

29. The Supreme Court in **Kunhayammed & others v. State of Kerala and another** [(2000) 6 SCC 359], held that when a superior authority adjudicates a matter on merit, the lower authority's order ceases to have an independent existence. Similarly, in **Union of India v. K. V. Jankiraman** [(1991) 4 SCC 109], the Court held that once an administrative authority reconsiders an order, limitation should be counted from the date of reconsideration of decision rather than the original order.

30. The rejection of the claim petition by the Tribunal solely on the ground of limitation violates the fundamental principles of natural justice. The petitioner was unaware of his dismissal order until he received an information from the Nodal Officer, Firozabad. It is well-settled principle of procedure that limitation does not begin to run against a party until he has knowledge of the adverse order.

31. A plea has been taken by the respondents that though the dismissal order was alleged to have been served upon the wife of the petitioner on 04.12.2013, but it was not established from the record that it had actually been served upon her. After 2½ years, the Nodal Officer, Firozabad supplied the requisite information on 09.02.2016 that too on the petitioner's application moved on 23.01.2016. Thereafter, on a direction given by the Tribunal, the representation was decided on merit by the competent authority by a detailed order passed on 05.06.2017 against which the petitioner filed a claim petition on 20.02.2018, which ought to have been treated well within time prescribed under the statute.

32. Since the petitioner promptly pursued the remedies upon service of the dismissal order, the claim of the petitioner could not held to be time-barred by overlooking the scheme of statutory Rules understood as above.

33. For the aforementioned reasons, the Court is of the opinion that the rejection of the claim petition merely on the ground of limitation is legally unsustainable in view of the application of doctrine of merger which followed as a result of non-supply of the order passed in the year 2013 giving rise to representation under Rule 25 of the Rules, 1991. Secondly, the petitioner was deprived of an opportunity to contest his dismissal order on merits due to procedural irregularities of service of the order and lastly, limitation cannot run against a party unaware of the adverse action.

34. In view of the foregoing paragraphs, the view taken by the Tribunal is not tenable and calls for interference.

35. Accordingly, the writ petition is **allowed** and the impugned judgment and order dated 12.07.2022 is quashed. The matter is remitted to the Tribunal for deciding it afresh on merits, within a period of six months from the date of receipt of a certified copy of this order, as the matter is lingering since 2013. Parties undertake to co-operate with the proceedings before the Tribunal. No order as to costs.

(2025) 3 ILRA 340
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 18.03.2025

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ - A No. 18801 of 2024 connected with other cases

Priyankar Upadhyaya	...Petitioner
Versus	
U.O.I. & Ors.	...Respondents

Counsel for the Petitioner:

Sri R.K. Ojha, Sri G.K. Singh, Sri Pradeep Chandra, Senior Advocates, Sri Shivendu Ojha, Sri Sankalp Narain, Ms. Asha Parihar, Sri Manoj Kumar Singh, Advocates

Counsel for the Respondents:

Sri V.K. Upadhyay, Sri Ajit Kumar Singh, Sri Shashi Prakash Singh, Senior Advocates, Sri Ritvik Upadhyay, Sri Hem Pratap Singh, Sri Manoj Kumar Singh, Sri Purnendu Kumar Singh, Sri Dhananjay Awasthi, Sri Rahul Jain, Advocates

A. Service Law – Constitution of India, 1950 – Article 226 – Writ – Second writ petition – Maintainability – Earlier, writ petition seeking switch back from CPF Scheme to GPF-cum-Pension Scheme was dismissed – Afterward a judgment with different view was passed by Delhi High Court, which got affirmed by the Apex Court too – How far can be ground of maintaining second petition with similar relief – Held, petitioners have wrongly declared that present writ petitions are their first writ petitions on the relief sought. Therefore, Court is of the view that declaration made in present writ petitions is contrary to record – Held further, only on ground that subsequently a different interpretation of law was given by a Single Bench of Delhi High Court, which was affirmed upto Supreme Court and since petitioners were approaching the authorities after these judgments, would not make a ground that said judgment is applicable to petitioners so much as that earlier judgment would not come in the way. (Para 8 and 29)

B. Service Law – Contributory Provident Fund – Office Memorandum dated 01.05.1987 was issued giving option to change over from CPF Scheme to GPF-cum-Pension Scheme with cut off date 09.07.1998 – Option to remain in earlier Scheme was given before fixed cut-off date – Effect – Claim of being deemed to come over in GPF-cum-Pension Scheme was made – Permissibility – Held, any

option given beyond 09.07.1988 would not est, however, on basis of record, none of petitioners have a case that they have opted to remain in earlier CPF Scheme on basis of above cutoff date rather their claim was taken birth only after Banaras Hindu University adopted the Scheme on 09.04.1988 and they have given option before new cut off date, i.e., 09.07.1988, therefore, the benefit of judgment in *University of Delhi Vs Smt. Shashi Kiran* would not be applicable. [Para 21 and 30(c)]

