IN THE HIGH COURT OF DELHI AT NEW DELHI

L.P.A. NO. 554 OF 2014
IN
CWP No. 5631 OF 2010

IN THE MATTER OF :

University of Delhi .. Appellants

Vs

N.C. Bakshi & Ors. ..Respondents

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APPELLANTS

UNIVERSITY OF DELHI

THROUGH

Mohinder J.S.Rupal
Counsel for the Appellants
135, Old Block, Lawyers Chambers, Delhi High Court, New Delhi-3
Mob. 9811151216

Filed on : .08.2014
Place : New Delhi

A

NOTICE OF MOTION

IN THE COURT OF DELHI AT NEW DELHI
CM NO. OF 2014
IN
LPA No. /2014

SHRI _____
Advocate

IN THE MATTER OF :
University of Delhi .. Appellants

Vs

N.C. Bakshi and Ors. ..Respondents

Sir,
The enclosed Application in the aforesaid matter as being filed on behalf of the appellant and is likely to be listed on _____or any date, thereafter. Please take notice accordingly.

Through

MOHINDER J.S. RUPAL
Counsel for the appellants University of Delhi
135, Old Block,
Delhi High Court Chambers,
Delhi High Court, New Delhi-3
Mob. : 9811151216

Filed on : .8.2014
Place : New Delhi

IN THE HIGH COURT OF DELHI AT NEW DELHI

L.P.A. NO. OF 2014

IN THE MATTER OF :

University of Delhi .. Appellants

Vs

N.C. Bakshi and Ors. ..Respondents

To,
The Deputy Registrar
Delhi High Court of Delhi.
New Delhi

Sir,

Kindly treat this accompanying his Application as an urgent one in accordance with the High Court Rules and Orders.

1. The grounds of urgency are :- Prayer
   Urgent Interim Order are prayed for.

Yours faithfully,

MOHINDER J.S. RUPAL
Counsel for the Respondent University of Delhi
135, Old Block,
Delhi High Court Chambers,
Delhi High Court, New Delhi-3
Mob. : 9811151216

Filed on : .08.2014
Place : New Delhi

C

LIST OF DATES AND EVENTS

1.5.1987	The OM dated 1.5.1987 issued by Union Of India to enable its employees to seek conversion from CPF to GPF cum Pension scheme
25.5.1987	The University of Delhi adopted the said OM dated 1.4.1987 to enable its teachers and teachers of various Colleges to exercise the option.
1988- 99	The University of Delhi granted 12 extensions to enable the teachers to seek conversion from one scheme to another.
2010	The present Writ Petition filed by the Respondent No. 1
14.2.2011	The University of Delhi filed the short affidavit and additional affidavits thereafter.
27.3.2014	The present Writ Petition along with conneted Writ Petitions were heard and Judgment reserved by the Learned. Single Judge
30.4.2014	The impugned Judgment passed thereby allowing the present Writ Petition.
.08.2014	Hence the present LPA filed before this Hon'ble Court.

IN THE HIGH COURT OF DELHI AT NEW DELHI

L.P.A. NO. 555 OF 2014

IN

CWP No. 1490/2006

IN THE MATTER OF :

University of Delhi ... Appellants

Vs

R.N. Virmani & Ors. ...Respondents

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APPELLANTS
UNIVERSITY OF DELHI

THROUGH

Mohinder J.S.Rupal
Counsel for the Appellants
135, Old Block, Lawyers Chambers,
Delhi High Court, New Delhi-3
Mob. 9811151216

Filed on : . .08.2014

Place : New Delhi

'A'

NOTICE OF MOTION

IN THE COURT OF DELHI AT NEW DELHI

CM NO. OF 2014

IN

WPC 1490/2006

IN THE MATTER OF :

University of Delhi &Anr. .. Appellants

Vs

R.N. Virmani .....Respondents

SHRI _____

Advocate

Sir,

The enclosed Appeal in the aforesaid matter as being filed on behalf of theAppellants and is likely to be listed on .2014 or any date, thereafter. Please take notice accordingly.

Through

MOHINDER J.S. RUPAL
Counsel for the appellants University of Delhi
135, Old Block,
Delhi High Court Chambers,
Delhi High Court, New Delhi-3
Mob. : 9811151216

Filed on : .2014

Place : New Delhi

'B'

IN THE HIGH COURT OF DELHI AT NEW DELHI

L.P.A. NO. OF 2014

IN THE MATTER OF :

University of Delhi &Anr. .. Appellants

Vs

R.N. Virmani& Ors. ..Respondents

To,

The Deputy Registrar

Delhi High Court of Delhi.

New Delhi

Sir,

Kindly treat this accompanying his application as an urgent one inaccordance with the High Court Rules and Orders.

1. The grounds of urgency are :- Prayer
   Urgent Interim Order are prayed for.

Yours faithfully,

MOHINDER J.S. RUPAL
Counsel for the respondent University of Delhi
135, Old Block,
Delhi High Court Chambers,
Delhi High Court, New Delhi-3
Mob. : 9811151216

Filed on : .08.2014

Place : New Delhi

LIST OF DATES AND EVENTS

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1988- 99	The University of Delhi granted 12 extensions to enable the teachers to seek conversion from one scheme to another.
2006	The present Writ Petition filed by the Respondents No. 1 to 20
2006	The University of Delhi filed the short affidavit
30.01.2014	The present Writ Petition along with connected Writ Petitions were heard and Judgment reserved by the Learned. Single Judge
30.4.2014	The impugned Judgment passed thereby allowing the present Writ Petition.
.08.2014	Hence the present LPA filed before this Hon'ble Court.

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 29.03.2016
Pronounced on: 24.08.2016

\+ **LPA 410/2014**
SMT. SHASHI KIRAN AND ORS. .....Appellants
Versus
UNION OF INDIA AND ORS. ....Respondents

\+ **LPA 411/2014**
MR. ANAND PRAKASH .....Appellant
Versus
UNION OF INDIA AND ORS. ....Respondents

\+ **LPA 412/2014**
DR. (MRS.) MEENA KHETRAPAL .....Appellant
Versus
UNION OF INDIA AND ORS. ....Respondents

\+ **LPA 413/2014**
DR. RAJINDER KAUR AND ORS. .....Appellants
Versus
UNION OF INDIA AND ORS. ....Respondents

\+ **LPA 414/2014**
DR. (MRS.) SURJEET KAUR AND ORS. .....Appellants
Versus
UNION OF INDIA AND ORS. ....Respondents

\+ **LPA 416/2014**
MS. KANTA BATRA AND ANR. .....Appellants
Versus
UNION OF INDIA AND ORS. ....Respondents

\+ **LPA 417/2014**
KAMLESH MALHOTRA AND ORS. .....Appellants
Versus

UNION OF INDIA AND ORS. ....Respondents

\+ **LPA 418/2014**
TANUJA SACHDEV AND ORS. .....Appellants
Versus
UNION OF INDIA AND ORS. ....Respondents

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Versus
N.C. BAKSHI AND ORS. ....Respondents

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UNIVERSITY OF DELHI .....Appellant
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R.N. VIRMANI AND ORS. ....Respondents

\+ **LPA 558/2014**
MANJEET SIKKA .....Appellant
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UNION OF INDIA AND ORS. ....Respondents

