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

Date of Decision: 20th December 2024

+ W.P.(C) 8511/2011

VINOD KUMAR & ORS.

..... Petitioners

Through: Mr. Jaideep Gupta, Sr. Advocate with
Mr. Padma Kumar S., Ms. R. Chawla
and Ms. Riddhi Bose, Advocates.

versus

NATIONAL INSTITUTE OF IMMUNOLOGY THROUGH ITS
DIRECTOR AND ORS.

..... Respondents

Through: Mr. Kirtiman Singh, CGSC with Mr.
Waize Ali Noor, Mr. Varun Rajawat,
Ms. Vidhi Jain, Mr. Varun Pratap
Singh, Mr. Kartik Bajjal, Mr. Aryan
Aggarwal, Ms. Shreya V. Mehra and
Mr. Maulik Khurana, Advocates.

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI J.

By way of the present petition filed under Article 226 of the Constitution of India, the petitioners seek a direction to the respondents for grant of pensionary benefits under Office Memorandum dated 01.05.1987 issued by the Department of Pension & Pensioners' Welfare, Ministry of Personnel, Public Grievances & Pensions of the Government of India in terms of the Central Civil Services (Pension) Rules, 1972 ('Pension Scheme') from the date respondent No. 1/National Institute of Immunology's ('NII') proposal



seeking implementation of the Pension Scheme was sent for approval to the respondents Nos. 2 & 3. While some of the petitioners were employees of respondent No.1, others are legal heirs of deceased employees, who were in service of respondent No.1. To begin with 179 persons had joined as petitioners in the present proceedings; however, subsequently, during the pendency of the petition, some of the petitioners have passed away and as a result their legal heirs have been impleaded as petitioners.

2. Respondent No. 1 is an autonomous research institute registered as a society under the Societies Registration Act, 1860. Respondent No. 2 is the Department of Biotechnology, Ministry of Science & Technology, Government of India under which respondent No. 1 was established. Respondent No. 3 is the Department of Expenditure, Ministry of Finance, Government of India.
3. Notice on this petition was issued on 14.12.2011; pursuant to which counter-affidavits dated 23.03.2012 and 24.08.2012 were filed by respondent No. 1 and by respondents Nos. 2 & 3 respectively. Subsequently, the matter was 'admitted' for hearing on the Regular Board of this court *vide* order dated 25.09.2013.
4. The court has heard Mr. Jaideep Gupta, learned senior counsel appearing on behalf of the petitioners; and Mr. Kirtiman Singh, learned CGSC appearing on behalf of the respondents, at length. Written submissions have also been filed on behalf of all the parties.
5. The essence of the dispute between the parties relates to the applicability of the Pension Scheme to the petitioners, and the rights and benefits arising therefrom.



6. The relevant facts leading-up to the filing of the present petition are that on the recommendation of the Fourth Central Pay Commission, employees of the Central Government were given the option to switch-over *from* the Contributory Provident Fund Scheme ('CPF Scheme') under which their pensionary benefits were then governed *to* the Pension Scheme. *Vide* Office Memorandum dated 01.05.1987 issued by the Department of Pension & Pensioner's Welfare ('O.M. dated 01.05.1987'), Central Government employees were given the option of specifically *opting for* (that is to say, to continue with) the then existing CPF Scheme if they so desired *instead of* the Pension Scheme; and *if such choice was not exercised*, they were to be covered under the Pension Scheme. The relevant extracts of the O.M. dated 01.05.1987 read as follows :

"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."

* * * * *

"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.

* * * * *

“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 Ordnance 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 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.

* * * * *

“7.2 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.”

(emphasis supplied)

7. The petitioners claim that the one-time option available to employees of respondent No.1 society to continue under the CPF Scheme was never given to them; and as such the Pension Scheme should have *automatically applied*. On the other hand, it is the respondents' contention, that respondent No.1 being an autonomous institution, is not covered by circulars and orders of the Central Government; and moreover, O.M. dated 01.05.1987 was never specifically incorporated in the rules, regulations and bye-laws of respondent No.1 institution nor was it circulated to its employees; and therefore, the Pension Scheme was not available to them at all.