C. Judgment in rem and Judgment in personam – Applicability of Apex Court judgment of *Smt. Shashi Kiran's case*, being judgment in rem, was sought – Held, judgment passed by Supreme Court in *University of Delhi Vs Smt. Shashi Kiran* was a judgment in rem and not in personam, however, facts of each case may have different consequences. (Para 26)

Writ petition dismissed. (E-1)

List of Cases cited:

1. University of Delhi Vs Smt. Shashi Kiran & ors.; 2022(7) SCR 957
2. Neerja Tiku Vs School of Planning & Architecture & anr.; 2024:DHC:2891

(Delivered by Hon'ble Saurabh Shyam Shamshery, J.)

CORAM : HON'BLE SAURABH SHYAM SHAMSHERY, J.

1. Petitioners, in above referred writ petitions, are retired teaching and non-teaching employees of Banaras Hindu University and they are beneficiaries of Contributory Provident Fund Scheme (hereinafter referred to as "CPF Scheme").

2. Government of India has issued an Office Memorandum dated 01.05.1987 on a

subject "Change over of the Central Government employees from the Contributory Provident Fund Scheme to Pension Scheme-Implementation of the commendations of the Fourth Central Pay Commission". Salient features of said Office Memorandum are reproduced hereinafter:

"The undersigned is directed to state that the Central Government employees who are governed by the Contributory Provident Fund Scheme (CPF Scheme) have been given repeated options in the past to come over to the Pension Scheme. The last such option was given in the Department of Personnel and Training O.M. No. F3(1)-Pension unit/85 dated the 6th June, 1985. However, some Central Government employees still continue under the CPF Scheme. The Fourth Central Pay Commission has now recommended that all CPF beneficiaries in service on January 1, 1986, should be deemed to have come over to the Pension Scheme on that date unless they specifically opt out to continue under the CPF Scheme.

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

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

3.2. The employees of the category mentioned above will, however, have an option to continue under the CPF Scheme, if they so desire. The option will have to be exercised and conveyed to the concerned

Head of Office by 30.09.1987 in the form enclosed if the employees wish to continue under the CPF Scheme. If no option is received by the Head of Office by the above date the employees will be deemed to have come over to the Pension Scheme.

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

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

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

3.6 The option once exercised shall be final.

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

3. In pursuance of above Office Memorandum, the Deputy Registrar (Administration), Banaras Hindu University has made a communication to Secretary, University Grants Commission to sent copies of order on the subject to switch over to CPF Scheme to General Provident Fund-cum- Pension Scheme (*hereinafter referred to as "GPF-cum-Pension Scheme"*) and accordingly Under Secretary of University Grants Commission by communication dated 19.01.1988 sent an Office Memorandum to Registrar of many Central Universities including Registrar of Banaras Hindu University on above referred issue. After due deliberation office of Registrar (Administration), Banaras Hindu University issued an Office Memorandum dated 09.04.1988 on the subject "Change over of the Central Government employees from the Contributory Provident Fund Scheme to Pension Scheme-Implementation of the commendations of the Fourth Central Pay Commission". This communication was addressed to Head of different Departments of Banaras Hindu University. The contents of communication, being relevant for the purpose of adjudication of present cases, are reproduced hereinafter:

"I am directed to inform you that it has been decided to apply the

Government of India orders on the above subject to the employees of the University. Accordingly, all the University employees on CPF/PF Scheme who were in service on 1.1.1986 will be deemed to have comeover to Pension Scheme.

2. The employees of the category mentioned above will, however, have an option to continue under the PF/CPF Scheme if they so desire. This option will have to be exercised and conveyed to this office latest by the 9th July, 1988 in the form enclosed. If no option is received by this date the employee will be deemed to have come over to Pension Scheme.

3. The employees who have/subsequent to 1.1.1986 and in whose cases retirement benefits have been paid under the CPF Scheme will also be eligible to come over to Pension Scheme provided they refund the University's contribution and interest thereon drawn by them.

4. In the case of employees who were in service on 1.1.1986 but have since died either before or after retirement, the option to retain the CPF benefits or to come over to Pension Scheme will be exercised by the widow/widower, and, in the absence of widow/widower by the eldest surviving member of the family who would have otherwise been eligible to family pension under the Family Pension Scheme if such scheme were applicable to the employee.

5. The last date for exercising options in all cases will be the 9th July, 1988 and option once exercised will be final.

6. In the cases involving refund of University's contribution to provident fund

(including interest thereon), the amount will have to be refunded latest by the 9th July, 1988, failing which interest thereon @ 10% per annum will be payable for the period beyond this date.

7. The provisions of this Circular do not apply to personnel re-employed in the University or those appointed on contract basis.

