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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 8679/2018

PRAVIN GUPTA & ORS

.....Petitioners

Through: Mr. Salman Khurshid, Sr. Adv.
with Ms. Sidra Khan and Mr. Ishu Dikshit,
Advs.

versus

UNION OF INDIA & ORS

.....Respondents

Through: Mr Manish Mohan CGSC, Mr
Jatin Teotia and Mr. Varenyum, Advs. for
UOI
Ms. Avshreya Pratap Singh Rudy, SPC for
UOI
Mr. Siddharth, Standing Counsel for EPFO
with Ms. Rashmi Malhotra, Mr. Amit
Kumar Agrawal, Mr. Prateek Goyal and Mr.
Harshit Manwani, Advs.

+ W.P.(C) 3236/2024 & CM APPL. 56154/2024, CM APPL.
65939/2024

SUNIL KUMAR & ORS.

.....Petitioners

Through: Mr. Shadan Farasat, Sr Adv;
Ms. Natasha Maheshwari, Adv; Mr. Bharat
Gupta, Adv; Ms. Swapnil Shukla, Adv.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr Manish Mohan CGSC, Mr
Jatin Teotia and Mr. Varenyum, Advs. for
UOI
Ms. Zehra Khan, Ms. Ravicha Sharma,
Advs. with Ms. Rajni Arora, AGM, APEDA
for R-3

Mr. Siddharth, Standing Counsel for EPFO
with Ms. Rashmi Malhotra, Mr. Amit



Kumar Agrawal, Mr. Prateek Goyal and Mr. Harshit Manwani, Advs.

CORAM:

**HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA**

JUDGMENT (ORAL)

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19.08.2025

C. HARI SHANKAR, J.

1. These writ petitions involve an identical controversy. For the sake of convenience, we refer to the facts in WP (C) 8679/2018.
2. The petitioners were appointed to various posts, pursuant to advertisement dated 5 September 1987 issued by the Agricultural & Processed Food Products Export Development Authority¹, which specifically assured them that they would be paid superannuation benefits of gratuity and pension etc., as applicable to employees of the Government of India, via the following clause:

“COMPENSATION PACKAGE:

- i) In addition to Basic pay, the posts carry House Rent Allowance, City Compensatory Allowance and Dearness Allowance, Leave Travel Concession, Medical reimbursement and *superannuation benefits of pension, Gratuity etc., as applicable to employees of Government of India will be also available.*”

(Emphasis supplied)

3. There is no dispute that, at that time and even thereafter, gratuity and pensionary benefits etc., as available to employees of the Government of India, are governed by the CCS (Pension) Rules 1972,



which admittedly apply to all government servants appointed on or before 31 December 2003.

4. Despite the above assurance, the petitioners have not received pensionary benefits, from APEDA, as were payable to government employees under the CCS (Pension) Rules. This is the principle grievance of the petitioners.

5. While they were in service with the APEDA, the APEDA, *vide* Notification dated 18 January 1994, notified the Agricultural and Processed Food Products Export Development Authority Regulations 1986².

6. Regulation 1(2) of the APEDA Regulations clearly stated that they would come into force on the date of their publication in the official gazette. They did not, therefore, have retrospective effect.

7. Regulation 32(1) of the APEDA Regulations which, according to Ms. Zehra Khan, learned Counsel for APEDA, constitutes an apparently insurmountable hurdle to the APEDA abiding by its assurance, to the petitioners, that they would be entitled to pensionary benefits as applicable to Central Government employees, read thus:

“32. Power as to pay and allowances, leave and other conditions of Services of officers and other employees:- (1) Pay and allowance, leave and other conditions of services including age of superannuation and other facilities such as advance of pay, advances for the purchase of conveyance, construction of houses and the like, in respect of officers and employees appointed by the

¹ “APEDA” hereinafter

² “the APEDA Regulations” hereinafter



Authority shall, if no provision is made in these Regulations or otherwise, be regulated in accordance with such Rules and Regulations or otherwise, as are for the same being applicable to officers and employees of the Central Government of the corresponding grades or status stationed at these places except for provisions related to post retirement benefits such as pensions, General Provident Fund, medical reimbursement”

8. On 13 April 2000, the following Office Memorandum³ was issued by the Department of Commerce:

“New Delhi, Dt. 13th Apr, 2000

OFFICE MEMORANDUM

Subject:- Introduction of Pension Scheme on GOI Pattern for the employees of Autonomous Bodies.

