



2025:DHC:7629-DB



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

Reserved on: 05.08.2025
Pronounced on: 02.09.2025

(1)+ W.P.(C) 3172/2019

BHARTI BAHUGUNAPetitioner

Through: Mr. S. Sunil, Adv.

versus

KENDRIYA VIDYALAYA SANGATHAN & ORS

.....Respondents

Through: Mr. U. N. Singh, Mr. D. N. Singh and Ms. Sandhya Chaturvedi, Advs. for KVS
Ms. Shubhra Parashar and Mr. V. P. S. Charak, Advs. for UOI.

(2)+ W.P.(C) 2113/2020

DURGA SHIVA KUMAR & ORS.Petitioners

Through: Mr. Anirudh Gupta, Adv.

versus

UNION OF INDIA & ORS.Respondents

Through: Mr. U. N. Singh, Mr. D. N. Singh and Ms. Sandhya Chaturvedi, Advs. for KVS

(3)+ W.P.(C) 2676/2020 & CM APPLs. 44100/2022 & 20317/2024

ANJALI DAS & ORSPetitioners

Through: Mr. K.K. Rai, Sr. Adv. with Mr. S.K. Pandey, Mr. Anshul Rai, Ms. Sreshi Chatterjee, Mr. Rajan Parmar, Mr. Chandrasekhar A. Chaulabbi and Mr. Awanish Kumar, Advs.

versus

UNION OF INDIA & ORSRespondents

Through: Mr. U. N. Singh, Mr. D. N. Singh and Ms. Sandhya Chaturvedi, Advs. for KVS
Dr. Amar Nath Gupta and Mr.



2025:DHC:7629-DB



Santosh Kumar Sahu, Advs. for
R-12, 14, 15 and 16.

(4)+ W.P.(C) 9479/2020 & CM APPL. 30500/2020

KENDRIYA VIDYALAYA SANGATHANPetitioner
Through: Mr. U. N. Singh, Mr. D. N.
Singh and Ms. Sandhya
Chaturvedi, Advs. for KVS
versus
MS. NISHA RANIRespondent
Through: Mr. Ravi Shankar Roy, Adv.

(5)+ W.P.(C) 10278/2020 & CM APPL. 32534/2020

KENDRIYA VIDYALAYA SANGATHANPetitioner
Through: Mr. U. N. Singh, Mr. D. N.
Singh and Ms. Sandhya
Chaturvedi, Advs. for KVS
versus
MS.RADHIKA JOSHIRespondent
Through: Mr. N. P. Joshi, Adv.

(6)+ W.P.(C) 11077/2020 & CM APPL. 34583/2020

KENDRIYA VIDYALAYA SANGATHANPetitioner
Through: Mr. U. N. Singh, Mr. D. N.
Singh and Ms. Sandhya
Chaturvedi, Advs. for KVS
versus
MRS.SHRADHA KASHYAP AND ORSRespondents
Through: Dr. Amar Nath Gupta and Mr.
Santosh Kumar Sahu, Advs.

(7)+ W.P.(C) 13002/2021 & CM APPL. 40981/2021

KENDRIYA VIDYALAYA SANGATHANPetitioner
Through: Mr. U. N. Singh, Mr. D. N.
Singh and Ms. Sandhya
Chaturvedi, Advs. for KVS
versus
SMT. SAROJ SHARMARespondent



2025:DHC:7629-DB



Through: Mr.Suresh Sharma, Adv.

(8)+ W.P.(C) 10818/2022

SMT. INDU WAHIPetitioner

Through: Mr.Suresh Sharma, Adv.

versus

UNION OF INDIA AND OTHERSRespondents

Through: Mr. U. N. Singh, Mr. D. N. Singh and Ms. Sandhya Chaturvedi, Advs. for KVS
Mr.Anurag Ahluwalia, CGSC
with Mr.Keshav Sehgal, Adv.
for UOI

Ms.Avshreya Pratap Singh Rudy, SPC with Ms.Usha Jannal, Ms.Harshita Chaturvedi, Advs. for UOI.

(9) + W.P.(C) 10408/2020 & CM APPL. 32971/2020

KENDRIYA VIDYALAYA SANGATHANPetitioner

Through: Mr. U. N. Singh, Mr. D. N. Singh and Ms. Sandhya Chaturvedi, Advs. for KVS

versus

MADAN LAL PANERIRespondent

Through:

(10)+ W.P.(C) 748/2024

RITU SINGHPetitioner

Through: Dr.Amar Nath Gupta and Mr.Santosh Kumar, Advs.

versus

THE COMMISSIONER KENDRIYA VIDYALAYA
SANGATHAN & ORS.Respondents

Through: Mr. U. N. Singh, Mr. D. N. Singh and Ms. Sandhya Chaturvedi, Advs. for KVS



2025:DHC:7629-DB

**(11)+ W.P.(C) 766/2024**

VUTLA SUBBARAOPetitioner
Through: Dr.Amar Nath Gupta and
Mr.Santosh Kumar, Advs.
versus
THE COMMISSIONER KENDRIYA VIDYALAYA
SANGATHAN & ORS.Respondents
Through: Mr. U. N. Singh, Mr. D. N.
Singh and Ms. Sandhya
Chaturvedi, Advs. for KVS

(12)+ W.P.(C) 8970/2024

GURVINDER KAUR SANDHUPetitioner
Through: Dr.Amar Nath Gupta and
Mr.Santosh Kumar, Advs.
versus
THE COMMISSIONER KENDRIYA VIDYALAYA
SANGATHAN & ANR.Respondents
Through: Mr. U. N. Singh, Mr. D. N.
Singh and Ms. Sandhya
Chaturvedi, Advs. for KVS

(13)+ W.P.(C) 14455/2021

MR. P. RAMACHANDRA REDDY & ANR.Petitioners
Through: Dr.Amar Nath Gupta and
Mr.Santosh Kumar, Advs.
versus
UNION OF INDIA & ORS.Respondents
Through: Mr.Ripudaman Bhardwaj, CGSC
with Mr.Kushagra Kumar,
Mr.Amit Kr. Rana, Advs. for
UOI.
Mr. U. N. Singh, Mr. D. N.
Singh and Ms. Sandhya
Chaturvedi, Advs. for KVS

(14)+ W.P.(C) 1440/2022

BIJAY KUMAR JHAPetitioner
Through: Mr.Abhishek Singh, Adv.
versus



2025:DHC:7629-DB



THE COMMISSIONER KENDRIYA VIDYALAYA
SANGATHAN & ANR.Respondents
Through: Mr. U. N. Singh, Mr. D. N.
Singh and Ms. Sandhya
Chaturvedi, Advs. for KVS

(15)+ W.P.(C) 11465/2023

BHUPINDER JIT SODHI & ANR.Petitioners
Through: Dr.Amar Nath Gupta and
Mr.Santosh Kumar, Advs.
versus
THE COMMISSIONER KENDRIYA VIDYALAYA
SANGATHAN & ANR.Respondents
Through: Mr. U. N. Singh, Mr. D. N.
Singh and Ms. Sandhya
Chaturvedi, Advs. for KVS

(16)+ W.P.(C) 50/2024

USHA CHOUDHARYPetitioner
Through: Mr.Kripa Shankar Prasad and
Mr.Harsh Jain, Advs.
versus
KENDRIYA VIDYALAY SANGATHAN THROUGH
COMMISSIONER & ORS.Respondents
Through: Mr. U. N. Singh, Mr. D. N.
Singh and Ms. Sandhya
Chaturvedi, Advs. for KVS

(17)+ W.P.(C) 12211/2023

SMT.RAKESH KUMARIPetitioner
Through: Mr.G. Natarajan, Adv.
versus
THE COMMISSIONER KENDRIYA VIDYALAYA
SANGATHAN AND ANR.Respondents
Through: Mr. U. N. Singh, Mr. D. N.
Singh and Ms. Sandhya
Chaturvedi, Advs. for KVS

(18)+ W.P.(C) 12991/2023 & CM APPL. 51223/2023



2025:DHC:7629-DB



CHANDRA CHOOR PANDEYPetitioner
Through: Ms.Anubha Dhulia, Adv.
versus
UNION OF INDIA AND OTHERSRespondents
Through: Ms.Nidhi Banga, SPC with
Mr.Sandeep Chaudhary, Adv.
for R-1/UOI.
Mr. U. N. Singh, Mr. D. N.
Singh and Ms. Sandhya
Chaturvedi, Advs. for KVS

(19)+ W.P.(C) 16726/2023

ALOK KUMAR SHARMA & ANR.Petitioners
Through: Dr.Amar Nath Gupta and
Mr.Santosh Kumar, Advs.
versus
THE COMMISSIONER KENDRIYA VIDYALAYA
SANGATHAN & ORS.Respondents
Through: Mr. U. N. Singh, Mr. D. N.
Singh and Ms. Sandhya
Chaturvedi, Advs. for KVS
Mr. N. K. Bhatnagar, Mr. Arkam
Khan and Ms.Tanushree
Khandelwal, Advs.

(20)+ W.P.(C) 1373/2024

AMIN UDDIN KHAN AND ANOTHERPetitioners
Through: Ms.Anubha Dhulia, Adv.
versus
THE COMMISSIONER, KENDRIYA VIDYALAYA
SANGATHAN AND ANRRespondents
Through: Mr. U. N. Singh, Mr. D. N.
Singh and Ms. Sandhya
Chaturvedi, Advs. for KVS

(21)+ W.P.(C) 5718/2024

USHA KIRAN DHAMIJAPetitioner
Through: Dr.Amar Nath Gupta and



2025:DHC:7629-DB



Mr.Santosh Kumar, Advs.

versus

COMMISSIONER KENDRIYA VIDYALAYA
SANGATHAN & ANR.Respondents

Through: Mr. U. N. Singh, Mr. D. N.
Singh and Ms. Sandhya
Chaturvedi, Advs. for KVS

(22)+ W.P.(C) 10032/2024

M. SAROJINI NANCY BALA & ORS.Petitioners

Through: Dr.Amar Nath Gupta and
Mr.Santosh Kumar, Advs.

versus

KENDRIYA VIDYALAYA SANGATHAN & ORS.

....Respondents

Through: Mr. U. N. Singh, Mr. D. N.
Singh and Ms. Sandhya
Chaturvedi, Advs. for KVS
Mr.Naginder Benipal, SPC with
Mr.Ankit Siwach, Mr.Udit
Vaghela and Mr.Arjun Baliyan,
Advs.

(23)+ W.P.(C) 6557/2024

ANKARAJU SAVITHRI DEVIPetitioner

Through: Dr.Amar Nath Gupta and
Mr.Santosh Kumar, Advs.

versus

UNION OF INDIA & ORS.Respondents

Through: Mr.Kshitij Chhabra, SPC with
Mr.Kamaldeep, Adv.
Mr. U. N. Singh, Mr. D. N.
Singh and Ms. Sandhya
Chaturvedi, Advs. for KVS

(24)+ W.P.(C) 9581/2024 & CM APPL. 39347/2024

SMT KRISHNA DAS & ORS.Petitioners

Through: Dr.Amar Nath Gupta and



2025:DHC:7629-DB



Mr.Santosh Kumar, Advs.

versus

THE COMMISSIONER
SANGATHAN & ORS.

