

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

% *Judgment Reserved on: 22.07.2010*
Judgment Delivered on: 28.07.2010

+ **R.S.A. No. 278/2006 & CM No.11407/2006**

MUNICIPAL CORPORATION OF DELHI

.....Appellant

Through: Mr. Nalin Tripathi, Addl. Standing
Counsel.

Versus

SH. CHATAR SINGH

.....Respondent

Through: Ms. Deepali Gupta, Advocate.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J.

1. This appeal has impugned the judgment dated 20.02.2006 passed by the court of the Additional District Judge, whereby he had endorsed the finding of the trial judge dated 13.01.2005 decreeing the suit of the plaintiff Sh. Chatar Singh in his favour.

2. The factual matrix of the case is as follows:-

(i). The plaintiff Sh. Chatar Singh is the husband of his deceased wife Smt. Shanti Devi. Smt. Shanti Devi working as a teacher in the MCD had superannuated in June, 1990. She died on 18.09.1997. The plaintiff is her legal heir.

(ii). Smt. Shanti Devi served as an assistant teacher in the

Education Department of the District Board, Meerut

from 5.10.1951 to 08.07.1968.

- (iii). She joined Aggarwal Gindoria Primary School, Baldev Park, Delhi and served there from 09.07.1968 to 02.02.1975.
- (iv). She was absorbed in the MCD school from 03.02.1975 to June 1990 which was the date of her retirement.
- (v). Services of Smt. Shanti Devi were regular, continuous and without any break.
- (vi). Smt. Shanti Devi was not paid her retiral benefits.
- (vii). She was constrained to file a civil suit for mandatory injunction against the defendant on 23.08.1991. The suit was decreed on 17.08.1994. Defendant was directed to pay her dues. Defendant did not comply. Execution proceedings were filed. Smt. Shati Devi expired on 18.09.1997. Her husband Sh. Chatar Singh was substituted as her legal heir in the execution proceedings.
- (viii). On 16.08.2002, Smt. Shanti Devi was paid pensionary benefits w.e.f. 06.07.1970 up to June 1990. The period prior to 06.07.1970 was not counted as service and she was not given pensionary dues for that period.
- (ix). Mr. Chatar Singh gave legal notice to the Department to release the pensionary dues of his deceased wife prior to 06.07.1970, but to no avail.
- (x). Present suit was filed.
- (xi). The written statement did not dispute the factual dates of the various periods of service of Smt. Shanti Devi. It was stated that Aggarwal Gindoria Primary School ,

which Smt. Shanti Devi had joined on 09.07.1968 was recognized only w.e.f. 01.05.1969 which was then transferred to the MCD in the year 1975. The services of Smt. Shanti Devi in the Meerut School where she was working as a temporary employee also could not be counted for the purpose of pensionary benefits.

(xii). Trial court had framed four issues. Issue no. 3 is relevant for the disposal of the present appeal. It related to the entitlement of the plaintiff for his claim of the relief of mandatory injunction. While dealing with this issue, the testimony of PW1 and four other witnesses examined on behalf of the plaintiff were considered. Service book of Smt. Shanti Devi Ex. PW 3/2 had substantiated her stand that she had joined Aggarwal Gindoria Primary School on 09.07.1968; further she retired from her service in 1990. DW-1 confirmed the stand of the plaintiff that there was no break in her service.

(xiii). The Trial court relied upon the service record of Smt. Shanti Devi to conclude that Smt. Shanti Devi had spent more than 38 years of her life in service and even if the contention of the Department that Aggarwal Gindoria School was granted recognition only on 01.05.1969 is accepted; Smt. Shanti Devi having joined this school on 09.07.1968, even presuming that this intervening period from 9.7.1968 to 1.5.1969 is excluded, nevertheless taking the earlier service record of the petitioner when she was in service from

05.10.1951 to 08.07.1968 in Meerut, Uttar Pradesh, the petitioner would have served for more than the requisite period of 33 years which is required to obtain a full pension, clearly entitling her to the relief as prayed for. Civil Services Conduct Rules (hereinafter referred as the CCS Rules) were held applicable. Suit was decreed in favour of the plaintiff directing the department to pay the pensionary benefits of the Smt. Shanti Devi to the plaintiff for period of her service which had not been counted i.e. from 05.10.1951 to 06.07.1970. Interests and costs were also awarded in her favour.

