



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

%

*Reserved on: 5th August, 2026
Pronounced on: 14th October, 2026
Uploaded on : 14th October, 2026*

CNR No. DLHC011535882011

+ **W.P.(C)- 7763/2011**

Dr. Ravinder Paul Singh Malik

S/o Shri Gurbax Singh

R/o E-407, Greater Kailash, Part-II,
New Delhi-110048.

.....Petitioner

Through: Mr. Tanmaya Mehta and Mr. Aryan
Bhardwaj, Advocates with Petitioner
in person.

versus

1. **University of Delhi,**
Through its Registrar,
Delhi-110007.
2. **Agricultural Economics Research Centre,**
University of Delhi,
Delhi-110007.
3. **Secretary,**
Department of Higher Education,
Ministry of Human Resource Development,
Shastri Bhawan, Dr. Rajendra Prasad Road,
New Delhi.
4. **Union of India,**
Through Ministry of Personnel, Public Grievances and Pensions,
North Block, New Delhi.



5. University Grants Commission,
Bahadur Shah Zafar Marg,
New Delhi-110002

.....Respondents

Through: Mr. Mohinder Rupal, Mr. Hardik Rupal, Mr. Aishwarya Malhotra and Ms. Tripta Sharma, Advs. for R-1. Mr. Prasanta Varma, Senior Central Government Counsel for R-3 and R-4 with Mr. Rajender Nath Sharma, Advocate.
Mr. Ravinder Agarwal, Mr. Manish Kumar Singh and Mr. Vasu Agarwal, Advocates for UGC / R-5.

AND

CNR No. DLHC010048782022
+ **W.P.(C)- 1799/2012**

Dr. Ravinder Paul Singh Malik
S/o Shri Gurbax Singh
R/o E-407, Greater Kailash, Part-II,
New Delhi-110048.

.....Petitioner

Through: Mr. Tanmaya Mehta and Mr. Aryan Bhardwaj, Advocates with Petitioner in person.

versus

1. **University of Delhi,**
Through its Registrar,
Delhi-110007.
2. **Agricultural Economics Research Centre,**
University of Delhi, Delhi-110007.

.....Respondents

Through: Mr. Mohinder Rupal, Mr. Hardik Rupal, Mr. Aishwarya Malhotra and



Ms. Tripta Sharma, Advs. for R-1.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

1. The Writ Petition **W.P.(C)- 7763/2011** has been filed under Article 226 of the Constitution of India by the Petitioner, Dr. Ravinder Paul Singh Malik, seeking the issuance of an appropriate writ, order or direction that he is entitled to retire voluntarily with the Provident Fund standing to his credit and with full gratuity. He has also sought quashing of the Letters dated 29.09.2010 and 19.08.2011 of the University of Delhi (*hereinafter referred to as the "University"*), the Letters dated 15.10.2010 and 06.09.2011 of the Agricultural Economics Research Centre (*hereinafter referred to as the "AERC"*), and the Letter dated 19.06.1985 of the Ministry of Education, Government of India.
2. The connected **Writ Petition, W.P.(C) 1799/2012**, challenges the termination of the Service of the Petitioner w.e.f. 01.05.2009, vide the Letter dated 30.01.2012 of the University and the Letter dated 01.02.2012 of AERC.
3. Since the termination in W.P.(C) 1799/2012 arises directly out of the denial of voluntary retirement assailed in W.P.(C) 7763/2011, the two Writ Petitions are being considered together and are disposed of by this common judgment.
4. AERC is a specialised Research Centre under the administrative control of the University, but is funded by the Ministry of Agriculture, Government of India, and not by the University Grants Commission



(hereinafter referred to as the “UGC”). The Vice-Chancellor of the University is the Chairman of the Governing Body of AERC and heads the Selection Committee for appointments to its faculty, which are approved by the Executive Council of the University.

5. The Petitioner joined AERC as a Fellow in May, 1977. He is governed by the *Contributory Provident Fund-cum-Gratuity Scheme* (hereinafter referred to as the “CPF Scheme”), contained in Appendix B to Statute 28-A of the University. The employees governed by the *General Provident Fund-cum-Pension-cum-Gratuity Scheme* (hereinafter referred to as the “GPF Scheme”) are covered by Scheme detailed in Appendix A thereto.

6. A faculty member is entitled to Extra-Ordinary Leave (*hereinafter referred to as “EOL”*) without pay for a total period of five years during the entire service, *during which outside employment is permitted*. Prior to May, 2009, the Petitioner had already availed EOL for about three years and eleven months.

7. In 2009, the Petitioner received an offer of a *two-year contract* from the International Water Management Institute (*hereinafter referred to as “IWMI”*). The Vice-Chancellor sanctioned EOL for one year w.e.f. 30.04.2009, and the Petitioner joined IWMI, on 01.05.2009.

8. On 26.03.2010, the Petitioner sought extension of EOL by one year as a special case. The Director, AERC, informed him vide letter dated 21.04.2010, that no extension was permissible and that he should rejoin on 01.05.2010. On his request for reconsideration dated 26.04.2010, AERC vide letter dated 30.04.2010, extended his EOL by one month and four days. With this, the Petitioner exhausted the maximum permissible EOL of five



years, which expired on 04.06.2010.

9. On 31.05.2010, the Petitioner applied for voluntary retirement from the services of AERC, and requested that since he was already on EOL, the requirement of Notice period, if any, be waived. AERC received the letter on 02.06.2010.

