits of the pension scheme with commutation of pension and, therefore, they could not feign ignorance regarding the same.

12. In so far as ground of challenge raised by the writ petitioners with respect to non-granting of fresh option is concerned, it is averred that the school had given two chances to the writ petitioners and similarly situated persons to exercise their option through the SROs which were duly published for information and necessary action. It was claimed that nothing prevented the writ petitioners from approaching the authorities and seeking clarification in case they found any ambiguity in SRO published on 9.1.1992. It was then claimed that the Government of India had now implemented a new pension scheme which is defined "Contribution Pension Scheme" replacing the existing system of Defined Benefit Pension Scheme vide Ministry of Finance O.M. No. 1(7)(2)/2003/TA/11 dated 7.1.2004. Lastly, the appellants contend that the reversion to the GPF for employees who themselves opted to remain in CPF scheme at this stage would be administratively inconvenient and not feasible.

13. The writ petitioners did not choose to file rejoinder.

14. The learned Single Judge based on these pleadings, vide judgment dated 26.7.2011 allowed the writ petition by holding that the writ petitioners had been

misled by the SRO dated 10.1.1992, thinking that only the time for exercising the option had been extended without any further extended benefits which ultimately prejudiced the writ petitioners in exercise of their option. For this purpose, the learned Single Judge placed reliance on letter dated 5.3.2002 addressed by appellant No. 2 to appellant No. 1 wherein he is alleged to have admitted the lapse on his part that while publishing the SRO dated 10.1.1992 the points of the revised scheme were not highlighted in the SRO stating clearly that the previous anomaly had in fact been removed, therefore, the employees thought that there was nothing new in the scheme and accordingly paid no attention to the SRO aforesaid. The letter dated 5.3.2002 reads thus:

Phones: 72024(Off) 72027 (Res)

Sainik School, Sujanpur Tira-176 110 District Hamirpur (HP)

No. SSST/304/Accts

05 March, 2002

The Honorary Secretary, Sainik Schools Society, Ministry of Defence, Room No. 222, "A" Wing, Sena Bhawan, New Delhi - 110 011

Change of Option from CPF to GPF (Pension Scheme)

1. Reference Sainik Schools Society letter No. PC-10(4)/87-SSC dated 08 Feb. 1989 vide which pension scheme was introduced with effect from 01 April, 1988.
2. As provisions of family pension and commutation did not exist in the scheme when introduced, a large number of school employees had opted for the CPF against the GPF scheme.
3. In response to the Sainik Schools Society letter No. 2(2)/90-D(SSC) dated 09 Dec., 1991 vide which previous anomalies were removed and provisions for family pension and commutation made, the employees were again asked to exercise their options for CPF or GPF(Pension Scheme). The Sainik School, Sujanpur Tira vide their SRO serial No. 1 dated 10 Jan., 1992 (copy enclosed for ready reference) had intimated all concerned to exercise fresh options.
4. Even though the School had published the SRO, it, however, did not unambiguously state the revised salient features of the GPF scheme incorporating benefits of family pension and commutation of pension. Since these points of the revised scheme had not been highlighted in the SRO stating clearly that previous anomalies have been removed. The employees thought that there was nothing new in the scheme, therefore, paid no attention to the SRO then.
5. After some passage of time the employees realised their mistake and had taken up a case with the Sainik Schools Society to give them one more chance to exercise their options which was turned down. In this connection Sainik Schools Society's attention is invited to their letter No. 38(1)/2001/D(SSC) dated 27 Jul 2001 in response to this School's latest letter No. SSST/304/Accts. Dated 23 Mar

2001 (copy enclosed).

