



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

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Judgment reserved on: 05.04.2025

Judgment pronounced on: 16.04.2025

+ W.P.(C) 8170/2023 & CM APPL. 34087/2023

DR. (MRS.) SHARDA ARYA

.....Petitioner

versus

UNION OF INDIA & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Jayant Bhushan, Senior Advocate with Mr. Amartya Bhushan and Mr. Yojit Mehra, Advocates.

For the Respondents : Mr. Mohinder J.S. Rupal, Mr. Hardik Rupal and Ms. Aishwarya Malhotra, Advocates for R-3/University of Delhi.
Mr. Ravikesh K. Sinha, Advocate for R-4/UGC.
Mr. Ankur Chibber and Mr. Anshuman Mehrotra, Advocates for R-5/College.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

TUSHAR RAO GEDELA, J.

[The proceeding has been conducted through Hybrid mode]

1. This is a writ petition under Article 226 of the Constitution of India, 1950, seeking *inter alia* the following reliefs:-



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"i. Quash the letter dated 10.03.2023 of the Respondent no.3 not granting the pensionary benefits to the petitioner.

ii. Pass an appropriate writ/order/direction declaring the petitioners to have come over to the Pension Scheme w.e.f 01.10.1987 in compliance of office memorandum dated 01.05.1987 of the Respondent No. 1, they having not exercised option to the contrary by 30.09.1987.

iii. Pass any other order that is deemed fit and proper under facts and circumstances of the case."

2. The petitioner was a faculty at respondent no.5 – Daulat Ram College, University of Delhi, having joined service on 08.12.1965 and retired on 28.02.1994 on attaining the age of 60 years and then finally left the service on 19.02.1999 after re-employment.

3. The respondent no.1 vide its Memorandum no.4/1/87.PIC-1 dated 01.05.1987, while accepting the recommendations of 4th Central Pay Commission, had directed that all the central government employees who were in service on 01.01.1986 and were still in service would be deemed to have come over to the General Provident Fund-cum-Pension Scheme (hereinafter referred to as the "*Pension Scheme*") on that date unless they specifically opt to continue under the Contributory Provident Fund Scheme (hereinafter referred to as "*CPF Scheme*"). As per Clause 3 of the said Memorandum, all the CPF beneficiaries who were in service on 01.01.1986 and who are still in service on the date of issue of these orders would be deemed to have come over to the Pension Scheme. It was also stipulated that the employees of the category mentioned above would, however, have the option to continue under the CPF Scheme, if they so desire. It noted that the option to continue under the CPF Scheme would have to be exercised and



conveyed to the concerned Head of Office by the cutoff date i.e., 30.09.1987. It further noted that if no option is received by the Head of Office by the said cutoff date, the employees would be deemed to have come over to the Pension Scheme.

4. The respondent no.3 – University of Delhi *vide* its notification dated 22.05.1987 had adopted the recommendations of the 4th CPC and the abovementioned Office Memorandum of respondent no.1 dated 01.05.1987.

5. It is the case of the petitioner that she does not recall if she had exercised a positive option to remain in the CPF Scheme back in 1987. However, upon retirement, she received the pensionary benefits as per the CPF Scheme. It is the case of the petitioner that her right has been crystallized by the judgement of the Supreme Court in *University of Delhi vs. Shashi Kiran & Ors.*, reported in (2022) 15 SCC 325, allowing the switch over to the Pension Scheme.

6. To implement the judgment of the Supreme Court in *Shashi Kiran (supra)*, the respondent no.3/University of Delhi issued a letter no.Fin/Pen.Cell/CPF-GPF/SLP/2022 dated 06.06.2022 to all its constituent colleges. The relevant paragraphs of the said letter read as follows-

“(4) As directed by the Hon'ble Apex Court and taking into consideration of the O.M. No.4/1/87.PIC-I dated 1st May 1987 Ministry of Finance (DoE) Notification No.5/7/2003- ECB&PR dated 22nd December, 2003 an option from the employees both in service retired who are/were in the University/College services as on 1.1.1986 and up to 31.12.2003 placed under the CPF may be submitted option form for shifting from CPF to GPF.