\+ **LPA 594/2014**
CHETANYA MOHAN GUPTA .....Appellants
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DR. K.S. VERMA AND ORS. ....Respondents

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Versus
NANDITA NARAIN AND ORS. ....Respondents

\+ **LPA 615/2014, C.M. APPL.15478/2014**
UNIVERSITY OF DELHI .....Appellant
Versus
DR. S.K. BAJPAI AND ORS. ....Respondents

\+ **LPA 616/2014, C.M. APPL.15489/2014**
UNIVERSITY OF DELHI .....Appellant
Versus
DR. RAJ KUMAR AND ORS. ....Respondents

\+ **LPA 617/2014, C.M. APPL.15495/2014**
UNIVERSITY OF DELHI .....Appellant
Versus
DHARAM PAL GUPTA AND ORS. ....Respondents

\+ **LPA 618/2014, C.M. APPL.15501/2014**
UNIVERSITY OF DELHI .....Appellant
Versus

DR. VINOD AGGARWAL AND ORS. ....Respondents

\+ **LPA 619/2014, C.M. APPL.15552/2014**
UNIVERSITY OF DELHI .....Appellant
Versus
SHAHID AMIN AND ORS. ....Respondents

\+ **LPA 621/2014, C.M. APPL.15575/2014**
UNIVERSITY OF DELHI .....Appellant
Versus
B.R. GUPTA AND ORS. ....Respondents

\+ **LPA 622/2014, C.M. APPL.15581/2014**
UNIVERSITY OF DELHI .....Appellant
Versus
BALRAJ KUMAR (DECEASED) THR. MRS. NEELAM (WIFE) AND ORS. ....Respondents

\+ **LPA 623/2014, C.M. APPL.15587/2014**
UNIVERSITY OF DELHI .....Appellant
Versus
DR. GIRISH AHUJA AND ORS. ....Respondents

\+ **LPA 624/2014, C.M. APPL.15594/2014**
UNIVERSITY OF DELHI .....Appellant
Versus
DR. PURNIMA GUPTA AND ORS. ....Respondents

\+ **LPA 625/2014, C.M. APPL.15600/2014**
UNIVERSITY OF DELHI .....Appellant
Versus
DR. T.K. NAGPAL AND ORS. ....Respondents

\+ **LPA 626/2014, C.M. APPL.15610/2014**
UNIVERSITY OF DELHI .....Appellant
Versus
RAJENDRA PRASAD AND ORS. ....Respondents

\+ **LPA 627/2014, C.M. APPL.15651/2014**
UNIVERSITY OF DELHI .....Appellant
Versus
VIJAY KUMAR SAINI AND ANR. ....Respondents

\+ **LPA 628/2014, C.M. APPL.15616/2014**
UNIVERSITY OF DELHI .....Appellant
Versus
MRS. RENU KHANEJA AND ORS. ....Respondents

\+ **LPA 629/2014, C.M. APPL.15622/2014**
UNIVERSITY OF DELHI .....Appellant
Versus
DR. BINDRA PRASAD AND ORS. ....Respondents

\+ **LPA 632/2014, C.M. APPL.15774/2014**
UNIVERSITY OF DELHI .....Appellant
Versus
DR. SUDESH KUMARI SHAH AND ORS. ....Respondents

\+ **LPA 633/2014, C.M. APPL.15780/2014**
UNIVERSITY OF DELHI .....Appellant
Versus
DR. RAJESH KUMAR SAXENA AND ORS. ....Respondents

\+ **LPA 634/2014, C.M. APPL.15791/2014**
UNIVERSITY OF DELHI .....Appellant
Versus
DR. MRS. K. PRABHA AND ANR. ....Respondents

\+ **LPA 635/2014, C.M. APPL.15797/2014**
UNIVERSITY OF DELHI .....Appellant
Versus
DR. ARCHANA GUPTA AND ORS. ....Respondents

\+ **LPA 636/2014, C.M. APPL.15803/2014**
UNIVERSITY OF DELHI .....Appellant
Versus

KRISHNA KUMAR AND ORS. ....Respondents

\+ **LPA 637/2014, C.M. APPL.15810/2014**
UNIVERSITY OF DELHI .....Appellant
Versus
DR. S.C. MAHAJAN AND ORS. ....Respondents

\+ **LPA 638/2014, C.M. APPL.15816/2014**
UNIVERSITY OF DELHI .....Appellant
Versus
SURENDER KUMAR AND ORS. ....Respondents

\+ **LPA 639/2014, C.M. APPL.15822/2014**
UNIVERSITY OF DELHI .....Appellant
Versus
DR. MEENAKSHI SETHI AND ORS. ....Respondents

\+ **LPA 640/2014, C.M. APPL.15828/2014**
UNIVERSITY OF DELHI .....Appellant
Versus
MRS. VEENA KHANNA AND ORS. ....Respondents

\+ **LPA 641/2014, C.M. APPL.15834/2014**
UNIVERSITY OF DELHI .....Appellant
Versus
CHETANYA MOHAN GUPTA AND ORS. ....Respondents

\+ **LPA 642/2014, C.M. APPL.15840/2014**
UNIVERSITY OF DELHI .....Appellant
Versus
DR. B.S. MOSHAL AND ANR. ....Respondents

\+ **LPA 643/2014, C.M. APPL.15846/2014 & 7043/2015**
UNIVERSITY OF DELHI .....Appellant
Versus
PROMILA ARORA AND ORS. ....Respondents

\+ **LPA 644/2014, C.M. APPL.15852/2014**

UNIVERSITY OF DELHI .....Appellant
Versus
SUMEDHA KUMAR AND ORS. ....Respondents

\+ **LPA 645/2014, C.M. APPL.15869/2014**
UNIVERSITY OF DELHI .....Appellant
Versus
DR. S.K. LAROIYA AND ORS. ....Respondents

\+ **LPA 646/2014, C.M. APPL.15879/2014**
UNIVERSITY OF DELHI .....Appellant
Versus
DR. M.C. VIDYALANKAR AND ORS. ....Respondents

\+ **LPA 647/2014, C.M. APPL.15885/2014**
UNIVERSITY OF DELHI .....Appellant
Versus
SANTOSH CHANDRA PANDA AND ORS. ....Respondents

\+ **LPA 648/2014, C.M. APPL.15891/2014**
UNIVERSITY OF DELHI .....Appellant
Versus
DR. B.C. SEHGAL AND ORS. ....Respondents

\+ **LPA 649/2014, C.M. APPL.15897/2014**
UNIVERSITY OF DELHI .....Appellant
Versus
VEENA MANGAL NATH AND ORS. ....Respondents

\+ **LPA 650/2014, C.M. APPL.15903/2014**
UNIVERSITY OF DELHI .....Appellant
Versus
SUMAN LATA AND ORS. ....Respondents

\+ **LPA 651/2014, C.M. APPL.15909/2014**
UNIVERSITY OF DELHI .....Appellant
Versus
DR. MANGAL NATH AND ORS. ....Respondents

\+ **LPA 652/2014, C.M. APPL.15915/2014**
UNIVERSITY OF DELHI .....Appellant
Versus
DR. BHAVNESH KUMAR GROVER AND ORS.....Respondents