8. The Directors/Deans/Principals/Heads etc. are requested to bring the contents of this Circular to the notice of all the employees subscribing to the Provident Fund/Contributory Provident Fund under their control including those on leave or on foreign service terms, so that the ignorance of these orders is not pleaded at a later stage and the options of the employees delivered in this office in time.”

4. As referred above, the Office Memorandum of Government of India dated 01.05.1987 wherein the last date for exercising options was fixed as 30.09.1987 was adopted by Banaras Hindu University subsequently on 09.04.1988 and last date for exercising options was fixed as 09.07.1988.

5. At this stage, it would be relevant to mention here that University of Delhi has accepted the recommendation of 6th Pay Commission by notification dated 25.05.1987, i.e., within a very short period of Office Memorandum dated 01.05.1987 issued by Government of India and accordingly cut off date, i.e., 30.09.1987 would be relevant for the purpose of University of Delhi. However, with regard to Banaras Hindu University Court above referred two dates, i.e., 09.04.1988 when Banaras Hindu University adopted the

Scheme and last date for option was fixed to be 09.07.1988 would be relevant

6. Petitioners have declared that in pursuance of above referred communication they have given option to continue in earlier Scheme, i.e., CPF Scheme before cut off date as fixed by Banaras Hindu University, i.e., 09.07.1988. It is also on record that Banaras Hindu University has extended the cut off date of submitting option subsequent to 09.07.1988 also on more than one occasion and some employees have given option thereafter also to remain in CPF Scheme.

7. In aforesaid circumstances, number of petitioners, have earlier filed Writ Petitions No. 32101 of 2004 and 28790 of 2004, wherein they have prayed that they may be allowed to switch back from CPF Scheme to GPF-cum-Pension Scheme, i.e., to withdraw their option to remain in CPF Scheme. The Division Bench of this Court vide order dated 12.08.2011 dismissed both writ petitions and relevant part of said judgment is reproduced hereinafter:

“13. Shri V.K. Upadhyay appearing for the University Grants Commission has relied upon the counter affidavit of Dr. N.K. Jain, Joint Secretary, University Grants Commission, New Delhi. He has reiterated the objections taken by the University as well as the Central Government. He submits that the University Grants Commission had taken up the matter by letter dated 8.8.2001 to the Joint Secretary, Government of India, MHRD to consider to extend the scheme and to notify a clear view of cut off date so that the institutions do not fix their own cut off date. The Ministry of Human Resource Development, Government of India by its

letter dated 22.9.2001 informed the UGC that earlier the matter was examined in consultation with the Ministry of Finance (Department of Expenditure). The Ministry had regretted and expressed its inability to allow one more option to change over from CPF to GPF Scheme to the employees of the UGC and institutions maintained by it. Earlier the Ministry of Human Resource Development, Government of India by letter dated 19.6.2000 had also communicated the matter pertaining to the option in consultation with the Ministry of Finance and had regretted its inability to allow one more option.

14. It is submitted by learned counsel appearing for UGC that Ministry of Human Resource Development by its letter dated 24.12.2002 forwarded a letter to the Vice Chancellor, Banaras Hindu University regarding change of option. After examining the matter UGC informed by its letter dated 23.9.2003 that the options were available only upto 30.9.1987 and as such request of University cannot be considered.

15. So far as discrimination is concerned, learned counsel appearing for UGC submits that the Banaras Hindu University extended the date in the year 1988 and in 1995 on its own, without the approval of UGC. The UGC by its letter dated 23rd September, 2003 informed the University that one more option to change over cannot be accepted. In case of Assam University the employees, who were recruited after 1994 and that at that time only GPF Scheme was available, the Assam University by mistake given CPF to the employees, which was not permissible. In para 8 of the counter affidavit of Dr. M.K. Jain, Joint Secretary, UGC it is stated that IITs at Kanpur, Bombay, Gorakhpur and

Roorki are not covered under the purview of UGC and that Delhi University was not given any permission by UGC to extend the date. By D.O. letter dated 25.5.1999 addressed to the Registrar, University of Delhi, a copy of which was endorsed to all Central University cut off date for change over from CPF to GPF was informed to be 30.9.1987 and the benefit of retirement liabilities for such employees after cut off date was to be treated as unapproved expenditure. On the basis of the reply received from the Delhi University to UGC they suggested to Ministry of Human Resource Development on 3rd September, 2002 to regularise the change for Delhi University upto 31.3.1998 or that the Government of India may instruct UGC with pension liability of the employee be not made by UGC, who have permitted irregular conversion from CPF to Pension Scheme after 30.9.1987. In reference to these letters the Ministry of Human Resource Development informed UGC on 24.10.2002 that since the UGC is funding agency and it itself had extended the government policy on conversion from CPF to GPS to the Central Government and deemed universities receiving 100% maintenance grant, no specific government instructions are warranted to those employees of the University of Delhi, who had not permitted to make conversion from CPF to GPF Pension Scheme after prescribed cut off date. The UGC had not permitted the University for extension of the dates. The conversion was accepted by the Executive Council of the Delhi University, where there is no representative of UGC/ Government of India. The permission for extension to some of the employees by Banaras Hindu University after the cut off date is in violation of the instructions given by the Government of India and UGC.