(5) The Executive Council has also resolved that after fixation of pension, the employer contribution along with 8% simple interest per annum to be refundable to the University Colleges may be adjusted.



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After adjustment of employer contribution, the pension payable to the pensioners are needs to be disbursed."

7. It is the case of the petitioner that *vide* impugned letter dated 10.03.2023, the respondent no.3/University of Delhi had erroneously rejected the case of the petitioner to switch over from CPF Scheme to Pension Scheme stating that the employees who have joined the services of University/College prior to 01.01.2004 and retired on or after 01.02.1999, with CPF benefits have been considered under the Pension Scheme as per orders of High Court of Delhi dated 13.04.2014 and 24.08.2016 and the order of the Supreme Court in ***Shashi Kiran*** (*supra*) dated 10.05.2022. It was further stated that since the opportunities were given by the University to switch over from CPF Scheme to Pension Scheme from time to time during the period of 1989 to 31.01.1999 and the petitioner not falling under the scope of above mentioned court orders, the file of the petitioner, who had retired on 28.02.1994, was returned.

8. Thereafter, the petitioner made a representation in the form of a letter dated 17.04.2023 requesting the University to implement the directions passed by the Supreme Court in ***Shashi Kiran*** (*supra*) as well as the letter dated 06.06.2022 to allow her to switch over from CPF Scheme to Pension Scheme. However, even after months, no reply was received by the petitioner constraining her to file the present petition.

CONTENTIONS OF THE PETITIONER:-

9. Mr. Jayant Bhushan, learned senior counsel for the petitioner submits that the petitioner does not recall if she had exercised a positive option to



remain in the CPF Scheme back in 1987. He stated that assuming the petitioner had not exercised a positive option at all to remain in the CPF Scheme, then falling within the ratio laid down in R.N. Virmani batch of matters as noted by the Supreme Court in ***Shashi Kiran*** (*supra*), she should have been automatically switched over to the Pension Scheme in accordance with the 1987 notification without any further ado.

10. It is further contended by Mr. Bhushan that even assuming that she had submitted a positive option to remain in the CPF Scheme, even in that case, the petitioner could not have been denied the benefits of the OM in question. Dilating further, he urged that even assuming that the petitioner would fall under Shashi Kiran batch as observed by the Supreme Court in ***Shashi Kiran*** (*supra*), in that case too, she would be entitled to switch over from CPF to Pension Scheme.

11. It is also submitted that neither in the Supreme Court judgment in ***Shashi Kiran*** (*supra*) nor in the letter dated 06.06.2022 issued by the respondent no.3/University of Delhi is there a condition stating that only those employees who had joined the University prior to 01.01.2004 and retired on or after 01.02.1999 with CPF benefits have to be considered under the Pension Scheme. Thus, this condition is an artificial distinction created by the imagination of respondent no.3 in its letter dated 10.03.2023 *vide* which it rejected the case of the petitioner for benefits under Pension Scheme.

12. Thus, according to learned senior counsel, the petitioner in the above circumstances and keeping in mind the ratio laid down by Supreme Court in



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Shashi Kiran (supra) would be entitled to change over to the GPF-cum-Pension Scheme which may be so directed.

CONTENTIONS OF RESPONDENT NO.3/UNIVERSITY:-

13. *Per contra*, Mr. Rupal, learned standing counsel for respondent no.3/University extensively referred to various paragraphs of the judgment of the Supreme Court in *Shashi Kiran (supra)* to submit that the said judgment categorically delineated that out of 86 employees, only 75 employees have agitated their grievance before the learned Single Judge and thereafter, the Division Bench and finally, before the Supreme Court. He stated that it is only those employees who had approached the Supreme Court who were held entitled to the switch over option from CPF Scheme to Pension Scheme. Accordingly, the University of Delhi had issued the letter dated 06.06.2022 to its constituent colleges whose employees would be impacted by the decision rendered by the Supreme Court in *Shashi Kiran (supra)*. Thus, it is contended that the submission predicated on the letter dated 06.06.2022 urged on behalf of the petitioner, would not enure to her benefit.

