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

% *Date of Decision : September 23, 2015*

\+ **LPA 132/2014**

PROF R CHANDRA ..... Appellant
Represented by: Mr.Biraja Mahapatra, Advocate

versus

GNCT OF DELHI & ORS ..... Respondents
Represented by: Mr.Abhishek Singh, Advocate for Ms.Avnish Ahlawat, Advocate

LPA 133/2014

PROF R CHANDRA ..... Appellant
Represented by: Mr.Biraja Mahapatra, Advocate

versus

GNCT OF DELHI & ORS ..... Respondents
Represented by: Mr.Abhishek Singh, Advocate for Ms.Avnish Ahlawat, Advocate

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

PRADEEP NANDRAJOG, J. (Oral)

1. Challenge in LPA No.132/2014 is to the order dated November 18, 2013 dismissing R.P.No.584/2013 filed by the appellant and thereby not reviewing the order dated September 12, 2013, which has been challenged by the appellant in LPA No.133/2014.

2. Learned counsel for the appellant concedes that no appeal lies against an order dismissing a review petition and thus LPA No.132/2014 is liable to be dismissed on said ground alone.

3. As regards LPA No.133/2014, the relevant facts to be noted are that the appellant was serving with the Regional Engineering College, Kurukshetra (established by the State of Haryana) since August 03, 1970 till June 23, 1982. The very next day i.e. on June 24, 1982 he was appointed as an Assistant Professor under the Delhi Technological University (Respondent No.2), earlier known as Delhi College of Engineering, which was then an autonomous college under the Government of NCT Delhi and as of today is a deemed university established by the Government of NCT of Delhi. Service under respondent No.2 is governed by the CCS (Pension) Rules, 1972 framed by the Central Government and the office memorandums issued by the Central Government concerning pension of Central Government Employees are applicable to the respondent No.2. The appellant superannuated from service under respondent No.2 somewhere in the year 2001 (exact date and month not disclosed in the pleadings) and the dispute pertains to qualifying service being calculated for pension with reference to the past service rendered by the appellant from August 03, 1970 till June 23, 1982 under the Regional Engineering College Kurukshetra. Whereas the appellant claims a right for said period to be reckoned towards pensionable service, the respondent No.2 pleads to the contrary.

4. While serving under the Regional Engineering College the respondent was a member of the Contributory Provident Fund Scheme. When the appellant submitted technical resignation with the Regional Engineering College he received the amount payable to him as a member of the

Contributory Provident Fund Scheme from the Haryana Government, and albeit belatedly, together with interest, deposited the amount with respondent No.2 on July 16, 1997. The respondent No.2 did not reckon service rendered by the appellant under Regional college of Engineering, Kurukshetra as pensionable service in spite of retaining the contributory provident fund amount received by the appellant from the State of Haryana together with interest thereon from the date appellant received the amount till when he deposited the same.

5. On August 29, 1984, OM No.28-10/84-Pension was issued by the Department of Personnel, Government of India. Para 3 and para 5 thereof being relevant need to noted. They read as under:-

> *"3. This matter has been considered carefully and the President has now been pleased to decide that the cases of Central Government employees going over to a Central Autonomous Body or vice versa and employees of the Central Autonomous Body moving to another Central Autonomous Body may be regulated as per the following provision:-*
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> *(a)* ......
>
> *(i)* .....
>
> *Note* ......
>
> *(ii)* ......
>
> *(b) Autonomous Body where the Pension Scheme is not in operation:*
>
> *(i)* .....
>
> *(ii) An employee of an Autonomous Body on permanent absorption under the Central Government will have the option*

either to receive CPF benefits which have accrued to him from the Autonomous Body and start his service afresh in Government or choose to count service rendered in that Body as qualifying service for pension in Government by forgoing employer's share of CPF contributions with interest thereon, which will be paid to the concerned Government Department by the Autonomous Body. The option shall be exercised within one year from the date of absorption. If no option is exercised within stipulated period, employee shall be deemed to have opted to receive CPF benefits. The option once exercised shall be final.

x x x

5. (1) The employees of a Central Autonomous Body or Central Government, as the case may be, who have already been sanctioned or have received pro rata retirement benefits or other terminal benefits for their past service will have the option either –

(a) to retain such benefits and in that even 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 revive until the whole amount has been refunded. In other cases where pro rata retirement benefits have already been sanctioned but have not yet become payable, the concerned authorities 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 these 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."

6. With reference to para 3(b)(ii), the learned Single Judge has held that since the option was not exercised by the appellant within one year from date of absorption, the appellant would not be entitled to the benefit of the office memorandum.

7. Para 5 of the office memorandum has been overlooked by the learned Single Judge.

8. A reading of the office memorandum makes it clear that it has retrospective operation, and for which we may simply highlight paragraph 5 of the office memorandum. Para 3(b)(ii) would obviously apply to such employees who have been permanently absorbed under the Central Government after the office memorandum has been issued and their cases would be covered by said para. Those who had been permanently absorbed earlier to the memorandum being issued would be covered by para 5 thereof. The reason being that para 5 contemplates pro-rata retirement benefits or terminal benefits for past service being received and gives an option to the employee to either retain such benefits or to have the past service counted as qualifying service as pension but after depositing the amount received along with interest thereon from the date of receipt of the benefits till the deposit with the autonomous body or the Central Government as the case may be.

9. Dismissing LPA No.132/2014 as not maintainable we allow LPA No.133/2014. Impugned judgment dated September 12, 2013 dismissing W.P.(C) No.916./2011 is allowed. Judgment dated September 12, 2013 is

set aside. A mandamus be issued to the respondents to disburse pension to the appellant by recurring service reckoned with effect from August 03, 1970 till June 23, 1982 with the Regional Engineering College, Kurukshetra

10. Compliance be made within 6 weeks from today.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

SEPTEMBER 23, 2015
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