10. The Letter dated 19.06.1985 (*hereinafter referred to as the "1985 Letter"*) was written by Sh. R.C. Sharma, Under Secretary, Ministry of Education, to the Secretary, UGC, under the subject "*Proposal for extension of Scheme of Voluntary Retirement to employees borne on C.P.F.*", with a copy to the Vice-Chancellor of the University.

11. Dr. Usha Tuteja, Acting Director, AERC, vide Letter dated 03.06.2010, declined the request, stating that according to the Letter of the Ministry of Education dated 19.06.1985, the "*scheme of Voluntary Retirement has not been extended to the employees borne on the CPF*", and asked the Petitioner to join duty, after the expiry of his EOL.

12. The Petitioner again wrote on 10.06.2010, to AERC, asserting that his request was in *conformity with FR 56(k) of the Fundamental Rules*. He pointed out that the 1985 Letter was 25 years old and that employees under the CPF Scheme had since become entitled to gratuity in 1987. He sought a copy of the University's letter dated 21.01.1984, to which the 1985 Letter referred. The petitioner relied on the Office Memorandum dated 22.03.2004 of the Ministry of Personnel, Public Grievances and Pensions, to contend that beneficiaries of the Contributory Provident Fund, are permitted voluntary retirement in the Government of India.

13. AERC referred the matter to the University, on 14.06.2010. Sh. Deepak Vats, Deputy Registrar (Colleges), vide Letter dated 29.09.2010,



informed AERC that *“Voluntary retirement under CPF Scheme is not permissible. However, if resigns he will be paid only P.F and half of leave encashment”*.

14. AERC communicated this to the Petitioner, vide letter dated 15.10.2010, and directed him to join duty latest by 01.11.2010.

15. On 28.10.2010, the Petitioner wrote that none of the issues raised by him had been addressed, and sought to know the Rule, Statute or Ordinance of the University, under which voluntary retirement had been denied. AERC, vide letter dated 18.11.2010, informed him that the matter had been referred to the University.

16. The Petitioner meanwhile, sought information under the Right to Information Act, 2005. The Central Public Information Officer of the University, vide Reply dated 29.11.2010, stated that *“there is no provision of granting voluntary retirement for CPF beneficiary”*. In Appeal, Sh. R.K. Sinha, Registrar and Appellate Authority, directed that any specific provision of rule on the matter, be supplied to the Petitioner. In response, the Petitioner was supplied only a copy of the 1985 Letter, on 02.02.2011.

17. On a separate query regarding the applicability of the Fundamental Rules, Sh. R.K. Sinha, Registrar and Appellate Authority, vide Order dated 18.01.2011, observed that the Government Rules are applied in the University *“mutatis mutandis”* and *“also apply when there are no specific extant rule/guidelines framed by the University/UGC/MHRD”*.

18. On a further query, the University, vide Reply dated 09.03.2011, stated that the 1985 Letter *“was a clarification issued by the Ministry of Education and it is not a general circular or notification. Therefore, the letter was not circulated.”*



19. The Department of Pension and Pensioners' Welfare, vide Reply dated 11.02.2011, and the Department of Personnel and Training, vide Reply dated 22.03.2011, stated that they had no information on the validity of the 1985 Letter.

20. The University, vide Letter dated 19.08.2011, reiterated its decision dated 29.09.2010. AERC forwarded it to the Petitioner, vide Letter dated 06.09.2011, stating that it "*shall now proceed as per the Delhi University Rules on this matter*".

21. On 16.09.2011, the Petitioner again sought the provision under which voluntary retirement had been denied. AERC, vide Letter dated 26.09.2011, informed him that his case would be placed before the next Meeting of the Governing Body.

22. The Governing Body, at its Meeting held on 14.10.2011, took up the matter as Item No. 7, and decided:

*"The GB considered the case of the Voluntary Retirement of Dr. R.P.S. Malik in the light of the extended and prolonged communications on this matter with him, the Centre and Delhi University. In view of the latest communication from Delhi University on the matter, **the GB directed that Centre should ask Dr. Malik to join duty by December 01, 2011, failing which his services from the Centre will be treated as terminated.**"*

23. The Petitioner filed **W.P.(C) 7763/2011 on 29.10.2011**. Notice was issued on 31.10.2011. On the same date, CM No. 17576/2011, by which the Petitioner had sought a restraint against disciplinary action on the ground of absence from duty, was withdrawn with liberty to take appropriate



proceedings.

24. AERC, vide letter No. 262/2011 dated 02.11.2011, forwarded the decision of the Governing Body to the Petitioner, and directed him to join duty by 01.12.2011, failing which his services would be treated as terminated.

25. The Petitioner challenged this letter in **W.P.(C) 8272/2011**, which was withdrawn on 24.11.2011, with liberty to approach the Court “*if at all the respondent no.2 implements its threat*”.

26. The Petitioner, vide Letters dated 08.12.2011 and 03.01.2012, and an Application under the Right to Information Act, 2005 dated 25.01.2012, sought to know the status of his employment.

27. Sh. Ram Dutt, Deputy Registrar (Colleges), vide Letter dated 30.01.2012 addressed to the Chairperson of the Governing Body, conveyed that the Vice-Chancellor “***has accorded his approval on the decision of the Governing Body dated 14.10.2011 for terminating the services of Dr. R.P.S. Malik, a Fellow in your Centre w.e.f. 01.05.2009 i.e. from the date he proceeded on EOL, in terms of clause 7 of Annexure to Ordinance XII and clause 7(9) of Ordinance XVIII of the University***”.