14. Mr. Rupal submitted that since the petitioner had retired from the services of the respondent no.5/College on 28.02.1994 by consciously availing the benefits available under the CPF Scheme, her case does not fall under the scope of the benefit granted by the judgement in *Shashi Kiran (supra)*. Thus, it was stated that the request for fixation of pension as per the Pension Scheme in respect of the petitioner has been rightly turned down by the University of Delhi *vide* letter dated 10.03.2023.



ANALYSIS AND CONCLUSIONS:-

15. This Court has heard the arguments of Mr. Jayant Bhushan, learned senior counsel and Mr. Mohinder J.S. Rupal, learned standing counsel for respondent no.3/University of Delhi, perused the records and considered the judgements relied upon by the parties.

16. The present controversy essentially arises from the batch of matters dealt with by this Court and finally decided by the Supreme Court in *Shashi Kiran (supra)* wherein as per the facts involved, the employees were categorized into three classes, which are as follows:-

- (i) **Category A** - Employees who had not exercised any option at all, and thus, by virtue of the deeming provision contemplated in the notification dated 01.05.1987 were deemed to have “come over” to the Pension Scheme; but having continued to make contribution under the old CPF Scheme were being treated to be under the CPF Scheme. (This batch was subsequently referred to as “*R.N. Virmani batch of cases*”).
- (ii) **Category B** - Employees who had not exercised the option by the cutoff date contemplated under the notification dated 01.05.1987, and thus deemed to have “come over” to the Pension Scheme; however, such employees had exercised the option to remain under CPF Scheme during first two extensions granted by the University between 01.10.1987 to 29.02.1988; and were now praying that they be allowed to switch over the Pension Scheme. (This batch of cases was referred to as “*N.C. Bakshi batch of cases*”).



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- (iii) **Category C** - Employees who had exercised positive option by 30.09.1987 i.e. the original cutoff date contemplated under the notification dated 01.05.1987 and had chosen to remain under CPF Scheme; but were now demanding that they be given further option, and were therefore praying for extension of cutoff date to enable them to “come over” to the Pension Scheme. (This group of matters was referred to as “*Shashi Kiran batch of cases*”)

The petitioner claims to fall within Category A which this Court would examine.

17. Before adverting to the issue and material on record, since the controversy arises from the interpretation of certain paragraphs of the OM dated 01.05.1987, it would be apposite to extract the same hereunder:-

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

New Delhi, the 1st May, 1987.

OFFICE MEMORANDUM

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

The undersigned is directed to state that the Central Government employees who are governed by the Contributory Provident Fund Scheme (CPF Scheme) have been given repeated options in the past to come over to the Pension Scheme. The last such option was given in the Department-of Personnel and Training O.M. No. F3(1)- Pension unit/85 dated the 6th June, 1985. However, some Central Government employees still continue under the CPF Scheme. The Fourth Central Pay Commission has now recommended that all CPF



beneficiaries in service on January 1, 1986, should be deemed to have come over to the Pension Scheme on that date unless they specifically opt out to continue under the CPF Scheme.

2. After careful consideration the President is pleased to decide that the said recommendation shall be accepted and implemented in the manner hereinafter indicated.

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

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

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

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

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

3.6 The option once exercised shall be final.

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



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

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

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

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

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

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

6.2 These orders do not apply to Central Government employees who, on re-employment, are allowed to subscribe to Contributory Provident Fund. These orders also do not apply to Central Government employees appointed on contract basis where the contribution to the Contributory Provident Fund is regulated in accordance with the terms of contract,



6.3 These orders do not also apply to scientific and technical personnel of the Department of Atomic Energy, Department of Space, Department of Electronics and such other Scientific Departments as have adopted the system prevailing in the Department of Atomic Energy. Separate orders will be issued in their respect in due course.