16. From these facts, we find that the University Grants Commission had never communicated any decision to the Banaras Hindu University to extend cut off date for change of the option. The Ministry of Human Resource Development had requested Ministry of Finance (Department of Expenditure), which did not agree to extend the cut off date for switching over from CPF to GPF Scheme. The Office Memorandum No.4/1/87 dated 1.5.1987 notifying the scheme pertaining to change over from CPF to GPF was never amended. The Vice Chancellor of the Banaras Hindu University, on his own without any authority from University Grants Commission and further without there being any resolution of the Executive Council appears to have extended the date for some of its employees upto 31st December, 1995. The change offered to them was beyond the authority of the Vice Chancellor of the University. The Committee headed by Prof. D.K. Rai had made a recommendation for giving one more opportunity to switch over to GPF, which appears to have been accepted by the Vice Chancellor, without the recommendations of the Executive Council and that finally the Executive Council by its impugned decision regretting its inability to approve the orders of the Vice Chancellor dated 20.3.2001 and 18.1.2002. The Vice Chancellor of the University could not have acted against the directives of the University Grants Commission and Ministry of Human Resource Development as the University is fully funded by the University Grants Commission.

17. We are of the opinion that the Vice Chancellor on his own without there being any approval of the Executive Council, which is in turn bound in the matters of financial discipline, by the

decisions taken by the University Grants Commission, which fully funds the University, did not have any authority to extend the date for option.

18. In the present case the question involved is not to extend the date of option but to allow the petitioner to withdraw their option to continue in the CPF Scheme. Under the scheme all the teachers/ employees were allowed the benefit of GPF-Gratuity-Pension Scheme. Only those employees, who had exercised their option to continue under the CPF Scheme were not given the benefit. Rule 3 (iii) of the Central University Retirement Benefit Rules, 1967 were not amended to give authority to the Vice Chancellor to extend the last date. The Vice Chancellor on his own without any valid authority vested in him extended the cut off date in the year 1988 and in 1995. The petitioners did not take benefit of this unauthorised extension policy also. They, therefore, have no right whatsoever to claim further extension. The Executive Council did not commit any mistake in regretting its inability to extend the date following the directives of the UGD and Ministry of Human Resource Development.

19. The petitioners are teachers and employees of the University. They had fully understood the financial implications of the option exercised by them. The benefits offered by the 5th Pay Commission given w.e.f. 1.1.1996 could not be a ground to allow them to opt for GPF-Gratuity-Pension Scheme almost nine years after the cut off date fixed at 30.9.1987 had expired.

20. The University Grants Commission has given sufficient explanation to the complaint of discrimination. The Guwahati University

employees appointed in 1994 were wrongly offered CPF Scheme and thus they were all brought into GPF Scheme for rectifying the error. The IITs were instructed by UGC/MHRD not to extend cut off date since they are not funded by the U.G.C. Any decision taken by them will not amount to discrimination with the teachers/employees of the Central Universities. The Delhi University continued with an illegality, against the clarifications issued by the UGC and Ministry of Human Resource Development.

21. In Union of India Vs. M.K. Sarkar, (2010) 2 SCC 59 the Supreme Court held where an employee governed by CPF Scheme did not opt for pension scheme, despite several chances given to him, his representation 22 years after his retirement, with willingness to refund the amount cannot be permitted to switch over to pension scheme. If his request is accepted, the effect would be to permit him to secure double benefit. There was no recurring or continuing cause of action to file writ petition after such a long time. It was further held that when he had notice or knowledge of the availability of option he could not be heard to contend that he did not have written intimation of option.

22. We also find that this writ petition was filed on 5.8.2004 challenging the decision of the Executive Council of the University dated 19/20th July, 2002, communicated by the Registrar of the University on 5.9.2002, and much after the new pension scheme had become applicable to all the employees joining Central Government after 1.1.2004. The employees, who were covered by GPF-Gratuity-Pension Scheme were given offer to switch over to new pension scheme and

thus in the year 2004 there was absolutely no justification for the petitioners, many of whom have retired long ago to be offered an opportunity to change their option and to switch back to GPF-Gratuity-Pension Scheme.”

8. The above judgment was not assailed further, as such, it has attained finality. In aforesaid circumstances, the present writ petitions seeking similar relief should have declared present writ petitions as second writ petitions on same issue. However, petitioners have wrongly declared that present writ petitions are their first writ petitions on the relief sought. Therefore, Court is of the view that declaration made in present writ petitions is contrary to record.