PETITIONER'S SUBMISSIONS

8. Mr. Gupta, learned senior counsel appearing for the petitioners has made the following principal submissions :
- 8.1. That the petitioners are squarely covered under O.M. dated 01.05.1987, which gave employees a one-time option to *opt for* continuing with the CPF Scheme, and since that choice was never exercised by any of the petitioners, they ought to have been covered *automatically* by the Pension Scheme;
- 8.2. That though it is correct that respondent No.1 is an autonomous institution, but the fact is that the same option of choosing to be covered under the Pension Scheme was given to other autonomous institutions as specified in counter-affidavit dated 24.08.2012 filed on behalf of respondents Nos. 2 & 3 in the



present case, in which respondents Nos. 2 & 3 have *inter-alia* stated the following :

“2. However, a one-time option was given to autonomous institutes to continue under the CPF Scheme. The Autonomous Institutes who are continuing under the CPF Scheme after 1.1.87 are those who have opted to continue under the CPF Scheme. At the relevant time, the employees of Respondent No. 1 Institute never gave any option to switch over to Pension Scheme.”

(emphasis supplied)

8.3. That respondent No.1 institute never voluntarily *opted for* the CPF Scheme; the petitioners were never given an option to specifically switch-over to the Pension Scheme, or more particularly, to continue under the CPF Scheme as envisaged by O.M. dated 01.05.1987. This is borne-out from letter dated 11.04.2012 addressed by respondent No.1, by which respondent No.1 answered the query of the Deputy Secretary of respondent No. 2 as follows :

“In this connection, it is submitted that as per available records, department of pension and pensioner’s welfare O.M. No. 4/1/87 PIC-I dated 01/05/1987 does not appear to have been received/Or circulated amongst the employees of this institute.”

(emphasis supplied)

8.4. That furthermore, the requirement of having to expressly switch-over *i.e.*, to specifically *opt-into* the Pension Scheme is misplaced, since O.M. dated 01.05.1987 lays-down a requirement to *opt-out of* the Pension Scheme, and if the option



to opt-out of the Pension Scheme is not exercised, the Pension Scheme is to *automatically* apply in place of the CPF Scheme; and

- 8.5. That therefore, the petitioners cannot be said to have opted for the CPF Scheme voluntarily, merely by virtue of being employees of an autonomous institution.
9. In support of their submissions, the petitioners have relied on the following judicial precedents :
- 9.1. ***Union of India and Anr. vs. S.L Verma and Ors.***,¹ to submit that O.M. dated 01.05.1987 created a legal fiction by which an employee was to *consciously opt for* the application of the CPF Scheme instead of being automatically covered under the Pension Scheme;
- 9.2. ***Union of India and Ors. vs. Amit Mukherji and Ors.***,² to submit that employees of autonomous institutions also had the option to continue under the CPF Scheme, instead of falling under the Pension Scheme;
- 9.3. ***Shashi Kiran and Ors. vs. Union of India and Ors.***,³ to submit that the omission to give to the employees of an institution, in this case the Delhi University, to switch-over to the Pension Scheme, while permitting employees of other institutions to do so, itself amounts to discrimination; meaning thereby, that

¹ (2006) 12 SCC 53 at paras 5 to 7

² (2013) SCC OnLine Del 2049 at para 5 and 7

³ (2016) SCC OnLine Del 4819 at paras 1, 5-6 and 19 as affirmed by the Supreme Court in ***University of Delhi vs. Shashi Kiran*** (2022) 15 SCC 325 at para 51 and 52



denying to the employees of an institution the right to opt for the Pension Scheme is itself unsustainable since it results in arbitrariness; and

- 9.4. *Manoj Pant and Ors. vs. Jawaharlal Nehru University*,⁴ to submit that the petitioners cannot be denied the right that stands conferred on them by way of O.M. dated 01.05.1987, namely, the right to be covered by the Pension Scheme *automatically* unless they specifically *opt for* continuing under the CPF Scheme.