Ministry of Finance (Department of Expenditure) vide that DO.No.25(l)EV/2000 dated 16.3.2000 (copy enclosed) has suggested that following systems to be followed for the pension schemes to the employees of autonomous bodies.

- (i) to continue follow the system of CPF Scheme, or
- (ii) the Autonomous Bodies, if they so desire may work out in annuity scheme through the Life Insurance Corporation of India based on Voluntary Contributions by the employees and without any contribution from the Government; or
- (i) the employees may join the pension scheme introduced by the Ministry of Labour for the P.F. Subscribers.

In case, the pension scheme implemented in your organisation is funded from the funds provided by the GOI, you may like to consider to switch over to any schemes referred above. Henceforth, funds for pension scheme in Government of India pattern will not be provided by this department, unless prior approval of the Ministry of Finance is obtained.

(S.B. Mohapatra)
Additional Secretary & Financial Advisor”

³ “OM” hereinafter



9. This OM, according to Ms. Zehra Khan, is another hurdle in the APEDA abiding by its assurance to the petitioners to disburse retiral benefits to them as available to Central Government employees.

10. Yet another hurdle, in this path, appears to be Section 17(1)(a)⁴ of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952⁵. On 3 March 2024, the Assistant Provident Fund Commissioner, Employees Provident Fund Organization⁶ wrote to APEDA, directing various conditions to be complied with, before exemption under Section 17(1)(a) of the EPF Act could be granted. This exemption is, apparently, yet to be obtained.

11. In 2012, APEDA wrote to the Department of Commerce, proposing introduction of an SBI⁷ Pension Scheme, for disbursal of pensionary benefits to APEDA employees. On 26 December 2014, the Director, Department of Commerce, Ministry of Commerce & Industries, responded, stating that the DOC had no objection to APEDA introducing a Pension Scheme for pre-1 April 2004

⁴ 17. **Power to exempt. –**

(1) The appropriate Government may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt, whether prospectively or retrospectively, from the operation] of all or any of the provisions of any Scheme—

- (a) any establishment to which this Act applies if, in the opinion of the appropriate Government, the rules of its provident fund with respect to the rates of contribution are not less favourable than those specified in Section 6 and the employees are also in enjoyment of other provident fund benefits which on the whole are not less favourable to the employees than the benefits provided under this Act or any Scheme in relation to the employees in any other establishment of a similar character; or
- (b) any establishment if the employees of such establishment are in enjoyment of benefits in the nature of provident fund, pension or gratuity and the appropriate Government is of opinion that such benefits, separately or jointly, are on the whole not less favourable to such employees than the benefits provided under this Act or any Scheme in relation to employees in any other establishment of a similar character.

Provided that no such exemption shall be made except after consultation with the Central Board which on such consultation shall forward its views on exemption to the appropriate Government within such time limit as may be specified in the Scheme.

⁵ “the EPF Act” hereinafter

⁶ “EPFO” hereinafter

⁷ State Bank of India



employees, with SBI Life as the Fund Manager, subject to obtaining exemption from the EPFO under Section 17(1)(a) of the EPF Act. Thereafter, by letter dated 6 November 2016, the EPFO rejected APEDA's request for exemption under Section 17(1)(a) of the EPF Act, on the ground that no exemption, under the said provision, could be granted in respect of a class of employees.

12. At the end of the day, the fallout of the above confabulations and communications appears to be that APEDA has neither been successful in introducing a Pension Scheme with SBI Life as the Fund Manager, nor in securing exemption from the EPFO under Section 17(1)(a) of the EPF Act.

13. The petitioners have, therefore, prayed, in this writ petition, that

- (i) Regulation 32 of the APEDA Regulations be struck down, insofar as it denies pensionary benefits, to the petitioners, on par with the pensionary benefits available to Central Government employees,
- (ii) the draft APEDA Regulations of 1986 be directed to be promulgated and make applicable to all retired employees of APEDA,
- (iii) the Ministry of Commerce be directed to exempt APEDA from the applicability of Section 17(1)(c) of the EPF Act,
- (iv) the Ministry of Commerce be directed to grant approval to the SBI Pension Scheme applicable to retired employees of APEDA and
- (v) extend, to the petitioners, the benefit of revision of pension of pre-2016 pensioners after the enforcement of the



recommendations of the 7th Central Pay Commission.

