

copy of letter dated 17.12.2024 issued by Dy. Excise Commissioner, Prayagraj containing details of vehicles seized by the department, be sent to the Chief Secretary along with a copy of this order for consideration by the **Coordination Committee**.

45.2 Let a copy of this order be sent to the office of Home Department, Government of Uttar Pradesh for coordination.

45.3 Let a copy of this order be transmitted to all the learned District Judges of Uttar Pradesh through the Registrar General of this Court, with a direction to ensure that the judgment is duly circulated among all Judicial Officers.

45.4 Registrar General shall also forward a copy of this judgment to the Director JTRI, Lucknow for record and reference.

46. Accordingly, the application is *disposed of* in the terms stated above.

(2025) 5 ILRA 1063
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 02.05.2025

BEFORE

THE HON'BLE ASHWANI KUMAR MISHRA, J.
THE HON'BLE PRAVEEN KUMAR GIRI, J.

Special Appeal No. 228 of 2025
 With
 Special Appeal No. 235 of 2025
 And
 Special Appeal No. 309 of 2025

Prof. Harish Chandra Chaudhary & Ors.
...Appellants
Versus
The Union of India & Ors. ...Respondents

Counsel for the Appellants:

Sri Sankalp Narain, Sri Srivats Narain, Sri G.K. Singh (Sr. Advocate)

Counsel for the Respondents:

A.S.G.I., Sri Dhananjay Awasthi, Sri Hem Pratap Singh, Sri Ajit Kumar Singh (Sr. Advocate)

A. Service Law – Constitution of India, 1950 – Article 226 – Writ – Principle of *res judicata* – Applicability – Benefit of conversion from Contributory Provident Fund Scheme to Pension Scheme claimed – Entitlement – Issue of entitlement was decided in V. P. Singh's case between the parties – Effect – Change made in the law, how far can upset the binding nature of decision – Held, an adjudication, inter-se between the parties, in respect of a cause once attaches finality, the same cannot be revived – A previous adjudication inter-se between the parties in respect of the same *lis* remains operative and even an erroneous judgment operates as *res judicata*, inter-se, between the parties and that a subsequent change in law would not invalidate such previous adjudication – The appellants would not be entitled to any relief even though the subsequent judgment of the Supreme Court in the case of Smt. Shashi Kiran supports their claim. (Para 38, 48 and 50)

B. Service Law – Central University Retirement Benefit Rules, 1967 – Pension Scheme – Entitlement – Office Memorandum dated 1.5.1987 – It's applicability to the appellant, appointed on 9.7.1990 and not in employment of BHU on 1.1.1986 – Objection was made against inclusion in the Contributory Provident Fund Scheme – Effect – Held, by virtue of Office Memorandum dated 1.5.1987, all those, who came in employment after 1.1.1986, were covered under the Pension Scheme. For such employees, there was no option available to be included in the CPF Scheme. (Para 54 and 57)

Special Appeal no. 309 of 2025 allowed and rest Appeal dismissed. (E-1)

List of Cases cited:

1. U.O.I. Vs M.K. Sarkar; (2010) 2 SCC 59
2. Kurukshetra University Vs Ramesh Gupta; (2000) 10 SCC 97
3. S. Ramachandra Rao Vs S. Nagabhushana Rao & ors.; 2022 SCC OnLine SC 1460
4. U.O.I. Vs Madras Telephone SC & ST Social Welfare Association, (2006) 8 SCC 662
5. B.S.N.L. & anr. Vs U.O.I. & ors.; (2006) 2 SCR 823
6. A.R. Antulay Vs R.S. Nayak & anr., (1988) 2 SCC 602

(Delivered by Hon'ble Ashwani Kumar Mishra, J.)

1. These appeals arise out of a judgment of learned Single Judge, dated 18.3.2025, whereby learned Single Judge has refused to extend the benefit to the writ petitioners of the judgment rendered by Hon'ble Supreme Court in University of Delhi Vs. Smt. Shashi Kiran and others, 2022 (7) SCR 957. Learned Single Judge has held that the judgment in the case of Smt. Shashi Kiran (supra) is though a judgment *in rem*, yet its benefit cannot be extended to petitioners in the facts of the present case.

2. Petitioners in this batch of writ petitions are the teaching and non-teaching staff of Banaras Hindu University (hereinafter referred to as the 'BHU'). Some of them have also retired. Except petitioner Akhoury Sudhir Kumar Sinha, all other petitioners were in employment of the BHU prior to 1.1.1986. All of them were governed by the Central University Retirement Benefit Rules, 1967. As per these rules, they were entitled to benefit of Contributory Provident Fund Scheme (hereinafter referred to as 'CPF Scheme'). They were not covered by the Pension Scheme.

3. Central government employees were also covered by the CPF Scheme. They were given an option to switch over to Pension Scheme. This option was not exercised by all employees and some of them continued under the CPF Scheme. Recommendations of Fourth Pay Commission was implemented w.e.f. from 1.1.1986 for the Central Government employees. One of the recommendation of commission was that all CPF beneficiaries in service on 1.1.1986 be deemed to have come over to the pension scheme on that date, unless they specifically opt out to continue under the CPF scheme. This decision was implemented vide office memorandum dated 1.5.1987 which is 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."

