

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

+ **W.P. (C) No. 6329/2011**

% *Judgment reserved on: 16th October, 2012*
Judgment delivered on: 07th January, 2013

SANJEEV VERMA

.....Petitioner

Through:

Mr. N. Safaya, Advocate

Versus

DISTRICT AND SESSION JUDGE

.....Respondent

Through: Ms. Avnish Ahlawat and Ms. Latika
Chaudhary, Advocates

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the instant petition, the petitioner seeks setting aside the order/letter dated 10th June, 2011 issued by the respondent. Consequently, the respondent be directed to pay pension to the petitioner as per the norm/rule from 4th July, 2009 with interest @ 15% per annum.

2. The brief facts of the case are that the petitioner joined as LDC on 12.03.1997 with the respondent. Vide order dated 16.03.2004, he was put under suspension by the respondent. Vide order dated 04.07.2009, the respondent imposed the penalty of compulsory retirement upon the petitioner by passing the following order:-

“Having regard to the totality of the facts and circumstances, the undersigned considers it fit that a penalty of Compulsory Retirement will meet the ends of justice.

Now, therefore, the undersigned in exercise of powers conferred by Rule 15(3) of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 hereby imposes a penalty of Compulsory Retirement upon the said Sh.Sanjeev Verma, Ahlmad/LDC with immediate effect.

Sh.Sanjeev Verma, LDC was suspended vide order dated 16.03.2004. The said order of suspension is hereby lifted. It is ordered that he will not receive any benefits more than what he had already received during the period of suspension.”

3. On 10.12.2010, when petitioner submitted the pension form and the same was denied by the respondent, thereafter, he filed a petition being W.P.(C) No. 1408/2011. The same was dismissed by the Division Bench of this Court vide its orders dated 04.03.2011 holding as under:-

“5. We may record here that this aspect was raised before the Appellate Authority as well and the Appellate Authority stated, while rejecting the appeal of the appellant, that when the petitioner had given up his challenge to the findings of the Inquiry Officer and had rather prayed for a lenient view, the order of the Disciplinary Authority did not suffer from any infirmity. We are quite in agreement with the aforesaid view taken by the Appellate Authority. It is also recorded by the Appellate Authority that the petitioner had failed to disclose any bias or prejudice of the Disciplinary Authority against the petitioner as to why such an admission would be recorded by the Disciplinary Authority in the impugned order.”

4. However, learned counsel for the petitioner had submitted before the Division Bench that the order of compulsory retirement was passed on 04.07.2009, the terminal dues of the petitioner were not settled by that time though he had fulfilled all the formalities.

5. Finding force in the submission of learned counsel for the petitioner, the Division Bench of this Court directed the Disciplinary Authority to calculate the terminal dues, which were payable to the petitioner under different heads with a direction to examine as to whether the petitioner was entitled to pension having regard to the number of years of service put by him. Order in this regard was to be passed within a period of two weeks from the date of the said order and the terminal dues were directed to be paid within four weeks thereafter.

6. Learned counsel for the petitioner submitted that Senior Accounts Officer, who is not the competent authority, sent a communication dated 10.06.2011 regarding pension to the petitioner. The same reads as under:-

“In continuation of Letter no.16702-I/Pension/Accts./2011 dated 31.05.2011 I am directed to inform you that as per Swamy’s CCS Pension rule no.49(b), “In case of Government servant retiring in accordance with the provisions of these rules before completing qualifying service of thirty-three years, but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under clause (a)” and According to Swamy’s Pension Rules Made Easy, Chapter 6, Pension and Gratuity, “A Government servant who retires from service with a qualifying service of less than ten years is not entitled for the payment of ‘pension’ but

is entitled for the payment of lumpsum amount termed 'Gratuity'.

7. It is further submitted that the petitioner is entitled for pension as he has qualifying service of more than ten years. In case of a Government servant, who has been under suspension, the period of suspension shall not be counted as qualifying service for pension if the competent authority specifically directs that specific entries would be made in the service book/record and would be taken note of at the time of reckoning qualifying service. In the absence of specific entries, period of suspension will be counted towards the qualifying service.

8. Learned counsel for the petitioner has relied upon a case decided by the Punjab & Haryana High Court, titled as ***Balkar Singh Vs. Union of India & Ors., 1991 (1) SLR 799***, wherein it has been observed as under:-

“3. In the return filed by the respondents, the impugned action is sought to be justified by pleading, that a lenient view of the matter has been taken and instead of imposing a major punishment, the punishment of compulsory retirement from service was inflicted. It has further been pleaded that as the petitioner had no qualifying service to his credit, he was not entitled to any pension.