RESPONDENTS' SUBMISSIONS

10. On the other hand, Mr. Singh, learned CGSC appearing for the respondents has raised the following main contentions :
- 10.1. That the present petition is not maintainable since the petitioners cannot claim parity with 'government servants' who are covered by O.M. dated 01.05.1987, especially since there is no specific prayer in the writ petition seeking implementation of the said O.M. *nor* is there any pleading to that effect in the petition;
- 10.2. That the petitioners are employees of an autonomous institution, namely respondent No. 1, and are not employees of the Central Government; and therefore they are not entitled to claim as a matter of right the benefits that the Central Government grants to its own employees. Circulars and orders issued by the Central Government pertaining to service

⁴ (2022) SCC OnLine Del 520 at para 38 as affirmed by the Division Bench in *Jawaharlal Nehru University vs. Manoj Pant*, 2022 SCC OnLine Del 4887 at paras 39 and 43



conditions of its employees cannot *ipso-facto* apply to employees of respondent No. 1, which is an autonomous institution;

- 10.3. That, in particular, the judgments relied upon by the petitioners are not applicable to the present case, since in those cases O.M. dated 01.05.1987 had been specifically applied by the concerned institution to their employees by making appropriate insertions in their respective statutes, rules, regulations and bye-laws, which has not been done by respondent No.1 institution. It is pointed-out that it is the admitted position that O.M. dated 01.05.1987 was neither incorporated nor adopted into the rules, regulations or bye-laws of respondent No. 1; nor was it even circulated amongst the employees of respondent No. 1 institution;
- 10.4. That furthermore, *vide* a subsequent Office Memorandum dated 30.06.2009 ('O.M. dated 30.06.2009'), respondent No.1 has approved the adoption of the New Pension Scheme (instead of the CPF Scheme) *for employees who have joined respondent No. 1 after 01.01.2004*. Various Office Memorandums have also been subsequently issued by respondent No. 1 to the petitioners to switch-over from the CPF Scheme to the New Pension Scheme; however the petitioners have chosen not to do so, which shows that the petitioners have chosen to continue under the CPF Scheme;
- 10.5. That the Pension Scheme cannot be applied to the petitioners since respondent No. 1 never adopted or incorporated that



- scheme into their rules, regulations or bye-laws;
- 10.6. That granting any relief to the petitioners in terms of O.M. dated 01.05.1987 would have enormous financial implications and repercussions; and would create a huge financial liability for the respondents; and
- 10.7. That, in any case, this court should not intervene in the present matter since it concerns a policy decision; and besides, a prayer seeking application of O.M. dated 01.05.1987 to the petitioners is also barred by limitation.
11. In support of their submissions, the respondents have relied on the following judicial precedents :
- 11.1. *UPSC vs. Dr. Jamuna Kurup*,⁵ to submit that employees of a municipal corporation or other statutory body are not ‘government servants’ and do not enjoy the same status or benefits;
- 11.2. *State of Assam vs. Barak Upatyaka D.U Karmachari Sanstha*,⁶ to submit that even if a State Government has all pervasive control over an entity, and the entity may be treated as ‘State’ for purposes of Article 12 of the Constitution of India but the employees of such entity cannot be treated as employees of the State Government;
- 11.3. *State of Himachal Pradesh and Others vs. Rajesh Chander Sood and Others*,⁷ to submit that even if a State Government is

⁵ (2008) 11 SCC 10 at para 16

⁶ (2009) 5 SCC 694 at para 9

⁷ (2016) 10 SCC 77 at para 79



the one determining the conditions of service, that is inconsequential, especially where the persons concerned are not ‘government servants’ but employees of an independent corporate body functioning under the State Government;