28. Dr. Usha Tuteja, Acting Director, AERC, vide Letter dated 01.02.2012, informed the Petitioner that “*As per Delhi University rules, your services stand terminated w.e.f. 01.05.2009 i.e. from the date you proceeded on EOL*”.

29. The Petitioner thereafter, filed **W.P.(C) 1799/2012**, challenging the termination.

30. The **grounds of challenge in W.P.(C) 7763/2011** are that no Rule of the University prohibits voluntary retirement of employees under the CPF



Scheme. Appendix A to Statute 28-A specifically provides for voluntary retirement under the GPF Scheme, while Appendix B is silent. Where the Rules of the University are silent, the Fundamental Rules apply *mutatis mutandis*, as acknowledged by the Appellate Authority on 18.01.2011, and FR 56(k) entitles a Group 'A' employee to retire voluntarily, after attaining the age of 50 years.

31. That the 1985 Letter is a bald and unreasoned communication; refers only to a "scheme" of voluntary retirement, and has been relied upon without disclosing the context in which it was issued. The Petitioner seeks no pension or any special benefit, but only his entitlements under the CPF Scheme on retiring before the age of superannuation of 65 years. The 1985 Letter conflicts with FR 56(k) and Rules 48 and 48-A of the Central Civil Services (Pension) Rules, 1972, and has lost relevance since employees under the CPF Scheme, became entitled to gratuity in 1987.

32. That there is no qualitative difference between employees under the CPF Scheme and the GPF Scheme, and the denial of voluntary retirement to the former, violates Article 14 of the Constitution of India. The only difference between the two lies in the retirement benefits, which has no nexus with the right to retire. The denial compels an employee under the CPF Scheme to resign and forfeit gratuity. *Reliance is placed on the Ordinances of Jawaharlal Nehru University, which permit voluntary retirement to a teacher whether or not he has opted for the GPF Scheme.*

33. The grounds in **W.P.(C) 1799/2012** are that the termination is a direct consequence of the denial of voluntary retirement, and was effected during the pendency of W.P.(C) 7763/2011, only to render it infructuous and to deprive the Petitioner of his gratuity. The Petitioner has drawn no salary



since 30.04.2009, claims no lien on the post or any financial benefit after 31.05.2010, and does not seek to count the period after expiry of EOL towards gratuity.

34. That no notice or opportunity of hearing was given, and no disciplinary proceedings were initiated. Under Ordinance XX-G, which governs AERC, the Governing Body may terminate the services only of the administrative and other non-academic staff. Clause 7(9) of Ordinance XVIII applies to Colleges, and AERC is not a College. Clause 7 of the Annexure to Ordinance XII, is the model Service Agreement for College teachers, which the Petitioner never executed.

35. The **University, the Respondent No. 1, in its replies**, contended that the Petitioner is admittedly governed by the CPF Scheme, and employees under the GPF Scheme alone are entitled to retire voluntarily with pension and gratuity. The 1985 Letter has been uniformly applied to all employees under the CPF Scheme, and the challenge to it is time barred. In its counter affidavit in W.P.(C) 7763/2011, it stated that the services of the Petitioner had not been terminated and no disciplinary action had been taken against him.

36. That the Petitioner did not join duty after exhausting his EOL and remained unauthorisedly absent for over a year. Since no stay had been granted by any Court, the matter was referred to the Vice-Chancellor, with whose approval his services were terminated. It denied that the termination is linked to the denial of voluntary retirement, or that the Governing Body lacked the power to terminate. It also averred that the Petitioner's services had earlier been terminated by Himachal Pradesh University, vide Order dated 21.06.1980.



37. AERC, the Respondent No. 2, took a similar stand, and added that the Petitioner was given three chances to join duty after the expiry of his EOL, but remained unauthorisedly absent for more than one and a half years.

38. UGC, the Respondent No. 5, in its short affidavit, stated that the question of voluntary retirement is an administrative issue within the exclusive domain of the Respondents No. 1 and 2, and that it is neither a necessary nor a proper party.

39. The Union of India, the Respondents No. 3 and 4, in its written submissions, contended that W.P.(C) 7763/2011 does not challenge the termination dated 01.02.2012. The Petitioner is not a Government servant, and neither the Fundamental Rules nor the Central Civil Services (Pension) Rules, 1972, apply to him ipso facto. Reliance is placed on *State of Maharashtra v. Bhagwan*, (2022) 4 SCC 193, *UPSC v. Dr. Jamuna Kurup*, (2008) 11 SCC 10, and *State of Assam v. Barak Upatyaka D.U. Karamchari Sanstha*, (2009) 5 SCC 694.

40. That Appendix B to Statute 28-A, consciously does not provide for voluntary retirement, and the Statute has not been challenged. As recorded in the Order dated 20.04.2023, the Petitioner does not seek pensionary benefits. No writ can be issued contrary to statutory provisions, for which reliance is placed on *A.P. Christians Medical Educational Society v. Government of Andhra Pradesh*, (1986) 2 SCC 667, and *Union of India v. Kirloskar Pneumatic Co. Ltd.*, (1996) 4 SCC 453.

41. The Petitioner, in his Rejoinders and written submissions, has reiterated his averments. He has submitted that the averment regarding Himachal Pradesh University is made only to create prejudice, and that the



termination, effected after W.P.(C) 7763/2011 was filed, has been challenged in W.P.(C) 1799/2012. He does not claim the applicability of the Fundamental Rules as a Government servant, but under the University's own practice of applying them, where its Rules are silent. The Statutes must be read in conformity with Article 14, for which reliance is placed on *B. Banerjee v. Anita Pan*, (1975) 1 SCC 166, and *Girdhari Lal & Sons v. Balbir Nath Mathur*, (1986) 2 SCC 237.