\+ **LPA 653/2014, C.M. APPL.15921/2014**
UNIVERSITY OF DELHI .....Appellant
Versus
SUMAN BALA JAIN AND ORS. ....Respondents

\+ **LPA 654/2014, C.M. APPL.15928/2014**
UNIVERSITY OF DELHI .....Appellant
Versus
MANGALA PRASAD UPADHYAY AND ORS. ....Respondents

\+ **LPA 655/2014, C.M. APPL.15934/2014**
UNIVERSITY OF DELHI .....Appellant
Versus
DR. ASHA TIKKU AND ORS. ....Respondents

\+ **LPA 667/2014**
AMEETA HASIJA .....Appellant
Versus
THE UNIVERSITY OF DELHI AND ANR. ....Respondents

\+ **LPA 672/2014, C.M. APPL.16448/2014**
DR. TRIPTA VERMA .....Appellant
Versus
UNIVERSITY OF DELHI AND ORS. ....Respondents

\+ **LPA 673/2014, C.M. APPL.16450/2014**
UNIVERSITY OF DELHI .....Appellant
Versus
DR. RAJINDER KAUR AND ORS. ....Respondents

\+ **LPA 780/2014**
DR. ANURADHA GUPTA .....Appellant

Versus

VC, DELHI UNIVERSITY AND ORS. ....Respondents

Through: Ms. Jyoti Singh, Sr. Advocate with Ms. Tinu Bajwa, Sh. Tanuj Khurana, Sh. Aman Nandrajog, Sh. Sameer Sharma and Sh. P. Chaitanyashil, Advocates, for appellants in LPA 410/2014, 411/2014, 412/2014, 413/2014, 414/2014 & 780/2014.

Ms. Rekha Palli, Sr. Advocate with Ms. Punam Singh and Ms. Shruti Munjal, Advocates, for appellants in LPA 416/2014, 417/2014 & 418/2014.

Sh. Sudhir Nandrajog, Sr. Advocate with Sh. Mohinder. J.S. Rupal and Ms. Simran Jeet, Advocates, for University of Delhi.

Sh. Siddhartha Shankar Ray and Sh. Abhik Kumar, Advocates, for appellant in LPA 558/2014.

Ms. Roma Bhagat, Advocate, for appellant in LPA 414/2014, 416/2014, 417/2014 & 418/2014.

Sh. Arjun Harkauli, Advocate, for UGC.

Sh. S.S. Ahluwalia, Advocate, for Respondent No.5 in LPA 410/2014 & 413/2014; for Respondent No.10 in LPA 606/2014; for Respondent No.72 in LPA 645/2014 and for Respondent No.3 in LPA 672/2014.

Sh. Rajesh Gogna, CGSC, for UOI in LPA 412/2014, 413/2014, 416/2014 & 418/2014.

Sh. Anil Soni, CGSC with Sh. Naginder Benipal, Advocate, for UOI in LPA 411/2014.

Sh. Anurag Mathur, Advocate, for Respondent No.2 in LPA 627/2014, 642/2014 & 667/2014; for Respondent No.5 in LPA 412/2014; for Respondent No.6 in LPA 645/2014; for Respondent No.9 in LPA 606/2014 & 646/2014; for Respondent No.11 in LPA 610/2014 and for Respondent No.16 in LPA 614/2014.

Sh. S.K. Pandey, Advocate, for private respondents in LPA 416/2014, 417/2014, 418/2014, 554/2014 & 555/2014, 606/2014, 638/2014, 640/2014, 644/2014, 645/2014, 646/2014, 647/2014, 653/2014, 655/2014 & 673/2014.

Sh. Vikas Mahajan, CGSC with Sh. S.S. Rai and Sh.

Amit Mehta, Advocates, for Respondent Nos.1 and 2 in LPA 417/2014.

Sh. R.P. Sharma and Sh. Vaibhav Mehra, Advocates, for Respondent No.5.

Sh. P. Chaitanyashil and Sh. Ishaan Madan, Advocate, for respondents in LPA 554/2014 & 635/2014.

Sh. Dev. P. Bhardwaj, CGSC, for UOI in LPA 554/2014.

Sh. Prateek Dahiya, Advocate, for private respondents in LPA 555/2014, 606/2014, 615/2014, 618/2014, 621/2014, 623/2014, 625/2014, 626/2014, 628/2014, 629/2014, 637/2014, 642/2014, 648/2014 & 672/2014.

Sh. Meet Malhotra, Sr. Advocate with Sh. Prateek Dahiya, Advocate, for private respondents in LPA 555/2014 & 615/2014.

Sh. Manish Mohan, CGSC with Sh. Shivam Chanana and Ms. Manisha Saroha, Advocates, for UOI in LPA 558/2014, 608/2014, 609/2014, 622/2014, 623/2014, 624/2014, 632/2014, 635/2014, 638/2014, 641/2014, 650/2014 & 653/2014.

Ms. Abha Malhotra, Advocate, for Respondent No.1 in LPA 594/2014.

Sh. Vivek Goyal, CGSC, for UOI and Sh. Prabhakar Srivastav, Advocate, for Respondent No.6 in LPA 606/2014; for Respondent Nos. 48 and 49 in LPA 645/2014; for Respondent No.8 in LPA 646/2014; for Respondent No.4 in LPA 648/2014 & 652/2014; for Respondent No.2 in LPA 654/2014, and for Respondent Nos. 2 and 3 in LPA 655/2014.

Sh. Virender Ganda, Sr. Advocate with Sh. S.K. Giri, Advocate, for Respondent No.1 in LPA 608/2014, 617/2014 & 622/2014.

Ms. Beenashaw. M. Soni and Sh. Aakash Yadav, for Respondent No.3 in LPA 616/2014 & 636/2014; for Respondent No.5 in LPA 609/2014, 640/2014 & 655/2014; for Respondent No.10 in LPA 644/2014, and for Respondent No.7 in LPA 653/2014.

Sh. Yateendra Singh Jafa, Advocate, for respondent in LPA 609/2014.

Ms. Geeta Luthra, Sr. Advocate with Ms. Shreya Singh, Advocate, for respondents in LPA 614/2014 & 619/2014.
Sh. Rakesh Kumar, CGSC, for UOI and for Respondent No.4 in LPA 616/2014; for Respondent No.2 in LPA 617/2014, and for Respondent No.13 in LPA 618/2014.
Sh. Abhishek Goyal, Advocate, for respondent in LPA 616/2014.
Sh. Rakesh Ranjan and Sh. Hansh Pratap Shahi, Advocates, for Respondent No.16 in LPA 618/2014.
Sh. Aviral Tiwari, Advocate, for Respondent No.1 in LPA 621/2014.
Sh. Amit Bansal, Ms. Seema Dolo and Sh. Akhil Kulshrestha, Advocates, for Respondent No.4 in LPA 623/2014; for Respondent No.5 in LPA 414/2014, and for Respondent No.7 in LPA 639/2014.
Sh. Rajesh Chhetri, Sh. Rajeev Chhetri, Sh. Pawan Upadhyay and Ms. Meenakshi Rawat, Advocates, for respondents in LPA 624/2014, 632/2014, 632/2014 & 650/2014.
Sh. J.H. Jafri, Advocate, for Respondent No.2 in LPA 625/2014, 629/2014, 634/2014 672/2014, and for Respondent No.3 in LPA 648/2014.
Sh. Arun Bhardwaj, CGSC, for UOI in LPA 626/2014.
Sh. Rajender Dhawan and Sh. B.S. Ranan, Advocates, for Respondent No.2 in LPA 624/2014; for Respondent No.5 in LPA 554/2014, 632/2014, 633/2014 & 638/2014, and for Respondent Nos. 41 to 43 in LPA 645/2014.
Ms. Payal Jain, Advocate, for respondent in LPA 639/2014 & 653/2014.
Ms. Nilanjan Bose, Advocate, for Respondent No.2 in LPA 643/2014.
Sh. Shankar Raju and Sh. Nilansh Gaur, Advocates, for Respondents in LPA 649/2014 & 651/2014.
Ms. Monika Arora, CGSC, for UOI in LPA 672/2014.
Ms. Meera Bhatia, Advocate, for UOI in LPA 780/2014.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT

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1. This judgment will dispose of a batch of appeals – one by members of the teaching staff working in the colleges of the Delhi University and the other, by the University itself. The Delhi University is aggrieved by the judgment and order of the learned Single Judge allowing a batch of writ petitions, i.e. W.P.(C) 1490-1507/2006, on 30.04.2014. This order shall be hereafter referred to as "the Virmani order". In the other batch, hereafter referred to as "the Shashi Kiran Batch", the appeal has been preferred by the members of the teaching staff against a judgment (hereafter called "the Shashi Kiran order") – in W.P.(C) 5759/2010 and connected cases, (dismissing by another order dated 30.04.2014 the writ petitions).

2. The respondents in the Delhi University's appeal and the appellants in the other batch of appeals are all members of the teaching staff working in various colleges and institutions, which are either affiliated, or part of the Delhi University. The conditions of service of the teaching staff are somewhat analogous to Central government employees. On 06.06.1985, the Central Government employees, who were governed by the Contributory Provident Fund Scheme (CPF) were permitted to opt for a General Provident Fund and Pension Scheme. Having regard to the erratic response, the Central Government issued a notification/circular with respect to change-over of employees from the CPF Scheme to the Pension Scheme on 01.05.1987. The relevant parts of the said circular are as follows:

"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 30.09.1987 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 January, 1986. but have since retired and in whose case retirement benefits have also been paid under the CPF Scheme, will have an option to have their retirement benefits calculated under the Pension Scheme provided they refund to the Government, the Government contribution to the Contributory Provident Fund and the interest thereon, drawn by them at the time of settlement of the CPF Account. Such option shall be exercised latest by 30.09.1987.

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

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

3.6 The option once exercised shall be final.

3.7 In the types of cases covered by paragraph 3.3 and 3.5 involving refund of Government's contribution to the contributory provident fund together with interest drawn at the time of retirement, the amount will have to be refunded latest by the 30th September, 1987. If the amount is not refunded by the said date, simple interest thereon will be payable at 10% per annum for period of delay beyond 30.9.1987.

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

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

XXXXXX *XXXXXX* *XXXXXX*

Form of Option

I, ...(name), employed as.....(designation) in the Ministry/Department/Office of .....(name of Ministry/Department/Office), do hereby opt to continue under the Contributory Provident Fund Scheme in terms of the Department of Pension and Pensioners' Welfare, O.M. No.4/1/87-P.I.C-I dated 1-5-1987.

Place.....

Date....."

3. With effect from 05.05.1987, Statute 28(5) was inserted to the Statutes of the Delhi University. This had the effect of enabling the extension of benefits to the Delhi University teaching staff as and when more advantageous terms of service were adopted by the Central Government for its employees. On 25.05.1987, the Delhi University provided its interpretation to the 01.05.1987 circular, as incorporated by its statute. On 04.06.1987 and 09.02.1989, two notifications were issued, the latter was on account of the fact that all employees had not furnished their forms and there was some confusion with respect to those employees who were in service on 01.01.1986 but who died before the issuance of the notification. This notification of 09.02.1989 enclosed a form, granting option to the employees to remain in the CPF scheme. The form of option enclosed to the circular reads as follows:

"UNIVERSITY OF DELHI
(FINANCE-VIII)

The Assistant Registrar (A/cs-II)
University of Delhi,
Delhi-110007

Subject: Change of option from CPF to GPF

Sir,

In response to the Registrar's Notification No._____ dated _____, I enclose my option in duplicate for coming over to the Scheme General Provident Fund-cum-Pension-cum-Gratuity Appendix 'A', Statute 28-A

from the Contributory Provident Fund-cum-Gratuity Scheme-Appendix 'B', Statute 28-A.

Yours faithfully
Signature _____
Name in block letters: _____
CPF Account Number: _____
Designation _____
Department _____

FOR OFFICE USE ONLY
G.P.F. No. Alloted
*G-*_____

UNIVERSITY OF DELHI
(FINANCE-VIII)
ACKNOWLEDGEMENT

I am to acknowledge the receipt of the Option exercised by (Name)
Sh./Smt./Miss _____
(Designation) _____
(Department/Office) _____
for the following scheme relating to the retirement benefits rules and to say that the same has been placed on record of the University for necessary action.

Scheme for which option has been given	*General Provident Fund-cum-Pension-cum-Gratuity Scheme*

**GPF Account Number allotted:* _____

Section Officer (Accounts)
(Accounts-II)

** Please quote this number in all future correspondence."*

4. The Delhi University, acting through its Executive Council, issued 11 notifications after the above notification dated 09.02.1989 on 06.09.1989, 12.07.1991, 16.07.1993, 12.07.1994, 16.07.1994, 15.03.1996, 11.02.1998 and 01.01.1999, extending the period within which options had to be exercised by the employees/officers whether to continue and remain with the CPF Scheme or migrate to the Pension Scheme. The result of these shifting cut-off dates in regard to the option to be exercised by the public servants and Delhi University teachers had different consequences. As a result of the Delhi University's last extension, as many as a total of 2469 staff members opted for pension though they had not indicated anything to the contrary earlier. On the other hand, the materials on record indicate that the appellants in the Shashi Kiran batch had opted for continuing in the CPF Scheme. Those who opted to remain in the Pension Scheme are part of the Virmani batch. The third category of 40 members of the teaching staff are those who opted for benefits between 1987 and 1988.

5. The Virmani group of petitioners claimed that their representations for grant of Pension Scheme were arbitrarily not considered. Likewise, in the Shashi Kiran batches, it is contended that not permitting to switch-over from the CPF scheme to the Pension Scheme on the ground that both lack of sanction or that the options were not given within the cut-off dates, were not justified. In this respect, it is contended that all classes of retirees constitute a homogenous class and that given the option indicated in 1987 - a positive option to continue in the CPF, whether the employee concerned did or did not

fill the form to switch-over to the Pension Scheme, did not matter. It was urged furthermore that the very circumstance that for over 14 years, repeated extensions were granted, the benefits of which were secured by a large number of employees well after the cut-off date meant that there was really no sanctity with regard to such stipulation.