- 11.4. ***T.M Sampath and Others vs. Secretary, Ministry of Water Resources and Others and other connected matters***,⁸ to submit that where an autonomous institution functioning under a Ministry had framed its own rules for pensionary benefits, O.M. dated 01.05.1987 would not be applicable to its employees, since the principle of non-interference or minimal interference must be maintained for interpreting the rules framed by an autonomous institution;
- 11.5. ***State of Bihar vs. Bihar Pensioners Samaj***,⁹ ***All India Reserve Bank Retired Officers Association vs. Union of India***,¹⁰ and ***State of A.P. and Another vs. A.P. Pensioners’ Association and Others***,¹¹ to submit that the financial implications of any relief that is to be granted must be considered by the court as a relevant factor in granting benefits; and
- 11.6. ***Directorate of Film Festivals and Others vs. Gaurav Ashwin Jain and Others***,¹² and ***State of Punjab and Others vs. Ram Lubhaya Bagga and Others***,¹³ to submit that the scope of

⁸ (2015) 5 SCC 333 at paras 9 to 15

⁹ (2006) 5 SCC 65 at para 18

¹⁰ (1992) 1 Supp SCC 664 at para 10

¹¹ (2005) 13 SCC 161 at para 39

¹² (2007) 4 SCC 737 at para 16

¹³ (1998) 4 SCC 117 at para 25



judicial review in matters of policy is restricted to cases of violation of fundamental rights and arbitrariness.

DISCUSSION & CONCLUSIONS

12. Considering the afore-mentioned submissions made by the parties, in the opinion of this court, the decision of the present case turns on two principal questions, which may be framed as follows :
 - 12.1. *First*, whether the Pension Scheme was applicable to the petitioners since they were not *stricto-sensu* 'government servants' but were employees of an autonomous body, namely the NII; and
 - 12.2. *Second*, whether the Pension Scheme required employees to *opt-into* that scheme, or was it the *default scheme* that would apply to all pensioners *automatically*, *unless* they chose to opt-out of the scheme.
13. To answer the first query, reference must be had to the decision of a Division Bench of this court in *Amit Mukherjee* (supra), in which case the Division Bench referred to the interpretation of O.M. dated 01.05.1987 by the Supreme Court in *S.L. Verma* (supra), and rejected a writ petition challenging an order from the Central Administrative Tribunal concerning employees of the Delhi Urban Arts Commission. The case arose because the Central Government had denied approval for those employees to be included in the Pension Scheme. In its ruling, the Division Bench referenced clause 7.2 of O.M. dated 01.05.1987, which is a directive from the Department of Pension and Pensioners' Welfare to all administrative ministries overseeing the



Contributory Provident Fund Rules; and based on that the Division Bench directed the department to issue similar orders for CPF Scheme beneficiaries in the Delhi Urban Arts Commission. It is also noticed that the special leave petition challenging the Division Bench's ruling in *Amit Mukherjee* (supra) was dismissed by the Supreme Court by order dated 04.01.2018 passed on SLP (Civil) No. 8682/2015; and the decision of the Division Bench accordingly attained finality.

14. In *Shashi Kiran* (supra), again referring to the Supreme Court decision in *S.L. Verma* (supra), another Division Bench of this court ruled that the Pension Scheme *did apply* to employees of the Delhi University; however, it noted that the option to remain under the CPF Scheme was no longer available after the deadline set in the O.M. had passed.
15. Recently, a Co-ordinate Bench of this court, in *Manoj Pant* (supra), followed the same interpretation, namely that an employee was required to *actively choose* to remain in the CPF Scheme; and if no such choice was made, the employee would automatically be covered by the Pension Scheme.
16. In fact, para 2 of the counter affidavit dated 24.08.2012 filed by respondents Nos. 2 & 3 expressly acknowledges that a one-time option was given to autonomous institutions to remain under the CPF Scheme; and those institutions which chose to continue with the CPF Scheme have been doing so since 01.01.1987. However, it is then *erroneously* stated in the counter-affidavit that since at the relevant time the employees of respondent No. 1, were never given any option to switch-over to the Pension Scheme, they could not be permitted to



get benefits of the Pension Scheme. It is important to highlight para 2 of the counter affidavit filed by respondents Nos. 2 & 3 :

“2. As in the case of other autonomous institutions working under the Govt. of India Respondent No. 1 has Introduced Contributory Provident Fund (CPF) Scheme for Its employees. In pursuance of the recommendations of the IV Pay Commission the Ministry of Personnel, Public Grievances & Pensions ordered on 1st May, 1987 that all CPF beneficiaries who were in service on 01.01.1986 and who are in service on the date of issue of the order will be deemed to have come over to the pension Scheme. However, a one-time option was given to the autonomous institutes to continue under the CPF Scheme. The Autonomous Institutes who are continuing under the CPF Scheme after 1.1.87 are those who have opted to continue under the CPF Scheme. At the relevant time, the employees of Respondent No. 1 institute never gave any option to switch over to Pension Scheme.”

