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

Date of decision: May 29, 2013

+ **W.P.(C) 3665/2013**

JAI PAL SINGH Petitioner
Represented by: Mr.G.Srivastava, Advocate

versus

DELHI TRANSPORT CORPORATION & ORS.
..... Respondents
Represented by: Ms.Avnish Ahlawat and
Ms.Latika Choudhary,
Advocates

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE V.KAMESWAR RAO

PRADEEP NANDRAJOG, J. (Oral)

1. As per the decision pronounced by the Supreme Court in Civil Appeal No. 11440/2011, if a person has not completed 10 years service, pension cannot be granted. This is what the Supreme Court had to say in para Nos.22 to 26 of its decision passed in Civil Appeal No.11440/2011, DTC Vs. Lillu Ram which are reproduced as under:-

“22. The minimum qualifying service which is required for earning pensionary benefits finds place in Rule 49 of the Pension Rules. For the

sake of convenience, Rule 49 is reproduced hereinbelow:-

“49. Amount of pension.- (1) in the case of government servant retiring in accordance with the provisions of these Rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month’s emoluments for every completed six-monthly period of qualifying service”.

<i>(2) to (4)</i>	<i>xxxxx</i>	<i>N.A.</i>
<i>(5) & (6)</i>	<i>xxxxx</i>	

23. Thus, looking to the matter from all angles, we are of considered opinion that even though Respondent had completed 10 years of service for being entitled to claim VRS but he had certainly not become entitled to claim pensionary benefits as he had not put in qualifying service of 10 years with the Appellant.

24. Conjoint reading of Rule 3 (1) (q) and Rule 49 of the Pension Rules quoted hereinabove, make it abundantly clear that only those employees would become entitled to pensionary benefits, who had put in 10 years of qualifying service.

25. Looking to the facts of this case, where Respondent/employee had remained absent, without any sanction unauthorisedly for a long period of 486 days during the period of 10 years of service, he had put in with the Appellant, he would fall short of completing 10 years of qualifying service.

26. As mentioned hereinabove, there are two

different things one with regard to grant of VRS and another with regard to entitlement for pensionary benefits. First one is governed under the VRS whereas the second one is governed under the Statutory Rules. Merely because his application for voluntary retirement was accepted, automatically, he would not become entitled for grant of pensionary benefits”.

2. On the factual aspect of the matter, petitioner relies upon a communication dated February 11, 2011 sent by DTC to him, which records that the petitioner had contributed towards the contributory provident fund for 11 years.

3. We find that in the reply filed by the respondent to the Original Application, in para No.3 it was pleaded as under:

“That as per service record the applicant herein availed 538 days leave without pay hence his qualifying year of service is 8 years 03 months and 02 days. The year-wise leave availed by the applicant are as follows:

YEAR	LEAVE WITHOUT PAY
02.07.1982 to 31.12.1982	NIL
1983	NIL
1984	1
1985	3
1986	1
1987 (17.08.87 to 14.09.87)	29 DAYS UNDER SUSPENSION
1988	11
1989	NIL

1990	58
1991	365
01.01.1992 to 19.03.1992	80
TOTAL	509 + 29 (U/S) = 538 DAYS

DATE OF RETIREMENT	20.03.1992
DATE OF APPOINTMENT (MONTHLY RATES)	02.07.1982
TOTAL SERVICES	9 YEARS 8 MONTHS 81 DAYS
LEAVE WITHOUT PAY	1 YEARS 5 MONTHS 20 DAYS
QUALIFYING SERVICES	8 YEARS 3 MONTHS 02 DAYS

Hence the applicant herein is not eligible for DTC pension as he had not have minimum ten years of qualifying service which is an essential conditions for the eligibility for the DTC Pension Scheme.”

4. Suffice would it be to note that the qualifying service is 08 years, 03 months and 02 days.
5. Suffice would it be to state that number of years interregnum from date of joining till leaving service need not necessarily be the same as qualifying service. The reason is that such period where an employee remains on leave and for which no pay is paid requires said period to be deducted by computing service for the purpose of

pensionary benefits if the period is treated as '*dies non*'.

6. We also find that the writ petition laying a claim for pension was filed after 13 years. The writ petition was registered as W.P.(C) No. 5825/2003 and was transferred to the Tribunal for decision when a notification was issued requiring service disputes pertaining to employees of DTC to be decided by the Central Administrative Tribunal. The writ petition was registered as Transfer Application No.692/2009 which was dismissed on August 11, 2009 against which the writ petitioner filed W.P.(C) No.12656/2009 but restricting prayer to non payment of dues. The petitioner thereafter filed Original Application No.4635/2011 claiming pension; a prayer which in our opinion could not be re-agitated in view of the decision in Transfer Application No.692/2009.

7. We find no merit in the writ petition. The same is accordingly dismissed.

8. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(V.KAMESWAR RAO)
JUDGE

MAY 29, 2013
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