

\$~34

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

+ **W.P.(C) No. 6498 of 2013**

%

Date of Judgment: 10.12.2015

GOVT. OF NCT OF DELHI & ORS.

.....Petitioners

Through : Mr. Satyakam, ASC and Mr. Nikhil
Bhardwaj, Advocate for the petitioners.
Versus

DR. V.K. VERMA

.....Respondent

Through : Mr. Sagar Saxena, Md. Aquil Minhaj and
Mohd. Tabrez Mallik, Advs.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J.

1. Present writ petition has been filed by the petitioner under Article 226 and 227 of the Constitution of India challenging the correctness of the order dated 01.02.2013 passed by the Central Administrative Tribunal (hereinafter referred to as 'Tribunal') in O.A. No. 4173 of 2011 whereby the Tribunal allowed the said O.A. filed by the respondent herein.
2. The facts of the present writ petition enumerated in brief is as follows:

"The respondent joined A&U Tibbia College in the post of Demonstrator. He was promoted to the post of Jr. Lecturer on 19.06.1978 and promoted to the post of Reader w.e.f. 01.06.1996. The respondent superannuated as Reader from A & U Tibbia College, Govt. of NCT of Delhi on 30.06.2001. He was in the scale of pay of `12000-18000. Before his retirement, the Special Secretary, Health and Family Welfare, Govt. of NCT of

Delhi, vide order dated 09.06.2001 conveyed him the decision of the Lt. Governor of Delhi "to provide him extension of service of one year on normal terms and conditions" after his retirement on superannuation on 30.06.2001. Again, vide order dated 09.07.2002, the Joint Director/Head of Office, A&U Tibbia College conveyed the decision of the Lt. Governor to re-employ him as Lecturer in the scale of pay of `8000-13500 plus allowances as admissible under the rules for a period of six months from his date of joining or till the post is filled up on regular basis, whichever is earlier.

As the petitioners have not been finalizing his pension case, even after the extension of his service for one year and further re-employment for another six months, he had earlier approached the Tribunal vide OA 3132/2003 and it was disposed of on 30.12.2003 with a direction to the petitioners to decide his claim within 45 days. Pursuant to the aforesaid directions, petitioners passed the Office Order dated 08.09.2004 stating that the various retirement benefits like gratuity, leave encashment, GPF, UTGEJIS etc. have been paid to him but he was not entitled for any pension.

Later on, in terms of the Corrigendum dated 25.07.2006 issued by the Govt. of NCT of Delhi, the respondent and other similarly placed persons were declared as employees of the Govt. of NCT of Delhi and ordered for payment of pension also. Accordingly, the respondent was granted the basic pension of 'Rs.6339/- w.e.f.01.07.2001 vide Pension Payment Authority's letter dated 10.03.2009. However, he found that he was not given the pensionary benefits for the one year's extension of service in the scale of pay of Rs.12000-18000 already granted to him vide order dated 09.06.2001. Infact, the petitioners issued the impugned Corrigendum dated 25.11.2008 in supersession of their earlier order dated 09.06.2001 wherein the respondent was granted extension of service of one year beyond 30.06.2001 by the Lt. Governor stating that the word extension appearing in the said order shall be read as retention/re-employment in service for one year in the pay scale of `8000-13500 plus usual allowance as admissible under the rules including NPA. They have also issued order dated 02.01.2009 re-fixing his pay, accordingly."

3. In this background, Mr. Satyakam, learned Additional Standing Counsel for the petitioner submits that once a Government Servant superannuates, his/her service can only be retained on re-employment and no further extension in service can be granted to such employees. He further submits that in the present case, the respondent was to superannuate on 30.06.2001 and a proposal was put up by the competent authority through a communication dated 22.05.2001 seeking approval from the Lieutenant Governor for re-employment of the respondent as 'Lecturer' on a minimum scale of Rs.8,000- Rs.13,500 for a period of two years or till the post is filled up on regular basis, whichever is earlier. Learned counsel further contended that the proposal was approved by the Administrative and Special Secretary, Ministry of Health, & Family Welfare, whereafter the same was placed before the Lieutenant Governor, who approved the proposal in the following words :

"I agree to extension by one year, later secure a regular placement within that time".