6. The learned Single Judge rejected the Shashi Kiran batch of writ petitions, holding that the Delhi University could not have granted extensions for switching-over from the CPF Scheme to the Pension Scheme without the Central Government and UGC's approval and that the petitioners had positively opted to continue in the CPF Scheme and were, therefore, precluded from resiling from that position. The learned Single Judge also held as follows:

> *"(ii)(a). assuming without accepting that University of Delhi could grant extensions, a careful reading of the circular dated 09.02.1989 would demonstrate that even as per the University the circular was intended to give one more opportunity to those employees of the University of Delhi or colleges affiliated to it, which were, receiving maintenance grant from the UGC to "come over to the pension Scheme." The circular was not directed towards those employees, who had consciously opted to remain in the CPF Scheme. In other words, no come back situation was contemplated in the said circular. Therefore, the argument that the extensions had to be brought to the notice of the employees in the manner prescribed in the said circular which required the employer to obtain acknowledgements and keep a record of the same, had no applicability to employees, such as, the present petitioners. The employers were, in such like cases, in my opinion, not required to issue any further notice assuming that the extensions were valid, as they had already exercised their option, to remain under the CPF Scheme.*

(ii)(b). As indicated above, this is not to say that the extensions were valid or that the petitioners could resile from the option given by them to remain under the CPF Scheme prior to 30.09.1987; pursuant to the issuance of O.M. dated 01.05.1987 and its adoption by University of Delhi on 04.06.1987."

The learned Single Judge furthermore held that granting relief would result in saddling the Central Government with unapproved expenditure and if at all financial burden was to be borne, it was to be that of the Delhi University.

7. In the Virmani batch, learned Single Judge allowed the petitions. It was held that a perusal of the form – to the O.M. dated 01.05.1987 and the different proceedings incorporated in para 3.1 and 3.2 had affected all employees not opting to continue in the CPF Scheme to automatically switch-over to the Pension Scheme. It was held as follows:

"14.1 It is not in dispute before me that O.M. dated 01.05.1987 was adopted by the University of Delhi vide notification dated 25.05.1987 read with notification dated 04.06.1987, pursuant to an approval received in that behalf from its Vice Chancellor. Therefore, much would depend, in my opinion, upon the language of the relevant clause of O.M. dated 01.05.1987. The said O.M. clearly applies to all employees who were CPF beneficiaries on 01.01.1986. Clause 3.1 read with clause 3.2 is plainly indicative of the fact that all such employees, who are CPF beneficiaries, shall be deemed, to have, come over to Pension Scheme unless the employee(s) concerned submitted his or her option to continue with the CPF Scheme. This option had to be submitted in the prescribed form to the concerned Head of Office by 30.09.1987. In case, no option was received by the Head of Office by 30.09.1987, employees were deemed to have come over to the Pension Scheme. Therefore, by legal fiction once, the deeming clause kicked-in, those who did not submit their option form for continuation under the CPF Scheme stood covered by the Pension Scheme. If there was any doubt with regard to the language of clause 3.2, when read with clause 3.1,

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

XXXXXX XXXXXX XXXXXX

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

15. As indicated above, the University of Delhi, at one stage, with respect to employees who were in service prior to 01.01.1986, did seek to demonstrate the unfairness in having those employees continue under the CPF Scheme, which decidedly less beneficial, when compared to employees, who were covered under the Pension Scheme only by virtue of the fact that they were in employment on 01.01.1986, unless they, consciously chose to straddle the contrary course.

16. The argument raised before me by the respondents, which veered towards approbation, was based on the fact that petitioners had continued to contribute under the CPF Scheme. This submission would not cut much ice with me, having regard to the plain terms of O.M. dated 01.05.1987. If, the cover under the Pension Scheme, gets triggered with effect from 30.09.1987, the contribution by an employee and its receipt by the employer clearly proceeds on a misconception of the provisions of O.M. dated 01.05.1987. As a matter of fact, this very argument was repelled by the Supreme Court, in S.L. Verma's case, and I think, for good reason. Consequently, there is no room for entertaining such an argument. The relevant observations made in paragraph 7, specific to this aspect, are, once again, extracted hereinafter.

"..It may be right they had made an option to continue with the CPF Scheme at a later stage but if by reason of the legal fiction created, they became members of the Pension Scheme, the question of their reverting to the CPF would not arise.." (emphasis supplied)"

Contentions on behalf of the University, University Grants Commission and the Central Government

8. The Delhi University, which is in appeal against the judgment in the Virmani batch of cases, contends that the learned Single Judge fell into error in allowing the writ petitions. It is argued that those who continued to remain in the CPF Scheme, either by opting for it within the period of extension or continued without protest, by contributing to the scheme, as established by periodic annual statements, cannot be permitted to argue that the Pension Scheme applied. It is urged that the learned Single Judge made an invidious distinction between employees who continued without protest and those who continued in the CPF Scheme but chose their remedy very late in the day after decades of continuing in the Scheme despite the lapse of date. It is urged that the judgment ignores a salient fact that an undue financial burden had been cast on the Delhi University and the Central Government. Having regard to the fact that the petitioners, by their conduct, continued in the CPF Scheme, almost 20 years later, cannot turn around and rely upon the OM dated 01.05.1987.

9. In the batch of appeals (LPA 554/2014 and LPA 606-10/2014, LPA 614-619/2014, LPA 621-629/2014 and LPA 632-655/2014, LPA 667/2014, LPA 672-673/2014 and LPA 780/2014), the appellant Delhi University's argument is that on a fair construction of the Scheme embodied in the O.M. dated 01.05.1987 which was in turn incorporated in Statute 28-A, those who opted in accordance with the terms and conditions for switching-over alone were entitled to the benefits of the Pension Scheme. Since the O.M. dated 01.05.1987 did not visualize extension, that a large number of employees

preferred to opt late but within the time granted for extension did not entitle them to the GPF-cum-Pension Scheme whereby pension is disbursed. Here again, it is emphasized that till the time the option to changeover to the Pension Scheme in accordance with the extensions were made, the employees continued to avail of the CPF benefits.

10. It is also argued that the UGC, by its letter dated 25.05.1999 refused to approve the switchover of CPF Scheme to employees and officers. The letters of the Central Government dated 19.06.2000 and 27.09.2001 are similarly relied upon. It is submitted that although the University had requested to the UGC and Central Government to consider the issue and its impact as it concerned the petitioners, the Central Government's position, clarified in its letter dated 03.09.2002 was categorical, stating that no further decision would be forthcoming on the question.

Contentions on behalf of the members of the staff – Shashi Kiran batch

11. Learned counsel for the Delhi University staff, arrayed as respondents in the Virmani batch and who are appellants in the Shashi Kiran batch, made separate submissions. In the Virmani batch, it is submitted that just because the employees did not protest, they could not be denied the results of consequences flowing from not opting for the CPF benefits. It is highlighted that the plain terms of the 01.05.1987 circular showed that it was only those who opted for and who wished to continue, who had to exercise their option. As far as those who did not opt clearly, the Pension Scheme applied by default. By penalizing the members of the staff, who did not opt in accordance with the original scheme and asking that they did not protest when the CPF Scheme was applied to them, the Delhi University could not

be allowed to approbate and reprobate. It is urged that the confusion was created by the Delhi University itself which continued to extend the option for its employees when there was neither the need nor provision to do so. In short, submitted learned counsel, the respondents/petitioners could not be penalized for exercising their right choice – which in turn meant that they were always entitled to the Pension Scheme.