9. Sri R.K. Ojha, learned Senior Advocate assisted by Sri Shivendu Ojha, Advocate; Sri G.K. Singh, learned Senior Advocate assisted by Sri Sankalp Narain, Advocate; Sri Pradeep Chandra, learned Senior Advocate assisted by Ms. Asha Parihar, Advocate and Sri Manoj Kumar Singh, Advocate for petitioners, have vehemently submitted that subsequently a similar matter was adjudicated with regard to employees of University of Delhi and law was crystallized firstly by Single Bench and thereafter by Division Bench of Delhi High Court and thereafter by Supreme Court in **University of Delhi vs. Smt. Shashi Kiran and others, 2022(7) SCR 957**. Learned Senior Advocates have vehemently referred the judgment passed by Supreme Court to contend that case of petitioners is similar to the case of one of the batch of petitioners therein, i.e., N.C. Bakshi batch, and referred following findings returned by Supreme Court, so far as said batch is concerned:

“15. According to the notification dated 01.05.1987 two situations were contemplated. First, the deeming provision

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

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

10. Learned Senior Advocates further submitted that as soon as Single

Bench of Delhi High Court has passed judgment in the case of employees of Delhi University, petitioners herein have approached the concerned authorities that similar benefit may be granted to them since they have exercised the options after 30.09.1987, i.e., the last for exercising option as fixed by Office Memorandum dated 01.05.1987 issued by Government of India and their option to continue to CPF Scheme would be considered to be non-est and consequently they ought to have deemed to be switch over to GPF-cum-Pension Scheme. Learned Senior Advocates further submitted that petitioners have repeated their request after the judgment passed by Division Bench of Delhi High Court and also after the judgment passed by Supreme Court in **University of Delhi vs. Smt. Shashi Kiran (supra)** but their representations kept pending on one or other reasons.

11. According to record, in aforesaid circumstances, some of the similarly situated employees of Banaras Hindu University approached this Court by way of filing Writ-A No. 19158 of 2022, which was disposed of vide order dated 29.11.2022 and for reference said order is reproduced hereinafter:

"Heard Sri R.K. Ojha learned Senior Counsel assisted by Sri Shivendu Ojha learned counsel for the petitioners, Sri Arvind Singh learned counsel for the Union, Sri Hemendra Pratap Singh learned counsel for the University and Sri Rijwan Ali Akhtar learned counsel for respondent No. 2.

Petitioners seek a direction upon respondent-University to release GPF and pension to the petitioners under General Provident Fund Scheme. In that regard

reliance has been placed on two decisions of the Delhi High Court as affirmed by the order of the Supreme Court on 10.5.2022.

*Without entering into the merits, insofar as the claim made by the petitioners is *prima facie* tenable and the same is still pending and the University has already forwarded the same to respondent No. 1 on 29.9.2022 who has to take a final decision in the matter, no useful purpose would be served in keeping the petition pending or calling for counter affidavit, pending that decision. Accordingly, writ petition is disposed of with a direction, subject to petitioners filing a copy of this order before respondent No. 1, said respondent shall verify the correct facts and pass appropriate reasoned order, as expeditiously as possible, preferably within a period of three months from the date of compliance shown by the petitioners. Any amount found due and payable to the petitioners may be paid out within a further period of three months, failing which same may attract interest @ 8% from the date amount becoming due till the date of its actual payment.”*

12. In pursuance of above order, matter was considered by Government of India and vide communication dated 03.04.2023 addressed to Secretary, University Grants Commission, prayer of petitioners to give benefit of GPF-cum-Pension Scheme, was rejected taking a view that judgment passed by Supreme Court in **University of Delhi vs. Smt. Shashi Kiran (supra)** was only applicable to employees of Delhi University and not to employees of other Central Universities and Ministry of Education, Department of Higher Education, Government of India has issued an order dated 26.04.2023 taking a

similar view as well as that the Office Memorandum dated 01.05.1987 was applicable to Delhi University since it was adopted by a separate Notification dated 25.05.1987 but Banaras Hindu University has not adopted it in said terms. The interpretation of it would be that the letter dated 09.04.1988 was issued by Deputy Registrar (Administration), Banaras Hindu University to invite options from its employees would not be considered to be a legal adoption of GPF-cum-Pension Scheme. Aforesaid two orders dated 03.04.2023 and 26.04.2023 are impugned in present writ petitions.