(emphasis supplied)

17. The forgoing stand of respondents Nos. 2 & 3 is however clearly erroneous and misconceived, inasmuch as it militates against the clear words of O.M. dated 01.05.1987, which provides that unless an employee *actively exercises* the option of *continuing* under the CPF Scheme, such employee would *be deemed* to be covered by the Pension Scheme, namely that the switch-over to the Pension Scheme would be automatic.
18. The record also shows that in its response dated 11.04.2012 sent by respondent No. 1 to an enquiry dated 11.04.2012 received from the Department of Biotechnology, Ministry of Science & Technology as to whether the O.M. dated 01.05.1987 had been circulated among the employees of respondent No. 1, and whether they had all opted to continue under the CPF Scheme, respondent No. 1 said that according



to their records that O.M. dated 01.05.1987 had neither been received nor circulated among its employees. Based on NII's own position therefore, *if O.M. dated 01.05.1987 was never received or circulated among its employees, the petitioners could never have exercised any choice to continue under the CPF Scheme.* Additionally, if respondents Nos. 2 & 3 maintain that the O.M. was not applicable to the employees of respondent No. 1, *then there would have been no reason for them to have asked respondent No. 1 whether they had received the O.M. and whether their employees had exercised the option to remain in the CPF Scheme.*

19. The inquiry dated 11.04.2012 sent by respondents Nos. 2 & 3 to respondent No. 1 about whether their employees had opted to stay under the CPF Scheme itself suggests : *firstly*, that the O.M. was applicable to the employees of respondent No. 1; and *secondly*, that if the employees of respondent No. 1 had *not opted* to continue under the CPF Scheme, they would have been included in the Pension Scheme automatically and by default.
20. The above interpretation of the O.M. dated 01.05.1987 is also borne-out by the Supreme Court's ruling in *S.L. Verma* (supra), as indicated in the relevant excerpt, which reads thus:

*“7. The Central Government, in our opinion, proceeded on a basic misconception. By reason of the said office memorandum dated 1-5-1987 a legal fiction was created. Only when an employee **consciously opted** for (sic) to continue with the CPF Scheme, he would not become a member of the Pension Scheme. It is not disputed that the said respondents did not give their options by 30-9-1987. In that view of the matter Respondents 1 to 13 in view of the legal fiction created, became the members of the Pension Scheme.*



Once they became the members of the Pension Scheme, Regulation 16 of the Bureau of Indian Standards (Terms and Conditions of Service of Employees Regulations, 1988) had become ipso facto applicable in their case also. It may be that they had made an option to continue with the CPF Scheme at a later stage but if by reason of the legal fiction created, they became members of the Pension Scheme, the question of their reverting to the CPF would not arise. Two legal fictions, as noticed hereinbefore, were created, one by reason of the memorandum, and another by reason of the acceptance of the recommendations of the Fourth Central Pay Commission with effect from 1-1-1986. In terms of such legal fictions, it will bear repetition to state, Respondents 1 to 13 would be deemed to have switched over to the Pension Scheme, which a fortiori would mean that they no longer remained in the CPF scheme.”