6. Now the following employees of the school have individually, put up fresh requests for seeking permission of the Sainik Schools Society to file suits in the civil court of law:-

(a) Sh. S.S. Deswal, Master (Eng.) (b) Sh. S.P. Thakur, Master (Eng.) (c) Sh. G.D. Kshirsagar, Master (Maths) (d) Sh. R.C. Sharma, Asstt. Master, (Hindi) (e) Sh. Ram Chand, Band Master (f) Sh. Ramji Dass, LDC/Compositor-cum-Machine Operator (g) Sh. Deep Kumar, Lib. Attendant (h) Sh. S.K. Dixit, Craft Attendant (j) Sh. V.K. Sharma, Mess Manager (k) Sh. S.K. Gupta, Accountant (l) Sh. S.P. Powari, Medical Assistant (m) Sh. Des Raj Sharma, Hostel Supdt. (n) Sh. Shamba Ram, Gen. Emp. (o) Sh. Jogi Ram, Driver (p) Sh. Krishan Kumar, Gen. Emp. (q) Sh. J.P. Vashistha, Master (Maths) (r) Sh. Jagan Nath, Driver.

7. Applications received from above personnel are forwarded in original alongwith this letter as enclosures from Appendix "A" to "R".

8. Society is requested to give further directions on the subject.

Sd/- (R.C. Laddha) Colonel Principal

15. Based on this letter, it was further observed by the learned Single Judge that despite having acknowledged the lapse on its part, the appellants herein, illegally rejected the claim of the writ petitioners in terms of the letter dated 9.12.1991.

16. Aggrieved by the judgment passed by the learned Single Judge, the appellants have preferred these appeals on the ground that vide order dated 9.12.1991 the writ petitioners had failed to exercise their option and even prior to this date they had been granted adequate opportunity for exercising the option, therefore, no fresh opportunity could not have been granted at such belated stage. The writ petitioners were already aware of the decision taken by the appellants which was duly communicated through SROs and yet the writ petitioners chose to sleep over the matter and did not exercise their option within the stipulated time. The appellants have lastly contended that the learned Single Judge did not take into consideration the fact that the impugned judgment would have all India ramifications because all those employees who had failed to exercise their option well within the cut off date would now seek fresh option in light of the impugned judgment.

17. We have heard Mr. Sandeep Sharma, learned Assistant Solicitor General of India for the appellants and Mr. Surender Sharma, learned counsel for the respondents and have also gone through the records meticulously and carefully.

18. The only question which is required to be determined in these appeals is whether the letter dated 5.3.2002 in itself could have furnished cause of action to the writ petitioners to change the option particularly in view of the observations made in paras 3 to 5 of the aforesaid letter as has been relied upon by the learned Single Judge to allow the claim of the writ petitioners. The learned

Single Judge held that the gist of the decision as conveyed by the appellant No. 1 to the Principal concerned was not further conveyed to the writ petitioners vide SRO (Annexure PB) dated 10.1.1992, it only mentioned that the decision was received from the Board of Governors, Sainik School Society that the Sainik School employee would be allowed a fresh opportunity for exercising option or to change their option to pension scheme/CP Fund latest by 31.1.1992 and in case no revised option is received within the stipulated date i.e. 31.1.1992, it would be presumed that the concerned employee was not willing to revise/change the option. It was further observed that the extended benefits which were ordered to be allowed by the Governing Body were in fact not at all conveyed. The learned Single Judge recorded the following reasons for holding the writ petitioners entitled to a grant of fresh opportunity to exercise their options:

14. It is well settled that the statutory authority who are required to implement/convey the orders of higher authorities are statutorily and religiously bound to convey the real sense fairly and without any reservation so as to achieve the desired result. But in the instant case principal of respondent No. 2 only conveyed half cooked decision vide SRO (Annexure PB) by concealing material context which created more confusion to its employees than clarifying the same.