KENDRIYA VIDYALAYA
.....Respondents

Through: Mr. U. N. Singh, Mr. D. N.
Singh and Ms. Sandhya
Chaturvedi, Advs. for KVS

(25)+ W.P.(C) 15137/2024 & CM APPL. 63528/2024

KENDRIYA VIDYALAYA SANGATHAN THROUGH ITS
COMMISSIONERPetitioner

Through: Mr. U. N. Singh, Mr. D. N.
Singh and Ms. Sandhya
Chaturvedi, Advs. for KVS

versus

DIVYA TIWARI & ORS.Respondents

Through: Dr.Amar Nath Gupta and
Mr.Santosh Kumar Sahu, Advs.
Mr.Abhishek Tyagi and
Mr.Rajiv Mitra, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

SHALINDER KAUR, J.

1. The present batch of Writ Petitions under Article 226 of the Constitution of India, have been filed to assail the final Orders passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as, 'Tribunal'), either allowing or dismissing the Original Applications ('OA') filed by the employees of the Kendriya Vidyalaya Sangathan ('KVS') seeking grant of the



benefits under the General Provident Fund ('GPF')-cum-Pension Scheme of the KVS.

2. At the outset, we may note that the batch of petitions involve similar issues of law and arise from a common bundle of facts, though the dates of joining, retirement and nature of appointment are different, therefore, it is deemed appropriate to adjudicate them *vide* this common Judgment.

FACTUAL BACKGROUND

3. The brief factual matrix, so far as is relevant to the present petitions, is that pursuant to the recommendations of the Fourth Central Pay Commission (CPC), Office Memorandum dated 01.05.1987 was issued by the Ministry of Personnel, Public Grievance and Pension, Department of Pensions and Pensioners' Welfare, for switch-over of employees from the Contributory Provident Fund ('CPF') Scheme to the Pension Scheme, according to which all CPF beneficiaries who were in service of the Central Government on 01.01.1986 and continue to remain in service, were deemed to have come over to the Pension Scheme unless, on or before 30.09.1987, they specifically opted to continue under the CPF Scheme. It was further stipulated that the CPF beneficiaries, who were in service on 01.01.1986 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 opt for the same latest by 30.09.1987 and 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. It was stipulated that the option once exercised, shall be final. The relevant extract from the said OM is as under:

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

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

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

xxxxx

3.6 The option once exercised shall be final.

xxxxx

4.2 In the case of employees referred to above, who come over or are deemed to come over to the Pension Scheme, the Government's contribution to the CPF together with the interest thereon credited to the CPF Account



of the employee will be resumed by the Government. The employees contribution together with the interest thereon at his credit in the CPF Account will be transferred to the GPF Account to be allotted to him on his coming over to the Pension Scheme.”

4. The KVS adopted the said OM dated 01.05.1987 *vide* OM No. 152-1/79-80/KVS/Budget/Part II dated 01.09.1988 and decided to implement it *mutatis mutandis*, except that the date of giving the option was stipulated as 31.01.1989. The relevant portions of the KVS OM dated 01.09.1988 reads as under:

“In the 51st Meeting of the Board of Governors of the Kendriya Vidyaiaya Sangathan held on 31st May, 1988, it was approved that Kendriya Vidyalaya Sangathan will, implement mutatis-mutandis the decision taken by the Govt. of India on the recommendations of the Fourth Central Pay Commission for its employees for the change over from Contributory Provident Fund Scheme to Pension Scheme in the manner as indicated in the Ministry of Personnel, Public Grievances and Pensions (Deptt. Of Pension and Pensioners' Welfare) O.M. No. 4/1/87-PIC dated 1.5.1987.

2. It has, accordingly, been decided that persons joining service in the Sangathan on or after 1.1.1986 shall be governed only by the G.P.F.-cum-Pension Scheme and will have no option for C.P.F. Scheme. However, for all CPF beneficiaries, who were in service on 1.1.1986, the decision taken shall be Implemented in the manner hereinafter indicated.

3. All C.P.F. 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 desired. The option will have to be exercised and conveyed to the concerned Head of office/Principal by 31.1.1989. In duplicate, in the form enclosed (one form may be sent to this office while the other kept with personal records of the employee concerned) if the employees wish to continue under the CPF Scheme. If no option is received by the Head of Office/Principal by the above date and in this office through them by 28.2.1989 the employees will be deemed to have come over the Pension Scheme. The Head of Office/Principals are to forward in one lot options exercised by employees for retention of CPF Scheme received by them, to reach Sangathan's Office latest by 28.2.1989, where no option to continue under the CPF Scheme is received by them from any, a nil report be sent by due date viz. 28.2.1989.

3.3 The C.P.F beneficiaries, who were in service-on 1.1.1986, but. have since retired and in whose case retirement benefits have also been paid under the C.P.F Scheme, will have option to have their retirement benefits calculated under the Pension Scheme provided they refund to the Sangathan, the Sangathan contribution (Management Share) 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 31.1.1989.

xxxxx

3.6 The Option once exercised shall be final.

xxxxx

4.2 In the case of employees referred to above, who come over or are deemed to come over to the Pension Scheme, the Sangathan's contribution to the CPF together with the interest thereon credited to the CPF account of the employee will be resumed by the



Sangathan. The employees contribution together with the interest thereon at his credit in the CPF account will be transferred to the CPF account, to be allotted to him on his coming over to the Pension Scheme.”

5. At this stage, it would be relevant to note that Mr. K. K. Rai, learned Senior Counsel for some of the employees of the KVS, pursuant to our Order dated 14.07.2025, furnished consolidated written submissions on behalf of the employees, and submitted that all the writ petitions can be categorized into three categories, which are as follows:

- I. **Category A:** Employees who had **not opted** to continue in the CPF Scheme during the prescribed period of five months, that is, from 01.09.1988 to 31.01.1989, in terms of the KVS OM dated 01.09.1988.
- II. **Category B:** Employees who had **opted** to continue in the CPF Scheme during the said five-month period from 01.09.1988 to 31.01.1989 and now want to switch over to the GPF-cum-Pension Scheme.
- III. **Category C:** Employees who were **direct appointees** (or whose services were confirmed/regularised) between 01.01.1986 and 31.12.2003, when the CPF Scheme was not in operation.

6. The learned Senior Counsel has also provided us with a list, splitting all the petitions in the present batch into the three categories



mentioned above, as under:

Category 'A'	Category 'B'	Category 'C'
W.P. (C) Nos. 3172/2019, 2113/2020, 9479/2020, 1440/2022, 10818/2022, 12211/2023, 748/2024, 766/2024, 11077/2020, 16726/2023, 11465/2023, 10278/2020, 13002/2021, 5718/2024, 9581/2024, 10032/2024, 50/2024 and Respondent Nos. 73 & 74 in W.P. (C) 14455/2021.	W.P.(C) Nos. 2676/2020, 14455/2021, and Respondent Nos. 7, 9 and 11 in W.P.(C) No. 11077/2020	W.P.(C) Nos. 6557/2024, 8970/2024, 15137/2024, 10408/2020. 1373/2024 and 12991/2023

7. The common grievance of the employees is that they seek retiral benefits under the GPF-cum-Pension Scheme instead of the CPF Scheme.

8. **Category A** employees claim that they are eligible for the benefits under the GPF-cum-Pension Scheme as they never opted to remain in the CPF Scheme and, therefore, automatically came over to the GPF-cum-Pension Scheme as per the deeming provision under paragraph 3.2 of the OM dated 01.09.1988. **Category B** employees claim that though they had initially opted to continue under the CPF Scheme during the prescribed period, they should be entitled to switch over to the GPF-cum-Pension Scheme, based on principles of parity and equality, as similar opportunities had been granted to employees in other organizations as also KVS employees in other States.



Category C employees claim that as per paragraph 2 of the OM dated 01.09.1988, persons joining service in the KVS on or after 01.01.1986 shall be governed only by the GPF-cum-Pension Scheme and will have no option for the CPF Scheme, therefore, since they were borne in service post the cut-off date, they would automatically come under the GPF-cum-Pension Scheme.

9. It is the case of the employees that in this regard, they requested the KVS to consider them under the GPF-cum-Pension Scheme and also submitted representations for the same, which were, however, rejected, prompting them to approach the learned Tribunal.

10. The learned Tribunal was pleased to allow some OAs and dismiss the others. Accordingly, the KVS has filed Writ Petitions against the former, while the employees have filed Writ Petitions against the latter.

DELAY AND LACHES

11. At the outset, we deem it appropriate to first address the common preliminary objection of delay and laches raised by the KVS across all categories.

SUBMISSIONS ON BEHALF OF THE KVS

12. The learned counsel for the KVS submitted that the present batch of petitions are liable to be dismissed on the ground of delay and laches. It was submitted that the actual cause of action arose way back in the year 1989, when the employees were asked to submit their option forms in terms of the KVS OM dated 01.09.1988. He



2025:DHC:7629-DB



submitted that thus, the employees could not have approached the learned Tribunal or this Court at such a belated stage to voice their grievances, particularly when in some of the cases, the petitions have been filed many years after retirement, which is not permissible in law.

13. The learned counsel vociferously urged that the employees have no right to receive the benefits under the GPF-cum-Pension Scheme by claiming that the said right is a continuous cause of action. It was submitted that even if it is assumed that the KVS had allowed them to make payments under the CPF Scheme despite not having opted for the same, the employees could have raised their grievances within a year from when the OM dated 01.09.1988 came into effect, that is, the period of limitation prescribed for filing an OA, and not beyond that.

14. The learned counsel further submitted that the present petitions are squarely covered by the judgment passed by this Court in *DTC v. Madhu Bhushan Anand*, 2010 (172) DLT 668, and the employees have filed the present petitions belatedly, without any explanation for the delay and laches in approaching the learned Tribunal and, hence, the petitions are liable to be dismissed. In support of the said contention, the learned counsel also relied upon the judgment of the Supreme Court in *Union of India and Ors. v. M.K. Sarkar*, (2010) 2 SCC 59, and of this Court in *Kendriya Vidyalaya Sangathan v. Manju Sehgal*, 2021:DHC:937-DB, and of the High Court of Kerala in *M.R. Indira v. Kendriya Vidyalaya Sangathan & Ors.*, 2023 SCC OnLine Ker 11465.



SUBMISSIONS ON BEHALF OF THE EMPLOYEES OF THE KVS

15. *Per contra*, the learned counsels for employees submitted that the right to pension, being a fundamental right, could not be circumscribed by taking recourse to the plea of delay and laches. Reliance was placed on the judgment dated 17.01.2019 of Bombay High Court in W.P No. 1331/2017, titled *Amita Ajit Desai & Ors. v. Union of India & Ors.*

16. It was also submitted that insofar as the right to pension is concerned, the cause of action is of a continuing nature and, therefore, the plea of limitation would not arise. Hence, the employees' claim cannot be rejected merely on the ground of delay. Reliance in this regard was placed on the decision of Supreme Court in *Union of India & Anr. vs. Tarsem Singh*, (2008) 8 SCC 648.

17. It was further submitted that the reliance of the KVS on the case of *M. K. Sarkar* (supra) is misplaced as the facts of the said case did not include any deeming provision, which was available in the present batch of petitions. The learned counsels submitted that in the present case, a legal fiction was created by the OM whereby employees were automatically deemed to have come over to the GPF-cum-Pension Scheme unless they consciously opted otherwise, and the operation of such legal fiction cannot be negated by subsequent conduct or delay in asserting rights.

18. Regarding Category B employees, the learned counsels further submitted that even employees who had initially opted for CPF Scheme, should be entitled to switch over to GPF-cum-Pension



Scheme based on the principle of parity and equality, as similar opportunities had been granted to employees in other organizations as also to KVS employees by other High Courts and affirmed by the Supreme Court. It was submitted that delay cannot be a ground to deny such beneficial schemes when the purpose is employee welfare.