4. Mr. Satyakam further contended that though the words "Extension of service" were used, it was infact for re-employment which is evident from the fact that when the second proposal for re-employment for the next year was put up before the Lieutenant Governor, the initial order was also sought to be rectified. It is further contended that the College Authority has wrongly interpreted the order of the Lieutenant Governor as an order of 'Extension' and fixed the pay of the respondent accordingly, which is bad in law.

5. It is further contended that no doubt, the Lieutenant Governor passed the order of extension on 25.05.2001 but the same was infact that of re-employment as once a Government Servant superannuates, his/her services can only be retained on re-employment.
6. Mr. Satyakam further contended that merely because the office misinterpreted the order of re-employment, there was no bar in rectifying the same, more so when the respondent had given an undertaking at the time of his superannuation that he would refund the excess payment, if any. He further contended that in supersession of the order dated 09.06.2001 whereby the respondent was granted extension of service for one year, a Corrigendum dated 25.11.2008 was issued that the extension of service had been revised to 're-employment in service' and recovery of pay and allowances be made from the official.
7. Per Contra, Mr. Sagar Saxena, learned counsel for the respondent argued that the respondent was to superannuate on 30.06.2001 and he made a representation for extending the term of his service. On considering his request, Lieutenant Governor accorded sanction for extension of his services by one year and he was conveyed the same on 09.06.2001 in terms of which the extension for one year, would have to be counted to his service and his pensionary benefits were to be affixed including the extended period of service of one year. He further contended that pensionary benefits of the respondent were granted to him vide Pension Payment Authority Letter dated 10.03.2009 in the pay scale of Rs.12,000– Rs.18,000 and was not given benefit for one year of extension of service as per the Corrigendum dated 25.11.2008 in supersession of earlier

order dated 09.06.2001. The respondent herein filed an OA before the Central Administrative Tribunal (CAT) which was allowed.

8. The petitioner herein is aggrieved by the directions contained in the order dated 01.02.2013 passed by the Tribunal, which reads as under:

“13. In view of the above position, we allow this OA. Consequently, the corrigendum dated 25.11.2008 and the impugned order dated 17.08.2011 are quashed and set aside. We also direct the respondents to count the one year extension in service granted to the applicant to his total service and restore his basic pay to Rs.13875/- (pre-revised) which he was drawing at the end of his extension of service on 30.06.2001 with consequential service benefits including revised encashment of leave by including the leave earned during the extension of service, revised computation of the retiral benefits and payment of arrears accruing from such revision. We also direct the respondents to refund the entire amount recovered from the applicants gratuity on account of reducing his basic pay unilaterally from Rs.13875/- per month to Rs.13500/- per month due to arbitrarily treating one year extension granted by order dated 09.06.2001 with the approval of the Lt. Governor, as re-employment. We further direct the respondents to refund the entire amount wrongly deducted towards commuted value of pension from pension arrears w.e.f. 01.07.2001 (date of superannuation) in the face of the commutation paid to him on 29.04.2009 as admissible under the rules. In the above facts and circumstances of the case and in the interest of justice, the applicant will also be entitled for 9% interest for the delayed payment on all retirement benefits which otherwise attracts interest on delayed payment. However, we do not order for grant of any cost of litigation as prayed for by the applicant in this OA.

14. The aforesaid directions shall be complied with within a period of two months from the date of receipt of a copy of this order.”

9. We have heard learned counsel for the parties and considered their rival submissions. We have also carefully perused the impugned order passed by the Central Administrative Tribunal.
10. The entire controversy revolves around the proposal for re-employment of the respondent which was placed before the Lieutenant Governor who gave the approval in the following terms.

“I agree to extension by one year, later secure a regular placement within that time”.

11. The case of the petitioner is that a Government Official can only be re-employed and his services cannot be extended beyond his period of superannuation. ‘Re-employment’ and ‘Extension’ are distinguishable as the purpose and nature of appointment has to be taken into account in conferring benefits. Where the services of a Government servant, beyond the age of his superannuation are required in the same cadre post which he is holding at the time of superannuation, then such retention is to be treated as Extension of service. On the contrary, where the services of a Government servant on deputation to an ex-cadre post or holding an ex cadre post are required by the competent authority beyond the date of his superannuation in his parent service, then such retention, be it on the post he was holding at the time of superannuation or in any other post shall for all purposes be treated as Re-employment. In the present case the Lieutenant Governor of Delhi had agreed for extension for a period of one year with the following observations:

“I agree to the extension for a period of one year, let us secure a regular replacement within that time”

Pursuant to the aforesaid order, the respondent was granted extension for a period of one year vide Order No. F.13/(146)/76-IC/Vol-II/909 dated 09.06.2001, the relevant portion of which is as under:

“Lt Governor of Delhi is pleased to provide him extension in service for a period of one year on normal terms & conditions”

12. It is pertinent to note that petitioner moved an application for extension of his service on attaining the age of superannuation. When the matter was put up before Dr. J. V. K. Taneja, I/C Principal, on 14.05.2001, he recommended that “In the light of the above position, it is recommended that extension in his services may be granted so that his services may be utilized for teaching the students.” On the said note, Mr. M. S. Lari, MS recommended re-employment for a period of two years or till further order, whichever is earlier. On this office note, Mr. T. C. Nakh, Joint Director (ISM&H)/H.O.O. requested the Lieutenant Governor that “We may request the Lt. Governor to approve the re-employment of Dr. V. K. Verma as Lecturer at the minimum pay in the scale of Rs.8000-13500 for a period of two years or till the post is filled up on regular basis, whichever is earlier.” Considering the said request, Lieutenant Governor granted extension with following directions.

“I agree to extension by one year. Let us secure a regular replacement within that time.”

13. The Tribunal placed reliance upon the judgment of *Shyam Babu Verma vs Union of India (1994) 2 SCC 521* wherein it has been held that:-

“10. Although we have held that the petitioners were entitled only to the pay scale of Rs. 330-480 in terms of the recommendations of the Third Pay Commission w.e.f. 1.1.1973 and only after the period of 10 years, they became entitled to the pay scale of Rs. 330-560, but as they have received the scale of Rs. 330-560 since 1973, due to no fault of theirs, and that scale is being reduced in the year 1984 with effect from 1.1.1973. it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same.

11. The petitions are allowed in part. There will be no order as to costs.”

14. In ***Sahib Ram Vs. State of Haryana and Ors., 1995 Supp (1) SCC18*** the Apex Court held that the employee cannot be held responsible for a wrong construction made by the Principal. The relevant para of the judgment is reproduced as under:

“5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principle erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of higher pay-scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered for the appellant...”

15. Returning to the case in hand, the Lieutenant Governor had explicitly and specifically ordered the extension of service to the respondent. The service of a Government employee or a class of Government employees may be extended beyond the date of

superannuation after obtaining the approval from the competent authority which in the present case was granted by the Lieutenant Governor. It is not in dispute that the Special Secretary, Health and Family Welfare, Govt. of NCT of Delhi, vide order dated 09.06.2001 prior to the date of superannuation conveyed the respondent the decision of the Lieutenant Governor of Delhi “To provide him extension of service of one year on normal terms and conditions” after his retirement on superannuation on 30.06.2001. The extended service of one year rendered by the respondent qualifies for the purpose of granting him the consequential benefits on retirement and therefore, the extended period be reckoned for the purpose of computing pension and other retiral benefits.

16. We are, therefore, in consonance with the view taken by the Tribunal that the one year period of extension granted to the respondent is to be counted to his total service and restore his basic pay to Rs.13,875/- (pre-revised) which he was drawing at the end of his extension of service along with consequential service benefits.
17. By issuance of Corrigendum dated 25.11.2008 after seven years of passing the order for extension, modifying the earlier order of Lieutenant Governor and the impugned order dated 17.08.2011 that the original proposal was to grant him reemployment for one year and it was by mistake that the respondent had been granted extension, is inappropriate and cannot be sustained under any circumstances. The act on the part of the petitioners cannot be said to be analogous with equity, good conscience and justice. The concept of fairness has been given a go-by. In the light of the settled legal position noticed above, we are of the view that it shall

not be just and proper for the petitioners herein to withhold the payment to be made to the respondent for no fault of his.

18. For the reasons stated hereinabove, we do not find any infirmity in the order of the Tribunal impugned before us and accordingly, the present writ petition being devoid of any merit is dismissed. No order as to costs.

G. S. SISTANI, J

SANGITA DHINGRA SEHGAL, J

DECEMBER 10, 2015
gr