

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 02.05.2012

+ **W.P.(C) 2565/2012**

BHISHAM DUTT SHARMA

... Petitioner

versus

COMMISSIONER, MCD & ORS

... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr R. K. Saini

For the Respondents : Mr Anshuj Dhingra with Mr Anubhav Mehrotra

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE V.K. JAIN

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

CM 5502/2012

Allowed subject to all just exceptions.

WP(C) 2565/2012

1. This case has a chequered history. The petitioner is impugning the order dated 13.12.2011 passed in OA 492/2011 by the Central Administrative Tribunal, Principal Bench, New Delhi whereby the Tribunal

has virtually followed the order dated 28.07.2004 passed by a learned Single Judge of this Court in WP(C) 3262/2003.

2. The petitioner joined as a teacher with MCD on 21.02.1994. Prior to that, the petitioner was working with the Department of Education, U.P, at Nainital. Clause 6 of Resolution No. 13891 dated 23.03.1987 of the respondent/ MCD reads as under:-

“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 the basis of combined service. Every employee who want 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 order, 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 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 within 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.”

In terms of the said resolution, every employee, who wants to get the benefit of past service for the purpose of retirement benefits, is required to exercise his option within one year from the date of absorption in the MCD or from the date of issuance of orders whichever is later. It is further stipulated in the said Clause 6 of the said Resolution that 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 said Clause also provides that the option once exercised shall be final.

3. The whole issue before the Tribunal and now before us is whether the past service of the petitioner, when he was employed with the Department of Education, U.P, should be counted for the purposes of computing his retirement benefits. The petitioner had initially filed a writ petition being WP(C) 3262/2003, which was dismissed, as mentioned above, by the order dated 28.07.2004. Being aggrieved by the said dismissal of the writ petition, the petitioner filed a letters patent appeal before a Division Bench of this Court being LPA No. 2032/2005. The said

LPA was disposed of by an order dated 07.12.2005 in the following manner:-

“This writ appeal has been filed against the impugned judgment of the learned Single Judge dated 28th July, 2004. The Petitioner had claimed that his service in the Education Department at Nainital should be added to the service in the MCD for the purpose of pension. Admittedly, the Petitioner is still in service in MCD. We fail to understand how this writ petition could have been entertained at all and, in our opinion, it is pre-mature. The question of pension arises only when a person retires. Hence this appeal is dismissed on this ground. However, it is open to the Petitioner to file a fresh petition claiming his pension after his retirement. Appeal is disposed of.”

The petitioner subsequently retired on 31.07.2010 and following the liberty given by the Division Bench by virtue of the said order dated 07.12.2005, the petitioner filed the said OA 492/2011 which has been dismissed by virtue of the impugned order dated 13.12.2011. That is how the petitioner is now before us.

4. From the impugned order we find that the Tribunal has virtually followed the order of the learned Single Judge dated 28.07.2004 which had been passed in WP(C) 3262/2003. The Tribunal by itself has not examined the merits of the matter. On the contrary, the Tribunal was of the view that they are bound by that order and that a contrary view cannot be taken.

However, we feel that since the Division Bench had already granted the liberty to the petitioner by virtue of the order dated 07.12.2005, it was incumbent upon the Tribunal to have examined the matter on merits and to have come to a conclusion in accordance with law. Unfortunately, that has not been done.

5. Mr Saini appearing on behalf of the petitioner pointed out that the only issue that arises for consideration in this case is whether the petitioner had exercised the option within one year of his absorption in MCD or not. He submitted that in the Original Application filed by him he had specifically taken the plea in paragraphs 4.8 and 4.10 that the option had been exercised not once but twice. He submitted that whereas the petitioner was appointed in MCD with effect from 21.02.1994, he had exercised the option of adding of his past service on to the record of the MCD by the letter dated 30.04.1994 itself. Meaning thereby that the option had been exercised within two months of his joining the MCD. However, when a pointed question was raised by the learned counsel for the respondents that the requirement of the Resolution mentioned above was that the option should be exercised within one year from the date on which

the employee is absorbed in the Corporation, Mr Saini drew our attention to paragraph 4.10 of the OA wherein there is mention of another letter dated 10.05.1996, wherein, once again, the petitioner had exercised the said option of adding his past service to the service that he rendered in the MCD for the purposes of computing his pensionary benefits. Receipt of neither of these letters has been denied by the respondents in the counter-affidavit filed before the Tribunal. As a result, it has to be taken that it is an admitted fact that these two letters dated 30.04.1994 and 10.05.1996 had been sent by the petitioner and received by the respondents. In both these letters, there is a clear exercise of option on the part of the petitioner for adding his previous service to the service rendered in the MCD for the purposes of computing and calculating his pensionary benefits on the date of his retirement. In view of the clear and admitted position that the option had indeed been exercised within one year of the petitioner's joining the MCD as also within one year of his absorption in the MCD, which took effect on 07.03.1996, there is no doubt that the petitioner would be entitled to his pensionary benefits after the past service with the Department of Education, U.P is also counted towards the same.

6. Initially we had thought of remanding this matter to the Tribunal for a consideration on merits. However, in view of the admitted position that the option had, in fact, been exercised by the petitioner within the period of one year stipulated in Clause 6 of the said Resolution, no useful purpose would be served by remitting this matter to the Tribunal. The only point that arose for consideration in this case was whether the petitioner had exercised the option within the stipulated period of one year or not. Since it is now clear that he had, in fact, exercised his option within the stipulated period of one year of his absorption with MCD, the benefits of his past service cannot be denied to him.

7. Consequently, the impugned order is set aside and the respondents are directed to count his past service with the Department of Education, U.P for the purposes of computing his pensionary benefits. The same be completed by the respondents within four months. The writ petition stands allowed accordingly. There shall be no order as to costs.

BADAR DURREZ AHMED, J

V.K. JAIN, J

MAY 02, 2012
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