19. For Category C employees, it was submitted that these employees, being either direct recruits or employees joining/regularized after 01.01.1986, were mandatorily to be governed only by the GPF-cum-Pension Scheme as per clause 2 of the KVS OM dated 01.09.1988, and therefore any delay in claiming their rightful benefits cannot prejudice their statutory entitlement.

20. The learned counsels submitted that in these peculiar facts and circumstances of the present petitions, employees cannot be denied their valuable right to claim benefit under the GPF-cum-Pension Scheme after retirement.

ANALYSIS AND FINDINGS

21. On due consideration of the above submissions, it may be noted that the doctrine of delay and laches prevents the grant of relief when the delay is unreasonable and causes unfair prejudice to the opposite side. Laches is an equitable concept that considers the consequence of delay. Thus, in the present batch of petitions, the length of delay and the nature of the acts done during the course of delay that might affect rights of either party are to be considered before exercising the discretion in favour of the party that belatedly approached the Tribunal.

22. From the record, what emerges is that some of the employees



had filed representations before the KVS to claim benefit of the GPF-cum-Pension Scheme prior to their retirement, while others filed representations thereafter. Undoubtedly, there is delay in the filing of the OAs before the learned Tribunal in most cases, however, we have to remain conscious of the fact that employees herein are litigating to claim financial benefits arising out of the GPF-cum-Pension Scheme, which was a beneficial scheme intended for employee welfare.

23. To appreciate the legal context, it is pertinent to note that the Government of India, through OM dated 01.05.1987, introduced a paradigm shift in the pension system for Central Government employees. The OM was issued to implement the recommendations of the Fourth Central Pay Commission, which had recommended that all CPF beneficiaries in service as on 01.01.1986 would henceforth be deemed to be covered under the GPF-cum-Pension Scheme from that date, unless they submitted a specific option to continue under the CPF Scheme within the prescribed time limit. The KVS adopted this OM *mutatis mutandis* through its OM dated 01.09.1988, extending the cut-off date to 31.01.1989 for its employees.

24. The Supreme Court in *Union of India & Anr. v. S.L. Verma & Ors.*, (2006) 12 SCC 53, while dealing with similar issues, held that by reason of the OM dated 01.05.1987, a legal fiction was created. The Court observed that only when an employee consciously opted to continue with the CPF Scheme, such employee would not become a member of the GPF-cum-Pension Scheme. Once employees became members of the GPF-cum-Pension Scheme by virtue of this legal fiction, they would be deemed to have come over to the pension



scheme, which *a fortiori* would mean that they no longer remained in the CPF scheme, regardless of subsequent contributions made by them or their employer.

25. More recently, the Supreme Court in *University of Delhi v. Smt. Shashi Kiran & Ors.*, (2022) 15 SCC 325, dealt with a comprehensive batch of cases involving three distinct categories of employees: (i) employees who had not exercised any option at all (the *R.N. Virmani* batch - analogous to Category (A) in the present case; (ii) employees who had not exercised their option by the cut-off date but had exercised the option during extensions; and (iii) employees who had consciously opted for CPF but later sought to switch over (the *Shashi Kiran* batch - analogous to Category (B) of the present case. The Court categorically held that switch over from the CPF Scheme to the GPF-cum-Pension Scheme shall be permissible in all these categories, and that such claims would not be barred by delay, laches, or limitation.

26. In this context, we may note that the learned Single Judge of this Court, in *R.N. Virmani & Ors. v. University of Delhi & Anr.*, 2014:DHC:2285, while dealing with employees who had not exercised any option at all, rejected the objection of delay and laches, holding that the right to pension constitutes a continuing cause of action, placing reliance on *Tarsem Singh* (supra). The said view of the learned Single Judge, in fact, now stands affirmed by the Supreme Court in *Shashi Kiran* (supra), as noted hereinabove.

27. Accordingly, the objection raised by the KVS on the ground of delay and laches cannot be sustained. As clarified in *Shashi Kiran*



(supra), even where an employee had availed of the CPF benefits, that by itself cannot operate as a bar to his entitlement under the GPF-cum-Pension Scheme. Such employees are to be treated as '*deemed pension optees*' in terms of KVS OM dated 01.09.1988. The only requirement in such a case, as held by this Court in *Delhi Transport Corporation v. Anil Luthra*, 2025:DHC:1700-DB, would be for the employee to refund the CPF benefits so availed by him at the time of his retirement, along with interest.

28. In this regard, it is apposite to note the observations of *Shashi Kiran* (supra), which are as follows:

“51. According to the Notification dated 1-5-1987, the employees joining the service after 1-1-1986 would always be under GPF. With respect to those who were in service on 1-1-1986, said employees would be deemed to have “come over” to GPF unless an option to continue to be under CPF was consciously exercised before the cut-off date. Thus, when the Scheme was framed and was sought to be implemented, the authorities concerned must have taken into account the entire magnitude such as, the number of employees and the likelihood of impact on the management of the fund, so that reasonable returns can be effected by way of pension upon retirement of such persons. Going by the intent of the notification, those who were to opt for CPF, were an exception and the general rule was that everybody after 1-1-1986 would normally be covered by GPF. It is in this context that the number of original petitioners in Shashi Kiran batch of cases has to be seen. We are concerned with only 75 persons. On the other hand, the bulk of people, namely, 2469 employees were granted the choice of reverse switch over and they were allowed all the benefits under GPF. It can reasonably be said that when the Notification dated 1-5-1987 was issued, the authorities were



conscious of the possibility that all the employees may “come over” to GPF. With that possibility in mind, the fund was constituted and the affairs were arranged. The shift of those 75 employees would not in any way affect the strength and the character of the fund if a direction that the entire contribution made by the authorities be returned with reasonable rate of interest is issued. These 75 petitioners had approached the Court in the year 2010. At this length of time, it is not as if any floodgates are going to open and there will be drain on the resources of the State. A direction can, therefore, be issued, as was done by the learned Single Judge in para 20 of his judgment in R.N. Virmani [R.N. Virmani v. University of Delhi, 2014 SCC OnLine Del 2799] batch of cases and which aspect was mentioned in the Letter dated 23-1-2017 referred to in para 31.4 hereinabove, for recouping the contribution under CPF with 8% simple interest per annum.

52. Considering the circumstances on record, in our view, the decision rendered by the Division Bench of the High Court in Shashi batch of cases does not call for any interference except to the extent of direction for recouping of the contribution under CPF with 8% simple interest per annum. It is possible that at this length of time, some of the employees in Shashi Kiran batch of cases may not be interested in switch over to GPF. But an option must be afforded to them in such manner as the authorities deem appropriate.”

(Emphasis Supplied)

29. The decision of ***Shashi Kiran*** (supra) has also been consistently followed by various High Courts. The Rajasthan High Court, in its decision dated 27.07.2023 in D.B. Civil Writ Petition No. 16675/2022, titled ***The Commissioner, Kendriya Vidyalaya Sangathan & Anr. v. Mrs. Gurmail Kaur***, dealt with KVS employees



in similar circumstances and held that switch over from CPF to GPF-cum-Pension Scheme should be permitted. Similarly, the High Court of Madhya Pradesh, in **Ram Dayal v. Union of India & Ors.**, 2024 SCC OnLine MP 3299, allowed similar claims of KVS employees. Significantly, the Special Leave Petitions filed against both these decisions have been dismissed by the Supreme Court, thereby affirming the legal position.

30. More so, it is undisputed that certain employees made representations to the KVS before their superannuation, seeking the benefits under the GPF-cum-Pension Scheme, therefore, their claims cannot be brushed aside on the ground of delay and laches.

31. In this backdrop, we may note the observations of the learned Co-ordinate Bench of this Court in **Union of India & Ors. v. Namrata Semwal**, 2024:DHC:2896-DB, reading thus:

*“7. From the aforesaid extracts of the impugned order, it clearly emerges that on the one hand, there is no option of the respondent for being covered under the CPF Scheme after 01.09.1988 available and on the other hand, there are representations made by her right from 1993 requesting the petitioners to include her name under the GPF (Pension) Scheme. Even though, learned counsel for the petitioners is correct in urging that as held in **Jaspal Kaur** (supra), the mere absence of the option form on the record may not always be fatal, as an inference can also be drawn from the contemporary documents including payslips, the fact remains that the respondent had all along been representing for including her name under the GPF (Pension) Scheme as per OM dated 01.09.1988. In the light of this distinguishing factors, where representations were being all along made by the respondent*



*for being included under the GPF (Pension) Scheme, the ratio of the decision in **Jaspal Kaur** (supra) would not be applicable to the present case. There is absolutely no explanation by the petitioners as to why those representations submitted in 1993 and 1994 were not rejected if any such option to be governed by the CPF Scheme was available in the records of the petitioners.”*

32. Furthermore, in judgment dated 29.10.2024 in W.P. 20091/2022, titled **Union of India & Ors. v. C.V.L. Annapurna**, the High Court of Madras held as under:

41. ...The ground realities of a situation such as present cannot lose sight of. The private respondents are all in service and have been making representations before the employer regularly. As we have already indicated, it was unnecessary to even require them to make representations as their very O.M. dated 01.09.1988 requires Kendriya Vidyalaya Sangathan to effect transition to the GPF Scheme. This has not been done in the case of the private respondents.

42. Hence, for a default committed by the Kendriya Vidyalaya Sangathan, the employees cannot suffer to say that their representations and the institution of the applications before the CAT were hit by the bar of limitation. This submission does not appeal to us at all. Hence we find that the ratio of the decisions cited by Mr.Srinivasan, are entirely distinguishable as on the facts of those cases and the facts and legalities of the present matter.

43. At the risk of repetition, we must reiterate that O.M.dated 01.09.1988 was by the Kendriya Vidyalaya Sangathan itself putting into motion a scheme of transition from CPF to GPF and providing expressly that it is only if the option had been exercised for continuance that the employees would be



retained in the CPF Scheme. There is hence no merit or we may even say fairness in the Kendriya Vidyalaya Sangathan taking the present stand. They are also seen to have complied with the orders in the cases of many others similarly placed employees and hence we see no justification for the present private respondents being denied the same benefit.

33. For the employee(s) who made belated representations post-retirement, to disallow their claims on the ground of delay would be to create a situation of disparity amongst the employees in receiving different post-retiral benefits having served in the same organization. The same therefore, should not be allowed, especially keeping in view that the GPF-cum-Pension Scheme which was a beneficial scheme intended for the welfare of the employees.

34. The judgment in the case of **M.K. Sarkar** (supra) does not assist the KVS as that case involved fundamentally different facts. In **M.K. Sarkar** (supra), there was no deeming provision which would have automatically switched the employees over to the new scheme. Instead, the employees were given an option to switch over to the new scheme in place of continuing under the CPF Scheme. The employee in the said case was afforded such an opportunity on eight occasions over a period of 22 years, and still he did not opt for the new scheme and continued under the CPF Scheme. It was in this context that the Supreme Court held that the employee therein, having been aware of the option for nearly 22 years, could not at such a belated stage be permitted to assert a right to exercise the same. Accordingly, the petition was held to be filed after an inordinate delay. The present case is distinguishable as it involves a deeming provision that



automatically brings employees under the GPF-cum-Pension Scheme unless they consciously opt out within the stipulated time.