15. Thus, in my considered opinion, the petitioner were mis-led by the said SRO (Annexure PB dated 10.1.1992), thinking that only the time for exercising the option was extended without any further extended benefits, which ultimately prejudiced the petitioners in exercise of their option, it was incumbent upon the respondent No. 2 to convey the decision passed by the Governing Body and brought the matter into the notice of the employees of Sainik School in its right spirit. The mistake in issuing the SRO (Annexure PB) is clearly admitted by respondent No. 2 vide his letter Annexure PJ dated 5.3.2002 and this mistake was also brought to the notice of respondent No. 1 but despite that even thereafter it was not corrected by respondent No. 1. The arguments advanced by the learned ASG that the petitioner could have sought clarification from the officials is not at all sustainable as the decision which was conveyed to the petitioners was different from the decision already taken by the governing body and there was no occasion for them to seek clarification and no rule or law has been brought to my notice that it was for the petitioners to get it verified as ventilated.

19. We are afraid that we can not persuade ourselves to agree with the observations and findings recorded by the learned Single Judge. The contents of the letter dated 5.3.2002 could not have been read in isolation without taking into consideration the cumulative effect of all the facts and surrounding circumstances. The learned Single Judge completely missed out on the fact that majority of the employees and officials of the Appellant No. 2 had infact exercised their option within the stipulated time which would not have been possible in case they had not been informed correctly about the scheme.

20. At this stage, learned counsel for the writ petitioners (respondents herein)

would contend that since the employer had introduced the pension scheme, it was its duty to have either communicated the same individually or personally or apprised the writ petitioners by some other reasonable mode regarding the change brought about in the pension scheme. Mere display of such notice/instructions on the notice board of the school could not be treated as an intimation thereof to the employees/officers. For this purpose, has relied upon the judgment of the Hon''ble Supreme Court in *The Calcutta Port Trust and Others Vs. Anadi Kumar Das (Capt.) and Others*, and particularly para 23 thereof, which reads as under:

23. We would like to observe that whenever an employer introduces the pension scheme or makes the same applicable to retired employees and gives them opportunity to exercise option, the circulars/instructions issued for that purpose should either be communicated to the retirees or made known to them by some reasonable mode. Mere display of such notice/instructions on the notice board of the head office cannot be treated as an intimation thereof to the retired employees/officers. The employer cannot presume that all the retirees have settled in the city where the head office is located. If the employees belong to the services of the Central Government or its agencies/instrumentalities, they are likely to settle in their native places which may be far away from the seat of the Government or head office of the establishment or organization. The retirees are not expected to frequently travel from their native places to the seat of the Government or head office to know about additional benefits, if any, extended by the Government or their establishment/organization and it is the duty of the employer to adopt a suitable mechanism for communicating the decision to the retired employees so as to enable them to exercise option. This could be done either by publishing a notice in the newspaper about which the retirees are told at the time of their retirement or by sending copies of the circulars/instructions to the retirees or by sending a copy thereof to the association of the employees and/or officers with a direction to them to circulate the same among the retirees concerned. By taking advantage of the modern technology, the employer can also display the circulars/instructions on a designated website about which prior information is made available to the employees at the time of their retirement. If one of these modes is not adopted, the retired employees can legitimately complain that they have been denied right to exercise the option and can seek intervention of the court.

21. Here we may observe here that probably the learned counsel for the appellants has failed to notice that the Hon''ble Supreme Court in aforesaid case was seized of a matter pertaining to the retirees being put to notice of a new advantageous scheme and calling for the option in such eventuality. But in the present case, we are not dealing with case of retirees but the employees and officers who are/were still in service of the appellants school.