4. After hearing the learned counsel for the parties, we find that the impugned action is wholly untenable in law. As compulsory retirement of the petitioner after less than ten years; service is only a misnomer and, in fact, tantamounts to dismissal of the petitioner from service, such an action rendering the petitioner ineligible for claiming pension throughout his life, is liable to be struck down, following the law laid down by

Hon'ble the Supreme Court in Gurdev Singh Sidhu v. The State of Punjab and another, AIR 1964 SC 1585."

9. Learned counsel for the petitioner has relied upon Rule 23 of Central Civil Services Rules, 1972. For convenience, the said Rule is reproduced as under:-

"23. Counting of period of suspension – Time passed by a government servant under suspension pending inquiry into conduct shall count as qualifying service where, on conclusion of such inquiry, he has been fully exonerated or the suspension is held to be wholly unjustified: in other cases, the period of suspension shall not count unless the authority competent to pass orders under the rule governing such cases expressly declares at the time that it shall count to such extent at the competent authority may declare."

10. Counsel for the petitioner submitted that even as per the Government of India's orders, if the suspension is held to be wholly unjustified, the period of suspension would automatically be counted as qualifying service. In other cases, the period of suspension shall count as qualifying service for pension unless the competent authority specifically directs specific entries in this regard in the service book/records that it will be taken note of at the time of reckoning qualifying service. In the absence of specific entries, period of suspension will be taken as counting towards the qualifying service.

11. Learned counsel for the petitioner has further referred to F.R. 54-B, which is reproduced as under:-

"F.R. 54-B. (1) When a government servant who has been suspended is reinstated [or would have been so reinstated but for his retirement (including premature retirement) while under suspension,] the authority competent to order reinstatement shall consider and make a specific order-

- (a) *Regarding the pay and allowances to be paid to the government servant for the period of suspension ending with reinstatement or [the date of his retirement (including premature retirement)], as the case may be; and*
- (b) *Whether or not the said period shall be treated as a period spent on duty.”*

12. Learned counsel for the petitioner has further relied upon the case of ***Khem Chand vs. Union of India and Ors. AIR 1963 SC 687*** in which the Apex Court held that an order of suspension of a government servant does not put to an end to his service under the Government. He continues to be a member of the service in spite of the order of suspension. The real effect of the order of suspension is that though he continues to be a member of the Government service, he is not permitted to work, and further, during the period of suspension, he is paid only some allowance – generally called ‘subsistence allowance’, which is normally less than his salary instead of the pay and allowances, he would have been entitled to if he had not been suspended. It is held that there is no doubt that the order of suspension affects a government servant injuriously. There is no basis for thinking, however, that because of the order of suspension, he ceases to be a member of the service.

13. To sum up his arguments, counsel for the petitioner has contended that firstly; despite the directions issued by the Division Bench of this Court vide order dated 4th March, 2011, the disciplinary authority has not passed the order on the qualifying service and pension, however, the same has been passed by the officer other than the disciplinary authority, which is without

jurisdiction and bad in the eyes of law. Secondly; the petitioner has completed more than 12 years of service, therefore, he is entitled for pension for the period he worked.

14. On the other hand, Ms. Avnish Ahlawat, counsel for the respondent no. 2 submitted that the petitioner is not entitled for any pension since his net qualifying service is less than 10 years. The period of suspension with effect from 16th March, 2004 to 4th July, 2009 has not been counted towards qualifying service on the basis of Rule 23 of CCS Rules, 1972, as quoted above. She further submitted that vide Order No. 62943/F. 1032/Vigilance/08 dated 8th July, 2009 passed by the learned District and Sessions Judge, Delhi, it was directed that “he will not receive any benefits more than what he had already received during the period of suspension.”

15. She further submitted that the petitioner by raising certain contentions is only creating confusion and disarray. She has relied upon Rule No. 49(b) of CCS (CCA) Pension Rules, which is reproduced as under:-

“In case of government servant retiring in accordance with the provisions of these rules before completing qualifying service of thirty three years, but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under clause (a).”

16. Counsel for the respondent submitted that on a perusal of the aforesaid pension rule, after qualifying service of 10 years, the amount of pension shall be given proportionately. She further submitted that according to Pension Rules, Chapter 6 Pension and Gratuity, if a government servant retires from service with a qualifying service of less than 10 years, he is not

entitled for the payment of pension but is entitled for the payment of lump sum amount termed 'Gratuity', which has been paid to the petitioner including leave encashment and insurance.