Submissions heard and record perused.

42. Briefly summarised, the Petitioner, who had served AERC since May, 1977 and was governed by the CPF Scheme, applied for voluntary retirement on 31.05.2010, while on EOL, which was to expire on 04.06.2010. The request was declined *solely on the strength of the 1985 Letter*. During the pendency of **W.P.(C) 7763/2011**, his services were **terminated w.e.f. 01.05.2009**, the date on which he had proceeded on sanctioned EOL.

43. The Petitioner does not claim pension. *He seeks only to retire with the provident fund standing to his credit and the gratuity admissible under the CPF Scheme*. The Respondents contend that voluntary retirement is available only under the GPF Scheme, and that the Petitioner, having failed to rejoin, was rightly terminated.

44. The principal issues that arise for consideration are:

- (i) *whether W.P.(C) 7763/2011 is not maintainable for want of challenge to the termination, or is barred by delay;*
- (ii) *whether the 1985 Letter could be the basis for declining voluntary retirement to the Petitioner;*



- (iii) *whether the Statutes of the University bar voluntary retirement of an employee governed by the CPF Scheme;*
and
 (iv) *whether the termination of the services of the Petitioner vide letters dated 30.01.2012 and 01.02.2012 is sustainable.*

I. Whether W.P.(C) 7763/2011 is not Maintainable for Want of Challenge to the Termination, or is Barred by Delay:

45. The Union of India contends that **W.P.(C) 7763/2011** must fail, as it does not challenge the termination dated 01.02.2012. W.P.(C) 7763/2011 was filed on 29.10.2011, three months before the termination. The termination has been specifically challenged in **W.P.(C) 1799/2012**, which is being decided by this common judgment. The objection has no substance.

46. The University further contends, that *the challenge to the 1985 Letter is time barred*. The 1985 Letter was addressed by the Ministry of Education to UGC, and was never circulated to the staff, as admitted by the University in its reply dated 09.03.2011. It was applied to the Petitioner for the first time on 03.06.2010, and the University itself kept the matter open by re-examining it till 19.08.2011. The Petitioner could have had no grievance against the 1985 Letter before it was applied to him.

47. W.P.(C) 7763/2011, filed on 29.10.2011, suffers from ***no delay***.

II. Whether the 1985 Letter could be the Basis for Declining Voluntary Retirement to the Petitioner:

48. AERC declined the request of the Petitioner on 03.06.2010 for one reason alone, that according to the 1985 Letter, the “*scheme of Voluntary*



Retirement has not been extended to the employees borne on the CPF". The letters of the University dated 29.09.2010 and 19.08.2011 cite no other provision. The Governing Body, on 14.10.2011, acted "In view of the latest communication from Delhi University on the matter".

49. The 1985 Letter, is a reply of an Under Secretary of the Ministry of Education to UGC, on the subject "*Proposal for extension of Scheme of Voluntary Retirement to employees borne on C.P.F.*". It records only that the matter had been considered and "***it is regretted that the Scheme of Voluntary Retirement cannot be extended to the employees borne on the CPF***". It discloses no reason. Neither UGC's letter dated 24.04.1984, to which it responded, nor the University's letter dated 21.01.1984, has been placed on record.

50. Pertinently, the 1985 Letter speaks of a "Scheme" of voluntary retirement. The only provision for voluntary retirement in the Statutes of the University, is the **second proviso to Clause 15(c) of Appendix A to Statute 28-A, which governs the GPF Scheme**. It reads:

"Provided further an employee who has put in not less than 20 years of qualifying service may, by giving notice of three months in writing to the Registrar, retire from service voluntarily and the benefit of retiring pension will be admissible to University employee under this scheme subject to the following conditions:

...

(vi) While granting proportionate pension to an employee retiring voluntarily, under this proviso, weightage of up to five years would be given as an addition to the qualifying



service actually rendered by him ...”

51. The “scheme” of voluntary retirement under the Statutes, is thus, a scheme of retiring pension, with weightage of up to five years of qualifying service. *What was declined in 1985 was the extension of this pensionary scheme to employees under the CPF Scheme, who are by definition not entitled to pension. The Petitioner seeks neither pension nor weightage.*

52. The 1985 Letter has not been adopted into the Statutes, Ordinances or Rules of the University. The University, in its Reply dated 09.03.2011 under the *Right to Information Act, 2005*, admitted that the 1985 Letter “*was a clarification issued by the Ministry of Education and it is not a general circular or notification. Therefore, the letter was not circulated.*” When directed by its own Appellate Authority to furnish the specific provision of Rule under which voluntary retirement was barred, the University could furnish *nothing, except the 1985 Letter itself.*

53. An unreasoned and uncirculated communication, declining the extension of a pensionary scheme, cannot by itself take away from an employee the ability to retire on the terms of the Scheme which governs him. The refusal dated 03.06.2010, and its reiteration on 29.09.2010 and 19.08.2011, rest on a communication which does not address the request made by the Petitioner.

III. Whether the Statutes of the University Bar Voluntary Retirement of an Employee Governed by the CPF Scheme:

54. The Union of India contends that Appendix B to Statute 28-A consciously *omits voluntary retirement for employees under the CPF Scheme*, and that the omission cannot be supplied by the Court.