35. Therefore, the preliminary objection of delay and laches raised by the KVS is hereby rejected. The legal fiction created by the OMs, the beneficial nature of the pension scheme, the continuing cause of action in pension matters, and the consistent judicial precedents, all support the maintainability of these OAs/writ petitions despite the delay involved. Delay and laches are, no doubt, significant factors that merit consideration, however, in the present circumstances, as the GPF-cum-Pension Scheme being a beneficial scheme intended for the welfare of employees across all three categories and considering the specific legal context applicable to each category, the claim of the KVS employees cannot be rejected solely on the ground of delay and laches.

36. Having disposed of the preliminary objection, we now turn to examine the merits of each category of employees.

CATEGORY-A

W.P.(C) Nos. 3172/2019, 2113/2020, 9479/2020, 1440/2022, 10818/2022, 12211/2023, 748/2024, 766/2024, 11077/2020, 16726/2023, 11465/2023, 10278/2020, 13002/2021, 5718/2024, 9581/2024, 10032/2024, W.P (C) No. 50/2024 and Respondent Nos. 73 & 74 in W.P.(C) 14455/2021.

37. The factual matrix in this category of petitions is similar, inasmuch as the petitioners-employees claim that they did not opt to remain under the CPF Scheme and yet the KVS placed them under the



same instead of the GPF-cum-Pension Scheme.

SUBMISSIONS ON BEHALF OF THE EMPLOYEES OF THE KVS

38. The learned counsels on behalf of the employees of the KVS submitted that none of the employees falling under Category A, had exercised the option to continue under the CPF Scheme within the period prescribed in the KVS OM dated 01.09.1988 and, therefore, by virtue of the deeming provision contained in paragraph 3 of the said OM, such employees automatically switched over to the GPF-cum-Pension Scheme. The learned counsels submitted that accordingly, the employees should have received the benefits under the GPF-cum-Pension Scheme after the cut-off date of 31.01.1989, as stipulated in KVS OM dated 01.09.1988.

39. While placing strong reliance on the judgments of the Supreme Court in *S.L. Verma* (supra) and *Shashi Kiran* (supra), the learned counsels submitted that in *S. L. Verma* (supra), the Supreme Court has held that the OM dated 01.05.1987 created a legal fiction whereby all CPF beneficiaries in service as on 01.01.1986 would be deemed to have switched over to the Pension Scheme unless they specifically opted to continue under CPF by 30.09.1987, therefore, only when an employee consciously opted to continue under the CPF Scheme would such employees not come under the GPF-cum-Pension Scheme.

40. They further submitted that in *Shashi Kiran* (supra), the Supreme Court granted pension to all the employees – whether they had not exercised any option at all, and if they did, irrespective of the date on which they exercised the option.



41. They submitted that in the decision dated 04.01.2018 of the Rajasthan High Court in Civil W.P. No. 5976/2017, titled *M.S. Panwar v. CAT & Ors*, while relying upon *S. L. Verma* (supra), the Rajasthan High Court granted the benefit of the GPF-cum-Pension Scheme to a KVS teacher, which further strengthens the case of the employees, and accordingly, the same cannot be denied to the present set of employees.

42. The learned counsels further contended that it was at the time of framing and implementing the Pension Scheme that the concerned authorities should have considered the overall magnitude of the Scheme, which includes the number of employees and the possible impact on the management of the funds. Hence, the contention of the KVS that the extension of the benefit of the GPF-cum-Pension Scheme to the employees would now impose a financial burden on the KVS is devoid of merit.

SUBMISSION ON BEHALF OF THE KVS

43. *Per contra*, Mr. U.N. Singh, the learned counsel for the KVS, urged that once an employee has consciously availed the benefits under a particular scheme, they cannot, thereafter, invoke or seek recourse to any deeming provision to claim benefits under another scheme. He submitted that regular contributions to the CPF Scheme is a clear indication of the fact that such an employee had opted for the CPF Scheme and subsequently, there is no scope for such an employee to claim any right under the GPF-cum-Pension Scheme. In support, he placed reliance upon the decision dated 20.09.2011 of the



Full Bench of this Court in LPA No. 708/2002, titled ***R.D. Gupta & Ors. v. Delhi Transport Corporation & Anr.***

44. He further submitted that the OM dated 01.05.1987 and the subsequent KVS OM dated 01.09.1988 were in the knowledge of the employees, despite which they had continued to contribute towards the CPF Scheme by allowing deductions from their salaries on a monthly basis. He submitted that now, therefore, the employees cannot turn around and plead ignorance about the OMs in order to claim the benefit under the GPF-cum-Pension Scheme.

45. He submitted that the KVS is equipped with sufficient evidence, though secondary in nature, which clearly indicates that the employees were knowingly opted for the CPF by making their contribution to the CPF accounts and continuing to do so during their service tenure and even accepting the CPF funds at the time of retirement. He submitted that the employees are, therefore, estopped from raising the claim that their case is covered under the under the GPF-cum-Pension Scheme by virtue of OM dated 01.09.1988. Reliance in this regard was placed upon the judgment of the Supreme Court in ***Kendriya Vidyalaya Sangathan & Ors v. Jaspal Kaur & Anr*** (2007) 6 SCC 13.

46. The learned counsel submitted that the decision in ***Shashi Kiran*** (supra), as relied upon by the employees, would not be applicable to the present batch of petitions as in the said case, the Delhi University had extended multiple opportunities to its employees to exercise the option, whereas in the preset case, the KVS had provided only a single opportunity to its employees, therefore,



avoiding any confusion as every employee had a clear choice as to either be an optee under the CPF Scheme or not.

REJOINDER ON BEHALF OF THE EMPLOYEES OF THE KVS

47. In rejoinder, the learned counsels for the employees submitted that the KVS cannot derive any benefit from the decision in *Jaspal Kaur* (supra) as the said case was a judgment *in personum* and was decided on its peculiar facts, without taking into consideration the issues, as are discussed in *S. L. Verma* (supra), that is, by virtue of the deeming fiction the employees were deemed to have come over into the under the GPF-cum-Pension Scheme, which *a fortiori*, implied that they ceased to be governed by the CPF Scheme.

ANALYSIS AND FINDINGS

48. We have given our thoughtful consideration to the rival contentions of the parties and perused the record.

49. It is undisputed that till 01.01.1986, all the employees of the KVS were covered by the CPF Scheme. The KVS *mutatis mutandis* adopted the OM dated 01.05.1987 *vide* its OM dated 01.09.1988, thereby introducing the GPF-cum-Pension Scheme for its employees.

50. The petitioners-employees in the present Category A claim that by virtue of the KVS OM dated 01.09.1988, as they were in service prior to 01.01.1986 and continued post the said date as well, despite being CPF beneficiaries, they would be deemed to have switched over to the GPF-cum-Pension Scheme, unless they opted to remain under the CPF Scheme.

51. While the KVS does not dispute the mandate of the OMs, it



contends that the present set of employees are not entitled to be governed by the GPF-cum-Pension Scheme as they had continued to make their contributions towards the CPF Scheme and as had the KVS, and the benefits thereof have already been gleaned by the petitioners, indicating that they had opted to remain under the CPF Scheme. The KVS further contends that the employees cannot raise this issue belatedly, especially when most of them have retired and have preferred their claims thereafter.

52. From the KVS OM dated 01.09.1988, which has been reproduced hereinabove, what emanates is that the employees who were in service on 01.01.1986 and who continued in service as on the date of the issuance of the said OM “*will be deemed to have come over to the Pension Scheme*” and if they desired to continue under the CPF Scheme, they were required to exercise an option for the same, which was to be conveyed to the concerned Head of Office/Principal by 31.01.1989. In the event no such option was received by the Head of Office/Principal by the aforesaid date, and in the KVS office through them by 28.02.1989, the employees would be “*deemed to have come over to the Pension Scheme*”. The KVS, in accordance with its OM, had invited options from employees only once till 31.01.1989.

53. Admittedly, the petitioner-employees in this category were in service as on 01.01.1986 and continued thereafter. The KVS is unable to show that they exercised the option to remain in CPF, but relies upon their conduct as proof of exercise of such option did not exercise any option to continue under the CPF Scheme.



54. Thus, in view of the above, the key point for resolution before us is whether the petitioner-employees have a valid claim to the benefit under the GPF-cum-Pension Scheme, or would be governed by the CPF Scheme.

55. To appreciate the legal context of an employee not having exercised the option to continue under the CPF Scheme, reference may be made to the decision in *S. L. Verma* (supra), wherein it was held as under:

“7.The Central Government, in our opinion, proceeded on a basic misconception. By reason of the said office memorandum dated 1-5-1987 a legal fiction was created. Only when an employee consciously opted for to continue with the CPF Scheme, he would not become a member of the Pension Scheme. It is not disputed that the said respondents did not give their options by 30-9-1987. In that view of the matter 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. Respondent 14 has correctly arrived at a conclusion that an anomaly would be created and in fact the said purported option on the part of Respondents 1 to 13 was illegal when a request was made by Respondent 14 to the Union of India for grant of approval so that all those employees shall come within the purview of the Pension Scheme. In our opinion, the Ministry of Finance proceeded on



*a wrong premise that the Pension Scheme was not in existence and it was a new one. Two legal fictions, as noticed hereinbefore, were created, one by reason of the memorandum, and another by reason of the acceptance of the recommendations of the Fourth Central Pay Commission with effect from 1-1-1986. **In terms of such legal fictions, it will bear repetition to state, 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)

56. In view of the above, it is distinctly clear that the ‘legal fiction’ created an automatic switch to the GPF-cum-Pension Scheme for all eligible employees. Notably, at the time of joining of the employees in the present category, they automatically became members of the CPF Scheme, which existed prior to 01.01.1986, however, under the OM dated 01.05.1987 and the KVS OM dated 01.09.1988, employees had to exercise a fresh option to remain under the said scheme. It was only upon an employee’s conscious and timely exercise of the option to continue in the CPF Scheme, would such employee remain in the CPF Scheme and not become a member of the GPF-cum-Pension Scheme. However, failure to exercise the said option within the prescribed time limit resulted in the employee being deemed to have automatically switched to the GPF-cum-Pension Scheme by operation of the legal fiction.

57. The decision in *S. L. Verma* (supra) has also been relied upon in the judgments dated 04.01.2018 and 22.10.2021 of the Rajasthan High Court in W.P.(C) 5976.2017 and W.P.(C) 14158/2019 titled



M.S. Panwar v. Central Administrative Tribunal and *Gajendra Singh Rathore v. Central Administrative Tribunal*, respectively, both of which stand affirmed by the Supreme Court.

58. Furthermore, in this context, we may also refer to the decision of the Supreme Court in *Shashi Kiran* (supra), which deals with the OM dated 01.05.1987 as implemented by the University of Delhi for its employees. The University of Delhi had issued a Notification dated 25.05.1987 to implement the OM dated 01.05.1987 and extended the benefit of the GPF-cum-Pension to employees, granting them an opportunity to exercise their option in terms of the paragraph 5 of the Notification dated 25.05.1987 by 30.09.1987, which was subsequently extended till 31.01.1999 by way of several extensions.

59. As the OM dated 01.05.1987 had specifically provided that the last date for exercising the option was 30.09.1987 and had not granted any further time beyond that date to switch over to the GPF-cum-Pension, the University Grant Commission (UGC) opined that the University of Delhi could not have extended the time for exercising the option on its own by way of the various extensions.

60. In view of the said stand taken by the UGC, several employees of the University approached this Court claiming appropriate reliefs. This Court segregated the employees before it into 3 categories, and the issue regarding the category of employees who had not exercised any option at all, was cases in *R.N. Virmani & Ors. v. University of Delhi & Anr.*, 2014:DHC:2285, wherein the learned Single Judge held that such employees were deemed to have “*come over*” to the GPF-cum-Pension Scheme. The University of Delhi filed an LPA against



the same, and the said batch of appeals was referred to as the **RN Virmani** batch of cases.