13. Learned Senior Advocates have submitted that judgment passed by Supreme Court in **University of Delhi vs. Smt. Shashi Kiran (supra)** was a judgment in rem and not a judgment in personam and for that they referred a judgment passed by Single Bench of Delhi High Court in the case of **Neerja Tiku vs. School of Planning and Architecture and another, 2024:DHC:2891** that the judgment of Supreme Court in **University of Delhi vs. Smt. Shashi Kiran (supra)** would be applicable to School of Planning and Architecture and therefore, on same analogy it would be applicable to similarly situated employees of other Central Universities also and they referred paras 23 and 24 of said judgment, which are reproduced hereinafter:

“23. From an overall reading of the aforesaid judgment of the Supreme Court, it is clear that for those of the employees who had not exercised the option before the cut-off date i.e., 30.09.1987 and had opted beyond that date, such exercise of option would be non est in law. Meaning thereby, if the option was not exercised before the cut-off date or

exercised after the cut-off date, the deeming provision of coming over to the GPF cum Pension Scheme would be applicable to the employees, in both the cases. In coming to such conclusion regarding the effect of deeming provision, this Court draws strength from a judgment of the Supreme Court in State of Bombay Vs. Pandurang Vinayak and others reported in AIR 1953 SC 244. The relevant paragraph is extracted hereunder:

"12. In East End Dwellings Co. Ltd. v. Finsbury Borough Council [East End Dwellings Co. Ltd. v. Finsbury Borough Council, 1952 AC 109 (HL)], Lord Asquith while dealing with the provisions of the Town and Country Planning Act, 1947, made reference to the same principle and observed as follows : (AC pp. 132-33) "If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative, state of affairs had in fact existed, must inevitably have flowed from or accompanied it. ... The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."

24. In the present case, if one were to apply the aforesaid principle, it is clear that the petitioner had exercised the option to continue with the CPF Scheme on 07.12.1987, which was beyond the cut-off date 30.09.1987. The exercise of such option, according to the Supreme Court in Shashi Kiran (supra), would be non est in law, in which case, the deeming provision of the O.M. dated 01.05.1987 should be given its logical conclusion. In that, the

petitioner would be deemed to have come over to the GPF cum Pension Scheme."

14. At this stage, it would be relevant to mention here that School of Planning and Architecture has issued a Circular dated 17.08.1987 initiating procedure for exercising option by its employees on or before the cut off date, i.e., 30.09.1987, therefore, they have adopted Office Memorandum dated 01.05.1987 before the cut off date and as referred above the case of Banaras Hindu University is factually different since it has adopted the Scheme vide letter dated 09.04.1988 and cut off date for exercising option was fixed as 09.07.1988, i.e., much after the above referred two dates, i.e., 01.05.1987 and 30.09.1987.

15. Learned Senior Advocates for petitioners also submitted that the judgment passed in earlier round of litigation would not come in the way since later on law on the issue was declared and clarified by Supreme Court and its benefit can still be given to petitioners on a factual aspect that their options to continue with CPF Scheme were non-est since it was given after the cut off date, i.e., 30.09.1987 as mentioned in Office Memorandum dated 01.05.1987 issued by Government of India. The date fixed by Banaras Hindu University would have no legal consequence.

16. Sri V.K. Upadhyay, learned Senior Advocate assisted by Sri Ritvik Upadhyay, Advocate and Sri Ajit Kumar Singh, learned Senior Advocate assisted by Sri Hem Pratap Singh, Advocate for Respondent-Banaras Hindu University, have submitted that GPF-cum-Pension Scheme was adopted and the order dated 09.04.1988 issued by Deputy Registrar (Administration), Banaras Hindu

University was sufficient that the Scheme was adopted and its benefits have also been extended. There was no requirement to issue any other notification or make any amendment in relevant Act, Statute or Ordinance.

17. Learned Senior Advocates further submitted that so far as implementation of judgment of Supreme Court in **University of Delhi vs. Smt. Shashi Kiran (supra)** is concerned, it would not be applicable in the case of petitioners since not only their earlier similar prayer was rejected but Government of India has taken note of financial aspect also, therefore, at this stage prayer of petitioners cannot be accepted. It was also contended that factual aspects of present cases are different, which was not the issue before Supreme Court in **University of Delhi vs. Smt. Shashi Kiran (supra)** since Delhi University has adopted Office Memorandum dated 01.05.1987 in its entirety before the cut off date, i.e., 30.09.1987 and therefore, option was required to be submitted before said date whereas in the case of petitioners, the Banaras Hindu University has adopted Scheme much after the cut off date was over, i.e., on 09.04.1988 and last date for option was fixed as 09.07.1988.

