

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

+ **W.P.(C) No.6571/2010**

% **Date of Decision: 28.02.2011**

Municipal Corporation of Delhi Petitioner

Through Mr.Himanshu Upadhyay, Advocate

Versus

R.K.S.Gaur & Ors. Respondents

Through Mr.M.K.Bhardwaj, Advocate for the
respondent No.1 with respondent No.1
in person.

Mr.Anurag Mathur, Advocate for the
respondent No.2.

Ms.Kailash Golani, Advocate for the
respondent No.3.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MS.JUSTICE VEENA BIRBAL

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

ANIL KUMAR, J.

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1. The petitioner, Municipal Corporation of Delhi has challenged the order dated 3rd September, 2009 passed by Central Administrative Tribunal, Principal bench, New Delhi in T.A No.570/2009 titled as 'R.K.S.Gaur v. MCD & Ors' directing the Municipal Corporation of Delhi to count the erstwhile service rendered by respondent No.1 with the

Government of Sikkim without insisting on liability, which has been dispensed with as per O.M dated 9th October, 1986.

2. The relevant facts pertinent to comprehend the controversies are that respondent No.1 who is a post graduate teacher (Biology) had worked under the Government of Sikkim, Education Department, respondent No.2 from 2nd September, 1976 to 9th May, 1992.

3. The respondent No.1 pursuant to his application for the post of Assistant Education Officer with the petitioner with prior permission of respondent No.2 was appointed to the post of Assistant Education Officer through UPSC against the regular vacant post of Assistant Education Officer as on 21st April, 1992. The respondent No.2 had tendered technical resignation to respondent No.2 and he was relieved of his services, whereafter he joined the Municipal Corporation of Delhi as Assistant Education Officer from 11th May, 1992 at Headquarter, Education Department, Municipal Corporation of Delhi.

4. The respondent No.1 had been issued a service certificate dated 1st August, 1992 by the respondent No.2. Prior to that on 5th May, 1992 service certificate/book was transferred by respondent No.2. The petitioner had also fixed the basic pay of respondent No.1 at Rs.3300/- per month. While granting the basic pay of Rs.3300/- per month to the

respondent No.1 three advance increments were given on account of his past services.

5. The respondent No.1 contended that he made various representations from 15th March, 1993 till 2005 for counting his past services of 17 years for retirement benefits. On 12th July, 1995 the respondent No.2 had even transferred the GPF balance amounting to Rs.36,061/- to the petitioner. The petitioner, however, also sought transfer of pensionary contribution and other benefits with respect to respondent No.1 for counting his past service of 17 years in calculating his terminal benefits.

6. The respondent No.2 by its letter dated 23rd February, 2002 contended that on account of reciprocal arrangement between the petitioner and Government of Sikkim, and as per standing instructions vide O.M dated 9th October, 1986 issued by the Union of India, the pro-rata pension contribution of the parental department has been dispensed with. The petitioner, however, refused to consider O.M dated 9th October, 1986 and refused to count the services of the respondent No.1 with effect from 2nd September, 1976 to 9th May, 1992 rendered with the Government of Sikkim, respondent No.2 and also directed respondent No.2 that until the amount against pro-rata pension contribution is deposited by respondent No.2 or respondent No.1

himself his case would not be considered. A calculation slip was sent by petitioner to respondent No.1 that on depositing the net amount of Rs.1,38,320.16/- by respondent No.2, the case of the respondent no.1 would be considered.

7. Against the action of the petitioner not to consider the case of the respondent no.1 to count his service with the Government of Sikkim with effect from 2nd September, 1976 to 9th May, 1992 unless a net sum of Rs.1,38,320.16/- is deposited by respondent No.2, respondent No.1 made various representations and also served a legal notice dated 4th October, 2005 on the petitioner. The respondent No.1, thereafter, filed a writ petition in the High Court of Delhi praying inter-alia to issue directions to the petitioner to count the entire length of about 17 years of his service from 2nd September, 1976 to 9th May, 1992 rendered with respondent No.2 so as to consider the claim of the respondent No.1 while calculating his terminal/retiral benefits.

8. The writ petition filed by the respondent No.1 was contested by the petitioner contending inter-alia that the O.M dated 9th October, 1986 is not applicable to the petitioner as it pertained to Central and State Government whereas the petitioner is a local body and has not entered into any reciprocal arrangement either with the Central Government or State Government. The petitioner also contended that

even in respect of teachers of petitioners who joined Government of NCT of Delhi, pro-rata pensionary charges were recovered by the Government of NCT of Delhi and reliance was placed on letters dated 7th June, 2005 from Government of NCT of Delhi to DDO, Delhi Development Department. The petitioner also contended that pro-rata pension contribution for the period the respondent No.1 worked with Government of Sikkim is to be deposited with the petitioner either by the Government of Sikkim, respondent No.2 or by respondent No.1 himself and placed reliance on item No.29 in Resolution No.1381 dated 23rd March, 1987.