4. The Office Memorandum dated 1.5.1987 provided that all CPF beneficiaries in service as on 1.1.1986 came over to the pension scheme on that date, unless they (CPF beneficiaries) specifically opted to continue under the CPF Scheme. It is clear that the office memorandum was applicable to those who were in service on 1.1.1986. It was made applicable even for those employees who retired after 1.1.1986.

5. The aforesaid office memorandum dated 1.5.1987 fixed the cut-off date for exercise of option to continue under the CPF scheme as 30th September, 1987.

6. BHU on 24/26 September, 1987, requested the University Grants Commission (hereinafter referred to as the 'UGC') to intimate it the orders on the subject. Further, approval for implementation of the office memorandum dated 1.5.1987 in the BHU was also sought. Thereafter, a notification came to be issued by the Registrar of the BHU on

9.4.1988, providing that employees of the BHU would switch over to pension scheme from CPF scheme unless option to continue under CPF scheme is exercised latest by 9th July, 1988. This order of the Registrar of the BHU was pursuant to a resolution passed by the Executive Council of the BHU, which is 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 CPP/PF Scheme who were in service on 1.1.1986 will be deemed to have come over 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.

.....
.....
”

7. The option in terms of the office memorandum dated 1.5.1987, to be continued under the CPF Scheme was later extended by the BHU, at its own level, to its employees on 12.5.1995, 29.8.1995 and 4.12.1995.

8. All the writ petitioners in the present bunch opted to continue under CPF Scheme, as was earlier applicable upon them from before. These persons, therefore, did not *come over* to Pension Scheme.

9. It appears that the recommendations of Fifth Pay Commission Report were

implemented w.e.f. 1.1.1996 which substantially favoured the employees covered under the Pension scheme. The employees of BHU who had opted to continue under CPF scheme made representations to be given one more opportunity to opt to pension scheme. A Committee was constituted by the Vice-Chancellor to consider this request. The Committee submitted its report on 13.1.2001 recommending grant of one more opportunity to exercise such option within a period of two months. This recommendation was initially accepted by the Vice-Chancellor of the BHU on 20th March, 2001 and 18th January, 2002. However, when the matter was taken to Executive Council of the BHU in its meeting held on 19/20 July, 2002, the Council regretted to approve this decision of the Vice-Chancellor. The request of the BHU for permitting further opportunity to exercise option was also rejected by the Government of India and the UGC on 22.7.2003, 23.9.2003 and 20.10.2003. All such decisions came to be challenged in writ petition nos.32101 of 2004 (Dr. V.P. Singh & Others Vs. Executive Council Banaras Hindu University, Varanasi & Others) and 28790 of 2004 (Professor Mrittunjay Bhattacharyya Vs. Executive Council, B.H.U., Varanasi & Another). Many of the petitioners in this bunch were also the petitioners in earlier round of litigation *inter-se* between the parties on the same subject. In para 24 of the counter affidavit BHU has stated that petitioner nos.1, 4, 5, 6, 7, 8, 9, 13, 15, 16, 18, 19, 21, 22, 23, 25 & 26 were the petitioners in writ petition no.32101 of 2004.

10. The petitioners in the earlier round of litigation contended that Fifth Pay Commission had drastically amended the pay package in favour of the employees

who had opted for Pension Scheme in comparison to those who continued under the CPF Scheme.

11. A Division Bench of this Court by a detailed judgment dismissed the writ petition after noticing that the BHU is fully funded by the Central Government, through the University Grants Commission, and that no approval was granted either by the UGC or by the Central Government to allow additional option to be given to the employees to switch over from CPF Scheme to Pension Scheme. This division bench judgment has attained finality *inter-se* between the parties.

12. The plea to be given another chance to opt for pension scheme, in place of CPF scheme, was also pressed by employees of Delhi University before the Delhi High Court. The Delhi High Court allowed such plea on the premise that exercise of option to switch over to pension scheme, by the Vice-Chancellor, after 30th September, 1987 was *non est*.

13. The Executive Council of the BHU, relying upon the judgment of Delhi High Court dated 30.4.2014, passed a resolution on 29.6.2014, extending the judgment of Delhi High Court to the employees of BHU. Yet another opportunity was given to the employees of BHU to switch over to the pension scheme from CPF scheme.

14. Learned Single Judge of Delhi High Court in his judgment dated 30.4.2014 categorized the employees of Delhi University in three different capacities i.e. (i) where no option was exercised by the employee to continue under CPF scheme yet deductions under CPF scheme continued (referred to as Virmani's

Case); (ii) option to continue under CPF scheme was exercised after 30th September, 1987 (referred to as N.C. Bakshi's Case); (iii) where option was exercised before 30th September, 1987 to continue under the CPF scheme (referred to as Shashi Kiran Batch). Learned Single Judge allowed the writ petitions in the first two category while writ petitions falling in the third category were dismissed.

15. The judgment of the learned Single Judge was challenged in letters patent appeal before the Delhi High Court which came to be decided on 24th August, 2016. The Division Bench while affirming the judgment of learned Single Judge in first two category of cases also allowed the claim in third category of cases i.e. Shashi Kiran batch of petitions.

16. The Ministry of Human Resource Development, Department of Higher Education, Government of India also issued administrative instructions to the Delhi University to take appropriate action in light of the judgment of Delhi High Court.