- (xiv). On 22.02.2006, the appellate court had endorsed the findings of the trial judge; Article 21 of the Constitution of India and denial of pension covered under its ambit i.e. the right to life and liberty guaranteed to all citizens was taken as an additional support. The first appellate court held that there was no fault in the findings of the court below. Court had returned a positive finding that the period from 09.07.1968 to 06.07.1970 i.e. the period when Smt. Shanti Devi had worked in an unrecognized school i.e. in Aggarwal Gindoria School was to be counted as service; this was in view of the para 4 of the written statement of the department wherein the department had admitted that Smt. Shanti Devi had been relieved from the Meerut school only in order to allow her to join the Aggarwal Gindoria Primary School which in turn amounted to a

waiver of the condition of the alleged break of service even if it was held that Aggarwal Gindoria School was a private school. The benefit given to the husband of the plaintiff whose past services in a private institution had been considered for the grant of his pensionary benefits were also taken into account by the first appellate court as an additional piece of evidence. The decree and judgment of the trial court was accordingly upheld.

(xv). On 22.03.2010, the following question of law was formulated by this court which reads as under:-

“Whether deceased Shanti Devi was entitled to pensionary benefit on her retirement in June, 1990 for the period inclusive of her services with District Board, Meerut and Aggarwal Gindoria Primary School i.e. from 05th October, 1951 to 06th July, 1970?”

3. On behalf of the appellant, it is submitted that the judgments of the courts below are faulty and on a wrong interpretation of the proposition of law.

Reliance has been placed upon 1995 Supp (4) SCC 748 State of Punjab and Others Vs. Dev Dutt Kaushal and Others. It is submitted that in this case, the services rendered in a private management school had been disregarded for the purposes of fixing of the pension of the pensioner, the ratio of which is clearly applicable to the facts of the present case. This judgment is of no help to the appellant as in this case, there was a gift deed pursuant to which the private college has been taken over by the State Government and the said gift deed had specifically postulated that the Government shall not be responsible and shall not accept any liability for the period prior to its taking over of the college and

that all such liabilities shall be cleared by the Management Committee of the private college. There is no such written document in this case. Facts are inapplicable to the present case.

The second judgment relied upon by the counsel for the appellant is reported at (1997) 3 Supreme Court Cases 32 State of Punjab and Others Vs. Harnam Singh and Others. It is based on the proposition that Zilla Parishads and Boards are private bodies. In this case, the Supreme Court had held that the staff working in the former Zilla Parishads and Boards which were subsequently taken over by the Government would be treated as fresh entrants into the service from the date of their taking over. This judgment is also inapplicable and does not support the contention of the appellant. In this case as well, the conditions were specified in the deed of take over which clearly mentioned that after the takeover, the staff working in the former Zila Parishads and Boards would be treated as fresh entrants.

4. Per contra the learned counsel for the respondent has placed reliance upon Rule 13 of the CCS Qualification Service Rules (Chapter III, Swamy's-CCS (Pension) Rules) to support her stand that qualifying service of a Government servant would be the date when he or she takes charge of the post either substantively or in an officiating or temporary capacity; provided that such officiating or temporary service is followed without any interruption by a substantive appointment in the same or any other service or post.

Attention has been drawn to the OM of the Government of India, Ministry of Finance dated 03.12.1977 which dealt with the counting of service rendered with the Central Government, Autonomous Bodies before their take over by the Central

Government. The relevant extract reads as under:-

“This question has, therefore, been carefully considered and it has been decided that that the service rendered in the Central Autonomous Bodies by the employees who left the service of those bodies any time prior to their take-over by the Central Government, with or without break, will be allowed to be counted towards pension and/or gratuity to the extent admissible under the rules at the time such persons retire or retired from Government service, the period of break, if any, being condoned”.