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

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

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

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

10. Hindi version of these orders follows.

Sd/-

(I.K. Rasgotra)

Additional Secretary to the Government of India"

(emphasis supplied)

18. From a plain reading of the said OM dated 01.05.1987, it is manifest that it applies to central government employees for change over from CPF Scheme to the GPF-cum-Pension Scheme on the recommendations of the 4th Central Pay Commission. It is worth noting that the 4th CPC had recommended that all CPF beneficiaries in service as on 01.01.1986, 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. Accordingly, the said OM was issued. A careful, plain, harmonious and conjunctive



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reading of para nos.3, 3.2 and 3.3 of the said OM brings to fore that the change over from the CPF to the Pension Scheme was automatic and “deemed”, whereas, an option was to be necessarily exercised only if the employees wanted to continue with the CPF Scheme. Moreover, the words employed in para 3.2, “If no option is received by the Head of Office by the above date, the employees will be deemed to have come over to the Pension Scheme”, establishes beyond any doubt as to the clear intention of the Central Government that the change over to the Pension Scheme in case of all employees was the “default mandate” and only in case the employee wished to continue with the CPF Scheme, was he to exercise the said “option”. There is no ambiguity on this. It is also apparent that para 3 of the aforesaid OM is a ‘deeming fiction’ clause. The conclusion drawn by this Court is fortified by the ratio laid down by the Supreme Court in ***State of Bombay vs. Pandurang Vinayak and others*** reported in AIR 1953 SC 244. The relevant paragraph is reproduced hereunder:

“12. In East End Dwellings Co. Ltd. v. Finsbury Borough Council [East End Dwellings Co. Ltd. v. Finsbury Borough Council, 1952 AC 109 (HL)], Lord Asquith while dealing with the provisions of the Town and Country Planning Act, 1947, made reference to the same principle and observed as follows : (AC pp. 132-33)

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



19. Besides, the controversy is no more *res integra*. A learned Single Judge of this Court in ***R.N. Virmani vs. University of Delhi*** reported in **2014 SCC OnLine Del 2799** had, after a detailed and exhaustive discussion and reasoning, held that all those employees who had not exercised their option are entitled to the Pension Scheme. This judgement was, admittedly, never challenged by the respondent no.3/University and has become final and binding. Pertinently, this judgement in ***R.N. Virmani's*** case was noticed by the Supreme Court in ***Shashi Kiran (supra)*** and batch matters and approved in no uncertain terms. This Court had, in ***Neerja Tiku vs. School of Planning and Architecture & Anr.***, reported in **2024 SCC OnLine Del 2677**, considered a similar case and had directed that the CPF contribution be recouped and pensionary benefits be granted to the petitioner therein. Though in that case, the petitioner therein had given her option, but beyond the cutoff date and this Court held that the exercise of option beyond the cutoff date is *non-est* in law and applying the deeming fiction, allowed the petition. This Court had also considered the judgement of the Supreme Court in ***Shashi Kiran (supra)*** and brought out the relevant paragraphs in para 22 of the judgement in ***Neerja Tiku (supra)***. So far as the ***R.N. Virmani*** batch of matters is concerned, the Supreme Court in ***University of Delhi vs. Shashi Kiran***, reported in **(2022) 15 SCC 325** had observed as under :-

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

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



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b. On 06.06.1985, the Central Government employees who were governed by the Contributory Provident Fund (for short, "CPF") were permitted to opt for General Provident Fund and Pension Scheme (for short, "GPF"). Thereafter a notification was issued by the Central Government with respect to the changeover of the employees from CPF to GPF. Said notification issued on 1.5.1987 contemplated that all CPF beneficiaries who were in service on 01.01.1986 and were still in service would be deemed to have "come over" to GPF unless a contrary option was exercised by them in writing by 30.09.1987 to continue to be under CPF. The relevant paragraphs of said notification were:

The Central Government employees who are governed by the Contributory Provident Fund Scheme (CPF Scheme) have been given repeated options in the past to come over to the Pension Scheme. The last such option was given in the Department of Personnel and Training. O.M. No. F 3 (1) - Pension Unit/85, dated the 6th June, 1985. However, some Central Government employees still continue under the CPF Scheme. The Fourth Central Pay Commission has recommended that all CPF beneficiaries in service on January 1, 1986, should be deemed to have come over to the Pension Scheme on that date unless they specifically opt out to continue under the CPF Scheme.

