

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

+ **W.P.(C) No. 2885/2000**

19th July, 2010

UNION OF INDIA

..... Petitioner

Through: Mr. Ravi Sikri and Mr.
Ayushya Kumar, Advocates

VERSUS

M.L.PUNSHI & ANR.

....Respondents

Through: Respondent No.1 in person.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

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

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JUDGMENT

SANJAY KISHAN KAUL, J. (ORAL)

CM No. 5565/2009 (Restoration) and CM No. 5566/2009 (Condonation of delay) W.P.(C) No.2885/2000

The petitioner seeks recall of the order dated 22.9.2008 dismissing the petition for non-prosecution and also condonation of delay of 162 days in filing the application.

In our considered view, the petitioner should have been cautious and keep a watch on the matter, as it is a Union of India. There is also a considerable delay in filing the application.

However, keeping in view the facts and circumstances of the case, we allow these applications subject to payment of costs of Rs.5000/- to the respondent no.1 who appears in person.

Cost be paid within 15 days.

Applications stand disposed of.

W.P.(C).2885/2000

1. The petitioner is aggrieved by the impugned order of Central Administrative Tribunal ('CAT' for short) dated 11.2.2000 in terms whereof, the respondent no.1 who superannuated on 31.3.1995 has been held entitled to the benefit of OM dated 14.7.1995. It is the case of the petitioner that the OM applies only to such persons who retired from service w.e.f. 1.4.1995 while respondent no.1 retired on 31.3.1995.

2. The impugned order dated 11.2.2000 has allowed the OA of respondent no.1 on the ground that the matter in issue is covered by judgment of the Full Bench of the Central Administrative Tribunal, Nagpur Bench in OA No. 459 and 460/1997 decided on 15.10.1999.

3. A perusal of that order dated 15.10.1999 shows the reasoning of the Central Administrative Tribunal. In order to appreciate whether the OM applies or not, it would be appropriate to refer to the office memorandum dated

14.7.1995 itself. It is not necessary to reproduce the whole OM but the relevant portion is being reproduced as under:-

“ OFFICE MEMORANDUM

Subject: Treatment of Dearness Allowance as Dearness Pay for the purpose of death gratuity and retirement gratuity and raising the maximum limit of gratuity from Rs.1.90 lakhs to Rs.2.50 lakhs

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The Fifth Central Pay Commission in its interim report, has recommended the dearness allowance as admissible to the average All India Consumer Price Index (AICPI) 120 1 66 may be treated as dearness pay for reckoning emoluments for the purpose of retirement gratuity and death gratuity under the Central Civil Services (Pension) Rules, 1972 and the ceiling on gratuity be enhanced to Rs.2.50 lakhs. Accordingly, the President is pleased to decide that dearness allowance linked to AICPI 120 1 66 as indicated below shall be treated as dearness pay for reckoning emoluments for the purpose of retirement gratuity/death gratuity under the Central Civil Services (Pension) Rules, 1972 in the case of Central Government employees who retire or die on or after 1st April, 1995.”

We have to thus to interpret and understand the import of the expression “who retire or die” on or after 1st April, 1995.

4. The plea of the petitioner as canvassed before the CAT and also before us is that the respondent no.1 retired in the afternoon of the last date of the month of his working which was 31st March, 1995 on attaining the age of superannuation and thus he already stood retired on 31st March, 1995 and did not retire on or after 1.4.1995.

5. We are unable to persuade ourselves to agree with the submission of the petitioner for the reason that the respondent no.1 continued to work and is entitled to the benefits for the whole of the last working day i.e.

31.3.1995. It is only at midnight of 31.3.1995 that he completes his tenure of employment and thus superannuates the moment he crosses 12 noon i.e. on 1.4.1995. The OM itself showing that the same is applicable to every person who retires on or after 1.4.1995 would thus apply to respondent no.1. It cannot be said that respondent no.1 retired in any part of the day of 31.3.1995. We find ourselves in complete agreement with the reasoning of the CAT as reflected in the Full Bench judgment and thus consider it appropriate to reproduce the relevant portions which are as under:

“5. At the relevant time, F.R. 56 provided that every Government servant would retire from service “on the afternoon of the last day of the month” in which he attained the age of 58 years. Rule 35 of the Central Civil Services (Pension) Rules 1972, (in short “Pension Rules”).