18. Sri Shashi Prakash Sri, learned Senior Advocate/ Additional Solicitor General of India assisted by Sri Manoj Kumar Singh and Sri Purnendu Kumar Singh, Advocates, has supported the impugned orders and submitted that Banaras Hindu University has never adopted the GPF-cum-Pension Scheme in its true sense, since it has not amended it's Statute or Ordinance, as the case may be, whereas Delhi University has adopted Scheme by a modification and fixing the

cut off date as fixed in Office Memorandum issued by Government of India, therefore, the judgment passed by Supreme Court in **University of Delhi vs. Smt. Shashi Kiran (supra)** is distinguishable on facts of present case. He also submitted that in aforesaid circumstances, judgment passed by Supreme Court in **University of Delhi vs. Smt. Shashi Kiran (supra)** is not applicable so far as Banaras Hindu University is concerned and at this stage if prayer of petitioners is accepted after many years of their retirement and to fix their pension even after return of CPF amount with interest by them, still it would be a huge financial implication on Union Exchequer and it would also become a precedent for other Universities and Institutions also, which is required to be avoided.

19. In rejoinder, learned Senior Advocates appearing for petitioners, have reiterated their submissions and further submitted that Government of India has never objected the nature of order issued by Banaras Hindu University dated 09.04.1988 and since it has already been acted upon and number of employees of Banaras Hindu University have already switch over in GPF-cum-Pension Scheme, therefore, at this stage any dispute on it would be a somersault by Government of India and it would also be against the purport of Office Memorandum issued on the issue.

20. I have heard learned counsel for parties at length and perused the material available on record.

21. The factual aspect of the case which appears to be undisputed is that the Union of India has issued Office

Memorandum dated 01.05.1987 that CPF beneficiaries who were in service on 01.01.1986 and were still in service on the date of issue of Office Memorandum i.e., 01.05.1987 will be deemed to come over in GPF-cum-Pension Scheme, except they have exercised their option to remain in CPF Scheme by 30.09.1987 and interpretation of said Office Memorandum as held by Supreme Court in **University of Delhi vs. Smt. Shashi Kiran (supra)** so far as case of present petitioners is concerned, is that any option given subsequent to cut off date, i.e., 30.09.1987 to remain in CPF Scheme, would be non-est and according to petitioners since they have not given their option on or before 30.09.1987, therefore, they deemed to have come over to GPF-cum-Pension Scheme despite admittedly they have given option after said date. Court has to consider effect of dates of adoption of Scheme by Banaras Hindu University, i.e., 09.04.1988 and cut off date being fixed as 09.07.1988.

22. Learned Senior Advocates for petitioners have pressed their arguments heavily on an interpretation that petitioners have given their option to remain in CPF Scheme beyond the cut off date, i.e., 30.09.1987, therefore, their options were non-est and they were already deemed to switch over in GPF-cum-Pension Scheme and they are ready that if their prayers are accepted, they will return Union's contribution of CPF within a very short period alongwith reasonable interest. The date fixed by Banaras Hindu University to give option was beyond 30.09.1987, therefore, it would have no legal consequence.

23. The Court is of the view that there is no dispute so far as above referred position of law is concerned and as held by

Supreme Court in **University of Delhi vs. Smt. Shashi Kiran (supra)** in very specific words. Therefore, the law so far as option given subsequent to 30.09.1987 as held by Supreme Court has to be followed. However, few facts make present cases still distinguishable.

24. It is not in dispute that in the present case, Banaras Hindu University adopted GPF-cum-Pension Scheme by notification dated 09.04.1988, i.e., much after the cut off date, i.e., 30.09.1988 and it has fixed the cut off date as 09.07.1988 to exercise option to continue in CPF Scheme. Therefore, if the law, as held by Supreme Court in **University of Delhi vs. Smt. Shashi Kiran (supra)** is applied in present set of facts, any option subsequent to 09.07.1988 would be non-est. According to the case of petitioners they have opted to remain continue in CPF Scheme subsequent to date of adoption of Scheme by Banaras Hindu University on 09.04.1988 and before cut off date fixed, i.e., 09.07.1988.

25. If the Court takes a view that irrespective of fact whether any University or Institution has adopted the Office Memorandum dated 01.05.1987 even after the cut off date, i.e., 30.09.1987, the cut off date would be treated only 30.09.1987 and not any subsequent date fixed, then it would frustrate the very object of Office Memorandum dated 01.05.1987, i.e., giving option to remain continue in CPF Scheme as it would render meaningless. Said issue was not before Supreme Court since admittedly Delhi University has issued notification within a very few days of Office Memorandum dated 01.05.1987 fixing same cut off date, i.e., 30.09.1987. Same was the factual position in a subsequent judgment passed by Single

Bench of Delhi High Court in **Neerja Tiku (supra)** so far as School of Planning and Architecture is concerned.

26. So far as the argument that judgment passed by Supreme Court in **University of Delhi vs. Smt. Shashi Kiran (supra)** is in *rem* or *in personam* is concerned, the Court is of the view that it was a judgment in *rem* and not *in personam* as also held by Single Bench of Delhi High Court in **Neerja Tiku (supra)**, however, facts of each case may have different consequences.