55. This ground finds no mention in any of the impugned communications. Nor is it the stand of the University, which in its counter affidavit in W.P.(C) 1799/2012 states that “*the statute is silent about Pension and Gratuity in the case of CPF*”. In Mohinder Singh Gill v. Chief Election Commissioner, (1978) 1 SCC 405, the Supreme Court **observed** that “*when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out.*”

56. As noticed above, voluntary retirement under Appendix A, is provided as the occasion on which a retiring pension becomes admissible. Appendix B, which deals with a Scheme that grants no pension, naturally contains no provision for a retiring pension. *Its silence relates to pension, not to retirement.*

57. Appendix B itself contemplates retirement of an employee otherwise, than on superannuation. Clause 7 entitles a subscriber to his provident fund “at the termination of his service”:

“7. Subject to the provisions of Clause (3), a subscriber at the termination of his service **shall be entitled to receive the amount which accumulates to his credit**, viz., his subscription with interest and contribution by the University with interest thereon upon an application made by him in the prescribed Form XIII in that behalf to the Registrar.”

58. **Clause 12 provides for gratuity on retirement**, and lists the events on



which it is forfeited:

“12. (i) An employee who has completed five years of qualifying service at the University shall be granted Death-cum-Retirement Gratuity in accordance with the scale indicated in Clause 13. This gratuity shall be payable on his retirement from the service of the University. ...

...

*(iii) No gratuity shall be payable **on resignation** from the service of the University **or dismissal or removal from it for misconduct, insolvency, inefficiency not due to age.**”*

59. **Clause 1** permits deduction of the University’s contribution only in specified events, which include:

“ ...

*(iv) all amounts representing such contribution and interest, if the **subscriber is dismissed from service due to misconduct, insolvency or inefficiency.**”*

60. Appendix B provides for gratuity *“on his retirement”*, without confining retirement to superannuation. It specifically enumerates the events which forfeit gratuity, namely, **resignation, and dismissal or removal for misconduct, insolvency or inefficiency. Retirement before superannuation, is not one of them.** Nothing in the CPF Scheme, bars an employee from retiring voluntarily.

61. The Union of India rightly contends that the Petitioner is not a Government servant, and that neither the Fundamental Rules nor the Central Civil Services (Pension) Rules, 1972, apply to him *ipso facto*. The Petitioner does not claim so. The question is whether FR 56(k) is attracted through the



University's own rules and practice.

62. The University has no separate compendium of the Government Rules it follows. Its Information Handbook under the Right to Information Act, 2005 lists, in Manual 5, among the “*Rules, Regulations and Instructions*” used by it, the “*Fundamental and Supplementary Rules of Government of India as applicable to University of Delhi*”. When the Petitioner questioned this, the Registrar, as Appellate Authority, in the Order dated 18.01.2011, explained:

*“2. As far as the applicability of various government rules in the University is concerned, **it is applied mutatis mutandis**. There is no separate compendium of information in the University to suggest list of Fundamental Rules which are applicable in the University. Such rules also apply when there are no specific extant rule/guidelines framed by the University/UGC/MHRD. Therefore, the information disseminated under manual 5 of the Information Handbook of the University is not incorrect as it is indicative in nature. However, interpretation/clarification of any specific rule is to be done through proper administrative procedure.”*

63. The University has thus, itself declared that the Government Rules apply in the University *mutatis mutandis*, wherever there is no specific rule or guideline of the University, UGC or MHRD on the subject. AERC admits in its Counter Affidavit, that it is governed by the Rules of the University. The University, in both its Counter Affidavits, relies upon the Contributory Provident Fund Rules (India), 1962 of the Government of India, to describe



the very Scheme which governs the Petitioner. It cannot adopt the Government Rules where they suit it, and disown them where they do not.

64. *Appendix B to Statute 28-A, as seen above, contains no provision on voluntary retirement. Nor has any guideline of UGC or MHRD on the subject, been shown. The 1985 Letter is not such a guideline. The University has itself admitted that it “is not a general circular or notification” and was never circulated, and, as held above, it only declined the extension of a pensionary scheme.*

65. The field being unoccupied, the Government rule on voluntary retirement, namely FR 56(k), applies *mutatis mutandis*.

66. FR 2, relied upon by the Union of India, provides:

“F.R. 2. The Fundamental Rules apply, subject to the provisions of Rule 3 to all Government servants whose pay is debitable to Civil Estimates and to any other class of Government servants to which the President may by general or special order, declare them to be applicable.”

67. FR 56(k), in turn, provides:

“F.R. 56(k)(1) Any Government Servant may by giving notice of not less than three months in writing to the appropriate authority retire from service after he has attained the age of fifty years, if he is in Group ‘A’ or Group ‘B’ service or post (and had entered Government service on or before attaining the age of thirty-five years), and in all other cases after he has attained the age of fifty-five years.”

68. The contrast with the Central Civil Services (Pension) Rules, 1972 is



significant. Rule 2(d) of those Rules, also relied upon by the Union of India, expressly excludes from their application “*persons entitled to the benefit of a Contributory Provident Fund*”. No such exclusion is found in FR 2 or FR 56(k). A Government servant under the Contributory Provident Fund, though outside the Pension Rules, is thus, not outside FR 56(k). The right to retire voluntarily under FR 56(k), is independent of pension. *The Pension follows voluntary retirement for a pensionable employee; it is not a pre-condition for it.*

69. The Petitioner meets the conditions of FR 56(k). He asserted that he holds a Group ‘A’ post, and the Respondents have not disputed it. He joined AERC in May, 1977, and was 61 years old, when W.P.(C) 7763/2011 was filed in October, 2011. He had thus, entered service well before the age of thirty-five years, and had crossed the age of fifty years, long before he applied for voluntary retirement on 31.05.2010.

