

REPORTED

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

% Date of Decision: 27th March, 2008

+ LPA 2529/2005

D.T.C. Appellant
Through Mr. J.N. Aggarwal, Advocate.

versus

TARA CHAND Respondent
Through Mr. K.P. Tomas, Advocate.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: **DR. MUKUNDAKAM SHARMA, C.J. (ORAL)**

1. This appeal is directed against the judgment and order dated 24th August, 2005, passed by the learned Single Judge dismissing the writ petition filed by the appellant herein. The appellant contended that the respondent-workman was absent unauthorisedly and, therefore, an order was passed by the appellant on 7th March, 1988 holding that the respondent is deemed to have resigned from his job as he was unauthorisedly absent.

By the same order, the period of his unauthorised absence from 6th November, 1987 to 12th February, 1988 was regularised. Being aggrieved by the aforesaid order passed by the Management-appellant, the respondent-workman raised a dispute which the appropriate Government referred to the Industrial Adjudicator. The Industrial Adjudicator registered the said reference as ID Case No.206/89, wherein the following reference was considered:-

“Whether the termination of services of Sh. Tara Chand is legal and/or justified and if not, to what relief is he entitled and what directions are necessary in this respect?”

2. The learned Labour Court received the pleadings filed by the parties and also recorded the evidence adduced by the parties and, thereafter passed an award holding that the order of termination passed against the respondent by the Management was illegal and unjustified. After holding in the aforesaid manner, it was further held as follows:-

“The claimant has stated in his statement recorded on 07.12.1998 that he is unemployed since the date of termination of his services. He stated that he did not try to find out alternative employment as he was not keeping good health. He stated that he was not in a condition to work at all after the termination of his services. The claimant, therefore, is not entitled to any back wages. Again, the claimant has already crossed the age of superannuation. As stated hereinabove, the claimant had already worked for long 24 years with the DTC before he was deemed to have resigned the job. In the facts and circumstances of the case, the relief of reinstatement and back wages cannot be granted to the claimant. However, since the claimant could not be deemed to have resigned from the services for the reasons stated

above, he will be treated to have taken voluntary retirement with effect from 07.03.1988 when the impugned order was passed. The claimant would be entitled to all the benefits including pension, gratuity, encashment of leave, if any, to his credit etc. as if he had worked in the DTC upto 07.03.1988. The issue is decided and the reference is answered accordingly.”

3. Being aggrieved by the aforesaid Award of the Labour Court, the appellant filed a writ petition which was registered as CWP No.5225/2000.

The said writ petition was considered by the learned Single Judge and the same was dismissed by an order passed on 11th September, 2000. The learned Single Judge held as follows:-

“The petitioner has challenged an award dated 29th January, 1999 passed by the Labour Court No.III.

The respondent workman had been working with the petitioner for the last 24 years. The Respondent was deemed to have resigned from service with effect from 7th March, 1988. The Ld. Labour court was of the view that the deeming provision regarding resignation was not applicable so far as the respondent-workman is concerned. Accordingly, it was directed that the respondent workman be treated to have taken voluntary retirement with effect from 7th March, 1988.

I see no infirmity in the order passed by the Ld. Labour Court. The Respondent workman will be treated as having been voluntarily retired from service with effect from 7th March, 1988 as directed by the Ld. Labour Court and he will be entitled to benefits in this regard as if he had worked up to 7th March, 1988.

Dismissed.”

4. Being still aggrieved, the appellant filed an appeal which was

registered as LPA No.63/2001. The said appeal was dismissed by the Division Bench by an order passed on 5th February, 2001, holding that there was no merit in the said appeal.

5. In that view of the matter, the findings and the conclusions arrived at by the Industrial Adjudicator that the appellant would be considered as having taken voluntary retirement effective from 7th March, 1988 have become final and binding on all the parties.