Analysis

14. We fail to see how events that have transpired after the petitioners were appointed in the APEDA are of relevance in the present case.

15. Terms and conditions in advertisement are binding

15.1 We see no basis, whatsoever, for denying, to the petitioners, the benefit of pension under the CCS (Pension) Rules, as was held out to them in the advertisement pursuant to which they were recruited by the APEDA. All the developments charted above were much after the petitioners had joined APEDA on the strength of the assurance in the advertisement. We are of the view that the representation, as contained in the Advertisement regarding the retiral benefits which would accrue to the petitioners, and pursuant to which they were appointed in APEDA, are sacrosanct, and cannot be altered subsequently to their prejudice.

15.2 Mr. Siddharth has placed reliance on the judgment of the Supreme Court in *Punjab State Coop. Agricultural Development Bank Ltd. v Registrar Coop. Societies & Others*⁸.

15.3 The said decision is clearly distinguishable. The employees in that case were not held out any assurance, at the time of their

⁸ (2022) 4 SCC 363



appointment or even later, that they would be paid retiral benefits as payable to Central Government employees.

16. Effect of APEDA Regulations

16.1 Insofar as the APEDA Regulations are concerned, we are of the opinion that Regulation 32 thereof cannot stand in the way of the aforesaid pensionary benefits to which the petitioners are entitled.

16.2 The caveat “if no provision is made in these regulations *or otherwise*”, as contained in Regulation 32(1), would clearly save the applicability of the stipulation in the advertisement dated 5 September 1987, whereagainst the petitioners were appointed, to the effect that they would be entitled to superannuation benefits of pension, gratuity etc., as applicable to employees of the Government of India. Moreover, the APEDA Regulations came into force only on the date of their notification in the Gazette, and there is nothing in the APEDA Regulations, or at least in Regulation 32, imbuing it with retrospective effect. The terms and conditions of the advertisement dated 5 September 1987, whereunder the petitioners were appointed could not, in our view, be affected by the APEDA Regulations, which came into force more than 7 years thereafter.

16.3 Moreover, the expression “shall … be regulated”, as employed in Regulation 32(1), makes it clear that the Regulation would apply only to persons appointed after they came into force and would not apply to persons who had been appointed by APEDA prior thereto. The Cambridge Dictionary defines “shall” as a modal verb which



applies to the future. The Merriam-Webster Dictionary states, of the verb “shall”, that it is “used to express what is inevitable or seems likely to happen in the future”.

16.4 Moreover, as already noted, the caveat “if no provision is made in these regulations or otherwise”, would save any stipulation which is contrary to Regulation 32(1), if contained in the appointment orders of the concerned officers or in the advertisement whereunder they were appointed.

16.5 We are informed by Mr. Khurshid, learned Senior Counsel who appears for the petitioners in WP (C) 8679/2018, on instructions, that all the petitioners in both these writ petitions were appointed prior to the coming into effect of the APEDA Regulations. If that be so, there can be no question of their pensionary entitlement, in terms of the aforesigned stipulation in the advertisement, being in any manner affected by Regulation 32(1) of the APEDA Regulations.

17. Validity of APEDA Regulations

As such, no occasion arises for us to strike down the APEDA Regulations, or any part thereof.

18. The petitioners have undertaken to return the benefits of provident fund which they have already availed.

19. Mr. Siddharth, who appears for EPFO, submits that this is not required.



20. As such, we do not return any finding in this regard. If the respondents require the petitioners at any point of time to return the provident fund which they have availed, the petitioners would do so on being called upon by the respondents in that regard.

21. Accordingly, we direct the APEDA to disburse, to the petitioners, the balance of the pensionary benefits to which they would be due, treating them as entitled to retiral benefits as payable to them under the CCS (Pension) Rules.

22. Any retiral benefits, other than the provided fund benefits, which have been paid to the petitioners would, needless to say, be adjusted while making the said payment.

23. Let the needful be done within a period of eight weeks from today.

24. These writ petitions are disposed of in the aforesaid terms.

25. Accompanying pending applications also stand disposed of.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

AUGUST 19, 2025/dsn