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

% *Date of decision: July 09, 2015*

\+ **LPA 88/2008**

D.T.C. ..... Appellant
Represented by: Mr.Nitesh Kumar Singh, Advocate for Mrs.Avnish Ahlawat, Advocate.

versus

JAGDISH SHARMA ..... Respondent
Represented by: None.

**CORAM:**
**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**
**HON'BLE MS. JUSTICE MUKTA GUPTA**

**MUKTA GUPTA, J. (ORAL)**

1. The issue in the present appeal is squarely covered by the decision of the Supreme Court in Civil Appeal No.11440/2011 titled as D.T.C vs.Lillu Ram holding that a person who has not completed ten years of service cannot be granted pension.

2. The relevant portion of the judgment in Lillu Ram (Supra) is 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".*

*(2) to (4). xxxxx N.A.*

*(5) & (6). xxxxx"*

*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".*

3. The factual matrix of the case is that Respondent Jagdish Sharma was appointed as a Conductor on November 15, 1982 with the Delhi Transport

Corporation. On March 03, 1993 DTC introduced "Voluntary Retirement Scheme" '(in short "VRS") and it was informed to the employees through the circular that those opting for this VRS scheme shall be paid an ex-gratia payment only. Jagdish Sharma sought voluntary retirement and was retired under the VRS scheme on May 31, 1993. Since Jagdish Sharma had not completed the qualifying service of ten years for the reason that he was on leave without pay for 404 days he was held to be not entitled to grant of pension.

4. The facts are not disputed. The only contention on the basis of which the learned Single Judge passed the order was that Jagdish Sharma was not informed that he would not be entitled to pension. The circular of DTC dated March 03, 1993 introducing "Voluntary Retirement Scheme" is clear and draws the distinction between the eligibility criteria with regard to VRS and pension.

5. Clauses-2 and 4 of the Voluntary Retirement Scheme are reproduced as under:

> *"2. Eligibility: An employee must have completed ten years of service in this Corporation or completed 40 years of age to qualify for consideration under the Scheme. For this purpose, period of deputation/retention of lien in the parent office in lieu of deputation prior to absorption in the regular service of the Corporation will be excluded.*
>
> *4. An employee who taken voluntary retirement will be eligible to the following refunds/payments:-*
>
> *a) Balance in his PF Account as per rules of provident fund applicable to him.*
>
> *b) Encashment of refused leave and accumulated Earned*

*Leave as per rules of the corporation as payable to him as if he retires under the normal rules of retirement.*

c) *Gratuity as per payment of gratuity act and gratuity Rules of the corporation applicable to him.*

d) *Three month notice pay as is applicable in the individual case as per the terms of him/her employment.*

e) *An ex-parte payment equivalent to 1-72 month's basic pay plus DA for such completed year of service limited to one month pay multiplied by the number of whole month of service left before normal date of retirement.*

f) *Expense for travelling for the entitled class for the employee and his/her family comprising his/her spouse and dependent members from the place of his/her posting to the place where he/she intends to settle down in India.*

g) *Pensionary benefits as per office order No.16 at 27.11.92."*

6. The definition of qualifying service which finds place in Rule 3(1)(q) of the Pension Rules reads as under:

> *"3(1)(q). 'Qualifying service' means service rendered while on duty or otherwise which shall be taken into account for the purpose of pension and gratuities admissible under these Rules."*

7. Thus there is a clear distinction between VRS scheme and entitlement to pension as per the Pension Rules and the Appellant by its circular had clarified that those who opt for VRS scheme would be entitled to ex-gratia payment only and pensionary benefits as per Office Order No.16 dated

November 27, 1992 which were on the same pattern as per Central Government which in turn provided for the qualifying service as noted above.

8. In view of the decision of the Supreme Court in *Lillu Ram* (Supra) the impugned order dated October 30, 2007 is set aside. Appeal is disposed of accordingly.

**(MUKTA GUPTA)**
**JUDGE**

**(PRADEEP NANDRAJOG)**
**JUDGE**

**JULY 09, 2015**
**'vn'**