2. After careful consideration, it has been decided that the said recommendation shall be accepted and implemented in the manner hereinafter indicated.

3.1 All CPF beneficiaries, who were in service on 1st January, 1986, and who are still in service on the date of issue of these orders viz., 1st May, 1987) will be deemed to have come over to the Pension Scheme.

3.2 The employees of the category mentioned above will, however, have an option to continue under the CPF Scheme, if they so desire. The option will have to be exercised and conveyed to the concerned Head of Office by 30-9-1987, in the form enclosed if the employees wish to continue under the CPF Scheme. If no option is received by the Head of Office by the above date the employees will be deemed to have come over to the Pension Scheme.

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3.6 The option once exercised shall be final.

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6.3 These orders do not also apply to scientific and technical personnel of the Department of Atomic Energy, Department of Space, Department of Electronics and such other Scientific Departments as have adopted the system prevailing in the Department of Atomic Energy. Separate orders will be issued in their respect in due course. [See Order (3) in this Appendix.]

8. These orders issue with the concurrence of the Ministry of Finance, Department of Expenditure, vide their U.O. No.2038/IS(Pers.)/87, dated 13-4-1987."

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

"28-A: In this Statute unless there is anything repugnant in the subject or context:

- | | | | |
|-------|---|---|---|
| (1) * | * | * | * |
| (2) * | * | * | * |
| (3) * | * | * | * |
| (4) * | * | * | * |

(5) The sanction and payment of retirement benefits admission under this Statute shall regulated by such procedural instructions as would be issued by the Executive Council.

Amendment approved:

Add the following as Clause 5 in Statute 28-A and Clause 5 and 6 may be renumbered as Clause 6 and 7 respectively.

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

- | | | | |
|-------|---|---|---|
| (6) * | * | * | * |
| (7) * | * | * | * |



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

"5. Pensionary benefits to temporary employees – Temporary employees, who retire on superannuation or on being declared permanently incapacitated for further service by the appropriate medical authority after having rendered temporary service of not less than 10 years, shall be eligible for grant of superannuation/ invalid pension, retirement gratuity and family pension on the same scale as admissible to permanent employees.

Further it has also been decided by the Government of India that pensioners who have commuted a portion of their pension and on 1.4.85 or thereafter have completed or will complete 15 years from their respective dates of retirement will have their commuted portion of pension restored.

It was also recommended by the Pay Commission that all CPF beneficiaries who are in service on 1.1.1986 should be deemed to have come over to the pension scheme on that dates unless they specifically opt out to continue under the CPF Scheme. This recommendation has also been accepted by the Government of India.

Keeping in view the revised pensionary benefits, it has been approved by the Vice-Chancellor that the above decision of the Government of India regarding option also be adopted in the University. It has, therefore, been decided that all Contributory Provident Fund beneficiaries who are in service on 1.1.1986 in the University should be deemed to have come over to the pension scheme under Statute 28-A Appendix 'A' unless they specifically opt out to continue under CPF Scheme (Statute 28-A, Appendix 'B').

It has further been decided that in respect of categories B, C & D beneficiaries for whom the revised grades have been announced and implemented, they be given three months' time from the date of this notification for opting out to continue under CPF Scheme (Statute 28-A Appendix 'B'). For category A - CPF beneficiaries the period of three months' time for the same purpose will be reckoned from the date of adoption by the University of the revised pay scales based on the IVth Pay Commission's recommendations, UGC committee's Report.



Employees who have already opted for the scheme under Statute 28-A Appendix 'A' will not be eligible for any further option. These orders 'would also be applicable to the employees of the Colleges affiliated to the University of Delhi and receiving maintenance grant from 'the 'University Grants Commission. The contents of this notification shall be brought to the notice of each employee and his/her acknowledgement for having noted these orders obtained and opt in the office record."