70. The judgments relied upon by the Union of India, do not assist it. In State of Maharashtra v. Bhagwan (supra), the employees of an autonomous society claimed pensionary benefits at par with State Government employees, which their own Service Rules consciously excluded.

71. UPSC v. Dr. Jamuna Kurup (supra) and State of Assam v. Barak Upatyaka D.U. Karamchari Sanstha (supra) concerned the status of employees of bodies, which are not the Government. The Petitioner claims neither pension nor parity with Government servants. He claims the ability to retire under the Statutes of his own employer, which provide for gratuity on retirement.

72. The matter may also be examined from the standpoint of Article 14. In Krishena Kumar v. Union of India, (1990) 4 SCC 207, a Constitution



Bench of the Supreme Court held that retirees under the Provident Fund scheme and pensioners form different classes, and that liberalisation of pension need not be extended to the former. That classification rests on the difference in retirement benefits. It has no bearing on whether an employee may retire at all.

73. The GPF Scheme and the CPF Scheme operate within the same University, under the same Statute 28-A, for employees holding the same posts under the same service conditions. The Respondents have disclosed no reason why one class may retire voluntarily and the other may not. *Permitting an employee under the CPF Scheme to retire voluntarily, casts no pension liability on the University, and the gratuity payable to him is computed on the service actually rendered, and is no more than what would in any event have been payable on superannuation.*

74. The significant aspect is that the University itself, in its Counter Affidavit in W.P.(C) 1799/2012, states that *“In effect, the services of the employees under CPF scheme are terminated but without the benefit of pension and gratuity.”* The letter of the University dated 29.09.2010 offered the Petitioner only his provident fund and half of the leave encashment, if he resigned.

75. On the reading advanced by the Respondents, an employee under the CPF Scheme, however long his service, can leave only by resignation or termination, each of which forfeits gratuity under Clause 12(iii). A classification which produces this result, has no nexus with any object discernible from Statute 28-A.

76. Read as barring voluntary retirement of employees under the CPF Scheme, Appendix B would produce the very discrimination noticed above.



Read as silent on the subject, it does not. A provision must, where reasonably possible, be construed so as to avoid invalidity. *In B. Banerjee v. Anita Pan*, (1975) 1 SCC 166, the Supreme Court observed that “*if reasonable interpretation can avoid invalidation, it is surely preferable*”.

77. It is equally settled that a *casus omissus* is not ordinarily to be supplied by judicial interpretation, as held in *Padma Sundara Rao v. State of Tamil Nadu*, (2002) 3 SCC 533. No *casus omissus* is, however, being supplied. Appendix B itself provides for gratuity on retirement, and does not include retirement before superannuation, among the events of forfeiture. Read with the University’s own position that Government Rules apply where its Statutes are silent, and with FR 56(k) so attracted, Statute 28-A does not bar an employee under the CPF Scheme from retiring voluntarily.

78. The reliance of the Union of India on *A.P. Christians Medical Educational Society v. Government of Andhra Pradesh* (supra) and *Union of India v. Kirloskar Pneumatic Co. Ltd.* (supra), for the proposition that no writ can issue contrary to statutory provisions, is thus misplaced. The relief claimed by the Petitioner is not contrary to any provision of the Statutes of the University.

79. It remains to be considered whether the request of the Petitioner, made without three months’ Notice, could have been accepted. Once an employee under the CPF Scheme cannot be denied voluntary retirement, the conditions which the University itself applies in accepting voluntary retirement under Appendix A, furnish the measure for considering his request. *Clause (i) of the second proviso to Clause 15(c) of Appendix A* provides:

“(i) A notice of less than three months may also be accepted



in deserving cases by the appointing authority.”

80. The only grounds on which acceptance may be withheld, are set out in **clause (v) of the second proviso to Clause 15(c) of Appendix A:**

“(v) ... Such acceptance may be generally given in all cases except those (a) in which disciplinary proceedings are pending or contemplated against the employee concerned for the imposition of a major penalty and the disciplinary authority having regard to the circumstances of the case is of the view that the imposition of the penalty of the removal or dismissal, from service would be warranted in the cases or (b) in which prosecution is contemplated or may have been launched in a Court of Law against the employee concerned. ...”

81. The Petitioner applied on 31.05.2010 while already on EOL, which was to expire four days later. Being on leave without pay, he was discharging no duties, and insistence on three months’ Notice would have served no purpose. He had served AERC since May, 1977. No disciplinary proceedings or prosecution were pending or contemplated against him, and none has been cited by the Respondents. It was thus, a deserving case in which Notice of less than three months, could be accepted.

82. In view of the foregoing discussion, **the Petitioner, governed by the CPF Scheme, was not barred from retiring voluntarily.** His request dated 31.05.2010, made while on EOL, was liable to be accepted without insisting on Notice, and the refusal on the strength of the 1985 Letter, cannot be sustained.

83. The EOL of the Petitioner, as extended by the Respondents, expired



on 04.06.2010. He claims no lien on the post and no financial benefit after 31.05.2010. Treating him as having retired on the expiry of his sanctioned EOL, i.e. on 04.06.2010, accords with his request, and leaves no period of absence to be accounted for.

IV. Whether the Termination of the Services of the Petitioner vide Letters dated 30.01.2012 and 01.02.2012 is Sustainable:

84. The Respondents contend that the Petitioner remained unauthorisedly absent after the expiry of his EOL on 04.06.2010, despite three opportunities to join duty, and his service was therefore, terminated. They deny that the termination is linked to the refusal of voluntary retirement.