9. The above noted resolution contemplated that every employee will have an option to retain the benefits received from his previous employer and to get the retirement benefits from the Municipal Corporation of Delhi for the period of service rendered or surrender the benefit received from the previous employer and get the pensionary benefits on the basis of combined service. It further contemplated that every employee who wants to get the benefit of past service for the purpose of retirement benefit will have to exercise his option within one year from the date of absorption in the corporation or from the date of issue of orders whichever is later. The relevant Clause 6 of item No.29 of Resolution No.1381 dated 23rd March, 1987 is as under:-

“6. Every employee will have an option to retain the benefits received from his previous employer and to get the retirement benefits from the Municipal Corporation only for the period of service rendered or surrender the benefit received from the previous employer and get the pensionary benefits on basis of combined service. Every employee who went to get the benefit of past service for the purpose of retirement benefits will have to exercise his option within one year from the date of absorption in the Corporation or from the date of issue of orders, whichever is later. If no option is exercised within the stipulated period, the employee shall be deemed to have opted to get the retirement benefits only for the period of service rendered in the Corporation. The option once exercised shall be final. The right to count previous service as qualifying service shall not revive until the amount on account of pro-rata retirement benefits or other terminal benefits already received is refunded along with interest thereon from the date of receipt of their benefits till the date of deposit with the Corporation. The length of previous service may be accepted on the basis of incontrovertible evidence like service certificate and other service record. The past service will not count towards seniority.”

10. The stand taken by the Municipal Corporation of Delhi was refuted by the respondent No.1 relying on a communication reference No.F.5/24/83-UT.1 (Vol.1) dated 12th July, 1988 from the Under Secretary to the Government of India to the Director of Education categorically stipulating that counting of service for pensionary benefits will be allowed in respect of those State Governments with which reciprocal arrangements exists which include the Government of Sikkim. It further stipulated that the benefit has been extended by Ministry of Personnel, Public Grievances and Pension, Department of Pension & Pensioners Welfare O.M.28/(10)/84-P&W-Vol.II dated 7th

February, 1986 and 27th May, 1988 and these orders will apply to the employees of Central Government moving to State and their autonomous bodies and vice versa who are in service on the date of issue of such orders irrespective of the date of their absorption. The respondent No.1 categorically contended that the reliance has been placed by the petitioner on irrelevant documents including the alleged letter dated 7th June, 2005 from the Deputy Secretary Accounts to the DDO, Delhi Development Department. The Tribunal allowed the petition of the respondent No.1 relying on O.M dated 9th October, 1986 holding that a decision on administrative side is not to be overridden by a policy decision of the Government which would apply even to a body like Municipal Corporation of Delhi.

11. The petitioner has primarily challenged the order dated 3rd September, 2009 passed by Central Administrative Tribunal on the ground that the O.M dated 9th October, 1986 pertains to the Central and State Government whereas the petitioner is a local body having its own account and unless pro-rata pension contributed is deposited by the Government of Sikkim or by the respondent No.1, he is not entitled for the counting of his past services of 17 years with respondent No. 2 while computing his retiral pension. Regarding letter dated 12th July, 1988 of Government of India it has been contended that it does not relate to issue of pro-rata pension contribution.

12. This Court has heard the learned counsel for the parties in detail and has also perused the record. The petitioner has placed reliance on its Resolution No.1381 dated 23rd March, 1987 which contemplates in Clause 6 of item No.29, regarding counting of past service for pensionary benefits, stipulating that every employee will have an option to retain the benefits received from the previous employer and to get the retirement benefits from the Municipal Corporation only for the period of service rendered. The option was also given to surrender the benefits received from the previous employer and to get the pensionary benefits on the basis of combined service. The option contemplated under the petitioner's resolution had to be exercised within one year from the date of absorption or from the date of issue of orders whichever is later. Clause 6 of the resolution of petitioner also categorically stipulated that the right to count previous service shall not be revived until the amount on account of pro rata retirement benefits or other terminal benefits already received is refunded along with interest thereon from the date of receipt of benefit till the date of deposit with the Corporation.