12. Learned counsel for the Shashi Kiran batch argued that neither the Delhi University nor the Central Government could insist that terms of the original Scheme were to be strictly adhered to. Having given as many as 12 extensions, the Delhi University faced difficulties in 1999-2000. At that stage, it was apparent on account of the UGC's position – endorsed by the Central Government's stand, that Pension Scheme (which had been hitherto granted) in respect of more than 2400 employees who had opted at one time or the other during the extended dates, would no longer exist. As between these class of pensioners, i.e. the Virmani group who had initially not given option and others who had opted for CPF Scheme but later allowed to reverse within the extended dates, there in fact was no distinction. Going by the logic that the Delhi University and the Central Government sought to put, i.e. the option could be legitimately exercised only once, i.e. by 30.09.1987, the fact that others exercised such option much later, perhaps 10 years later, meant that in the strict sense, it had to be ignored. Granting pension benefits to a large batch of employees and denying the benefit of switching-over to the petitioners in Shashi Kiran batch, the Delhi University and the Central Government have acted in a discriminatory manner.

13. It was emphasized that the Pension Scheme is distinctly more

advantageous as conceded by the learned Single Judge since the Delhi University and the other respondents were of the opinion that at that time the option was given with a view to continue in the CPF Scheme. It is urged that at the time the extensions were granted, the Delhi University and the other respondents were conscious and alive to the fact that ground realities had changed considerably. Resultantly, repeated extensions were granted. In conveying the benefit to a few and not fully extending it to a large body- who were unable to exercise a pension option after a date, the respondents acted in an arbitrary manner.

14. Counsel for the staff members in the Virmani batch, on the other hand, urged that this court should not intervene or set aside the judgment of the learned Single Judge. In any case, the members of the staff in this batch had consciously chosen the Pension Scheme. It would be a travesty of justice to deny them the benefits of that scheme on the ground that they approached the court late, or that their contributions were deducted. It was submitted in this regard that there cannot be any ground of estoppel, because the cause of action would arise at the time of retirement, when the pension becomes payable.

Analysis and conclusions

15. The reason for this dispute would be clear if one understands the way the CPF/Pension Schemes operated over a period of time. What is notable here- an aspect which should not be lost sight of, is that options were sought from serving employees. At the stage when the options were sought and given, the CPF scheme had its attractions: contributions by the central government in significant measure matching the employees' contributions,

substantial rates of interest (about 14%) etc, which seemed a viable alternative to the Pension Scheme. However, with the change in interest rates, on account of changes in economic policies of the government, there was a fundamental change. This is best reflected in the following letter addressed by the Delhi University to the University Grants Commission (UGC):

> *"...I have received representations from 376 teachers of constituent colleges and departments of this University addressed to the Chairperson, UGC, requesting for the grant of a fresh option to switch over from the CPF to the GPF cum pension scheme. All of them were appointed before 1.1.1986.*
>
> *The representations have drawn attention to the huge disparity between those on the GPF cum pension scheme and those on the CPF scheme. This is because over the years and especially in the last few years - Government decisions have led to a situation where those entitled to pensionary benefits have been placed in a far more advantageous position that those entitled to CPF schemes. As a result of the Fifth Pay Commission's recommendations, 40% of pensions can now be commuted, giving a huge lump payment to pensioners. The communication is restored after fifteen years. Those on CPF get only a lump payment which includes their own contribution. Pensions are now fully indexed to inflation and their nominal value rises twice every year, in the case of those on CPF, the Government - keeping in view its overall fiscal and macro-economic strategy has reduced interest from a high of 12% in 1998 to 8% today. While the high interest rates which made CPF schemes attractive have come down, the nominal value of pensions keeping going up because of inflation indexing.*
>
> *All this has created a significant disparity between those on GPF-cum-pension and those on CPF schemes. According to a rough calculation, this could run into several lakh rupees over a period of time in the case of two identically placed professors. I think there is merit in the request that those who continue to*

be on the CPF scheme should be given a fresh option to switch over to the GPF cum pension scheme instead of taking the legalistic stand that those on CPF opted for the scheme. The Government, as a fair employer, may kindly take action to remove the growing inequality between those on CPF and those on GPF cum pension schemes. I would, therefore, request you to please take up the matter with the Ministry of HRD and the Ministry of Finance to allow a fresh option to those on the CPF scheme to come over to the GPF-cum-pension scheme..."

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

"14.2 A perusal of the aforesaid form would show that the only option which had to be exercised was with regard to continuation by an employee under the CPF Scheme. The employee was not required to submit any form if, he or she wanted to be covered under the Pension Scheme, as that was automatic, in view of the deeming provision incorporated in clause 3.1 and 3.2 of O.M. dated 01.05.1987."

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

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

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.

18. Now we consider the other batches of cases. The first one is the University's appeals, where members of the teaching staff, who exercised their options during the extensions given for the purpose by the University, and which has been denied, have succeeded. The reasoning of the learned Single Judge in this regard is as follows:

> *"4. I may only note that none of the counsels appearing: for University Grants Commission (UGC), the University of Delhi or the concerned colleges took a stand which would convey that the cut-off date provided in O.M. dated 01.05.1987, was not sacrosanct.*
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> **********
>
> *4.2 Having regard to the aforesaid stand of the counsels for the UGC, University of Delhi and concerned Colleges, the only conclusion that I can come to is that notwithstanding the fact that the petitioners in this batch of petitions had overtly expressed their desire to continue in the CPF Scheme, they got automatically covered by the Pension Scheme, once, the cut-off date of 30.09.1987, was crossed. Therefore, the objection qua delay and latches cannot be sustained in case of these writ petitioners, save and except, in those cases where the petitioners received, upon retirement, without protest (either by filing an action in court or otherwise) their benefits under the CPF Scheme. As explained in Dr: R.N. Virmani's judgement delay and latches will not get attracted as the cause of action in these cases if not continuing, is certainly recurring, each time the record was not corrected,(read paragraphs 17.3 & 17.4 of Dr. R.N. Virmani's judgment delivered by me today along with this judgement). The availability of relief to such petitioners,*

who collected their CPF benefit without protest, one would deny, not on the interpretation of the provisions of O.M. dated 01.05.1987,but on the grounds of equity. The exercise of jurisdiction under Article 226 of the Constitution being a discretionary remedy in such like cases, I would not be persuaded to exercise my discretion. Furthermore, once CPF benefits are collected without protest cause of action will decidedly come to an end. Therefore, the captioned writ petitions are allowed qua all the petitioners except vies-a-vies the petitioner in WP(C) No. 5981/2010 and, in respect of petitioner No.11 in WP(C)No.1216/2011."

19. It is argued by the learned counsel for the University that once the learned Single Judge held that extension of the option was not authorized, there was no question of granting relief. Furthermore, in respect of those who had not opted for CPF, but whose contributions continued in the scheme, the court should not have granted relief, given the passage of time and the voluntary conduct of the teaching staff and officials. It was urged that the learned Single Judge erred in relying on *Union of India v. S.L. Verma* (2006) 12 SCC 53; in any case, the observations relied on were mere passing remarks, in the nature of *obiter* and clearly had no binding effect. On the other hand, the learned Single Judge, urged the Appellants' counsel, fell into error in not relying on *Kendriya Vidyalaya Sangathan & Ors v Jaspal Kaur & Anr* (2007) 6 SCC 13 and *Union of India and Ors v M.K. Sarkar* (2010) 2 SCC 59.