Emphasis is on the words “with or without break” meaning thereby that even if there is a break in service, it would not affect the pensionary benefits of such an employee.

The impact of this OM was considered and appreciated in Order No. 28(10)/84-P&PW-Vol.II, Government of India (Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioners’ Welfare) dated 07.02.1986. It was reiterated that the counting of services for purposes of pension of employees of Central Government and Central Autonomous Bodies seeking absorption in autonomous bodies under the State Government and vice- versa has to be followed; this order was made applicable to State Governments including the State of Uttar Pradesh.

On 12.07.1988, the Government of India Order No. E.5-24/83-UT.I (Vol.-I), (Government of India, Ministry of Human Resource Development, and Department of Education) had made the following clarification:-

“Regard to service rendered in Autonomous Bodies under State Governments and vice-versa counting of service for pensionary benefits will be allowed in respect of these State Government with which reciprocal arrangement exists i.e Karnataka, Madhya Pradesh, Punjab, Rajasthan, Sikkim, Tripura, Gujrat, Assam, Uttar Pradesh, Bihar, West Bengal, Meghalya, Himachal Pradesh, Goa(fourteen State Governments). The above said benefit has been extended by the Ministry of Personnel, Public Grievance and Pension, Department of Pension and Pensioners Welfare in Order No. 28(10)/84-P&PW-Vol.II dated 07.02.1986 and 27.05.1988. These orders shall apply to the employees of Central Government moving from State autonomous Bodies to the State Government and their autonomous bodies and vice-

versa who are in service on the date of issue of the aforesaid orders irrespective of the date of their absorption. All the cases pertain to the counting of service of teachers rendered by them in Aided/Recognized Schools in Delhi and outside Delhi prior to coming over to Delhi Admn. the pensionary benefits may be settled accordingly."

It is submitted that on the basis of these aforesaid circulars and instructions of the Government of India, it is clear that the services rendered by the petitioner in the State body i.e. while she was serving in the Meerut Education Department at Uttar Pradesh between 05.10.1951 to 08.07.1968 has to be counted for the purpose of her pension and this is irrespective as to whether there is a break or no break in her service.

Learned counsel for the respondent has also placed reliance upon Rule 27 and Rule 28 of the Qualifying Service Rules Swamy's -CCS (Pension) Rules which deals with the effect of interruption in service and condonation in the interruption in service.

Attention has been drawn to the D.G.,P. & T.'s Letter No. 14/12/82-Vig-III, dated the 23rd September, 1982 which inter alia reads as follows:-

"It is not the intention of Government to deny pensionary benefits to the employees in all case of break of service. If necessary, the appointing authority may, in its discretion, not condone the break -in- service on account of authorized absence for purposes of pension only in exceptional and grave circumstances and not as a matter of course. The question of condonation of break-in-service for the purpose of Pension Rules may be considered *suo motu* without waiting for a representation from the affected officials and orders issued so that the retired employees are not put to financial hardship. "

It is submitted that it is only in exceptional cases of grave hardship that the break in service is not to be condoned; the general rule permitting a condonation in all other cases.

Counsel for the respondent has metered her arguments on the proposition that even assuming that the period between

09.07.1968 up to 06.07.1970 , when Smt. Shanti Devi was working at the Aggarwal Gindoria Primary School which was unaided (up to 06.07.1970) is excluded, her earlier service period from 05.10.1951 to 08.07.1968 and her subsequent period of service from 06.07.1970 to June 1990 has to be considered which is more than 33 years which entitles her to a full pension.

In the alternate, it is submitted that the period between 09.07.1968 up to 06.07.1970 cannot be treated as a break in her service as this was never the defence of the department; further in para 4 of the written statement, department had admitted that Smt. Shanti Devi had been relieved from Meerut only to enable her to join the Aggarwal Gindoria Primary School; the Education Board, Meerut itself had given her permission to join the said school; they cannot now take a u-turn on this stand. The interruption in service is, if any thus even otherwise liable to be condoned.