(emphasis supplied)

21. This court must also address the contention raised on behalf of the respondents that the employees of NII do not become ‘government servants’ *merely* because they are employees of an institution established under the Ministry of Science & Technology of the Government of India, the argument being that respondent No.1 is an autonomous body registered as a society, and is therefore not a Ministry or a department of the Government of India. In support of this submission, the respondents have cited the rulings in *Dr. Jamuna Kurup* (supra), *Barak Upatyaka DU Karamchari Sastha* (supra), *Rajesh Chander Sood* (supra) and *T.M. Sampath* (supra). These rulings lay-down the principle that employees of a particular entity, whether a corporation or statutory body, do not become ‘government servants’ simply because the government maintains significant control over the entity. Further, these rulings say that even if such an entity is



considered 'State' under Article 12 of the Constitution of India, and even if the government dictates the terms of employment in those entities, the employees of an independent corporate body do not qualify as 'government servants'.

22. However, this contention is answered by the fact that the employees of respondent No. 1 were governed by the CPF Scheme and have been functioning under the Ministry of Science & Technology of the Central Government; and clause 7.2 of O.M. dated 01.05.1987 contained a directive, which in so many words advised as follows :

“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.”

meaning thereby that the option to switch-over from CPF Scheme to the Pension Scheme (the latter being the default option) was not restricted only to 'government servants' but also applied to CPF beneficiaries functioning under any of the Administrative Ministries, which would include the present petitioners.

23. Another argument presented by the respondents is that the court must carefully consider the financial impact of granting any relief related to public employment. Additionally, it has also been argued that the scope of judicial review is limited scope in policy matters; and is confined to situations where fundamental rights are at stake or the government has acted arbitrarily.
24. In that context, the court must remind itself of two important aspects of the present case :



- 24.1. *Firstly*, that it is long established that pension is not a ‘bounty’ or a gratuitous payment made to an employee, depending upon the sweet will or act of the employer, but is a matter of right; and payment of pension does not depend on the discretion of the government, except that it is governed by the rules as applicable to a person claiming pension;¹⁴ and
- 24.2. *Secondly*, that the court is informed that other autonomous bodies functioning under the Ministry of Health & Family Welfare, including the National Institute of Biologicals, Central Council for Research in Ayurveda & Siddha, Central Council for Research in Homeopathy, Central Council for Research in Unani Medicines, National Institute of Homeopathy and National Institute of Ayurveda, have already extended the benefit of the Pension Scheme to their employees. Denial of the Pension Scheme to the petitioners would therefore, without a shadow of doubt, amount to arbitrariness and discrimination; and this court is therefore well within its Constitutional powers to exercise judicial review in the present matter, even if it concerns a policy decision of the government, since it arises from the government having acted arbitrarily.
25. As a sequitur to the above discussion, this court sees merit in the prayers made in the present petition, which prayers are accordingly allowed.

¹⁴ *Deokinandan Prasad vs. State of Bihar & Ors.* (1971) 2 SCC 330 (Constitution Bench) as referred to in *D.S. Nakara vs. Union of India*, para 18; as relied-upon in *State of Rajasthan & Anr. vs. Mahendra Nath Sharma* (2015) 9 SCC 540, para 28



26. The respondents are accordingly directed to grant to the petitioners *all pensionary benefits* as available to them under Office Memorandum dated 01.05.1987 issued by the Department of Pension & Pensioners' Welfare, Ministry of Personnel, Public Grievances & Pensions of the Government of India, as referred to above, from the date as may be applicable.
27. However it must be clarified, that while calculating the amount payable to the various petitioners under the Pension Scheme, the NII shall be entitled to recoup along with interest the contributions made by them towards the provident fund of the petitioners *and* the petitioners shall be entitled to interest on the arrears of pension receivable by them under the Pension Scheme. The interest payable on either side shall be 8% per annum for the concerned period. The detailed calculations in this behalf would of course have to be made by the NII, as per their records, individually for the petitioners.
28. Considering the complexity involved in implementing the switch-over to the Pension Scheme at this late stage, and in-line with what was observed by the Supreme Court in para 52 of *University of Delhi vs. Shashi Kiran*,¹⁵ it is possible that keeping in view the economics involved, some of the petitioners or their legal representatives may no longer be interested in the switch-over; in which case, such petitioners/legal representatives must be given the choice by the NII to not avail the benefit of this judgment.

¹⁵ (2022) 15 SCC 325



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29. The petition is disposed-of, in the above terms.
30. Pending applications, if any, stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

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