85. The record does not bear this out. The Petitioner applied for voluntary retirement, before his EOL expired. AERC referred the request to the University on 14.06.2010 and again on 18.11.2010. The University re-examined it and responded on 29.09.2010 and 19.08.2011. AERC placed it before the Governing Body as Item No. 7, titled “Voluntary Retirement of Dr. R.P.S. Malik, Fellow”, and the **Governing Body directed that his services be treated as terminated** “*In view of the latest communication from Delhi University on the matter*”, which was the refusal of voluntary retirement.

86. The three directions to join duty, dated 03.06.2010, 15.10.2010 and 02.11.2011, were issued while the request of the Petitioner was under consideration of the Respondents themselves. On receiving the letter of the University dated 29.09.2010, the Chairperson of the Governing Body, Prof. Kanchan Chopra, recorded on 08.10.2010 only that “*Dr. Malik may be informed accordingly to join duty*”. None of the three directions called upon



the Petitioner to explain his absence, or stated that any action was proposed against him, for misconduct. ***No disciplinary proceedings were initiated at any stage.*** The termination rests on nothing, but the refusal of voluntary retirement, and cannot survive once that refusal is set aside.

87. *The termination is equally unsustainable on its own terms. AERC functions under Ordinance XX-G of the University. Clause 2 thereof, which enumerates the powers of the Governing Body, provides, in so far as relevant:*

“2. Subject to the general control and supervision of the Executive Council, the Governing Body will manage the affairs of the Centre and shall have following powers and functions:

...

(e) after obtaining the recommendations of the Selection Committee constituted by the Executive Council and subject to its approval to appoint teaching/academic staff including the Director of the Centre. The staff so appointed will be subject to the recognition by the Executive Council;

(f) to appoint, suspend or terminate the services of the administrative and other non-academic staff of the Centre in respect of whom such powers may have been delegated by the Executive Council and to determine the emoluments and conditions of service;

Provided however, that the qualifications for appointment, emoluments and conditions of service of such persons shall be in accordance with those laid down by the Executive Council for similar posts in the University;

...



(i) to exercise such other powers and functions as may be assigned to them by the Executive Council.”

88. Ordinance XX-G draws a clear distinction between the two classes of staff. Under sub-clause (e), the Governing Body may appoint teaching and academic staff, only on the recommendation of a Selection Committee constituted by the Executive Council, and subject to its approval and recognition. ***It is only in respect of the administrative and other non-academic staff, under sub-clause (f), that the Governing Body is empowered to “appoint, suspend or terminate”,*** and that too where such powers have been delegated by the Executive Council.

89. No corresponding power to terminate is conferred in respect of ***teaching and academic staff***. The Petitioner, a Fellow, is academic staff. Nor has any assignment by the Executive Council under sub-clause (i), conferring such power on the Governing Body, been shown. The Respondents have merely denied this ground, without pointing to any provision conferring on the Governing Body the power to terminate academic staff.

90. The letter dated 30.01.2012 invokes *Clause 7(9) of Ordinance XVIII and Clause 7 of the Annexure to Ordinance XII*. **Ordinance XVIII is titled “Colleges other than those Maintained by the Government of India”.** Clause 7(9) thereof reads:

“(9) No decision for the termination of the services of any teacher or Principal appointed on substantive basis whether on probation or permanent, or for his suspension, shall be taken by the College or the institution concerned without the prior approval of the Vice-Chancellor.”



Clause 7 of the Annexure to Ordinance XII reads:

“7. The question of termination of the services of the Principal/Teacher or his suspension, shall not be decided by the College/Institution without the prior approval of the Vice-Chancellor.”

91. Ordinance XVIII governs Colleges, and AERC is not a College. Pertinently, where the University intended any provision of Ordinance XVIII to apply to institutions under Ordinance XX, it said so expressly. The footnote to Clause 7(4)(a) provides that *“The above provisions i.e. 7(4-A) shall apply mutatis mutandis to Colleges and Institutions maintained by the University under Ordinance XX except UCMS/VPCI/ACBR.”* No such extension is made of Clause 7(8) or Clause 7(9).

92. The Annexure to Ordinance XII is likewise, titled *“Form of Agreement of Service for College Teachers”*, and is an agreement *“between (hereinafter called the Teacher) of the first part, and the Governing Body of College, Delhi (hereinafter called the Governing Body) of the second part”*.

93. No such agreement was executed by the Petitioner, and none has been placed on record by the Respondents. Even so, Clause 7(9) of Ordinance XVIII and Clause 7 of the Annexure, merely require the prior approval of the Vice-Chancellor to a decision to terminate the services of a teacher. They require approval; they do not confer the power to terminate.

94. The ***power to terminate the engagement of a member of the teaching staff of a College, is located in Clause 7(8) of Ordinance XVIII***, which reads:

“(8) The engagement of the Principal or of any other



member of the teaching staff may be summarily determined by the Governing Body for misconduct, but save as aforesaid shall not be determined except for good cause and after three month's notice in writing or the payment of three months' salary in lieu of notice."

Clauses 5 and 6 of the Annexure to Ordinance XII read:

"5. The Governing Body shall be entitled summarily to determine the engagement of the teacher for misconduct, but save as aforesaid, shall only be entitled to determine the engagement after giving three months' notice in writing or payment of three months' salary in lieu of notice and for good cause.