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

f. However, the University kept granting extensions for exercise of option to remain under CPF. First two extensions were, thus, granted vide communications dated 5.10.1987 and 21.01.1988 for exercising the option to remain under CPF. About 626 employees exercised such option to continue under CPF during two extensions granted by the University.

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

h. On 25.5.1999, a letter was addressed by the University Grants Commission ("the UGC", for short) to the Registrar of the University stating that the option in terms of the notification dated 01.05.1987 issued by the Central Government could be exercised only upto 30.09.1987; and if no option was received by said date the employees were deemed to have "come over" to the pension scheme and thus, option once exercised, was final. Further, the revised option given by the University to the concerned employees to switchover from CPF to GPF after the deadline was incorrect and therefore, the cost of benefit, if any, to such employees must be met by the University from its own sources. The relevant portion of the communication was:

"As you are already aware, the employees of University of Delhi are governed by Central Government GPF/CPF rules. The Government of India vide their O.M.No.4/I/87-P.I.C, dated the 1st May, 1937 (copy enclosed) had given a cut-off date as 30.09.87 to the employees for



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exercising their option in case they desired to continue to be governed by the CPF Scheme, and in case no such option was exercised by the above date all the employees were deemed to have come over to the GPF Scheme of the Government of India. It was also made clear that no extension for exercising option for continuing in the CPF scheme will be admissible as per Government of India's rules after 30.9.87.

As per guidelines of Government of India, all CPF who were in service on 1st January, 1986, and who are still in service on the date of issue of these orders (viz. 1st May, 1987) have therefore automatically come over to the Pension scheme. However, the employees who have exercised an option to continue under the CPF scheme, if they so desired have done so after due consideration by the specific date i.e. 30.09.87. As the option was given upto 30.9.87 and it was clearly stated in the order that if no option is received by the above date the employees will be deemed to have come over to the Pension Scheme and the option once exercised shall be final. The revised option again given by the employees to come back to GPF Scheme from CPF Scheme and accepted by the University is absolutely incorrect and against the rule. I would therefore request you to please furnish a list of employees who have been given the extension of change over from CPF to GPF after 30.9.87 and the benefit of retirement liabilities for such employees may be met by the University from their own sources and the same would only be treated as unapproved expenditure while determining the maintenance grant of the University. The next installment of maintenance grant would only be released after the receipt of above information."

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

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

j. On 8.08.2001, the UGC again requested MHRD to allow one extension for exercise of option to switch over from CPF to GPF. The proposal was, however, rejected by the Finance Ministry of the Central Government on the ground that the cost of introduction of pension scheme was much higher than the CPF and that such cost would continuously increase with every revision in



the scale of pay and further that acceptance of such proposal would have wide repercussions with many similarly placed autonomous bodies demanding similar extension.

4. In these circumstances, Writ Petitions were filed in the High Court claiming diverse reliefs. These petitions, by order dated 21.05.2012 passed by the learned Single Judge of the High Court, were categorized into three categories.

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

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

c. Employees who had exercised positive option by 30.09.1987 i.e. by the original cutoff date contemplated under notification dated 1.5.1987 and had chosen to remain under CPF Scheme; but were now demanding that they be given further option and were therefore praying for extension of the cut-off date to enable them to "come over" to GPF. This group of matters was referred to as "Shashi Kiran batch of cases" in the decisions rendered by the High Court."

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

"12. The common thread which ran through the decisions of the learned Single Judge pertaining to three batches of cases, was that the text of the notification dated 01.05.1987 was clear that if no option was exercised by the concerned employees before the cut-off date, they would be deemed to have 'come over' to GPF. It was only a positive option exercised by the employees to continue to be under CPF which could have departed from such deeming provision. Once exercised, the option was final and as such, there could be no



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switchover from those who had consciously opted to be under CPF. Further, relying on the decision in *S.L. Verma*, it was observed that any exercise of option after the deadline or the cut-off would be inconsequential. It was on this premise that the cases in *R.N. Virmani* batch of cases and *N.K. Bakshi* batch of cases were allowed by the learned Single Judge.