17. The Executive Council of the BHU though had passed the resolution dated 29.6.2014 to consider request of employees in terms of the judgment of learned Single Judge of Delhi High Court yet, before it could be implemented, the council was apprised that an appeal was filed against judgment of learned Single Judge dated 30.4.2014. The Executive Council on 29.9.2015 therefore resolved to put up the matter before it with updates on the appeal so filed before Delhi High Court. Accordingly, after the Division Bench judgment was delivered on 24.8.2016 that the issue was again placed before the Executive Council on 30.3.2017. The Executive Council passed following resolutions:-

“Resolved that request for conversion of CPF to GPF be approved and regulated in terms of judgment of the Hon’ble High Court Delhi dated 24.8.2016 and orders dated 23.1.2017 of MHRD on the issue under intimation to UGC/MHRD.”

18. The Division Bench judgment dated 24.8.2016 was then carried in appeal before the Hon’ble Supreme Court. All three category of cases were decided by the Court vide judgment dated 10.5.2022. The judgment rendered by the Division Bench of Delhi High Court was affirmed with slight modification of recouping the contribution under CPF scheme with 8% simple interest per annum. The judgment of Supreme Court in Smt. Shashi Kiran (supra) essentially forms the basis of appellant’s claim to be allowed to convert to Pension Scheme.

19. In the facts of the present case, we are dealing with the second category of cases (except Special Appeal No. 309 of 2025) where option to continue under CPF Scheme was exercised after the cut-off date indicated in the Office Memorandum dated 1.5.1987 i.e. 30th September, 1987. This category of cases has been categorized by the Supreme Court as N.C. Bakshi’s Case.

20. Interestingly, when the BHU took the decision to follow the judgment of learned Single Judge of Delhi High Court, it had neither consulted the UGC, nor the views of Central Government were taken in the matter. No approval was obtained from them, either. The impact of the judgment rendered by Division Bench of this Court in *inter-se* between the parties, which had attained finality, was also not examined.

21. The Vice-Chancellor of the BHU sent a letter on 29.9.2022 to the Secretary, Department of Higher Education, Government of India, seeking consent of the Ministry to migrate employees under CPF to GPF Pension Scheme in terms of the adjudication made by the Supreme Court of India in appeals arising out of Delhi High Court Judgment. This request of the BHU was not acceded to by the Central Government.

22. Writ-A No.15158 of 2022 was therefore filed by some of the petitioners in respect of the cause relating to migration from CPF Scheme to GPF Scheme. This writ petition was disposed of on 29.11.2022, directing the Central Government to verify correct facts and pass appropriate orders in respect of such cause. It was also provided that if the amount is found due and payable the same shall be paid within a period of three months or else it may attract interest @ 8% per annum.

23. It is thereafter that the Ministry of Education, Government of India, passed an order on 3.4.2023, declining to extend the benefit of migration from CPF Scheme to GPF Scheme on the strength of adjudication made in respect of the employees of Delhi University. The Central Government was of the view that the judgment rendered in respect of the employees of Delhi University is not applicable to other Central Universities.

24. Subsequent order of 26.4.2023 came to be passed by the Central Government stating that in respect of employees of Delhi University there was a separate order dated 25.5.1987 in respect of adoption of office memorandum, dated 1.5.1987. This was, therefore, taken as an additional ground to non-suit the

appellants. The order of 3.4.2023 and 26.4.2023 were consequently assailed in the writ petitions before this Court.

25. Learned Single Judge has observed that the judgment of Supreme Court in University of Delhi Vs. Smt. Shashi Kiran (supra) is distinguishable on facts. The learned Judge has also observed that though the orders of the Central Government are not sustainable for the grounds mentioned therein since the BHU had also adopted the Scheme in the present case and the judgment of Supreme Court was a judgment *in rem* and not *in personam* and the contrary view of Central Government is not correct, yet facts being distinguishable, the appellants have been held not entitled to any relief. The writ petitions have accordingly been dismissed.

26. Sri G.K. Singh, learned Senior Counsel for the appellants submits that the switch over from CPF to pension scheme under office memorandum dated 1.5.1987, was automatic, unless the employee opted otherwise. This option was to be exercised only till 30.9.1987. In view of the law laid down by the Supreme Court in University of Delhi Vs. Smt. Shashi Kiran and others, 2022 (7) SCR 957 any option exercised after 30.9.1987 is meaningless and, therefore, all the appellants are entitled to pension scheme. He also submits that the appellants undertake to refund the benefits received under the CPF Scheme alongwith 8% interest.

27. Sri Singh further argues that the previous adjudication made by the Division Bench in 2011 has lost its efficacy since the employer i.e. BHU has subsequently resolved to take a different view in the matter, based upon the decision of Delhi High Court, as affirmed by the Supreme

Court and, therefore, the controversy for all practical purposes stands concluded by the judgment of the Supreme Court in Smt. Shashi Kiran (supra).