- 1. The Governing Body shall not determine the engagement of the teacher whether summarily or otherwise without informing him in writing of the grounds on which they propose to take action and giving him a reasonable opportunity of stating his case in writing, and before coming to a final decision shall duly consider the teacher's statement and if he so desires give him a personal hearing."*

95. Even under the very provisions invoked by the Respondents, the engagement of a teacher may be determined summarily only for misconduct, and otherwise only for good cause and after three months' notice in writing



or salary, in lieu thereof. In either case, **Clause 6 of the Annexure** mandates that the teacher be informed in writing of the grounds on which action is proposed, be given a reasonable opportunity of stating his case in writing, have his statement duly considered, and be given a personal hearing if he so desires. *No finding of misconduct was recorded, no good cause was stated, and no notice was given. The Petitioner was never informed of any grounds, nor called upon to state his case. None of the safeguards prescribed in the provisions relied upon by the Respondents themselves, was observed.*

96. A termination on the ground of absence from duty, without an opportunity of hearing, cannot be sustained. In D.K. Yadav v. J.M.A. Industries Ltd., (1993) 3 SCC 259, the Supreme Court held that a termination of service on account of unauthorised absence, effected without an opportunity to the employee, violates the principles of natural justice and Article 14 of the Constitution of India.

97. In Uptron India Ltd. v. Shammi Bhan, (1998) 6 SCC 538, it held that the services of an employee cannot be treated as automatically terminated for overstaying leave, without affording him an opportunity of hearing.

98. The direction of the Governing Body that the services of the Petitioner “*will be treated as terminated*” is precisely such an automatic termination.

99. The termination **also suffers from retrospectivity**. The Governing Body directed only that the services of the Petitioner would be treated as terminated if he did not join by 01.12.2011. The letter dated 30.01.2012 conveys approval for terminating his services “w.e.f. 01.05.2009 i.e. from the date he proceeded on EOL”, which was EOL sanctioned by the Vice-Chancellor himself and later extended till 04.06.2010. No authority decided,



for any stated reason, that the termination should relate back to a period of sanctioned leave.

100. The University has also referred to the termination of the Petitioner's services by Himachal Pradesh University, vide Order dated 21.06.1980. That Order finds no mention in the decision of the Governing Body or in the letters dated 30.01.2012 and 01.02.2012. It was copied to the Registrar of the University and the Director of AERC in 1980, and the Petitioner continued in the service of AERC for three decades thereafter. As observed in *Mohinder Singh Gill* (supra), the validity of an order must be judged by the reasons mentioned in it, and cannot be supplemented by fresh reasons in the shape of an affidavit. The Order dated 21.06.1980 cannot now be invoked to support the termination.

101. In view of the foregoing discussion, the termination of the services of the Petitioner vide letters dated **30.01.2012** and **01.02.2012**, is unsustainable.

102. With the termination set aside, the Petitioner ***stands neither dismissed nor removed for misconduct, insolvency or inefficiency***. The forfeiture of gratuity under Clause 12(iii) of Appendix B, reproduced above, is not attracted. Nor is the deduction under Clause 1(iv) of Appendix B attracted, as the Petitioner has not been dismissed from service on any of the grounds specified therein.

103. The Petitioner has to be deemed to have voluntarily retired. On his retirement, he is entitled to the provident fund standing to his credit under Clause 7, and to the Death-cum-Retirement Gratuity on his qualifying service under Clauses 12 and 13 of Appendix B.

104. In *State of Jharkhand v. Jitendra Kumar Srivastava*, (2013) 12 SCC 210, the Supreme Court held that pension is in the nature of property, which



cannot be taken away save by authority of law under Article 300A of the Constitution of India, and that a part of pension, gratuity or leave encashment cannot be withheld in the absence of a statutory provision. In *S.K. Dua v. State of Haryana*, (2008) 3 SCC 44, it held that an employee is entitled to interest on the delayed payment of retiral benefits.

105. The Petitioner has been kept out of his dues for over sixteen years.

Conclusion:

W.P.(C) 7763/2011:

106. In view of the above, the Writ Petition is allowed, and the following directions are issued:

(i) The letter dated 03.06.2010 of AERC, the letter dated 29.09.2010 of the University, the letter dated 15.10.2010 of AERC, the letter dated 19.08.2011 of the University, and the letter dated 06.09.2011 of AERC, **declining voluntary retirement to the Petitioner, are quashed.**

(ii) The Petitioner shall be **deemed to have retired voluntarily from the service of AERC, w.e.f. 04.06.2010.**

(iii) The 1985 Letter, which declined the extension of the Scheme of Voluntary Retirement to employees under the CPF Scheme, does not bar the voluntary retirement of the Petitioner under the CPF Scheme.

W.P.(C) 1799/2012:

107. The Writ Petition is allowed, and the letters dated 30.01.2012 and 01.02.2012, **terminating the services of the Petitioner w.e.f. 01.05.2009, are quashed.**



Relief:

108. Consequently, in view of the relief granted in both Writ Petitions, **the University and AERC shall:**

- (i) release to the Petitioner the entire amount standing to his credit in the Contributory Provident Fund, including the contribution of the University, with interest as admissible under the Rules of the Fund till the date of payment;
- (ii) compute and pay to the Petitioner the Death-cum-Retirement Gratuity under Clauses 12 and 13 of Appendix B to Statute 28-A, on his qualifying service up to 04.06.2010, at the rates applicable on that date;
- (iii) pay to the Petitioner the leave encashment, if any, admissible under the Rules of the University to an employee on retirement;
- (iv) pay simple interest at 6% per annum on the amounts under directions (ii) and (iii) from 04.06.2010 till the date of payment; and
- (v) Comply with the above directions within sixteen weeks from the date of this judgment

109. Pending application(s), if any, also stand disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 14, 2026/va/RS