22. Once it is not disputed that the writ petitioners were in service at the time when the relevant SRO had been issued then there was no requirement of the

scheme that the school would be required to give individual notices to the writ petitioners for exercising their option for the pension scheme and also for asking the writ petitioners to refund the employees contribution of CPF at that stage. Moreover, when the notice or knowledge of the pension scheme can be reasonably inferred or gathered from the conduct of the writ petitioners in the ordinary course of business and from surrounding circumstances, then it would constitute sufficient notice in the eyes of law. Reliance in this behalf can conveniently be placed upon the judgment of the Hon"ble Supreme Court in PEPSU Road Transport Corporation, Patiala Vs. Mangal Singh and Others, wherein it has been held as follows:

52. The respondents in all these appeals, before us, have made a claim for pensionary benefits under the Pension Scheme for the first time only after their retirement with an unreasonable delay of more than 8 years. It is not in dispute, in some appeals, that the respondents never opted for the Pension Scheme for their alleged want of knowledge for non-service of individual notices. In other appeals, although respondents applied for the option of the Pension Scheme but indisputably never fulfilled the quintessential conditions envisaged by the Regulations which are statutory in nature.

53. The learned counsel for the respondents in support of their contention for want of knowledge of the Pension Scheme due to non-service of individual notices relied on the decision of this Court in Dakshin Haryana Bijli Vitran Nigam and Others Vs. Bachan Singh, . The said decision is clearly distinguishable on facts. In that case, the appellant, Haryana State Electricity Board, had issued instructions dated 23.06.1993 and circular dated 09.08.1994 in order to provide an option to the employees for pensionary benefits in lieu of their work charged service with an express condition of noting of instructions from all the employees and acknowledging the receipt of the letter. In these appeals, before us, there is no such condition of noting from the employees or serving individual notices in the Pension Scheme or Regulations. Therefore, in our opinion, Bachan Singh's decision will not assist the respondents.

54. In our view, in the facts and circumstances of the present case and in view of absence of such condition in the scheme, it is not necessary for the Corporation to give an individual notice to respondents for exercising of option for pension Scheme and also for asking respondent to refund the employers contribution of C.P.F. at each stage. Furthermore, when notice or knowledge of the Pension Scheme can be reasonably inferred or gathered from the conduct of the respondents in their ordinary course of business and from surrounding circumstances, then, it will constitute a sufficient notice in the eyes of law.

55. In Union of India (UOI) and Others Vs. M.K. Sarkar, , this Court has held: (SCC p. 68, paras 21-23)

21. The Tribunal in this case has assumed that being "aware" of the scheme was not sufficient notice to a retiree to exercise the option and individual written

communication was mandatory. The Tribunal was of the view that as the Railways remained unrepresented and failed to prove by positive evidence, that the respondent was informed of the availability of the option, it should be assumed that there was non-compliance with the requirements relating to notice. The High Court has impliedly accepted and affirmed this view. The assumption is not sound.

22. The Tribunal was examining the issue with reference to a case where there was a delay of 22 years. A person, who is aware of the availability of option, cannot contend that he was not served a written notice of the availability of the option after 22 years. In such a case, even if Railway Administration was represented, it was not reasonable to expect the department to maintain the records of such intimation(s) of individual notice to each employee after 22 years. In fact by the time the matter was considered more than nearly 27 years had elapsed. Further when notice or knowledge of the availability of the option was clearly inferable, the employee cannot after a long time (in this case 22 years) be heard to contend that in the absence of written intimation of the option, he is still entitled to exercise the option.

23. This Court considered the meaning of "notice" in Nilkantha Shidramappa Ningashetti Vs. Kashinath Somanna Ningashetti and Others, . This Court held: (AIR p. 669, para 10)

10. We see no ground to construe the expression "date of service of notice" in Column 3 of Article 158 of the Limitation Act to mean only a notice in writing served in a formal manner. When the legislature used the word "notice" it must be presumed to have borne in mind that it means not only a formal intimation but also an informal one. Similarly, it must be deemed to have in mind the fact that service of a notice would include constructive or informal notice. If its intention were to exclude the latter sense of the words "notice" and "service" it would have said so explicitly.