28. Per contra, Sri Ajit Kumar Singh, learned Senior Counsel assisted by Sri H.P. Singh for the BHU and Sri S.P. Singh, learned Additional Solicitor General of India assisted by Sri Manoj Kumar Singh oppose the prayer made in the appeal on the ground that controversy raised before the learned Single Judge stood previously adjudicated by the Division Bench of this Court and, therefore, the subsequent judgment of Delhi High Court and the Supreme Court cannot have the effect of reopening the issue. The controversy once stood settled against the appellants it cannot be permitted to be revived. It is also urged by the respondents that learned Single Judge has rightly held that facts of the present case are distinguishable.

29. We have heard Sri G.K. Singh, Senior Advocate, assisted by Sri Sankalp Narain, learned counsel for the appellants; Sri Ajit Kumar Singh, Senior Advocate, assisted by Mr. Hem Pratap Singh, learned counsel for BHU; Sri S.P. Singh, learned Additional Solicitor General of India assisted by Sri Manoj Kumar Singh on behalf of the Union of India and perused the materials on record.

30. The appellants in this bunch of appeals (excluding Special Appeal No. 309 of 2025) were in employment of the BHU on 1.1.1986. These persons had exercised option to continue under the CPF Scheme. Their inclusion under the CPF Scheme was pursuant to the Central University Retirement Benefit Rules, 1967. The submission on their behalf is that the exercise of option by them was after the

cut-off date in Office Memorandum, dated 1.5.1987. It is submitted that exercise of option after the cut-off date i.e. 30th September, 1987, cannot be treated to be a valid option in law and, therefore, they are entitled to come over to the pension scheme on terms similar to the terms indicated by Delhi High Court in N.C. Bakshi's case. This position in law has otherwise been approved by the Supreme Court in Smt. Shashi Kiran (supra).

31. So far as the factual aspect with regard to exercise of option by the appellants after the cut-off date i.e. 30th September, 1987 is concerned, there is no issue on it. Even the respondents admit that such option was exercised by them after the cut-off date. In terms of the office memorandum switch over from CPF to Pension Scheme was automatic. Unless option was exercised within the time indicated in the Office Memorandum, dated 1.5.1987, the switch over to pension scheme was the consequence. Learned Single Judge has also accepted appellants claim in this regard.

32. Having accepted the appellants contention that exercise of option by them to continue under CPF Scheme was impermissible under the Office Memorandum, dated 1.5.1987, yet the relief prayed for has been denied in the facts of the case. A perusal of the judgment of the learned Single Judge would make it apparent that the claim of the appellants has been accepted on merits. The discussions contained in the judgment of learned Single Judge in paragraphs 21, 22 & 23 are reproduced:-

"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.”

33. Learned Single Judge has relied upon the judgment of Delhi High Court in Neerja Tiku vs. School of Planning and Architecture and another, 2024:DHC:2891 to hold that the decision of Supreme Court in University of Delhi Vs. Smt. Shashi Kiran (supra), is a judgment *in rem* and not *in personam*. Learned Single Judge has also taken note of the fact that the grounds urged by the Central Government to reject the resolution of BHU for extending the benefit of Delhi High Court also is unsustainable. Therefore, on merits, we find that learned Single Judge has accepted the claim of appellants. The only reason on which relief has been denied to the appellants is the submission of the respondents noticed in para 29 of the judgment, which is reproduced:-

“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.”

34. We have already noticed that majority of the appellants had earlier made

a claim before the BHU for grant of yet another opportunity to switch over to pension scheme. Persons such as appellants constitute a class in themselves inasmuch as their claim to switch over to pension scheme, from CPF scheme, is identically placed. Most of such employees of BHU (including majority of appellants in this bunch) had raised their claim in this regard. This plea of the appellants was considered by a Committee and the Vice-Chancellor also approved such recommendations subject to its approval by the Executive Council. The Executive Council, however, regretted to approve the orders of the Vice-Chancellor for grant of such opportunity to convert from CPF to Pension Scheme. Most of the appellants then came to this Court by filing Writ Petition Nos. 32101 of 2004 and 28790 of 2004. The Division Bench of this Court took note of the fact that the writ petitioners were covered by the Central University Retirement Benefit Rules, 1967 which provided for applicability of CPF Scheme. Option was also exercised by these persons, later, to continue with the CPF Scheme. The Division Bench of this Court relied upon the judgment of the Supreme Court in Union of India Vs. M.K. Sarkar, (2010) 2 SCC 59, wherein the Supreme Court had turned down the representation made after 22 years of retirement to switch over to pension scheme. This Court in Dr. V.P. Singh (supra) also took note of the fact that new pension scheme had become applicable to all employees joining Central Government after 1.1.2004. It was in this context that this Court in Dr. V.P. Singh refused to grant relief to the employees of BHU to switch over to pension scheme from CPF Scheme. Many of the appellants had also retired by then. These considerations prevailed with the Court in rejecting the claim of the petitioners. The

writ petition before the Division Bench was filed by almost 100 employees. The Judgment of this Court in Dr. V.P. Singh's case has attained finality. Most of the appellants in the present bunch were also the petitioners in the earlier round of litigation. They have acquiesced to the division bench judgment and have not filed any appeal against it before the Supreme Court. The thrust of the respondents submission, therefore, is that the appellants cannot be permitted to re-agitate the issue which has attained finality *inter-se* between the parties against them. Those who had not joined in the writ of Dr. V.P. Singh are alleged to have acquiesced to the decision of the executive council not to extend any fresh option to opt for pension scheme.