“ A superannuation pension shall be granted to a Government servant who is retired on his attaining the age of compulsory retirement”.

Rule 63(1) of the Pension Rules says:-

“Except in the case of a Government servant to whom the provisions of Rule 37 apply and subject to the provisions of Rule 9 and 69, a pension other than family pension shall become payable from the date on which Government servant ceases to be borne on the establishment.”

According to the Learned counsel for the respondents, retirement from service “on the afternoon of the last day of the month” would mean severance of relationship of master and servant after office hours of the last day of the month itself. That means a person remains in Government service for about 17 hours (i.e. from 1.00 a.m. to 5 p.m.) on the date of his superannuation and ceases to be in such service for the remaining 7 hours of the day. Why then such an employee does not get retirement pension for the last day of superannuation, the Learned Counsel says, because he was paid salary for that day. The reasoning appears to be fallacious. A person cannot be deemed to be in service for one part of a day and

out of service for the other part of the day. In other words, we are of the view that such an employee retiring from service “on the afternoon of the last day of the month” is deemed to be continuing in service till the midnight of that day and accordingly for all practical and technical purposes, he must be deemed to have ceased from service or to have actually retired from service on and from the next date of attaining the age of superannuation, i.e., with effect from 1st of the month following the last day of the month of superannuation.

6. Meaning of the word “afternoon” given on page 109 in Prem’s judicial Dictionary, Vol.1 1992 Edition, published by Bharat Law Publication, Jaipur is as follows:-

“Afternoon- This word has two senses. It may mean the whole time from noon to midnight; or it may mean the earlier part of the time, as distinguished from the event. When used in a statute its meaning must be determined by the context and the circumstances of the subject matter (Reg. v. Knapp. 3 E1, & B1 451) (1853) 2 B 447 (451). In 9 Geo. 4c 61, sch. C. the expression “afternoon divine service” means, the earlier part of the time from noon to midnight as distinguished from the evening”.

7. According to Rule 83 (1) of the Pension Rules, Pension becomes payable from the date on which Government servant ceases to be born on the establishment, (emphasis given). A Government servant continues to be born on the establishment till midnight of the date of superannuation. The decision of the Hyderabad Bench of this Tribunal in T. Krishna Murthy’s case (supra) cannot be brushed aside out by the Learned Counsel for the respondents. Retirement may be voluntary or on superannuation. The principles for payment of pension will not vary on the basis of these distinctions. According to us, “afternoon of 31st of March: or “forenoon of 1st of April” means one and the same thing and on this basis also we see no reason to hold that the said case is not applicable to the present cases. - In short, we are of the view that in the present cases the effective date of retirement would be 01.04.1995 and not 31.03.1995.”

6. The aforesaid reasoning is thus a complete answer to the plea of the petitioner and which reasoning we adopt.

7. Learned counsel for the petitioner sought to rely upon the judgment of the Supreme Court in *Achhaibar Maurya Vs. State of Uttar Pradesh and others (2008) 2 SCC 639*. We find the facts of the said case are quite different. The petitioner was retiring on 30.6.2003. If he retired thereafter, i.e., 1.7.2003 or any date subsequent to that, he would have been entitled to continue in service for the remaining academic session as the rule provided for continuous service for the academic session in such a case. The Supreme Court held against the petitioner herein because he already stood retired on the midnight of 30.6.2003. These facts no way show that the respondent no.1 herein can be held to be disentitled to the benefit of the OM which applies to a person who retires on or after 1.4.1995, when respondent no.1 was in service right till midnight of 31.3.1995 and retired only on 1.4.1995.
8. We thus find no merit in the writ petition and the same is accordingly dismissed leaving the parties to bear their own costs.
9. The enhanced amount of gratuity be remitted to the respondent no.1 within one month from today.

Dasti to learned counsel for the parties.

SANJAY KISHAN KAUL, J.

JULY 19, 2010
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VALMIKI J. MEHTA, J.