13. The said resolution of the Municipal Corporation of Delhi/petitioner also referred to O.M No.28/10/84-Pension Unit dated 29th August, 1984 which had allowed counting of past service for payment of pensionary benefits. The Office Memorandum of 1984 categorically stipulated that a number of Central

Autonomous/statutory bodies have introduced pension scheme for their employee on the lines of the pension scheme available to the Central Government employees. It was also urged by the autonomous statutory bodies that the services rendered by their employees under the Central Government or other autonomous bodies before joining the autonomous bodies may be allowed to be counted in combination with service in the autonomous body, for the purpose of pension, subject to certain conditions. Therefore, after consideration it was decided that the cases of Central Government employees going to Central Autonomous bodies or vice-versa and the employees of Central Autonomous bodies moving to other central autonomous bodies shall be regulated in terms of the office memorandum of 1984. For the autonomous statutory bodies where the pension is in operation it was decided that the employee with CPF benefits on permanent absorption in an autonomous body will have the option, either to receive CPF benefits which had accrued to it from the Government and start his service afresh in that body or choose to count the service rendered in the Government as qualifying service for pension in the autonomous body by forgoing Government's share of CPF contribution with interest, which will be paid to the concerned autonomous body/the concerned Government department. The option had to be exercised within one year from the date of absorption, if no option was to be exercised within the stipulated period the employee was to be deemed to have opted to receive the CPF benefits.

14. The office memorandum of 1984 also defined “Central Autonomous Body”. Relevant paras 4 & 5 of office memorandum dated 29th August, 1984 are as under:-

“4. “Central autonomous body” means body which is financed wholly or substantially from cases or Central Governments”. “Substantially” means that more than 50 percents of the expenditure of the autonomous body is met through Central Governments grants. Autonomous body include Central Autonomous body or a central university but does not include public undertaking.

Only such service which qualifies for benefits under the relevant rules of Government/Autonomous body shall be taken the account for this purpose.

5. (i) The employee of a Central Autonomous body or Central Government, as the cases may be who have already been sanctioned or have received pro-rata retirements benefits or other terminal benefits for their past service will have the option either:-

(a) to retain such benefits and in that event their past service will not qualify for pension under the autonomous body or the Central Government, as the case may be: or

(b) to have the past service counted as qualifying service for pension under the new organization in which case the Pro-rata retirement or other terminal benefits, if already received by them, will have to be deposited along with interest thereon from the date of receipt of those benefits till the date of deposit with the autonomous body or the Central Government, as the case may be. The right to count previous service as qualifying service shall not receive until the whole amount has been refunded. In other cases, where pro-rata retirement benefit have already been sanctioned but have not become payable, the concerned autonomous shall cancel the sanction as soon as the individual concerned opts for counting of his previous service for pension and inform the individual in writing about accepting his option and

cancellation of the sanction. The option shall be exercised within a period of one year from the date of issue of those orders. If no option is exercised by such employees within, the prescribed time limit, they will be deemed to have opted for retention of the benefits already received by them. The option once exercised shall be final.

- (2) Where no terminal benefits for the previous service have been received, the previous service in such cases will be counted as qualifying service for pension only, if the previous employee accepts pension liability for the service in accordance with the principles laid down in this office memorandum. In no case pension contribution liability shall be accepted from the employee concerned.”

15. The petitioner by another resolution No.1280 dated 6th February, 1986 had decided to implement the office memorandum dated 29th August, 1984 in the Municipal Corporation of Delhi mutatis mutandis with charges as relevant for implementation of this policy and counting/past service rendered by officers/employees of Central Government in MCD for all purposes including pension, gratuity etc. The relevant para 4 of the resolution No.1381 dated 23rd March, 1987 item No.29 is as under:-

“4. Corporation vide Resolution No.1280 dated 06.02.86 has referred a Resolution that the policy of the Central Government as contained in their O.M.No.28/10/84-Pension Unit dated 29 August 1984 be implemented in the Municipal Corporation of Delhi Mutatis Mutandis with charges as relevant for implementation of this policy and counting/past service rendered by officers/employees of the Central Government in MCD for all purposes including pension, gratuity etc. to the Commissioner for report.”

16. Consequent to the resolution No.1381 item No.29 the petitioner had decided to count the previous service strictly on the terms and conditions as given in the OM dated 29th August, 1984. In the case of respondent No.1, the Government of Sikkim had issued the service certificate on 1st August, 1992 and the petitioner on 5th August, 1992 had also fixed the pay of respondent No.1 at Rs.3300/- per month against his erstwhile pay scale of Rs.3000-4500/- per month and had also granted him three advance increments on the basis of his service with the Government of Sikkim. At the time of absorption it was not clarified that the respondent No.1 shall not be entitled for his pension for the period he had served with the Government of Sikkim until the contribution of pension by the Government of Sikkim shall be deposited by the petitioner. This is also not disputed and cannot be disputed by the petitioner that respondent No.1 had not received any retiral benefits from the Government of Sikkim and consequently in terms of resolution No.1381 dated 23rd March, 1987 item No.29 and office memorandum dated 29th August, 1984, Clause 5(2), the respondent No.1 was not to surrender any benefit to the petitioner as he had not received any such benefits from the State Government of Sikkim and, therefore, the respondent No.1 had become entitled to get the pensionary benefits on the basis of combined services.