35. Sri G.K. Singh appearing for the appellants attempted to wriggle out of this objection by stating that subsequent in point of time the Executive Council has taken a decision to extend the benefit of Delhi High Court to the employees of the BHU. He submits that once the BHU itself has accepted the claim of such employees, subsequently, the plea of *res judicata* based upon earlier adjudication by this Court in Dr. V.P. Singh case cannot be pressed against the appellants. It is thus urged that a fresh cause has arisen to the appellants and the circumstance relating to dismissal of the previous writ petition cannot come in the way of grant of relief to the appellants.

36. Sri Sankalp Narain, Advocate assisting Sri G.K. Singh has placed reliance upon a judgment of the High Court in Kurukshetra University Vs. Ramesh Gupta, (2000) 10 SCC 97 to contend that in somewhat identical circumstances where the University had earlier declined relief to the employee concerned and such decision was also affirmed with dismissal of the writ

petition, yet the subsequent decision of the University to extend such benefit was directed to be enforced. The judgment of the Court in Ramesh Gupta (supra) is reproduced:-

“The University has assailed the decision of the High Court of Punjab and Haryana calling upon the University to enforce the resolution of the Executive Council dated 26-4-1994 by which resolution the Executive Council approved the recommendation of Justice Sodhi and decided the salary to be paid to an employee of the University. From the facts narrated, it appears that earlier the University itself did consider the question of salary to the employee concerned and by a resolution dated 16-11-1985 did not grant the relief in question. That resolution of the University dated 16-11-1985 became final inasmuch as the writ petition filed against the same was dismissed and special leave petition to this Court was also dismissed in 1986. Notwithstanding the finality to the aforesaid decision of the University a fresh representation on being filed by the employee in the year 1994, the Executive Council thought it fit to refer the said representation to a committee headed by Justice Sodhi, and that Committee on consideration of all the relevant materials decided as to what the salary of the employee ought to be and with effect from which date. The said recommendation of the Justice Sodhi Committee was given approval by the Executive Council by its resolution dated 26-4-1994. But notwithstanding the aforesaid resolution of the Executive Council, as the same was not implemented by the University, the employee concerned approached the High Court for issuance of writ of mandamus to the University to follow the directions contained in the resolution. The High Court

by the impugned order having issued the necessary direction, the University has approached this Court. Mr Sanghi appearing for the University contends that the High Court had no jurisdiction to issue any mandamus to the University to grant relief to the employee concerned as per the resolution of the Executive Council dated 26-4-1994. He, further, contends that the said resolution of the Executive Council is non est, the same not being in accordance with the provisions of the Statute. On examining the relevant materials of the University Statute, we do not find any force in the same. The Executive Council is a part of the University itself under the University Statute. The Chancellor has the power to annul any proceedings of any authority of the University which in his opinion is not in conformity with the Act, Statute or the Ordinance. The resolution of the Executive Council being of the year 1994 and the Chancellor not having exercised that power in accordance with the Statute, it can well be assumed that the said resolution is in conformity with the provisions of the Statute or the Ordinance or at least the Chancellor himself never thought it fit to interfere with the said resolution of the Executive Council. Once the resolution of the Executive Council is not being annulled by the Chancellor in exercise of his powers, then the benefits flowing from that resolution can certainly be enforceable by a court of law by issuing a mandamus to the University, who is no other than an authority on whom a writ can be issued. We, therefore, see no infirmity with the impugned direction of the High Court so as to be interfered with by this Court. The special leave petition is dismissed.”

37. Following questions, therefore, emerge for our consideration in the present appeal:-

(i) whether appellants claim is barred by principles of *res-judicata* or

passing of subsequent resolutions by the BHU on 29th June, 2014 and 30th March, 2017 has the effect of granting fresh cause to the appellants to revive their claim, notwithstanding rejection of such claim by this Court in the case of Dr. V.P. Singh (supra);

(ii) whether appellants are entitled to the relief prayed for by them in this appeal in view of the judgment of Hon'ble Supreme Court in Smt. Shashi Kiran (supra).

38. It is well settled that an adjudication, *inter-se* between the parties, in respect of a cause once attaches finality, the same cannot be revived. Appellants in this bunch of appeals were either the petitioners in the previous round of litigation in the case of Dr. V.P. Singh or those who acquiesced to the decision of executive council not to extend fresh opportunity to switch over from CPF scheme to pension scheme. We have already held that such persons constituted a class in themselves and were represented by almost 100 teachers/employees. Few of those who had not approached this Court, then, are equally covered on the principles of acquiescence.

39. A chart has been handed over to the Court by counsel for the BHU informing that 659 employees were in service of BHU on 1.1.1986. 130 out of the total employees in service of BHU on 1.1.1986 opted to continue in CPF Scheme by exercising option pursuant to orders of the BHU dated 9.4.1988 and 12.5.1995. 529 employees did not exercise any option or chose to switch over from CPF to GPF Scheme. As per the appellants, the actual number is 121 as of now. Out of them, 44 are seeking migration from CPF to pension scheme. More than 100 persons from this

class of persons had approached this Court by filing writ petition earlier in the case of Dr. V.P. Singh (supra) for switching over to pension scheme. It is, therefore, apparent that the previous adjudication by the Division Bench of this Court in Dr. V.P. Singh virtually encompassed all those persons who wanted to switch over from CPF to Pension Scheme. Others, who did not join the writ, at that stage, apparently acquiesced to their continuance under the CPF Scheme. Viewed from both the aspects, we are of the view that the appellants who were or not the writ petitioners in the previous round of litigation are equally bound by the judgment of the Division Bench in the case of Dr. V.P. Singh (supra).