20. This court is of the opinion that no infirmity can be found with the approach or reasoning of the learned Single Judge, in allowing the respondents' petitions. The learned Single Judge made a factual analysis, in this category of teaching staff. The chart, prepared for the purpose, and

extracted at Para 3.1 of the judgment in this batch (*N.C. Bakshi v Union of India* WP 5310/2010) shows that all the employees opted for the CPF benefits, after the cut-off date. It was because of this and the expressed stand of the UGC- and the University that the learned Single Judge concluded that notwithstanding the so called option, exercised in terms of the extensions given, the writ petitioners could not be denied the benefit of the Pension Scheme because they were deemed, by the OM of 01.05.1987 to have opted for it, by default. Having regard to these facts, the appellants could not have urged that the benefit of the Pension Scheme should have been denied to these class of petitioners/teaching staff. Therefore, we are of opinion that there is no infirmity with the impugned judgment of the learned Single Judge. The University's appeals, therefore, deserve to fail.

21. The last category is the Shashi Kiran batch. Here, the University staff, who constituted the writ petitioners, had consciously opted for the CPF benefits. Their grievance was that of discriminatory exclusion. They had approached the court, contending that when they sought for options, the respondents refused to extend it, saying that the previous extensions had ended and later, that the UGC and the Central Government had refused to grant approval.

22. This court noticed earlier that relief was granted in the Virmani batch of petitions, by a separate judgment though delivered on the same day. In that judgment, the sequence of events which led to the extensions and how the respondents (i.e UGC and Union of India) were aware of it, was noticed. The said portion of the judgment is relevant and is extracted below:

> *"(i). that the option for employees for change over from CPF to Pension Scheme was available only upto 30.09.1987;*

(ii). the revised options given to employees to return to Pension Scheme were "absolutely incorrect and against the Rules";

(iii). the fact that 30.09.1987 was the cut-off date was conveyed by the UGC to the University of Delhi vide its letter dated 25.05.1999;

(iv). the UGC vide its communication dated 08.08.2001 had requested the GOI through Ministry of Human Resources Development (in short MHRD) to consider extension of the scheme of conversion, which was, however, not agreed to as reflected in GOI's letter dated 27.09.2001. The stand of the GOI as reflected in the said communication was based on its earlier communication dated 19.06.2000 which, adverted to the fact that the matter had been examined by the Ministry of Finance, GOI which had, in turn, advised against grant of another option for change over from CPF to Pension Scheme;

(v) In September 2002, letters were exchanged between the UGC and MHRD, GOI as also between University of Delhi and UGC.

(v)(a) To be noted, letters exchanged amongst the entities referred to above have been appended with the counter affidavit of UGC.

(v)(a)(i) The letters exchanged between the UGC and MHRD, GOI are dated: 03.09.2002, 24.10.2002, 26.03.2007, 28.03.2007, 11.05.2007, 26.09.2008, 10.09.2008;

(v)(a)(ii). In so far as correspondences exchanged between University of Delhi and UGC are concerned, these are dated : 28.02.2003, 23.09.2003, 21.12.2006.

(v)(a)(iii). Apart from the above, there is a reference to representations by teachers, who were employed with University of Delhi and colleges affiliated to it, prior to

01.01.1986.

(v)(b). The sum and substance of the correspondences referred to above is, that while UGC was sympathetic to extension of the date of conversion till at least 31.03.1998, it did not want to take the burden of pension liability of the employees if, GOI was not agreeable to the extension of date beyond 30.09.1987. (see letter dated 03.09.2002). As a matter of fact, UGC sought instructions in the matter from the GOI, which vide its letter dated 24.10.2002, advised UGC, being the funding agency for Central Universities and deemed Universities, to take a decision at its end without referring the matter to MHRD.

(v)(b)(i). The UGC, therefore, on its part vide its communication dated 23.09.2003, informed University of Delhi that it could not grant, a retrospective, one time change over from CPF Scheme to Pension Scheme.

(v)(b)(ii). What interestingly, though, emerges from the correspondence, is that, since several institutions, such as, IIT Kanpur and other autonomous institutions such as, the Department of Atomic Energy and CSIR had extended the date of switch over qua its employees - UGC's request that the conversion date be extended till 31.12.2003, as a new Pension Scheme had kicked-in vis-à-vis persons joining the University on or after 01.01.2004, was declined by MHRD. (see letter dated 26.03.2007)."

23. The discrimination complained of by the appellants in Shashi Kiran's batch of cases is that even though the deadline of 30.09.1987 was not deemed sacrosanct by the University (and through omission and, therefore, tacit approval, by UGC and the Central Government) a large number of employees who had not opted either way were allowed to switch-over to the Pension Scheme through options given over 14 years, by 12 different extensions. Given that the ground realities had undergone a sea change, the

CPF scheme was unfeasible and had lost viability; on the other hand, the Pension Scheme was more beneficial. These appellants argue that in such a situation, when 2469 staff members opted for pension on various dates during these extensions, when they wished to do so, the respondents unfairly refused the benefit.

24. The learned Single Judge's view has some logic in it because the University refused the Pension Scheme benefits in case of those who had chosen it: in Virmani's case, by default (i.e. no option, which meant deemed option) and in the other cases, because of the option for CPF, given after the date prescribed. While the logic for directing relief in the first category (Virmani) is sound, the second category was given relief by ignoring that they consciously wished to switch-over to the CPF scheme, but after the cut-off date. Thus, the learned Single Judge ignored the conscious choice made only on the ground that the choice or option for CPF was after the cut-off date. Now, this has led to a peculiar situation where those who opted for CPF benefits have been divided into two categories: one, who opted before the cut-off date and two, those who opted after the cut-off date. The latter have been given relief. That is also the basis for refusing relief to the former, who are appellants in this batch.

25. As noticed earlier, 2469 staff members are enjoying the benefit of the Pension Scheme, on account of the choice or option made by them. Furthermore, the University in its additional affidavit in the course of proceedings in the writ petitions had stated as follows:

> *"The reason for such a large number of petitioners seeking to migrate from the CPF scheme to the GPF-cum-Pension scheme is entirely due to the huge disparity in financial benefits that has developed, since the late 1990s, between those on CPF*

scheme and those on GPF-cum- pension scheme. Till the late 1990s, the interest rates applicable to the CPF scheme were very high-the rate was at 14% for 6 years until 1999-2000, thereafter, the interest rate sharply declined to 8 % in 2003-2004. On the other hand, however, those who were covered by the GPF-cum-pension scheme benefited from the generous provisions made on the basis of the recommendations of the fifth and sixth pay commission. As a result, basic pensions have undergone a significant increase in dearness allowance on pensions goes up every six months due to inflation indexation; 40% of the pension in available for commutation the original value being restored after 15 years; and, the basic pension goes up by 20% after the age of 80 and every five years thereafter. Thus, it is evident that the two retirement benefit schemes give differential benefits, with the GPF-cum-Pension scheme providing much more benefits than the CPF scheme, especially after the recommendations of the two pay commissions. It is solely on this account that the petitioners are belatedly attempting to migrate from the CPF scheme to the GPF-cum-pension scheme, even though they chose to remain covered by the CPF scheme and fully reaped the benefits that accrued to them under the scheme. The writ petitions are liable to be dismissed on the grounds of delay and laches, as well as the principle of approbate and reprobate."