Counsel for the respondent has placed reliance upon a judgment of this court reported in 2003 (5) SLR Delhi High Court (D.B) Civil Writ Petition No. 4593 and CM 7817 of 2002 Director of Education Vs. S.D. Mohala to support her arguments . This was a case where the services of the respondents who had worked in the RFA prior to his joining the office of the Deputy Commissioner, Tees Hazari, Delhi was counted for the purpose of pensionary benefits. This judgment was in the context of two Departments, both of which were admittedly Government Departments and as such will not apply to the facts of the instant case.

Reliance has also been placed upon JT 2010 (2) SC 434 Punjab State Electricity Board & Anr. Vs. Narata Singh and Anr. In

this case, the respondent no. 1 had worked with the Government of Punjab up to 15.04.1978 after which there was a break of four years before he joined services of the Punjab State Electricity Board which was on 06.08.1982. This gap of four years was condoned and services of the petitioner were treated as an uninterrupted service for the purpose of counting her pension.

5. The judgments of both the two fact finding courts below call for no interference. The courts below had held that the petitioner had had continuous service tenure without any break from 05.10.1951 to June 1990 when she was superannuated. It was also not the defence of the defendants that there was any break in her service.

6. Rule 13 of the Qualifying Service Rules make no distinction between the Government servants appointed substantially or in an officiating or temporary capacity for the purposes of his/her qualifying service.

7. The OM of 03.12.1977 was interse between two government bodies. It was followed by the subsequent letter and instructions by the Government of India, Ministry of Personnel on 07.02.1986 which clearly stated that for the purposes of pension, employees of the Central Government which included State Governments as also the State of Uttar Pradesh which seeks absorption in other autonomous bodies under the State Governments and vice-versa, such services will be counted for the purposes of pensionary benefits.

8. The instructions of the Ministry of Human Resource and Development dated 12.07.1988 postulated that all cases pertaining to the counting of the service of the teachers and the service

rendered by them in aided or recognized schools in Delhi and both outside Delhi will be counted for their pensionary benefits.

9. These instructions make it clear that the service of Smt. Shanti Devi from 05.10.1951 to 08.07.1968 while she was working in the Education Department of District Meerut in Uttar Pradesh has to be counted for the purposes of her pensionary benefits.

10. There was an interregnum period between 09.07.1968 up to 06.07.1970; this was the period when Smt. Shanti Devi worked in the Aggarwal Gindoria Primary School which remained unrecognized up to 06.07.1970 and had as an alternate plea been excluded by the trial court. Even by excluding this period, the trial court had held that Smt. Shanti Devi had completed more than 33 years of service and as such entitled to full pension.

11. The appellate court did not deal with this submission.

12. Rule 27 and Rule 28 of the Qualifying Service Rules are admittedly applicable. The instructions in the D.G.,P. & T.'s Letter No. 14/12/82-Vig-III, dated the 23rd September, 1982 express the intention of the Government i.e. the breaks in service for purposes of pension have to be liberally construed and as far as may be are to be condoned; purpose and effect being not to unnecessarily harass and deny pensionary benefits to its employees. Only in cases of extremely exceptional and grave circumstances i.e. unauthorized absence and even then not as a matter of course, the condonation of break-in-service may be denied; otherwise the question of condonation of break in service for purposes of pension may even be considered *suo motu* without waiting for a representation from the affected officer in order that the retired employee is not put to financial adversity.

13. These standing orders and instructions are binding on the MCD; their object and purpose being that the pensioner is not to be put to any financial constraint and should not be denied his due i.e. his/her pensionary benefits. There is no such grave or exceptional circumstances which would disentitle Smt. Shanti Devi for a condonation in her period of service; there was a clear fact finding that Smt. Shanti Devi had been released from Meerut, Education Board to enable her to join the Aggarwal Gindoria Primary School. The intention of the Government, in these circumstances, would not be and could not be to curtail or forbid her from receiving her financial benefits in the form of her pension.

28. There is no fault in the judgments of the both the courts below. The substantial question of law is answered against the appellant and in favour of Sh.Chatar Singh.

29. Appeal has no merit. Appeal as also the pending application is dismissed.

30. File be consigned to Record Room.

INDERMEET KAUR, J.

JULY 28, 2010

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