40. The Division Bench while dismissing the writ petition of Dr. V.P. Singh (supra), noticed the fact that the BHU is fully funded by the Central Government and is receiving 100% maintenance grant. The BHU is also bound by the decisions of the UGC. In para 17, the Division Bench has observed that in matters of financial discipline the BHU is bound by the decisions taken by the UGC which fully funds the BHU. Observations made by the Division Bench in Paragraphs 16 & 17 of the judgment rendered in Dr. V.P. Singh (supra) are reproduced:-

“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.”

41. This Court was also of the view that after new pension scheme become available to all employees joining central government after 1.1.2004, as such, there is no justification to allow benefit of pension scheme to the writ petitioners, many of whom had retired. The rationale for

denying the relief to the writ petitioners in the case of Dr. V.P. Singh (supra) was the lack of approval from the Central Government or the UGC, to extend the date for conversion from CPF to Pension Scheme. Paras 18 to 22 of the judgment rendered in Dr. V.P. Singh (supra) are reproduced:-

“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 of 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. If 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.”

42. Though the judgment of the Division Bench in Dr. V.P. Singh (supra) has attained finality, yet the Executive Council has proceeded to pass subsequent resolutions in favour of the appellants on 29th June, 2014 and 30th March, 2017. These two decisions are taken at the level of the BHU. There is neither any concurrence nor any approval obtained for such purposes by the BHU either from the UGC or from the Central Government.

43. Admittedly, the BHU is fully funded by the UGC and the Central Government. Financial resources, which would be necessary to extend the benefit under the Pension Scheme to the petitioners will have to be ultimately borne by the Central Government and the UGC. There is no decision by the Central Government or UGC for allowing the BHU to accept the claim of appellants, notwithstanding the previous binding judgment *inter-se* between the parties in the case of Dr. V.P. Singh (supra). The decision taken by the BHU to extend the judgment of Delhi High Court upon the employees of BHU cannot be enforced when approval or concurrence of UGC and Central Government is lacking. It was precisely for this reason that this Court in Dr. V.P. Singh's case rejected the plea to allow switch over CPF Scheme to Pension Scheme. As we have held that judgment in Dr. V.P. Singh is binding upon the appellants as such a different view cannot be taken on the issue.

44. Law with regard to the binding effect of previous adjudication between the

parties is too well settled to be questioned. In S. Ramachandra Rao Vs. S. Nagabhushana Rao and others, 2022 SCC OnLine SC 1460, the Supreme Court has reiterated the settled principle that even an erroneous judgment *inter-se* between the parties would be binding. The observations of the Court made in paragraphs 28 to 31 are reproduced:-

“28. It is also well-settled, as laid down in several decisions, that even an erroneous decision remains binding on the parties to the same litigation and concerning the same issue, if rendered between the same parties by a Court of competent jurisdiction. In the case of Gorie Gouri Naidu (supra), this Court, inter alia, said,

“4.....The law is well settled that even if erroneous, an inter-party judgment binds the party if the court of competent jurisdiction has decided the lis....”

29. In Makhija Construction & Engg. (P) Ltd. (supra), this Court also clarified the distinction between a precedent and the operation of the doctrine of res judicata in the following terms:-

“19. ...A precedent operates to bind in similar situations in a distinct case. Res judicata operates to bind parties to proceedings for no other reason, but that there should be an end to litigation.”

30. In S. Nagaraj (supra), it was also made clear by this Court that binding decisions cannot be ignored even on the principles of per incuriam because those principles have relevance to the doctrine of precedents but have no application to the doctrine of res judicata.

31. For what has been noticed and discussed in the preceding paragraphs, it remains hardly a matter of doubt that the doctrine of res judicata is fundamental to every well regulated system of

jurisprudence, for being founded on the consideration of public policy that a judicial decision must be accepted as correct and that no person should be vexed twice with the same kind of litigation. This doctrine of res judicata is attracted not only in separate subsequent proceedings but also at the subsequent stage of the same proceedings. Moreover, a binding decision cannot lightly be ignored and even an erroneous decision remains binding on the parties to the same litigation and concerning the same issue, if rendered by a Court of competent jurisdiction. Such a binding decision cannot be ignored even on the principle of per incuriam because that principle applies to the precedents and not to the doctrine of res judicata.”