17. The basic intent behind the Office Memorandum dated 29th August 1984 was to provide for a pension based combined service, and it required a representation for the same to be made within a period of one year. Since respondent no. 1 was appointed in the Municipal Corporation of Delhi on 21st April, 1992 and due representation to count his past services was made on 15th March, 1993, well within the period of one year as required by the petitioner, the respondent no.1 cannot be denied the benefit of the counting his past services with respondent no.2.

18. The office Memorandum No.14(5)86/TA/1029 dated 9th October, 1986 is regarding simplification of adjustment on account of allocation of leave salary and pension between the Central and State Government whereby it was decided to dispense with the system of allocation of leave salary and pension between the Central and State Government.

19. As has been discussed hereinabove, the petitioner's Resolution No.1381 dated 23rd March, 1987 item No.29 was adopted in order to incorporate the O.M No.28/10/84-Pension Unit dated 29th August, 1984 and to further clarify the petitioners own Resolution No.1280 dated 6th February, 1986. In these circumstances the petitioner cannot deny counting of previous service of the respondent No.1 even on the

plea that the OM dated 9th October, 1986 is not applicable to the petitioner.

20. The petitioner could not have denied grant of complete pension to the respondent No.1 after computing his service rendered with the Government of Sikkim, on the ground that pro-rata pension contribution of the Government of Sikkim of Rs.1,38,320/- has not been deposited by the respondent No.2, in case the petitioner is entitled for the said amount from respondent no.2. The item no.29 of resolution No.1381 does not contemplate that unless and until the previous employer will deposit their contribution, even if the previous employer is liable for the same, the pension shall not be paid to the absorbed employee on his retirement. The only restriction contemplated under the said item No.29 of resolution No.1381 is that if the employee had received the benefit from the previous employer then the absorbed employee will surrender the benefit received from the previous employer. This aspect has been further clarified in the office memorandum dated 29th August, 1984, Clause 5(2) which categorically states that when no terminal benefits for the previous service has been be counted as qualifying service for pension only and in no case, the pension contribution liability will be accepted from the employee concerned. Admittedly the respondent No.1 had not received the pro-rata pensionary benefits from the previous employer, State Government

of Sikkim and in the circumstances the right of the respondent No.1 to claim pension on the basis of combined service i.e. the service rendered with the State Government of Sikkim, respondent No.2 and the petitioner could not be denied to the respondent No.1 in any manner. Thus the condition that the amount of Rs. 1,38,320/- with interest, should be deposited by the Govt. of Sikkim or by the petitioner, and then only would his past services be counted while computing the terminal benefits by the petitioner in letter dated 13th November, 2003 cannot be validated under the terms of the policy adopted by the petitioner itself. Nor was any such condition informed to the respondent no. 1 at the time of his absorption.

21. Even if on account of no plea on behalf of petitioner, it is entitled to recover the pro-rata contribution of the pension payable to the respondent No.1 on account of services rendered by him with respondent No.2 on the ground that the office memorandum of 9th October, 1986 does not pertain to Autonomous Statutory Corporations. The petitioner may be entitled to claim the amount from the respondent No.2, but it cannot deny the full pension of combined service to the employee i.e respondent No.1 in the facts and circumstances. The resolution No.1381 item No.29 also does not contemplate that the absorbed employee in the autonomous statutory corporation will not be entitled for the full pension unless the pro-rata contribution is given by

the previous employer to the autonomous statutory Corporation. In the circumstances, on any of the grounds raised by the petitioner, combined service pension to the respondent No.1 i.e for the period of service rendered with respondent No.2 and period of service rendered with petitioner cannot be denied.

22. With these directions the TA No.570/2009 titled R.K.S.Gaur v. Municipal Corporation of Delhi and Ors is allowed and the present writ petition is disposed of and the writ petition filed by the Petitioner/ MCD is dismissed. The petitioner shall also be liable to pay a cost of Rs.5000/- to the respondent No.1 in the facts and circumstances.

ANIL KUMAR, J.

February, 28th, 2011.
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VEENA BIRBAL, J.