56. Regulation 4(iii) of the Regulations is a deeming provision to the effect: firstly, if an employee fails to exercise his option within a period of 6 months from the date of issue of these Regulations and; secondly, even on exercise of option, if an employee fails to refund the amount of advance taken from employers contribution of the C.P.F. within 6 months from the date of issue of these Regulations, then it shall be deemed that employee has opted to continue for the existing C.P.F. benefit. Therefore, the failure on the part of the respondents to opt for the Pension Scheme and refund the advance taken from the employer's contribution of C.P.F. will disentitle them from claiming any benefit under the Pension Scheme. Therefore, we cannot sustain the Judgment and order passed by the High Court.

Therefore, in terms of the aforesaid judgment, the employer can show that even though the scheme had not been communicated to the concerned employee in person, he was still aware of the same and the general rule is that each case

shall have to be decided by the court keeping in view the pleadings and evidence produced by the parties. Further it has been categorically held that "it cannot be laid down as a general rule that each and every circular/instruction issued by the employer giving additional monetary benefits to the retired employees must be published in newspaper and that in the absence of such publication or personal communication to the retired employee would entitle him to seek intervention of the Court after lapse of many years.

23. Further, there was no denying of the fact that one of the writ petitioner S.K. Gupta in fact was an Accountant and custodian of the files containing all policy letters on pay and allowances, CPF, GPF, gratuity, family pension, commutation of pension and allied matters including Board of Governors, Sainik School Society and Ministry of Defence etc. Moreover, the letter dated 9.12.1991 placed on record by the writ petitioners itself bore the remarks of this petitioner and then the remarks of the then Principal as is clear from perusal of Annexure R-4 with the reply and therefore this petitioner cannot claim that he had knowledge regarding the true import of the letter dated 9.12.1991.

24. Apart from the above, the specific case of the appellants is that after publication of the SROs giving gist of the policy letters, all members of the staff regularly consult the office Superintendent on office matters and on matters relating to pay and allowances, CPF, gratuity, pension and allied matters, they consulted the Accountant. Moreover, they (writ petitioners) have access to all unclassified letters issued by the Board of Governors.

Therefore, we feel that the writ petitioners cannot feign ignorance regarding the change brought about in the pension scheme vide letter dated 9.12.1991 and further claim that they were under the bonafide impression that no changes had been brought about in the said letter as has been contended in the writ petition.

25. Notably the scheme of GPF and Pension Scheme became effective from 1.4.1988 and it was after lapse of 13 years that the representations from some employees including the writ petitioners were received by the appellants for giving one more chance to exercise their option for changing from CPF to GPF and pension scheme. At that stage, the majority of the employees had already opted for the GPF scheme, while the rest chose to remain in the CPF scheme. In this view of the matter the Court even at the initial stage should have avoided directing the authorities to consider and decide the representation regarding stale or dead claims, as observed in *C. Jacob Vs. Director of Geology and Mining Indus. Est. and Another*, , by the Hon"ble Supreme Court:

9. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly, they assume that a mere direction to consider and dispose of the representation does not involve any "decision" on rights and obligations of parties. Little do they realise the consequences of such a direction to "consider". If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay,

all by reason of the direction to "consider". If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.

Moreover, when a belated representation in regard to a "stale" or "dead" claim is considered and decided in compliance with the directions of the Courts/Tribunals to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the "dead" claim or time barred dispute. The issue of limitation or delay and laches has to be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches as held by the Hon''ble Supreme Court of India in Union of India and others vs. M.K. Sarkar:

14. The order of the Tribunal allowing the first application of respondent without examining the merits, and directing the appellants to consider his representation has given rise of unnecessary litigation and avoidable complications. The ill-effects of such directions have been considered by this Court in C. Jacob Vs. Director of Geology and Mining Indus. Est. and Another,

9. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly, they assume that a mere direction to consider and dispose of the representation does not involve any "decision" on rights and obligations of parties. Little do they realise the consequences of such a direction to "consider". If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to "consider". If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.