45. It is equally settled that mere change of law, subsequently, will not effect the binding adjudication made earlier nor would occasion reopening of issues which are settled *inter-se* between the parties. In Union of India Vs. Madras Telephone SC & ST Social Welfare Association, (2006) 8 SCC 662, the Supreme Court observed as under in para 21:-

“21. Having regard to the above observations and clarification we have no doubt that such of the applicants whose claim to seniority and consequent promotion on the basis of the principles laid down in the Allahabad High Court's judgment in Parmanand Lal case [Parmanand Lal and Brij Mohan v. Union of India, WPs Nos. 2739 and 2652 of 1991 decided on 20-2-1985] have been upheld or recognised by the Court or the Tribunal by judgment and order which have attained finality will not be adversely affected by the contrary view now taken in the judgment in Madras Telephones [(1997) 10 SCC 226 : 1997 SCC (L&S) 1279]. Since the rights of

such applicants were determined in a duly constituted proceeding, which determination has attained finality, a subsequent judgment of a court or tribunal taking a contrary view will not adversely affect the applicants in whose cases the orders have attained finality. We order accordingly.”

46. In B.S.N.L. and another Vs. Union of India and others, (2006) 2 SCR 823, the Supreme Court again reiterated the principle that any subsequent over ruling of the judgment would not upset the binding nature of the decision on the parties to an earlier *lis* since the principle of *res judicata* would continue to operate.

47. Constitution Bench of the Supreme Court in A.R. Antulay Vs. R.S. Nayak and another, (1988) 2 SCC 602, has held as under in paragraph 183:-

“183.....When a previous decision is so overruled it does not happen — nor has the overruling Bench any jurisdiction so to do — that the finality of the operative order, inter partes, in the previous decision is overturned. In this context the word ‘decision’ means only the reason for the previous order and not the operative order in the previous decision, binding inter partes. Even if a previous decision is overruled by a larger Bench, the efficacy and binding nature, of the adjudication expressed in the operative order remains undisturbed inter partes.....” (emphasis supplied by us)

48. In view of the law settled that a previous adjudication *inter-se* between the parties in respect of the same *lis* remains operative and even an erroneous judgment operates as *res judicata*, *inter-se*, between

the parties and that a subsequent change in law would not invalidate such previous adjudication, we are of the considered view that subsequent decision of Delhi High Court in the same cause and its affirmance by the Hon'ble Supreme Court in Smt. Shashi Kiran will not furnish a fresh cause for the appellants to reagituate the issue.

49. Similarly, in the absence of prior approval or concurrence by UGC or Central Government the Executive Council had no authority to pass the subsequent resolutions of the year 2014 and 2017 for extending the benefit of judgment rendered by Delhi High Court.

50. We are thus of the view that the appellants would not be entitled to any relief even though the subsequent judgment of the Supreme Court in the case of Smt. Shashi Kiran (supra) supports their claim. We are also of the view that subsequent decision of the Executive Council also would not come to the appellants rescue, inasmuch as, the Central Government and the UGC, both, had refused to allow change from CPF to Pension Scheme. Such decision of the Central Government was affirmed by this Court in Dr. V.P. Singh's case. Without there being any permission from the Central Government/UGC, it was not open for the BHU to have taken a different decision in the matter of grant of option to switch over to Pension Scheme. Since the BHU is 100% funded by UGC/Central Government and is otherwise not having enough resources to bear the finances for the purpose on its own, we would not be justified in accepting the claim of the appellants to opt for pension scheme.

51. In matters of financial management and discipline the courts

would have to be careful and vigilant in granting reliefs. Any interference in such matters would be permissible only where the facts of the case justify such interference on settled principles of law.

52. The Pension Scheme was introduced on 1.1.1986. The option to continue under CPF Scheme was availed by the appellants. Their request for switch over to Pension Scheme was rejected in 2011. The judgment in Dr. V.P. Singh affirming such decision has attained finality. The pension scheme itself has been discontinued in 2004. In such circumstances and particularly when most of the appellants have otherwise superannuated, it would not be prudent exercise of discretion for this Court to interfere in the matter and permit change from CPF Scheme to Pension Scheme nearly 40 years later. This is particularly so, as in the previous round of litigation such claim of appellants has otherwise been rejected.

53. So far as the judgment of the Supreme Court in the case of Ramesh Gupta (supra) is concerned, there was no requirement of prior approval of UGC or Central Government for grant of relief to Ramesh Gupta, unlike the case in hand. In such circumstances, we find that the judgment of the Supreme Court in Ramesh Gupta (supra) is also distinguishable on facts and would not be of a much help to the appellants' cause.

54. So far as the appellant in Special Appeal No. 309 of 2025 is concerned, he came to be appointed in Institute of Technology, BHU, on 9.7.1988. He was, therefore, not in employment of BHU on 1.1.1986. By virtue of Office Memorandum dated 1.5.1987, all those, who came in

employment after 1.1.1986, were covered under the Pension Scheme. For such employees, there was no option available to be included in the CPF Scheme. The option contemplated in the Office Memorandum, dated 1.5.1987, was thus not available to Sri Akhoury Sudhir Kumar Sinha. Sri Akhoury Sudhir Kumar Sinha was also included in the pension scheme and was given interim GPF No. 13062 as an interim measure. This was, however, withdrawn in compliance to the resolution of the Executive Council, dated 19-20th July, 2002. Sri Sinha vide his representation dated 19.9.2011 informed the Registrar that the CPF Scheme itself was not available to him when he was substantively appointed in the BHU i.e. on 9.7.1990, yet the BHU erroneously offered him inclusion under CPF Scheme. He wrote to the BHU claiming benefit of pension scheme in 1995 and again in 2001. In his letters, he has clearly stated that neither he has consciously opted for CPF Scheme nor is it due to any error on his part that benefit of CPF Scheme has been extended to him. He has also claimed parity with one Dr. Sushil Kumar Singh, Professor, Department of Pharmaceutics, who has been allowed conversion from CPF to GPF Scheme vide order dated 20th March, 2013. The order dated 20th March, 2013 is Annexure 10 to the special appeal no.309 of 2025. This order clearly records that Dr. Sushil Kumar Singh has joined the BHU on 9.7.1990. It is asserted that the case of Sri Sinha is identical to that of Dr. Sushil Kumar Singh. The claim of Sri Sinha is also not covered by the previous judgment of this Court in Dr. V.P. Singh.