61. It is relevant to note that the factual position of the employees under the present category in this petition, that is, Category A, is similar to that of the **RN Virmani** batch of cases, as the said batch dealt with those employees who had never exercised the option to remain under the CPF Scheme, yet continued to be governed by it and make contributions under the same.

62. With respect to the **RN Virmani** batch of cases, the Supreme Court, in the case of **Shashi Kiran** (supra), observed as under:-

”A. R.N.Virmani batch of cases

17. The reasoning that weighed with the learned Single Judge was: (R.N. Virmani case, SCC OnLine Del para 14)

”14. In my view, the answer to the question: as to whether employees, who had not issued any overt communication with regard to his/her desire to continue with the CPF Scheme, stood covered by the Pension Scheme; would largely depend upon the provisions of OM dated 1-5-1987, itself.

14.1. It is not in dispute before me that OM dated 1-5-1987 was adopted by the University of Delhi vide Notification dated 25-5-1987 read with Notification dated 4-6-1987, 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 OM dated 1-5-1987. The said OM clearly applies to all employees who were CPF beneficiaries on 1-1-1986. 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 Head of Office concerned by 30-9-1987. In case, no option was received by the Head of Office by 30-9-1987, 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.“

18. To arrive at the conclusion as mentioned above, the learned Single Judge relied inter alia upon the following passages from the decision of this Court in Union of India v. S.L. Verma: (SCC pp. 55-56, paras 4 & 7)

”4. The Central Government as also Respondent 14 Bureau of Indian Standards have proceeded on some legal misconception that it was obligatory on the part of the said employees to give a positive option for the said purpose. For the first time on 2-2-1999, Respondent 14 requested the Union of India for grant of another chance to the respondents to switch over to pension scheme stating that they purported to have exercised their option for CPF Scheme on the cut-off date.

x x x

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



member of the Pension Scheme, Regulation 16 of the Bureau of Indian Standards (Terms and Conditions of Service of Employees Regulations, 1988) had become ipso facto applicable in their case also. It may be that they had made an option to continue with the CPF Scheme at a later stage but if by reason of the legal fiction created, they became members of the Pension Scheme, the question of their reverting to the CPF would not arise. Respondent 14 has correctly arrived at a conclusion that an anomaly would be created and in fact the said purported option on the part of Respondents 1 to 13 was illegal when a request was made by Respondent 14 to the Union of India for grant of approval so that all those employees shall come within the purview of the Pension Scheme. In our opinion, the Ministry of Finance proceeded on a wrong premise that the Pension Scheme was not in existence and it was a new one. Two legal fictions, as noticed hereinbefore, were created, one by reason of the memorandum, and another by reason of the acceptance of the recommendations of the Fourth Central Pay Commission with effect from 1-1-1986. In terms of such legal fictions, it will bear repetition to state, 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 by the learned Single Judge)

19. The argument made by the respondents was dealt with as under: (R.N. Virmani case, SCC OnLine Del para 16)

”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 OM dated 1-5-1987. If, the cover under the Pension Scheme, gets triggered with a effect from 30-9-1987, the contribution by an employee and its receipt by the employer clearly proceeds on a misconception of the provisions of OM dated 1-5-1987.

As a matter of fact, this very argument was repelled by the Supreme Court, in S.L. Verma case, and I think, for good reason. Consequently, there is no room for entertaining such an argument. The relevant observations made in para 7, specific to this aspect, are, once again, extracted hereinafter: (SCC p. 56)

'7. ... 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.' "

20. It was, therefore, directed: (R.N. Virmani case, SCC OnLine Del)

" 20. Having regard to the above discussion, the respondent University of Delhi/Colleges concerned will be entitled to recoup their contribution under the CPF Scheme, if not already recouped, with simple interest @ 8% p.a."

The petitions were thus allowed.

63. The Supreme Court further held as under:-

28. R.N. Virmani batch of cases: (Shashi Kiran case , SCC OnLine Del para 19)

"19. This Court is of opinion that the submissions of the University, the appellants, 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 1-5-1987 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 v. Tarsem Singh) there is a continuing cause of action. Therefore, we find no infirmity with the learned Single Judge's order, in Virmani case. “
(emphasis in original)

The appeals were thus dismissed“

xxxxx

38. According to the Notification dated 1-5-1987 two situations were contemplated. First, the deeming provision in terms of which the employee concerned was taken to have “come over “to GPF. The second situation being where a conscious option was exercised before the cut-off date to continue to be under CPF. R.N. Virmani batch of cases was therefore rightly allowed by the learned Single Judge and the Division Bench of the High Court, as no conscious option was exercised by the cut-off date. Consequently, the employees concerned must be deemed to have “come over”to GPF. Logically, it would be immaterial whether the employee concerned continued to make contribution assuming himself to be covered under CPF, even though contributions were made by the authorities concerned. The benefit was therefore rightly granted in favour of the employees and the entire contribution was directed to be refunded. The University has chosen not to appeal against that decision and thus the matter has attained finality.”

(Emphasis supplied)

64. What is evident from the above is that the petitioner-employees in the present Category A are squarely covered by the decision in *Shashi Kiran* (supra), which emphasizes that as the present employees did not exercise the option to continue under CPF Scheme by the cut-off date, consequently they must be deemed to have ‘come



over' to the GPF-cum-Pension Scheme. It would be immaterial whether the employees, or that even the KVS, continued to make contribution under the CPF Scheme, as the employees were automatically deemed to have come over to the GPF-cum-Pension Scheme by operation of the legal fiction, regardless of their subsequent actions.

65. In the *R.N. Virmani* batch of cases, as the University of Delhi did not prefer an appeal before the Supreme Court, the matter with respect to the present category of employees therein attained finality.

66. We may further note that a Co-ordinate Bench of this Court in *Anil Luthra* (supra), considered this issue in respect of DTC employees. After referring to the judgment of the Full Bench of this Court in *R.D. Gupta & Ors. v. Delhi Transport Corporation & Anr.*, 2011:DHC:4832-DB, which had upheld the decision in *DTC v. Madhu Bhushan Anand*, 2010 (172) DLT 668, and the judgments of the Supreme Court in *S.L. Verma* (supra) and *Shashi Kiran* (supra), the Co-ordinate Bench held as under:-

”29. Cumulative impact of S.L. Verma and Shashi Kiran

29.1 Thus, after S.L. Verma and Shashi Kiran, there can be no doubt about the legal position that, if an employee does not exercise any option to continue under the CPF scheme within the time stipulated in that regard, whether it was under the 1987 OM or the 1992 Office Order of the DTC, he would ipso facto be a deemed pension optee. The availment of CPF benefits by him, thereafter, is irrelevant and he can, at the highest, be directed to return the CPF benefits, if necessary with interest. Further, even if he



were to refer to himself as a CPF beneficiary thereafter, or even if he were to state, in a written communication, that he was not a pension optee, it would make no difference, as the character of the employee as a deemed pension optee is by operation of law, in terms of para 9 of the 1992 DTC Office Order. A consequence which arises by inexorable operation of law cannot be wished away by assertions to the contrary.

29.2 In view of this position, even if it were to be presumed that para 19 of the judgment of the Full Bench of this Court in *R.D. Gupta* treats the acceptance, by the employee, of CPF benefits, as sufficient to disentitle him to the benefits of the Pension Scheme, **that position can no longer be said to hold good in view of the decisions in *S.L. Verma and Shashi Kiran*. *Shashi Kiran*, we may note, is a recent decision, rendered as late as in 2022, and there was no occasion, therefore, for the position of law enunciated in *Shashi Kiran* to have been within the knowledge of the Full Bench when it decided *R.D. Gupta*, or the Division Bench of this Court when it decided *Madhu Bhushan*.**

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36. We, therefore, are of the firm opinion that after the judgment of the Supreme Court in *Shashi Kiran*, no scope remains for debate on the issue in controversy in the present case. An employee who fails to exercise the option, as envisaged in Clause 3 of the DTC Office Order dated 27 November 1992, on or before 1995, ipso facto, switches over to the Pension Scheme, by operation of para 9 of the said Notification. There is no possible comeback. The mere fact that the employee as well as the DTC continue to contribute to the CPF and the employee may have even earned the benefits of such contribution at the time of his retirement would make no difference.“



(Emphasis Supplied)

67. In so far as the reliance of the learned counsel for the KVS on the judgment of the Supreme Court in *Jaspal Kaur* (supra) is concerned, he had argued that the inability to produce the option forms may not always be fatal as an inference can be drawn from secondary evidence available on record, such as pay slips etc., that an employee had agreed to opt for the CPF Scheme. He submitted that from the conduct of the petitioners in the present category, it can be inferred that they had opted to continue under the CPF Scheme.

68. However, *Jaspal Kaur* (supra) is distinguishable inasmuch as in that case, extensive secondary evidence was available to establish that the employee had opted for the CPF Scheme. The Supreme Court specifically noted that there was a note in the Service Book stating that the CPF account was allowed under intimation to the employee, multiple letters from KVS showing revised CPF account numbers with the employee's name appearing consistently, the employee's own letter dated 15.03.1997 acknowledging that she was contributing towards CPF with a specific account number, and crucially, the last pay certificate clearly indicating that she had "opted for the CPF Scheme". The Supreme Court held that this "ample material" was sufficient to establish the exercise of option despite the original option document not being produced.

69. In contrast, in the present petitions concerning Category A employees, the KVS has not produced any documentary evidence or noting on record to demonstrate that these employees had ever exercised their option to remain under the CPF Scheme by the cut-off



date.

70. In *C.V.L. Annapurna* (supra), with regards to the records produced by the KVS to evidence the continuation of the employees under the CPF Scheme, the Madras High Court observed as under:

“35. However, as we have noted such records fall within the domain of control of the petitioners and cannot under any circumstances be taken to be express consent or exercise of option by the private respondents. The private respondents have brought on record several instances where orders of the CAT as well the High Court have in identical circumstances held in favour of the employees and the Kendriya Vidyalaya Sangathan has complied with those orders. There is no reason for the petitioners to have adopted a divergent stand in the present matters.”

71. Even otherwise, even if such documentary evidence existed, it cannot override the legal fiction created by the KVS OM dated 01.09.1988. In view of the binding precedent in *S.L. Verma* (supra), once the cut-off date was crossed without any option being exercised to continue under the CPF Scheme, the employees would be deemed to have automatically come over to the GPF-cum-Pension Scheme by operation of law. No subsequent conduct or belated exercise of option can reverse this legal consequence.

72. In this regard it would also be apposite to refer to *Commissioner Kendriya Vidyalaya Sangathan v. Central Administrative Tribunal Bench & Anr.*, 2023:AHC:199785-DB, which has been upheld by the Supreme Court, wherein the Allahabad High Court held as under:



“18. ...Mere continuance of deduction under CPF may itself not cause any legal effect as contemplated by the Supreme Court in the above described decision. Even change / revision of CPF number, not linked to prior application made by the respondent would be inconsequential.

19. That we note, wherever, statutory law prescribes a particular way to do a specific thing, the thing may other be done in that way or not at all. Though, we have not intended to elevate the status of the Office Memorandum dated 01.09.1988 to that of statutory law and we recognize the same and as Executive Order only, yet, in absence of any contrary statutory or other law or Executive Order shown to exist. We do not see how the respondent may be seen to have opted to be retained under the CPF when the Union has failed to establish that he had submitted the application on the prescribed form in the prescribed manner. In absence of that application made by the respondent, he had migrated to GPF scheme, by operation of law.