17. Further, it is submitted that in the order dated 4th July, 2009, the District and Sessions Judge specifically ordered that he will not receive any benefits more than what he had already received during the period of suspension. The intention of the disciplinary authority was that the suspension period of the petitioner would not be counted as service, therefore, the petitioner is not entitled for the relief sought in the instant petition and therefore, the instant petition may be dismissed.

18. I have heard learned counsels for the parties. The petitioner joined as LDC on 12.03.1997 with the respondent. Vide order dated 16.03.2004, he was put under suspension by the respondent. Vide order dated 04.07.2009, the respondent, while exercising the power conferred by Rule 15(3) of the Central Civil Services (Classification, Control & Appeal) Rules, 1965, imposed a penalty of compulsory retirement upon the petitioner. By the said order, the order of suspension was also lifted. It is further recorded that he will not receive any benefits more than what he had already received during the period of suspension.

19. Being aggrieved, the petitioner preferred a petition before this Court as mentioned above. The same was dismissed by the Division Bench of this Court vide order dated 04.03.2011 by holding that the orders of the Disciplinary Authority and the Appellate Authority, as were, did not suffer from any infirmity. This Court had further directed the Disciplinary Authority to calculate the terminal dues, which were payable to the

petitioner under different heads. It was also directed to examine as to whether the petitioner was entitled to pension having regard to the number of years of service put by him.

20. Pursuant to aforementioned directions, Senior Accounts Officer, who is not the competent authority, sent a communication dated 10.06.2011, whereby it is stated that as per Swamy's CCS Pension Rule No.49(b), if a person is not having the qualifying service of ten years, he is not entitled for the payment of pension but is only entitled for the payment of lump sum amount termed 'Gratuity'.

21. First of all, aforesaid order dated 10.06.2011 has not been passed by a competent authority i.e. the Disciplinary Authority, as directed by the Division Bench of this Court. Secondly, the law is well settled that a compulsory retirement of a person after less than ten years; service is only a misnomer and, in fact, tantamounts to dismissal of the petitioner from service. Such an action rendering the petitioner ineligible for claiming pension throughout his life is liable to be struck down, as held in the case of ***Gurdev Singh Sidhu*** (*supra*).

22. Moreover, as per Rule 23 of the Central Civil Services Rules, 1972, the time spent by a government servant under suspension, pending inquiry, shall count as qualifying service unless the competent authority expressly declares that the suspension period shall not be counted as on duty.

23. On perusal of the order passed by the Disciplinary Authority, in my considered opinion, nothing expressly has been declared about the suspension period. By merely saying that the petitioner will not get more

than what he had already received during suspension period, itself is not sufficient not to count his suspension period as qualifying service. Therefore, in the absence of specific direction, the period of suspension will be taken as counting towards the qualifying service.

24. Even under F.R. 54-B. (1), when a government servant is reinstated into service, the authority competent to order reinstatement shall consider and make a specific order regarding the pay and allowances to be paid to the government servant for the period of suspension ending with the reinstatement as to whether the said period shall be treated as a period spent on duty. Such type of specific order is missing in the case in hand.

25. In the case of *Khem Chand (supra)*, the Apex Court has held that an order of suspension of a government servant does not put an end to his service under the Government. He continues to be a member of the service in spite of the order of suspension. The real effect of the order of suspension is that he is not permitted to work, and further, during the period of suspension, he is paid only some allowance – generally called ‘subsistence allowance’. No doubt, order of suspension affects a government servant injuriously; however, there is no basis that because of the order of suspension, the petitioner ceases to be a member of the service.

26. Since the petitioner has put in more than twelve years of service, as per the Rule 49(b) of Swamy’s CCS Pension Rule, the petitioner is entitled for the proportionate amount of pension admissible under the said Rule. However, Swamy’s Pension Rules, Chapter 6, Pension and Gratuity says that if the government servant retires from service with a qualifying service

of less than ten years, he is not entitled for the payment of pension. In my opinion, this is not the case of the petitioner.

27. In view of the above discussion and the legal position, the impugned order dated 10.06.2011 is hereby set aside. Consequently, the respondent is directed to disburse the admissible pensionary benefits, within four weeks from the receipt of this judgment, proportionate to the service rendered by the petitioner with 8% interest from 4th July, 2009 till the date of disbursal.

28. The instant petition is allowed.

29. No order as to costs.

30. *Dasti.*

SURESH KAIT, J.

JANUARY 07, 2013

Sb/jg