27. Now the Court proceed to deal with the objection of Union of India that Office Memorandum issued by Government of India was not adopted in due process by Banaras Hindu University. In this regard, Court is of the view that objection has no legal basis since such objection was never raised in earlier round of litigation as well as that it has already been acted upon and its benefit has also been granted. Therefore, the Court is also of the opinion that without distinguishing on facts or on law, the stand of Union of India that the judgment of Supreme Court in **University of Delhi vs. Smt. Shashi Kiran (supra)** would not applicable to other Universities, would not be a correct legal approach.

28. Any objection with regard to financial implication is also unsustainable since it was the Office Memorandum of Government of India which must have taken care that after said Office Memorandum dated 01.05.1987 it was possible that all beneficiary employees may switch over to GPF-cum-Pension Scheme.

29. Court also takes note that similar prayer of petitioners were already rejected by this Court vide judgment dated

12.08.2011 and only on ground that subsequently a different interpretation of law was given by a Single Bench of Delhi High Court, which was affirmed by Division Bench and thereafter affirmed by Supreme Court in **University of Delhi vs. Smt. Shashi Kiran (supra)** and since petitioners were approaching the authorities after these judgments, would not make a ground that said judgment is applicable to petitioners so much as that earlier judgment would not come in the way.

30. The outcome of above discussion is that:

(a) The case of employees of Banaras Hindu University is factually on a different footing than the employees of Delhi University.

(b) Banaras Hindu University has adopted the Office Memorandum dated 01.05.1987 issued by Government of India by a notification dated 09.04.1988, i.e., much after the original cut off date, i.e., 30.09.1987, and has fixed the new cut off date, i.e., 09.07.1988 to submit option and since said notification is not under challenge, therefore, while applying the judgment of Supreme Court in **University of Delhi vs. Smt. Shashi Kiran (supra)**, above referred dates rendered it distinguishable.

(c) If the law as held by Supreme Court in **University of Delhi vs. Smt. Shashi Kiran (supra)** is applied in the facts and circumstances of present cases taking note of above referred dates, the only interpretation would be that any option given beyond 09.07.1988 would not est, however, on basis of record, none of petitioners have a case that they have opted to remain in earlier CPF Scheme on basis

of above cut off date rather their claim was taken birth only after Banaras Hindu University adopted the Scheme on 09.04.1988 and they have given option before new cut off date, i.e., 09.07.1988, therefore, the benefit of judgment in **University of Delhi vs. Smt. Shashi Kiran (supra)** would not be applicable to present petitioners. Any other interpretation would render date of adoption and any subsequent cut off date meaningless.

(d) It is not the case of petitioners or Respondent-Banaras Hindu University or even Union of India that Office Memorandum dated 01.05.1987 was automatically applicable to all Central Universities without being its specific adoption by a particular University and further that issue was not before the Supreme Court in the case of **University of Delhi vs. Smt. Shashi Kiran (supra)**.

31. In aforesaid circumstances, this Court is of the view that relief sought by petitioners cannot be granted. Impugned orders, though are not legally sustainable on grounds mentioned therein, since Banaras Hindu University has adopted the Scheme and that **University of Delhi vs. Smt. Shashi Kiran (supra)** is a judgment in rem not *in personam*, still once the Court is of the opinion that benefit of judgment passed by Supreme Court in **University of Delhi vs. Smt. Shashi Kiran (supra)** cannot be granted in given circumstances of present cases, being distinguished on facts and as discussed above, therefore, there is no reason to interfere with orders impugned in present petitions.

32. All Writ Petitions are accordingly dismissed.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 11.03.2025

BEFORE

THE HON'BLE AJAY BHANOT, J.

Writ - A No. 20509 of 2024

Govind Prasad Nishad ...Petitioner
Versus
The State of U.P. & Anr. ...Respondents

Counsel for the Petitioner:
Shreyas Srivastava

Counsel for the Respondents:
K.R. Singh, Ashok Kumar, C.S.C.

A. Service Law – Constitution of India, 1950 – Article 226 – Mandamus – Appointment – Claim made in lieu of acquisition of land – GO dated 21.09.1981, which was, later on, declared invalid, relied upon – Permissibility – Held, no lawful authority has been shown to be vested in the Gorakhpur Development Authority to create an independent policy for grant of employment to land owners beyond the terms of the Government Order dated 21.09.1981 has been shown to the Court – A mandamus cannot be issued to compel St. authorities to act in contravention of law. Judicial discipline and rule of law forbids the Court to do so. (Para 8 and 9)

Writ petition dismissed. (E-1)

List of Cases cited:

1. Ravindra Kumar Vs District Magistrate & ors.; 2005(2)AWC1650

(Delivered by Hon'ble Ajay Bhanot, J.)

Heard Shri Shreyas Srivastava, learned counsel for the petitioner and Shri K. R. Singh, learned counsel assisted by