20. Then, once that consequence arose in law, it full effect could not be avoided by either party on the evidentiary rule of acquiescence. Once, by law, the respondent was admitted to the GPF scheme, he could not be denied its benefit merely because he may not have resisted CPF contributions continued to be made thereafter. To allow for such contingency to arise / exist would be to read a new clause into the Office Memorandum dated 01.09.1988 i.e. an employee may (notwithstanding) anything also, not migrate an employee to GPF scheme and that employed may content to the same. Clearly that cause is not permissible.”

73. Therefore, in light of the views expressed by us herein before, we find ourselves unable to sustain the Orders passed by the learned



Tribunal dismissing the OAs. Accordingly, the present petitions filed by the petitioner-employees stand allowed subject to the conditions as stated hereinbelow in the concluding section.

74. Further, W.P.(C) 10278/2020 and W.P.(C)11077/2020 filed on behalf of the KVS, accordingly, stand dismissed.

75. Before concluding our discussion on Category A, we deem it necessary to separately address W.P.(C) 9479/2020, as it involves rather distinct factual circumstances that require individual consideration.

W.P.(C) 9479/2020

76. In the present petition, the issue that arises for our consideration is whether the respondent-employee, who came to be governed by the GPF-cum-Pension Scheme *vide* KVS OM dated 01.09.1988, and was accordingly allotted a GPF number by the KVS, could be reverted by the KVS to the CPF Scheme, after three years.

77. The learned Tribunal allowed her case based on the “deeming clause” in Para 3 of the KVS OM dated 01.09.1988. The Learned Tribunal was also convinced by evidence showing that she was initially allotted a GPF account number along with three other employees, had GPF deductions made for three years, and had raised representations about irregularities in her account as early as 1989. Her case was also distinguished from *Jaspal Kaur* (supra), noting that there was no evidence that she had exercised any option to remain under the CPF scheme.

78. The employee has claimed that she never opted to continue



under CPF Scheme and, therefore, falls under Category 'A'. More so, she has claimed that in the light of deeming provision contained in the KVS OM dated 01.09.1988, she was automatically entitled to the benefits under the GPF-cum-Pension Scheme.

79. Conversely, the KVS has contended that the said employee was well aware that she was a CPF optee and her own share as well as the management's share had been deposited regularly. It was further submitted that the change in her PF account number, was on account of her transfer in the year 1992.

80. Having considered the respective submissions on behalf of the parties and perused the record, we may note that the employee has claimed that she was initially brought under the GPF-cum-Pension Scheme, as is evident from the allotment of GPF Account No. 3736 pursuant to the Order dated 08.04.1986 issued by the KVS, and the recording of the said account number in her service book. The deductions made towards the GPF subscription for a continuous period of about three years, till August 1989, further strengthens the plea that the employee was being governed by the GPF-cum-Pension Scheme.

81. In the year 1989, however, her account was converted into a CPF account by allotting a new number. Upon learning of this, she promptly lodged a representation on 29.09.1989 before the Accounts Officer, KVS, seeking correction of records and restoration of her GPF-cum-Pension account.

82. In the present case, it is sufficient to note that the employee had joined the KVS as a TGT (Biology) on 27.09.1984 and undisputedly,



did not exercise any option to continue under the CPF Scheme, therefore, she clearly falls under Category A. Accordingly, by virtue of the deeming provision, she should have been given the benefit of the GPF-cum-Pension Scheme.

83. Relevantly, the KVS itself had treated her as a member of the GPF-cum-Pension Scheme, allotted her a GPF account number, and even made deductions toward her GPF account for three years. For reasons unknown, the KVS later converted her account to CPF on its own, without any cogent reason.

84. Accordingly, in light of the discussion and analysis contained in the preceding paragraphs, the present petition filed by KVS, being devoid of merit, stands dismissed.

CATEGORY-B:

W.P.(C) Nos. 2676/2020, 14455/2021 AND W.P. (C) 11077/2020 (respondent nos. 7, 9 and 11 falling in Category B)

85. Now, coming to Category B, which comprises of the employees of the KVS who had initially opted to continue under the CPF Scheme in pursuance of the KVS OM dated 01.09.1988, but subsequently sought to switch over to the GPF-cum-Pension Scheme. For that purpose, they submitted representations to the KVS, which came to be dismissed. In some petitions, the representations were made prior to the petitioners' retirement, whereas in others, they were made subsequent to their retirement. The dismissal of their representations by the KVS was challenged before the learned Tribunal, but the same was also rejected. Faced with such dismissals, they have approached



this Court.

SUBMISSIONS ON BEHALF OF THE EMPLOYEES OF THE KVS

86. For the employees falling in Category B, the learned counsels submitted that the employees had a right to subsequently changeover from the CPF Scheme to the GPF-cum-Pension Scheme, even though they had earlier given their option to continue under the CPF Scheme. They submitted that the employees had also preferred representations in this regard, seeking a switch over from the CPF Scheme to the GPF-cum-Pension Scheme. In support, they relied upon the decision of the Supreme Court in *Shashi Kiran* (supra) to submit that in said case, the Supreme Court had upheld the right of an employee, albeit in a different organization, to seek a switch over to the GPF-cum-Pension Scheme, even though they had consciously opted to be under CPF Scheme, on principles of parity or equality and as these schemes were designed for employee welfare.

87. The learned counsels placed reliance on the judgment of the Madras High Court in *N Subramanian vs. The Commissioner KVS*, 2017 SCC OnLine Mad 12661, to submit that the petitions are maintainable even though filed belatedly, urging that in the said case the Madras High Court had entertained the petition even after the retirement of petitioner therein, as he had earlier addressed a few representations to authorities seeking conversion from the CPF Scheme to the GPF-cum-Pension Scheme, notwithstanding that such representations were not required or envisaged in view of the deeming clause.



88. The learned counsels submitted that the learned Tribunal failed to appreciate that the KVS had *mutatis mutandis* adopted the OM dated 01.05.1987 issued by Ministry of Personnel, Public Grievances and Pensions (Department of Pension and Pensioners' Welfare), but changed the cut-off date to exercise the option from 30.09.1987 to 31.01.1989. They submitted that the KVS could not have altered this essential character of the OM dated 01.05.1987 unilaterally by extending the period of the cut-off date, which was not permissible and is *non-est* in the eyes of law. In support, reliance was placed on *Ashok Service Centre & Ors. v. State of Orissa*, (1983) 2 SCC 82.

89. The learned counsels further submitted that this Court in *N.C. Bakshi v. Union of India & Ors.*, 2014:DHC:2274, held that the cut-off date mentioned in the OM dated 01.05.1987, that is, 30.09.1987, was a sacrosanct date within which the option had to be exercised by the employees, which could not have been extended by the employer, and after the expiry of stipulated period, an employee would, by virtue of the legal fiction automatically come over to the GPF-cum-Pension Scheme.

90. The learned counsels submitted that the failure of KVS in granting the employees the benefits under the GPF-cum-Pension Scheme has led to wide disparities in the pensionary benefits of the employees covered under the two pensionary schemes, even though all the employees performed the same duties. It was further submitted that while the CPF Scheme provided a lump sum benefit on retirement, which include their own contributions, this amount was not indexed to inflation.



91. To fortify their plea, the learned counsels have placed strong reliance on the decision in *Gurmail Kaur* (supra) and *Ram Dayal* (supra).

SUBMISSIONS ON BEHALF OF THE KVS

92. *Per contra*, the learned counsel for the KVS submitted that the employees, of their own volition, had opted to continue under the CPF Scheme in pursuance of the OM dated 01.09.1988, knowing fully well that the option, once exercised, is final. He submitted that, therefore, the employees who are belatedly attempting to switch over from the CPF Scheme to the GPF-cum-Pension Scheme, after voluntarily opting for the same, and that too after their retirement, cannot be permitted to do so as once such an option was exercised, it attained finality. He submitted that thus, the petitions are liable to be dismissed.

ANALYSIS AND FINDINGS

93. It is to be noted that the Category B employees have claimed that by virtue of the decision in *Shashi Kiran* (supra), they too ought to have been granted the option to switch over from the CPF Scheme to the alternative GPF-cum-Pension Scheme, as the employees of other organizations were permitted to change their option belatedly even up to 31.12.2003, that is, prior to the recommendations of the Sixth Central Pay Commission.

94. To appreciate the pleas raised by the parties, it would be appropriate to refer to the decision in the *Shashi Kiran* batch of cases, as categorized by the Supreme Court in *Shashi Kiran* (supra), which



consisted of employees who had exercised the option to remain under the CPF Scheme by the original cut-off date under the OM dated 01.05.1987, but were demanding that they be given a further option to switch over to the GPF-cum-Pension Scheme.

95. In the said batch of cases, the factual context was that the petitioners therein had consciously opted for CPF benefits; however, their grievance was one of discriminatory exclusion. When they sought to exercise their option to switch over to the GPF-cum-Pension Scheme, the respondents refused to extend the time for doing so, even though employees in other institutions such as IIT Kanpur, the Department of Atomic Energy, and Council for Scientific and Industrial Research had been permitted by their respective organizations to exercise such option up to 31.12.2003. The Central Government, in such cases, had allowed the changeover prior to the recommendations of the Sixth Central Pay Commission, which thereafter introduced the CPF benefits universally for all those employees later, universally with effect from 01.01.2004.

96. The learned Single Judge of this Court had dismissed the *Shashi Kiran* batch of petitions, holding that the employees had consciously chosen to remain in the CPF Scheme, and the circular granting extensions did not contemplate any “come-back” situation for such employees. Aggrieved thereby, the employees challenged the said decision by way of LPA No. 410/2014, titled *Shashi Kiran & Ors. vs. Union of India & Ors.*, which was disposed of *vide* a common judgment dated 24.08.2016. The Co-ordinate Bench of this Court, while allowing the said appeals, observed that at the time when



the *Shashi Kiran* batch of appellants had exercised their option, they were in service, and neither the appellants nor the respondents could have visualized the drastic fall in interest rates, which substantially undermined the CPF option and diminished the lump sum CPF benefits that these appellants would receive. It was further held that neither the Central Government nor the UGC had given a single reason as to why the option to switch over to the GPF-cum-Pension Scheme was extended till 31.12.2003 in several other autonomous institutions but denied to the appellants. It was held that this failure to explain the reasons which compelled the Government to adopt such a different approach of granting extensions clearly amounted to discrimination. Therefore, the denial of the right to switch over to the GPF-cum-Pension Scheme in the *Shashi Kiran* batch of cases was held to be unsustainable.

97. The above mentioned decision of this Court came under challenge before the Supreme Court in *Shashi Kiran* (supra). The Supreme Court affirmed the view taken in the LPA by the Delhi High Court, and observed as under:

”49. The differential treatment afforded to those 2469 employees as against the employees in Shashi Kiran batch of cases, was not founded on any rationale. No justifiable reason was coming forth. If those 2469 employees could be afforded chance to exercise an option of switch over to GPF, even though they had consciously opted to be under CPF, on principle of parity or equality, the case was certainly made out.