6. A Pension Scheme was introduced for the employees of the DTC by the appellant on 27th November, 1992. It is, therefore, explicitly clear that the aforesaid Pension Scheme came to be introduced while the aforesaid reference was pending before the learned Industrial Adjudicator. We may extract the relevant portions of the said Pension Scheme, which are at paragraphs 2 and 3:-

“2. The date of effect of Pension Scheme would be 3.8.1981.

3. All the existing employees including those retired w.e.f. 03.08.1981 onwards would have the option to opt for the Pension Scheme or the Employees Contributory Provident Funds as at present, within 30 days from the date of issue of this o.o. for the implementation of the Pension Scheme as approved by the govt. of India.”

7. A bare perusal of the aforesaid Pension Scheme and the aforesaid Clauses contained therein would indicate that the effective date of applicability of the Pension Scheme was made as 3.8.1981, when the

respondent-workman was admittedly working with the DTC. Clause 3 of the said Pension Scheme makes it more explicit when it states that all the existing employees including those retired with effect from 3.8.1981 onwards would have the option to opt for the Pension Scheme or the Employees Contributory Provident Funds as at present, within 30 days from the date of issue of the Office Order. Therefore, all employee who were working and those who had retired with effect from 3.8.1981 were entitled to the benefit of exercising their option and becoming a member of the Pension Scheme. The respondent on the date when the Scheme was introduced i.e., 27th November, 1992 was deemed to have resigned by the appellant and his matter was pending before the Industrial Adjudicator. Therefore, he could not have exercised his option in the manner sought for by the appellant. He could submit his option, opting for becoming a member of the Pension Scheme, only on the disposal of the proceedings, which culminated in the award dated 29th January, 1999. When the award was passed in the aforesaid manner, and even thereafter the matter remained subjudice as the appellant filed a writ petition which was dismissed on 11th September, 2000 and the writ appeal filed by the appellant was dismissed on 5th February, 2001. Therefore, we find justification in the order passed by the learned Single Judge, who by a detailed reasoned order has held that the respondent would be entitled to the benefit of the Pension Scheme. The

learned Single Judge was justified in holding that the respondent could have exercised his option only upon setting aside of the order of deemed resignation passed by the appellant, which was finally set aside when the award dated 29th January, 1999, was passed. The learned Single Judge was also justified in making reference to the order passed by the learned Single Judge dismissing the writ petition and also the order of dismissal passed by the Division Bench, and in holding that in any case, an opportunity to exercise the option would have been available to the respondent-workman only upon the passing of the award as the respondent was not given any such opportunity to exercise his option before the passing of the award of the Industrial Tribunal.

8. We find no reason to take a different view than what was taken by the learned Single Judge. In our considered opinion, the respondent having stated that he would desire to be a member of the Pension Scheme, he would be entitled to get all the benefits under the said Scheme, and whatever benefit he is entitled to pursuant to the order of the learned Single Judge should be given to him, if not given already, within a period of four weeks, failing which the said amount shall be paid with interest at the rate of 12% per annum from the date of the same falling due till the date of payment.

9. Mr. J.N. Aggarwal, counsel appearing for the appellant, during the

course of his submissions relies upon a decision of the Supreme Court in **Life Insurance Corporation of India Vs. R.Dhandapani**; reported in JT 2005 (10) SC 245 in support of his contention that the relief of grant of pension cannot be given to the respondent as the respondent had resigned from his post. The said decision is clearly distinguishable on facts and, even otherwise, although the appellant treated the respondent as deemed to have resigned, the said order was set aside by the Industrial Adjudicator, which was upheld by the learned Single Judge and the Division Bench of this Court, holding that the respondent should be treated to have taken voluntary retirement. The said decision has no relevance to the facts of the present case as, in the meantime, the respondent has reached the age of superannuation.

10. The appeal stands dismissed with costs of Rs.10,000/- payable to the respondent within four weeks from today.

CHIEF JUSTICE

REVA KHETRAPAL, J

MARCH 27, 2008
VK.