15. When a belated representation in regard to a "stale" or "dead" claim is considered and decided in compliance with the directions of the Courts/Tribunals to do so, the date of such decision cannot be considered as furnishing a fresh

cause of action for reviving the "dead" claim or time barred dispute. The issue of limitation or delay and laches has to be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

26. That apart in the document permitted to be taken on record on behalf of the appellants vide court order dated 27.5.2014 and marked at flag "A", it has been categorically stated that even after the cut off date, the matter was again considered in the Sainik Schools Society during 2001 and referred to the Department of Pension & P.W. and Ministry of Finance/Deptt. of Expenditure for their advice, particularly whether grant of such an option would be in order at this belated stage. The appellants were informed that 5th Pay Commission had not recommended for grant of another option to those who by themselves opted to be governed under the CPF Scheme in implementation of the recommendations of 4th Pay Commission to switch over to the Pension Scheme. The Ministry was not in favour of allowing another option to these employees. It is further stated that in view of the aforesaid advice, the matter was treated as closed and the Principals of all Sainik Schools were advised on 6.6.2002 to inform the employees that their requests to come over from CPF scheme to GPF and Pension Scheme had been considered in the Sainik Schools Society in consultation with Ministry of Finance and PW and it was not found feasible to accede to their requests. The appellant No. 2 in turn informed 16 employees of Sainik School, Sujanpur Tihra about the decision.

27. Lastly, this Court cannot be oblivious of the fact that in case the time period for exercising option is extended to the cases of the writ petitioners in terms of the impugned judgment, the same will not only have all India ramifications but at the same time will be contrary to the provisions of law. This Court would not like to open Pandora's box that would open flood gates of litigation.

28. The Courts and Tribunals cannot decide the case merely on sympathetic consideration alone by ignoring the law. It was so held in Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another, by the Hon'ble Supreme Court:

10. Of late, this Court is coming across many cases in which appointment on compassionate ground is directed by judicial authorities. Hence, we would like to lay down the law in this regard. The High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic consideration. No doubt Shakespeare said in "Merchant of Venice":

The quality of mercy is not strain'd; It droppeth, as the gentle rain from heaven Upon the place beneath it is twice bless'd; It blesseth him that gives, and him that takes;

These words will not apply to all situations. Yielding to instinct will tend to ignore the cold logic of law. It should be remembered that "law is the embodiment of all Wisdom". Justice according to law is a principle as old as the hills. The courts are to administer law as they find it, however, inconvenient it may be.

11. At this juncture, we may usefully refer to *Martin Burn Ltd. Vs. The Corporation of Calcutta*, . At page 535 of the Report the following observations are found:

A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. A statute must of course be given effect to whether a Court likes the result or not.

The courts should endeavour to find out whether a particular case in which sympathetic considerations are to be weighted falls within the scope of law. Disregardful of law, however, hard the case may be, it should never be done. In the very case itself, there are regulations and instructions which we have extracted above. The court below has not even examined whether a case falls within the scope of these statutory provisions. Clause 2 of sub-clause (iii) of instructions makes it clear that relaxation could be given only when none of the members of the family is gainfully employed. Clause 4 of the circular dated January 20, 1987 interdicts such an appointment on compassionate grounds. The appellant Corporation being a statutory Corporation is bound by the Life Insurance Corporation Act as well as the Statutory Regulations and Instructions. They cannot be put aside and compassionate appointment be ordered.

29. Thus, from the analysis above and what can otherwise be reasonably inferred and gathered from the conduct of the writ petitioners and also from the surrounding circumstances leads us to a definite conclusion that the writ petitioners had full and complete knowledge regarding true import of the instructions issued by the appellants from time to time and yet failed to exercise their option within the cut off date and the findings to the contrary recorded by the learned Single Judge are therefore not sustainable and are accordingly set aside.

30. Consequently, these appeals are allowed and all the writ petitions are dismissed leaving the parties to bear their own costs. The Registry to place an authenticated copy of this judgment in all the files of other connected appeals.