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

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15. According to the notification dated 01.05.1987 two situations were contemplated. First, the deeming provision in terms of which the concerned employee was taken to have 'come over' to GPF. The second situation being where a conscious option was exercised before the cut-off date to continue to be under CPF. *R.N. Virmani* batch of cases was therefore rightly allowed by the learned Single Judge and the Division Bench of the High Court, as no conscious option was exercised by the cut-off date. Consequently, the concerned employees must be deemed to have 'come over' to GPF. Logically, it would be immaterial whether the concerned employee continued to make contribution assuming himself to be covered under CPF, even though contributions were made by the concerned authorities. The benefit was therefore rightly granted in favour of the employees and the entire contribution was directed to be refunded. The University has chosen not to appeal against that decision and thus the matter has attained finality.

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

(Emphasis supplied)

20. From the principles enunciated by the Supreme Court above and the reiteration of the ratio laid down by the learned Single Judge and upheld by



the learned Division Bench of this Court in *R.N. Virmani* batch of cases, the controversy in the present case can be put to rest. Even this Court in *Neerja Tikku (supra)* had held that changeover to Pension Scheme was the default mandate under the deeming fiction while interpreting various facets of Clause 3 of the OM of 1987.

21. In the present case, learned senior counsel for the petitioner had submitted that the petitioner had no recollection of whether she had or had not submitted her option as per the provisions of the OM of 1987 at the time of her retirement. In order to clarify the doubts surrounding this controversy, by the order dated 01.03.2025, this Court had directed respondent no.5/College to file a short affidavit indicating its stand based on the available records of the petitioner. In compliance of the same, respondent no.5/College filed an affidavit dated 26.03.2025, the relevant paras of which are extracted hereunder:-

"4. That the University of Delhi adopted the OM dated 01.05.1987 vide its notification dated 25.05.1987 read with the notification dated 04.06.1987 and the same was directed to be brought to the knowledge of all the employees. However, it is pertinent to mention that the exercise of such option was extended to 31.12.1987 by the University vide notification dated 05.10.1987 which was further extended by the University from time to time vide relevant notifications uptill in 1998 when through the notification dated 28.11.1998 it extended the exercise of such option by 31.01.1999 as one time exception for the Teaching and Non-teaching staff who were in service on 30.09.1998. However, despite extensions, the Petitioner did not exercise any option. Therefore, as a result of the same, in view of the deeming provision, the services of the Petitioner were brought under the purview of the pension scheme. Copy of the relevant notifications extending the exercise of option as provided through OM dated 01.05.1987 is annexed as ANNEXURE-R1.

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7. That as soon as the letter dated 06.06.2022 was received by the answering Respondent, it took the necessary actions in compliance of the same. It is submitted that in light of the same, the letter dated 27/28th December, 2022 was issued by the answering Respondent forwarding the case file of the Petitioner to the University of Delhi. It is submitted that a bare perusal of the said letter would show that the Petitioner falls under Category-I, as mentioned hereinabove, being of R.N. Virmani. Copy of the letter dated 27/28th December, 2022 is annexed as ANNEXURE-R-4.

8. That according to the record, the Petitioner falls under Category-I and has already been shifted to Pension scheme as per the notification of 01.05.1987. In these circumstances, the prayer of the Petitioner with respect to any such declaration is futile and inconsequential.

9. That the answering Respondent pursuant to the letter dated 10.03.2023 has already compiled the record of the Petitioner and forwarded the same to the University for their necessary action. Therefore, in view of the same, as on the date of filing of the present petition, there are no unresolved issues pending at the end of the answering Respondents."

