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

+ **WRIT PETITION(C) No. 11219/2016**

Date of decision: 28th November, 2016

K.C. RAKESH

..... Petitioner

Through Dr. J.C. Vashishta, Advocate alongwith
petitioner in person.

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through Mr. Devesh Singh, ASC for GNCTD.
Mr. K.K. Nangia, Advocate for Mr. Ram Kumar,
Advocate for respondent No. 2.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

The issue whether Respondent No. 3 the North Delhi Municipal Corporation was liable to pay interest on delayed payment of the pensionary/retirement benefits was first raised by the petitioner in Original Application No. 2521/2011. The prayer/claim for interest was dismissed by the Tribunal vide order dated 8th August, 2011, the operative portion of which reads as under:-

“11. That apart, from the material placed on record it is evident that the retiral benefits of the applicant could not be settled because the applicant while working in MCD was appointed on the post of Assistant Commissioner in KVS on 13.3.1996. He was on probation and during the period of probation his services were terminated/repatriated vide order

dated 31.1.1998. He did not join the parent department, i.e., MCD. Further the aforesaid period when he was working in KVS was not regularized and whether said period should be counted as qualifying service for the purpose of pensionary benefits. The order to that effect was passed on 8.2.2006, whereby the period w.e.f. 31.3.1996 to 16.12.1997 was treated as qualifying service in MCD and the period from 17.12.1997 to 31.1.1998 was treated as dies non. Further from the material placed on record it is evident that applicant has also taken House Building Advance (HBA) as well as scooter advance. When he retired on superannuation on 31.3.2004 the substantial amount of HBA to the tune of Rs.61463/- and a sum of Rs.13255/- on account of scooter advance (vide letter dated 7.4.2005 and 5.4.2005 respectively, pages 50-51 of the paper-book) were outstanding. Further from the perusal of the document dated 10.05.2006 it is evident that the recovery of the excess payment of pay due to shifting of increment from 1.4.1998 to 17.5.1998 and in the years 1.4.1999 to 1.5.1999, and in the years 2000, 2001, 2002 and 2003 was also required to be effected from the applicant. It may also be relevant to mention here that applicant did not join the parent department after his termination/repatriation by the KVS for a period of 103 days. The MCD has regularized this period as leave period. The said issue was also settled subsequently to his retirement. Thus, it cannot be said that the delay in making the payment is wholly attributable to the administrative lapse and not to the applicant.”

2. The petitioner had challenged this order before the High Court in Writ Petition (C) No. 7637/2012, but was unsuccessful and the order of the Tribunal was upheld vide order dated 24th April, 2013 observing as under:-

“5. From the above, it is seen that the petitioner himself is responsible for the delay that has occurred in settling the retiral benefits, as his period of working

in Kendriya Vidyalaya Sanghathan was not regularized. That could be regularized only with the issuance of order dated February 02, 2006 by treating the period between March 31, 1996 to December 16, 1997 as qualifying service and the subsequent period of December 17, 1997 to January 31, 1998 as dies non. Apart from that, certain advances taken by the petitioner were required to be effected from the petitioner. Thus, for certain justifiable reasons if the delay has occurred, the petitioner would not be entitled to interest on the payments from the date of superannuation to the date of payment. Besides claim filed beyond 3 years was ex-facie barred by limitation.”

3. After the aforesaid writ petition was dismissed, the petitioner filed OA No. 1959/2014 once again praying for interest on belated/delayed payment. This OA was dismissed by the impugned order dated 31st July, 2015 for several reasons, including the ground that the petitioner had earlier raised the issue of payment of interest and the same was denied. The earlier decision on the issue had attained finality.

4. The petitioner, who is now himself a practicing advocate, is present in the Court along with his counsel. It is urged by the petitioner that the claim of interest which was the subject matter of OA No. 2521/2011 related to nineteen years of service rendered by him as an employee of the Municipal Corporation of Delhi, whereas the claim in OA No. 1959/2014 pertains to the petitioner's prior service of fifteen years in Delhi Administration, i.e., Government of NCT of Delhi and, therefore, the causes of action are different and separate.

5. It is not possible to accept the said contention of the petitioner. The petitioner was earlier an employee of the Directorate of Education, Delhi Administration. Subsequently, on selection he was offered the post of Assistant Education Officer in Municipal Corporation of Delhi. However, initially the Delhi Administration was reluctant and did not relieve the petitioner, which had prompted the petitioner to file the Civil Writ Petition No. 759/1985. Pursuant to the interim order in the writ petition, the petitioner was permitted to join as an Assistant Education Officer Municipal Corporation of Delhi. He joined the said post on 4th April, 1985. The Civil Writ petition No. 759/1985 was transferred to the Tribunal and registered as TA No. 1109/1985 and was allowed vide order dated 29th April, 1992 making the interim order absolute.

6. The petitioner finally retired as Additional Director (Primary Education) from the Municipal Corporation of Delhi on 31st March, 2004. At the time of retirement, controversy arose regarding payment of pensionary benefits, with the Municipal Corporation of Delhi taking the stand that the petitioner's past service in the Delhi Administration would not be counted as qualifying service. The reason was that the petitioner had not tendered his technical resignation, when he had joined pursuant to the interim order passed by the High Court, which was made absolute. The petitioner had then filed Civil Writ Petition No. 2251/2004, to seek the benefit of service rendered by him with the Director of Education

(GNCTD), which was transferred to the Tribunal and registered as TA No. 1438/2009. This TA was decided in favour of the petitioner vide order dated 29th January, 2010.

7. Once the said order was passed, then the second question arose with regard to payment of interest on delayed payments of retirement or pensionary benefits. The said aspect was specifically raised in O A No. 2521/2011 and rejected for the reason recorded in the order dated 08.08.2011. Subsequent challenge in the Writ Petition (C) No. 7637/2012 was also unsuccessful. Principle of res judicata and constructive res judicata would apply. Even otherwise, the reasons given in paragraph 5 of the order dated 24th May, 2013 in W.P(C) 7367/2012 rejecting the prayer for interest would be squarely applicable to the present writ petition also.

8. Hence, the present writ petition has no merit and is dismissed.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

NOVEMBER 28, 2016
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