55. Sri Avinash Chandra, learned counsel appearing for Sri Sinha has placed reliance upon a judgment of Madras High Court in the case of Dr. T.S.N. Sastry, Vice

Chancellor, Tamil Nadu Dr. Ambedkar Law University, Poompozhil Vs. Pondicherry University and another, W.P. No. 29276 of 2019, dated 16.10.2020, wherein facts of the case are quite similar to the facts of this case.

56. Learned Single Judge of Madras High Court has taken note of the scheme to hold that on the date of appointment of Dr. Sastry, the CPF Scheme itself was not available. It was in this context that the Madras High Court has allowed the claim of Sri Sastry and a direction has been issued to grant him the benefit of pension scheme. Claim of Dr. Sinha is opposed only on the ground that he had continued under CPF Scheme and thereby acquiesced to CPF Scheme.

57. Having considered the respective submissions advanced in respect of the claim of Sri Sinha, we find that on the date of his substantive appointment in BHU i.e. 9.7.1990, he was covered by the pension scheme. Even his temporary appointment in the BHU on 9th July, 1988, was after the cut-off-date i.e. 1.1.1986. It is clearly revealed that he had objected to his inclusion in the CPF Scheme. He was in fact included in the pension scheme, but it was on account of resolution of the Executive Council, dated 19-20th July, 2002, that such benefit was withdrawn from him. There was otherwise no occasion for him to be extended the option to continue under the CPF Scheme. He has been representing against such decision and has approached the Court after the issue has been settled by the Supreme Court. In the facts of the case, we find that his case is clearly covered by the pension scheme and the question of exercising any option by him, to continue under the CPF Scheme, is not countenanced under the Office

Memorandum, dated 1.5.1987. The BHU on its own has accepted the claim of Dr. Sushil Kumar Singh in similar circumstances in 2013. There is otherwise no prior adjudication of the claim of Sri Sinha by this Court.

58. In such circumstances, we are of the view that the writ petition filed by Sri Sinha was liable to be allowed. Learned Single Judge while rejecting the batch of petitions has not examined the facts of the case of Sri Sinha. In fact there is no consideration of the appellant's case by the learned Single Judge.

59. In such view of the matter and for the discussion aforesaid, Special Appeal No. 309 of 2025, filed by Sri Akhoury Sudhir Kumar Sinha, succeeds and is allowed. The judgment of learned Single Judge, dated 18.3.2025, dismissing Writ-A No. 7111 of 2020, is set aside. A writ of mandamus is issued to the respondents to extend the benefit of pension scheme to Sri Akhoury Sudhir Kumar Sinha on the condition that he shall deposit CPF benefits availed, if any, alongwith 8% yearly interest within two months from today.

60. For the reasons and discussions held above all other appeals i.e. Special Appeal Nos. 228 of 2025 and 235 of 2025 (except Special Appeal No. 309 of 2025), fail and are dismissed.

61. No order is passed as to costs.

(2025) 5 ILRA 1080
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 01.05.2025

BEFORE

THE HON'BLE SAURABH SHYAM
SHAMSHERY, J.

Writ - A No. 27328 of 2018

Banna Lal ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:

Dinesh Kumar, Lal Babu Lal, Manish Singh, Naresh Singh Tomar, Sushma Singh

Counsel for the Respondents:

Ashok Kumar Yadav, C.S.C.

Service Law – Assistant Teacher in Basic

Schools - Equivalence of Qualification – IAF Education Certificate vis-à-vis Intermediate - Right of Children to Free and Compulsory Education (RTE) Act, 2009 – Whether I.A.F. Education Test certificate is equivalent to Intermediate examination for appointment as Assistant Teacher in Basic Schools. Held : *IAF Education Certificate is equivalent to Intermediate*, in view of Circular dated 28.4.1992 issued by Secretary, State of U.P.; Circular issued by the Ministry of Human Resource Development dated 23.8.2017, and judgment of Ram Lal Srivastava Vs State Of U.P. And Others, Neutral Citation No. 2019: AHC:205812 (Para 18) (E-5)

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

1. Heard Sri Yatindra, learned Amicus Curiae, Sri Sarv Dev Singh, learned counsel for the petitioner and Sri K.Shahi for respondent nos.2 and 3.

2. Petitioner had joined Air Force as an Airman in the year 1975 after his High School Examination. He passed I.A.F. Education Test for promotion to the rank of Corporal under Scheme 'A' in August, 1979 held in and conducted by Air Force Headquarters, New Delhi with more than 50 percent.

3. According to the case of the petitioner I.A.F. Education Test is