(Emphasis supplied)

22. From a perusal of the aforesaid affidavit, it is clear that there is nothing on record to indicate any exercise of an option to switch over to CPF Scheme at any time by the petitioner. Thus, in view of the aforesaid analysis and interpretation, this would enure to her benefit. Once the petitioner is held to have not exercised an option, she would be "deemed" to come over to the Pension Scheme, which according to the OM itself and the interpretation of this Court and the Supreme Court, is the default mandate.

23. There was a feeble attempt on the part of the respondent at urging that the writ petition is barred by inordinate delay and inexplicable laches. To that, this Court would only observe that it is trite that non grant of pension and pensionary benefits are continuing causes of action and thus, not barred by limitation. The act of the petitioner having availed of the CPF benefits at



the time of retirement in the year 1994 too would not be an impediment in the entitlement of the petitioner to the benefits of Pension Scheme. This has clearly been laid down by the Division Bench of this Court in *Shashi Kiran (supra)* in para 17, which is extracted hereunder:-

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



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According to the ratio laid down, all that the petitioner is to do is to deposit the CPF received with the respondent no.5/College with interest at the stipulated rate which would then be deposited in the Pension Fund created for this purpose and subsequent thereto, the pensionary benefits would be released to the petitioner.

24. Mr. Rupal, learned standing counsel had painstakingly read through various paragraphs of *Shashi Kiran (supra)* to submit that the ratio was made applicable only to 75 teachers out of 86 of the University of Delhi and since the petitioner was not one of such 86 incumbents, she cannot avail the benefits so granted. To the mind of this Court, the said argument is fallacious. This argument is predicated on sub-para(e) of para 10 of *Shashi Kiran (supra)* whereby the Supreme Court wanted to find out the statistics regarding the number of employees who answer the description that they are employees from before 01.01.1986 and are still part of the CPF Scheme. The response thereto was noted in sub-para(e) of para 11 of the said judgement. It is pertinent to note that the issue was of the employees who are still on the rolls and still part of CPF Scheme, whereas in the present case, the petitioner had already superannuated in the year 1994 itself. As such, the petitioner would not fall within the said ambit. Thus, the said argument would not hold any water.

25. Mr. Jayant Bhushan, learned senior counsel had very eloquently argued the case of the petitioner and predicated the same on the letter dated 06.06.2022 issued by the University of Delhi to all the Principals of its constituent colleges including respondent no.5/College. He had submitted



that the said letter was issued in pursuance of the dicta of Supreme Court in ***Shashi Kiran (supra)***. By referring to various paragraphs of the said letter, learned senior counsel urged that the distinction being sought to be projected by the respondent no.3/University of Delhi is untenable. He stated that it is clear from the recitals of the said letter that there is no discernible distinction between the already retired employees and those in service. In fact, according to learned senior counsel, even the Supreme Court in ***Shashi Kiran (supra)*** did not draw any such distinction. Thus, on the strength of this letter, learned senior counsel submitted that the petitioner ought to have been offered an option.

26. Learned senior counsel also submitted that it was the petitioner who had submitted her representation after the letter dated 06.06.2022 was received by the Principal of respondent no.5/College. However, by the impugned letter dated 10.03.2023, the said representation was rejected without considering the import and purport of the said letter or the ratio of the Supreme Court in ***Shashi Kiran (supra)***.

27. In view of the analysis, findings and conclusion recorded by this Court in the preceding paragraphs, it would not be necessary for this Court to deal with the aforesaid submissions.

28. In that view of the matter, the letter dated 10.03.2023 issued by the respondent no.3/University of Delhi is quashed and set aside. The respondents shall release the pensionary benefits as per the Pension Scheme to the petitioner from the date she is found entitled, upon the petitioner refunding the employer's contribution received by her, alongwith 8% simple



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interest per annum as directed by the Supreme Court in *Shashi Kiran (supra)*, within six (6) weeks from date. Consequent thereto, the pensionary benefits as per the Pension Scheme be disbursed to the petitioner within four (4) weeks from the date of such deposit by the petitioner.

29. In view of the above directions, the writ petition alongwith pending applications, if any, stands disposed of.

TUSHAR RAO GEDELA, J.

APRIL 16, 2025/rl