26. If these facts are taken together with the Central Government's conceded stand in permitting staff members and employees in other institutions, including educational institutions such as IIT Kanpur, the Department of Atomic Energy and Council for Scientific and Industrial Research to opt in extended dates for switch-over *qua* its employees, the rejection of UGC's request that the conversion date be extended till 31.12.2003, reveals the arbitrariness and non-application of mind by the Central Government.

27. That the Central Government permitted change over as late as till 31.12.2003, i.e before the sixth pay commission recommendations (introducing CPF benefits to all those employed later, universally with effect from 01.01.2004). This aspect assumes critical importance, because the Central Government (and UGC) admit that all those who opted after the cut-off date (and many of them having opted for CPF earlier) have been granted benefits under the Pension Scheme. The ground realities with respect to the nature of benefits that accrue to CPF optees in comparison with GPF/Pension optees paints a stark picture. One should keep in mind that while opting for such schemes, employees cannot gaze into the crystal ball, as it were, and speculate whether the existing state of affairs would continue. At the time when these options were sought and given, those opting for CPF were reasonably certain that having regard to the nature of contributions and the rate of interest, the end package would compare favourably with Pension optees, with respect to returns earned at the stage of superannuation. In other words, when the options were given, these appellants were in employment; neither they, nor for that matter the respondents could have visualized a drastic fall in the interest rates, which severely undermined the CPF option and shrunk the ultimate lump sum CPF benefit available to these appellants. While examining whether a statute once valid and upheld as such on the ground of Article 14 ceases to be so due to later developments and with passage of time, the Supreme Court has declared in a number of judgments that the earlier declaration of validity or basis of classification cannot be the basis to deny the arbitrariness of the law, if it is proved to be so later (Refer to *State of Madhya Pradesh Vs. Bhopal Sugar Industries* (1964) 6 S.C.R. 846; *Narottam Kishore Dev Varma and Ors. Vs. Union of India and Anr.*

(1964) 7 S.C.R. 55 ; *H.H. Shri Swamiji of Shri Admar Mutt etc. Vs. The Commissioner, Hindu Religious & Charitable Endowments Department and Ors.* (1980) 1 S.C.R. 368; *Motor General Traders and Anr. Etc. etc. Vs. State of Andhra Pradesh and Ors. etc.* 1984 (1) S.C.R. 594.) In *H.H. Shri Swamiji of Shri Admar Mutt etc* (supra) it was held that:

> *"there is a firm foundation laid in support of the proposition that what was once a non-discriminatory piece of legislation may in course of time become discriminatory and be exposed to a successful challenge on the ground that it violated Article 14 of the Constitution."*

28. In this case, clearly when the appellants opted for CPF benefits, they did so without premonition of future developments. The net result was that as between two individuals in the same grade and post, carrying the same pay scale, one who opted for the Pension Scheme was entitled to a substantial amount and future adjustments in pension whenever Dearness Allowance were to be enhanced. However, for the appellants, there was no such advantage; they saw a shrinking package on account of later developments – notably the drop in interest rates. Now, interest at the rate or anyway, somewhere near the rates, which prevailed when the scheme was introduced, was one of the significant basis for the CPF scheme. With a drastic change in the rates, those opting for CPF were at a grave disadvantage. To compound their problems, the University's interpretation of a fairly clear Office Memorandum (dated 01.05.1987) injected much confusion. The third factor is that even amongst University staffers, 12 extensions were given and a large number of options for the Pension Scheme were furnished – both in respect of those who opted for CPF earlier and those who did not. Taking the totality of circumstances, the University's

insistence to pin the appellants to the options they originally exercised is discriminatory.

29. The other reason why this court is inclined to allow this appeal is that neither the Central Government nor the UGC have furnished a single reason for why option to switch-over to the Pension Scheme was permitted up-to 31.12.2003 to several other autonomous institutions and denied to the appellants. This singular omission to say what compelled the Central Government to deny the petitioners the benefit of switch-over, while permitting those in other institutions, in the opinion of the court, clearly amounts to discrimination. The mere fact that the petitioners are working in the University whereas the other employees work in other institutions is not sufficient, given that the consistent stand is that options once given cannot be altered. Therefore, it is held that denying the right to opt to the Pension Scheme in the case of the Shashi Kiran batch is unsustainable; it has resulted in arbitrariness.

30. In view of the foregoing reasons, the University's appeals (LPA Nos.554-555/2014, 606-610/2014, 614-619/2014, 621-629/2014, 632-655/2014 & 673/2014) are dismissed. The appeals filed in the *Shashi Kiran* batch (LPA Nos.410-414/2014, 416-418/2014, 558/2014, 594/2014, 667/2014, 672/2014 & 780/2014) succeed and are allowed. There shall be no order as to costs.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

AUGUST 24, 2016

MOST IMMEDIATE

E.C. 28.02.2017
Annexure - 6.08.03

F. No. 4-41/2014-Desk (U)
Government of India
Ministry of Human Resource Development
Department of Higher Education
Desk (CU-II)

Shastri Bhawan, New Delhi
Dated 23rd January, 2017

To,

The Regisrar.
University of Delhi,
Delhi- 110007.

Sub: The Judgment related to switch over from CPF to GPF in the light of Judgment of Hon'ble High Court of Delhi.

Sir,

I am directed to refer to University's letter No. Fin/Pension Cell/CPF-GPF/Judgment-2016 dated 16.12.2016 on the subject mentioned above and to say that the matter has since been examined in consultation with D/o Expenditure, Ministry of Finance.

2. The directions/observations in the matter are as under for compliance:-

(i) To allow GPF/Pension of Government in respect of those employees who were in service as on 01.01.1986, unless they have specifically and in writing chosen the option to stay with CPF. However, in respect of the employees who have already retired, the question of surrender of the University's portion of the CPF, as already taken by them, will have to be dealt with by the University of Delhi in consultation with the UGC/MHRD. Delhi University/ Concerned Colleges will ensure to recoup their contributions under the CPF Scheme with simple interest of 8% per annum. Thus while seeking option from the employees, this point will have to be appropriately taken care by the MHRD/UGC/DU and Concerned Colleges.

(ii) In all other cases, University of Delhi is advised to file an appeal against the order of the Hon'ble Delhi High Court, in consultation with the UGC/MHRD.

(iii) In case any other employee who was not in service as on 01.01.1986 and joined thereafter, the question of application of order of Department of Pension dated 01.05.1987 shall not arise and as such if any order of any Court of Law allows pension in their cases, the University of Delhi may have to appropriately file appeal in the appropriate Appellate Court in consultation with UGC and MHRD.

3. The University may take appropriate action in light of the above and also to defend the interest of Govt. of India in all such Court Cases arising in the matter.

4. This issues with the approval of the competent authority.

Yours faithfully,

(P.K. SINGH)
Under Secretary to the Govt. of India.