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52. Considering the circumstances on record,



in our view, the decision rendered by the Division Bench of the High Court in Shashi Kiran batch of cases does not call for any interference except to the extent of direction for recouping of the contribution under CPF with 8% simple interest per annum. It is possible that at this length of time, some of the employees in Shashi Kiran batch of cases may not be interested in switch over to GPF. But an option must be afforded to them in such manner as the authorities deem appropriate.“

98. We may note that the Supreme Court has categorically held in ***Shashi Kiran*** (supra) that the switch over from the CPF Scheme to the GPF-cum-Pension Scheme shall be permissible in three categories, that is, (i) where the employees had not exercised any option at all; (ii) wherein the employees had not exercised their option by the cut-off date but had exercised the option to remain under CPF scheme during first two extensions granted by the University; and (iii) wherein the employees had exercised the positive option by the cut-off date but were eventually demanding a change. The rationale for permitting such a switch over was that the choice of the GPF-cum-Pension Scheme was itself a beneficial scheme intended for the welfare of the employees. Consequently, even employees who had originally opted to remain in the CPF Scheme could thereafter switch over to the GPF-cum-Pension Scheme, since denying them the more beneficial pension scheme would amount to discrimination.

99. This decision in ***Shashi Kiran*** (supra) was thereafter relied upon by the High Court of Rajasthan, Jaipur Bench, in ***Gurmail Kaur***, (supra) and by the High Court of Madhya Pradesh in ***Ram Dayal*** (supra).



100. In the set of petitions before the Rajasthan High Court, the petitioners, being employees of the KVS, had initially exercised the option to continue under the CPF Scheme pursuant to the KVS OM dated 01.09.1988, however, they later preferred to switch over to the GPF-cum-Pension Scheme and for that purpose submitted representations, which came to be dismissed. In some of the petitions, the representations were made prior to the petitioners' retirement from service, whereas in others, such representations were made subsequent to their respective retirements. The dismissal of their representations by the KVS was challenged before the learned Tribunal, but the same was also rejected. Faced with such dismissals, they approached the Rajasthan High Court, which held as under:

*"9. While dealing with the aspect of switch over, in all the three distinct types of eventualities as noted above, the Hon'ble Apex Court held that the switch over from the C.P.F. Scheme to the G.P.F. Scheme shall be permissible and the claims of the employees shall not be barred by the doctrine of delay and laches and/or limitation, in light of the fact that the schemes as put in operation, accrued for the welfare of the employees. In essence, the very choice to select a scheme stemmed and/or formed part of a beneficial piece of legislation, thereby permitting switch over between the two schemes. Therefore, as per the dictum as enunciated in **Shashi Kiran** (supra), it has been categorically held that switch over shall be permissible to the employees, in the following three eventualities i.e. (i) wherein the employees had not exercised any option at all; (ii) wherein the employees had not exercised their option by the cut-off date and (iii) wherein the employees had exercised the positive option by the cut-off date but were eventually demanding*



a change in connection therewith. The rationale for permitting switch over in the said eventualities, as enumerated above, was that the very choice to select a scheme accrued for the welfare of the employees.

10. Therefore, it can be said that even the employees who had originally opted to remain in the C.P.F. Scheme and subsequently sought to switch over to the Pension Scheme, on account of the latter being more beneficial to them, was permissible, especially due to the fact that non-grant of better and/or more lucrative benefits by way of pension and denying the same to one set of employees would per se be discriminatory notwithstanding the option exercised by the employees to remain in the C.P.F. Scheme.“

101. In **Ram Dayal** (supra), in a similar set of facts, though the petitioner therein exercised his option on 16.01.1989 to remain under the CPF Scheme and continued under the said scheme till his retirement in the year 2008, after retirement, the petitioner submitted an application requesting the KVS to convert his benefit under the CPF Scheme to the GPF-cum-Pension Scheme, which came to be rejected. His OA challenging the said decision of KVS was also dismissed. The Madhya Pradesh High Court, in the writ petition filed by the said petitioner, allowed the petition, and held as under:

“6. On 06.06.1985 the Central Government employees were governed by the Contributory Provident Fund in short 'CPF' and they were permitted to opt for General Provident Fund and Pension Scheme in short 'GPF'. Thereafter, a notification was issued by the Central Government with respect to change over of the existing employees from CPF to GPF. As per notification dt.01.05.1987, all the CPF beneficiaries, who were in service on



01.01.1986 and were still in service would be deemed to have come over to the GPF unless contrary option was exercised by them in writing by 30.09.1987. Therefore, by 30.09.1987 all the employees have deemed to have been come over in the GPF unless contrary option was exercised by them. On 30.09.1987 the petitioner had already been switched over to the GPF by fiction created in the notification dt.01.05.1987. Therefore, the option given by the petitioner on 16.01.1989 is of no use and the same was not warranted even. After 30.09.1987, the respondents should not have taken option from the petitioner because he had already been switched over to GPF. After 30.09.1987, no authority was given to any employee to give option for continuing in CPF. This interpretation of Clause 3.2 and notification dt.01.05.1987 was not considered by the respondents as well as by the Tribunal. After the aforesaid cut off date neither the employee has any authority to change the option nor the employer could have insisted for change of option. Kendriya Vidyalaya Sangathan adopted the 4th CPC report w.e.f. 01.01.1986 and implemented the same for its employee vide letter dt.27.11.1986.”

102. Undoubtedly, the employees in Category B are belatedly attempting to migrate from the CPF Scheme to the GPF-cum-Pension Scheme, though, while being in service they chose to remain covered by CPF Scheme. However, it cannot be overlooked that similarly situated employees having served in the same institution but in different places in India have already been granted the said benefit such as by the Rajasthan High Court in *Gurmail Kaur* (supra) and by the Madhya Pradesh High Court in *Ram Dayal* (supra). In view of the same, different *dictum* pronounced by different High Courts would



result in disparity between employees.

103. Accordingly, the petitions filed by the petitioners/employees falling under Category B, being W.P.(C) 2676/2020 and W.P.(C) 14455/2021 stand allowed. Their respective Impugned Orders whereby the learned Tribunal dismissed the OAs by not extending the benefit under GPF-cum-Pension Scheme are set aside, subject to the conditions as enunciated hereinbelow.

104. W.P. (C) 11077/2020, filed by the KVS is dismissed with respect to the respondents falling in Category B.

CATEGORY-C

W.P.(C) Nos. 10408/2020, 12991/2023, 6557/2024, 8970/2024, 15137/2024 & 1373/2024

105. Category 'C' pertains to the employees of the KVS who were initially recruited as PGTs/TGTs/PRTs, and were subsequently re-appointed at senior positions as 'direct recruits' after the 1986 cut-off date as mentioned in the KVS OM dated 01.09.1988. It also pertains to those employees who had been appointed on an *ad hoc*/temporary/experimental basis and whose services were regularized post-1986. In the present category, W.P.(C) 8970/2024, W.P.(C) 6557/2024, W.P.(C) 10408/2020 and W.P.(C) 15137/2024 pertain to employees that were appointed as 'direct recruits', whereas W.P.(C) 12991/2023 and W.P.(C) 1373/2024 pertain to employees that were appointed on an *ad hoc*/temporary/experimental basis.

106. In all the six petitions the factual grid is similar except for the date of appointment, nature of designation and date of retirement of



the employees.

SUBMISSIONS ON BEHALF OF THE EMPLOYEES OF THE KVS

107. Regarding the present category, the learned counsels for the employees urged that the employees were direct recruits, and joined service after the date of 01.01.1986 in terms of the KVS OM dated 01.09.1988.

108. The learned counsels submits that OM dated 01.05.1987 had been *mutatis mutandis* adopted by the KVS, by the KVS OM dated 01.09.1989, which provided the cut-off date to exercise the option of remaining under CPF as 31.01.1989, instead of 30.09.1987, as under the OM dated 01.05.1987. The learned counsels contended that the OM dated 01.05.1987 aimed to introduce a uniform GPF-cum-Pension Scheme for all the employees, and it was as an exception that the employees could opt to continue under the CPF Scheme by the specified cutoff date.

109. The learned counsels submitted the present employees, being 'directly recruited' after 01.01.1986, were automatically governed by the GPF-cum-Pension Scheme, as per Clause 2 of the KVS OM dated 01.09.1988, and the CPF Scheme was not available to direct recruits appointed during the period from 01.01.1986 to 31.12.2003.

110. The learned counsels submitted that it was an administrative error on the part of the KVS to place such employees under the CPF Scheme despite the GPF-cum-Pension Scheme being applicable during their service tenures. They submitted that, therefore, the KVS cannot take undue advantage of their own errors and omissions by not



permitting these employees to seek the benefit of the GPF-cum-Pension Scheme.

111. Additionally, the learned counsels appearing for the petitioners-employees in W.P.(C) 12991/2023 and W.P.(C) 1373/2024 submitted that the said employees had joined the KVS subsequent to 01.01.1986 on a temporary/experimental basis. They submitted that as per the KVS, the alleged dates of exercise of their option were 25.10.1988, 12.12.1988 and 22.11.1988, respectively, on which dates these petitioners-employees were not in regular service.

112. Further, in W.P.(C) 12991/2023, the single petitioner-employee was regularized on 01.12.1989 with effect from 23.05.1988, while in W.P.(C) 1373/2024, the petitioner no.1-employee was regularized on 02.02.2006 with effect from 05.08.1988 and the petitioner no.2-employee was regularized on 02.04.1998 with effect from 26.09.1983.

113. The learned counsels further submitted that in cases where the appointment of an employee was made on an *ad hoc* basis initially, and such employee was subsequently regularised, the eligibility of such employee to contribute to the GPF/CPF would arise only upon completion of one year of regular service from the date of regularisation. They submitted that, therefore, the petitioners-employees in aforesaid petitions never exercised the option for the CPF Scheme and were necessarily to be governed by the GPF-cum-Pension Scheme.

114. In support of their arguments, they placed reliance on the judgment dated 13.08.2013 of the Kerala High Court in OP(CAT) No. 597/2013, titled *Deputy Commissioner, Kendriya Vidyalaya*



Sangathan & Ors. v. Johnson P. John.

SUBMISSIONS ON BEHALF OF THE KVS

115. On the other hand, the learned counsel for the KVS contended that the employees, other than the *ad hoc* employees, had initially joined the KVS as PRTs/TGTs/PGTs and had initially enrolled themselves under the CPF Scheme pursuant to which they were allotted a CPF account number.

116. He further submitted that the employees had no break in service since they joined the KVS and subsequently rejoined the said organization, maybe on a senior post, therefore, their subsequent service has to be treated as a continuation of their earlier service with the KVS. He submitted that since the employees had joined the KVS prior to 01.01.1986 with a clear option for the CPF Scheme, thus, they were not governed by the KVS OM dated 01.09.1988.

117. It was further submitted that undisputedly, the KVS had reviewed the cases for conversion from CPF Scheme to GPF-cum-Pension Scheme in respect of those employees who had joined the KVS on direct recruitment basis from 01.01.1986 to 31.12.2003, however, the case of employees could not be reviewed under the aforesaid OM as they were in service prior to 01.01.1986.

118. The learned counsel, relying upon the letter bearing No. F3-14/2012-UT-2 dated 07.04.2015 issued by the Ministry of Human Resource and Development, contended that *vide* the aforesaid letter, the Ministry had informed that such cases had been examined by the Department of Expenditure, which observed that the employees of the



KVS who were in service as on 01.01.1986 and had decided to opt for the CPF made a conscious decision knowing fully well that the option once exercised is final. He submitted that the Ministry further observed that the grant of one more option to such CPF subscribers in the KVS could have repercussions elsewhere, and hence, the proposal for grant of one-time permission for changing the option from CPF to GPF-cum-Pension Scheme for teaching and non-teaching staff of KVS was not agreed to.

119. Furthermore, he submitted, some of the employees had opted for the CPF Scheme even after their reappointment as direct recruit. He submitted that in such circumstances, the plea now sought to be raised by such employees for being covered under the GPF-cum-Pension Scheme is untenable. He submitted that accordingly, the petitions falling under Category C deserve to be dismissed.

ANALYSIS AND FINDINGS

120. For clarity of analysis, we shall examine this category of petitions in two distinct sets – the first involving employees who were appointed as direct recruits after 01.01.1986, and second involving those who were initially appointed on ad hoc/temporary/experimental basis and later regularized after 01.01.1986.

W.P.(C) 10408/2020, W.P.(C) 8970/2024, W.P.(C) 6557/2024 and W.P.(C) 15137/2024

121. It is undisputed that in these petitions, the employees were initially appointed by KVS as PRTs/PGTs/TGTs before 1986. Subsequently, they were appointed afresh on senior posts as direct



recruits. At the time of their initial appointments, they came under the CPF Scheme.

122. The primary grievance of the employees of the KVS in these petitions is that at the time of their appointments as 'direct recruits' post 01.01.1986, there existed no CPF Scheme and, therefore, only the GPF-cum-Pension Scheme was applicable to them. These employees claim that once they were directly recruited and appointed at senior posts post the cut-off date of 01.01.1986, they were automatically deemed to be governed by the GPF-cum-Pension Scheme. The claim that the KVS, arbitrarily and by violating the statutory provisions, placed them under the CPF Scheme.

123. They further claim that on 26.11.2012 and 05.12.2012 a meeting of Finance Committee was held, wherein the issue regarding grant of permission to CPF optees, appointed on or after 01.01.1986 to 31.12.2003, to switch over to the GPF-cum-Pension Scheme was discussed, and the Committee recommended the KVS to refer the matter to the Ministry for its consideration. Accordingly, the KVS Headquarters, *vide* an Order dated June, 2014, directed all the Deputy Commissioners/Directors KVS to submit the details of the staff appointed under direct recruitment in KVS. The employees claim that nonetheless, the KVS wrongly continued to place them under the CPF Scheme.

124. Being aggrieved, the employees submitted their representations for grant of service pension under the GPF-cum-Pension Scheme but received no reply. They continued sending further representations and reminders to the concerned Authority, which too remained



unanswered, prompting them to approach the learned Tribunal.

125. To appreciate the pleas raised on behalf of the petitioners, it is apposite to note the relevant clause of the KVS OM dated 01.09.1988, which reads as under:

*“2. It has, accordingly, been decided that **persons joining service in the Sangathan on or after 1.1.1986 shall be governed only by the G.P.F.-cum-Pension Scheme and will have no option for C.P.F. Scheme.** However, for all C.P.F. beneficiaries, who were in service on 1.1.1986, the decision taken shall be implemented in the manner hereinafter indicated.”*

126. The crucial question that arises at this juncture is whether employees who were re-appointed through direct recruitment to senior posts after 01.01.1986 should be treated as fresh appointees falling under paragraph 2 of the KVS OM, or whether their previous service history places them under the transitional provisions for existing employees.

127. The KVS contends that since there was no break in service, these employees' subsequent appointments should be treated as continuation of their earlier service. However, this is unsustainable inasmuch as when an employee is appointed through a fresh selection process to a different post with different qualifications and responsibilities, even within the same organization, it constitutes a new appointment for the purposes of scheme applicability. The fact that previous service may be counted for seniority or other benefits does not alter the fundamental character of the new appointment.

128. A plain reading of paragraph (2) of the said OM is unambiguous inasmuch as it states that all persons entering/joining the



2025:DHC:7629-DB



service in the KVS on or after 01.01.1986 shall be governed solely by the GPF-cum-Pension Scheme. Moreover, the said OM does not provide for any option to such employees to continue under the CPF Scheme. Notably, these employees also did not exercise any option to continue under the CPF Scheme, except for the petitioner-employee in W.P.(C) 8970/2024.

129. Even though these employees were initially appointed as Teachers in the KVS prior to 01.01.1986, however, they were later re-appointed to senior posts in the same organization through direct recruitment and remained in service till their superannuation.

130. As already discussed in detail while disposing of Category A and Category B petitions, OM dated 01.09.1988 mandated that any person joining service on or after 01.01.1986 would automatically be governed by the GPF-cum-Pension Scheme and had no option to select between the CPF Scheme and the GPF-cum-Pension Scheme. In such circumstances, the present set of employees, being freshly appointed by mode of direct recruitment in higher posts, which differs from normal promotion, would be deemed to fall under paragraph (2) of the KVS OM, and the only scheme legally applicable to them would be the GPF-cum-Pension Scheme. Therefore, the exercise of the option by the employee(s) to continue under the CPF Scheme post their fresh appointment would be against the mandate of the KVS OM itself and, therefore, immaterial and of no consequence.

131. In view of the above, the present sets of employees were entitled to be governed by the GPF-cum-Pension Scheme. Thus, W.P.(C)6557/2024 and W.P.(C) 8970/2024 filed by the employees are



allowed and W.P.(C)15137/2024 and W.P.(C)10408/2020 filed by the KVS are dismissed.

W.P.(C)12991/2023 & W.P.(C) 1373/2024

132. As far as the employees in these two petitions are concerned, they were working on temporary/experimental basis in the KVS and were regularised post the 1986 cut-off date. They have contended that where an employee is appointed on an *ad hoc* basis and the employee is subsequently regularized, as per Paragraph 147(ii) of Chapter-13(Accounting in respect of provident fund) of the Accounts Code of Kendriya Vidyalayas, the eligibility to contribute to the GPF/CPF would arise only upon completion of one year of service from the date of such regular appointment. Paragraph 147(ii) of Chapter-13 of the Accounts Code of Kendriya Vidyalayas is reproduced herein below:

“An employee becomes eligible to contribute to the Provident Fund only on completion of one year’s continuous service in Kendriya Vidyalaya. If the appointment of an employee is made on ad hoc basis initially and later he is selected on a regular basis, he will be eligible to contribute to the G.P. Fund/C.P. Fund only after rendering one year of service from the date of regular appointment.”

133. It was further contended that the present employees never exercised any option to be governed under the CPF Scheme, thus, they ought to have been treated as fresh recruits joining service after 01.01.1986 and, therefore, would fall within Category C.

134. On the other hand, the learned counsel for the KVS had contended that since these employees had exercised their option to



remain under the CPF Scheme, in terms of the KVS OM, they have no right to switch over to the GPF-cum-Pension Scheme, especially when the said benefits have already been availed by them.

135. In the facet of the above submissions made on behalf of the employees, we may refer to the decision in **Johnson P. John** (supra), arising out of similar facts and circumstances, where the respondent-employee therein was initially appointed as a TGT (PCM) with the KVS on trial basis. During the course of his service, he applied for recruitment to the post of PGT (Physics). His candidature was duly considered, and he was selected for appointment to the said post, which he joined on 06.10.1988. It was in this backdrop that the Kerala High Court held that the respondent-employee could only be covered under the GPF-cum-Pension Scheme. The Kerala High Court observed as under:

”6. It is here that we revert to Ext.P5, the memorandum of offer of appointment of the respondent as a Trained Graduate Teacher (PCM) on trial basis. The clear provision of that offer is that the said appointment, among other things, is for a trial period under the guidance of the Principal and that his work and attitude for the teaching profession will be watched. During the trial period 10% of the basic pay was to be deducted and credited Into Post Office Savings Bank account in the name of the teacher, which shall be pledged in the name of the Principal of the school, so as to meet part of the cost of training when required. The teacher will not be allowed to withdraw any part of that amount which is intended to meet part of the cost of training when required. The manner in which such amount will be dealt with, on the teacher joining the Teachers Training Course, is also dealt with in Paragraph 3 of that memorandum.



Of crucial Importance is condition No.(ii) under Paragraph 5 of the memorandum which, inter alia, provides that, during the period of trial, the teacher has to complete the degree, either by joining regular course in a recognised teacher's training Institution or through Summer-cum-correspondence course of the Regional College of Education, and that he will have to qualify in the course In not more than two attempts failing which he will not be eligible for appointment in the service of the KVS on regular basis, and will have no claim whatsoever against KVS. While on training, he will not be entitled to any pay or allowance from the KVS and such period will be treated as extraordinary leave. It was during the term of the respondent as a teacher on trial basis on the aforesaid terms that he was offered appointment following selection as a Post Graduate Teacher. The clear terms noted above from clause (ii) of Paragraph 5 of the offer of appointment as a teacher on trial basis categorically show that unless he completes the course, he will not even be eligible for appointment in the service of the Kendriya Vidyalaya on regular basis. On the basis of this document, KVS can never be heard to contend that the respondent teacher was a TGT on regular basis at any point of time. We say this because, it is not the case of either the KVS or the teacher that the respondent was made a Trained Graduate Teacher on a regular basis, at any point of time. We, therefore, can in terms of settled principles of service jurisprudence, reckon only appointment of the respondent as Post Graduate Teacher as relevant to consider as to when he was appointed in KVS for the purpose of coverage under the GPF scheme.

7. Now, revert to Annexure A6 in Ext.P2. That office memorandum issued by the KVS shows in paragraph 2 thereof, among other things, that persons joining KVS service on or after 1.1.1986 shall be governed only by the GPF cum-Pension Scheme and will have no option for CPF Scheme. This seals the issues arising for



decision in this case where the Tribunal has, on facts, categorically found that the respondent had joined as Post Graduate Teacher on 6.10.1988 and he could be covered only under the GPF Scheme.”

(Emphasis Supplied)

136. The aforementioned decision was challenged by way of an SLP before the Supreme Court, which was dismissed as the KVS failed to remove the defects within the granted time of two weeks.

137. We find ourselves in agreement with the aforesaid observations of the Kerala High Court. In order to be covered under the GPF-cum-Pension Scheme, the appointment of an employee as a regular employee in the KVS would be a relevant factor to consider. In the present case, the employees were regularised post 1986 and, therefore, have to be governed by the GPF-cum-Pension Scheme.

138. In view of the above, W.P.(C) 12991/2023 and W.P.(C) 1373/2024 filed by the petitioner-employees who were appointed on an *ad hoc*/temporary/experimental basis are allowed in favour of the petitioners qua their right to claim pensionary benefits under the GPF (Pension) Scheme.

CONCLUSION

139. In view of the above discussion, the petitions filed by the KVS before this Court in all the three categories, that is, Category A, Category B and Category C, challenging the various orders of the learned Tribunal allowing the OAs of the employees stand dismissed. We uphold the Impugned Orders passed by the learned Tribunal whereby the OAs filed by the employees of the KVS have been allowed.



140. As far as the petitions filed by the employees against the dismissal of their OAs by the learned Tribunal are concerned, the same stand allowed.

141. For further clarification, we direct as under:

- A. The employees in the present batch of petitions shall be entitled to receive and will continue to receive pension in under the GPF-cum-Pension Scheme in accordance with the KVS OM dated 01.09.1988 with interest @ 6% per annum on the due amount from the date it had fallen due till the date of payment of the pension.
- B. In order to receive the benefit under the above Clause (A), the adjustment of the employees and the KVS towards the contribution to the CPF account of an employee along with interest @ 6% per annum will be made as per the extant Rules and OMs, as applicable.
- C. The above payments to be made by the KVS to the employees, and *vice versa*, in accordance with the above directions, shall be made within a period of three months from the date of this Judgment.

142. The above batch of petitions stands disposed of in the above terms, with no order as to costs.

SHALINDER KAUR, J

NAVIN CHAWLA, J

SEPTEMBER 02, 2025/sk/kp