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

+ W.P.(C) 7662/2015, CM APPL.14957/2015 (stay)

DELHI TRANSPORT CORPORATION Petitioner

Through: Ms. Avnish Ahlawat with Ms. Latika
Choudhary, Advs.

versus

KARAN SINGH Respondent

Through: Mr. J.S. Mann, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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15.03.2016

The Delhi Transport Corporation impugns order dated 19.02.2015 whereby O.A. No. 43/2014, filed by Karan Singh, the respondent before us, has been allowed with the direction that he be paid pension and other retiral benefits with interest at 9% per annum.

2. The respondent, Karan Singh had joined the petitioner-Corporation as Retainer Crew on 27.05.1983 and was employed as a monthly rate conductor with effect from 27.11.1983.

3. On 18.03.1993 the respondent had applied for Voluntary Retirement under the Scheme floated by the petitioner-Corporation. Application for voluntary retirement was accepted and the petitioner Corporation consequently released the Contributory Provident Fund, which was paid by a cheque. The Provident Fund was also settled. The respondent accepted the said payments without demur or objection.

4. Subsequently, after about nine years, the respondent filed Writ Petition (Civil) 7295/2002 claiming that he was entitled to pension as he had completed 10 years' regular service. The writ petition was transferred to the

Central Administrative Tribunal and was registered as TA No.1068/2009. The TA No.1068/2009 was allowed but the decision was reversed in Writ Petition (C) No.9029/2011 by a detailed judgment dated 29.5.2013. The Division Bench observed that ‘voluntary retirement’ and ‘entitlement to pension’ were two different aspects, and for entitlement to pension, the employee seeking voluntary retirement was required to satisfy the requirement of qualifying service of 10 years regular service, which criteria the respondent did not meet. One of the contentions raised before the High Court was that the respondent had rendered this 10 years of regular service. The contention was predicated on the plea that the respondent earned leave of 98 days which should be counted for the purpose of qualifying service. After referring and elaborating on different aspects, the High Court held that the petitioner was not entitled to pensionary benefits for he had not rendered and completed 10 years of qualifying service.

5. The respondent had filed a review application, *inter-alia* submitting that training period should be counted for computing qualifying service. The review application was dismissed by a speaking order dated 08.08.2013. The order records that the respondent had not raised this plea before the Tribunal or the High Court, though he was aware that he had undergone training. The stand of the petitioner – Corporation in the review petition was that the training period would not be counted as the qualifying service. Relevant portion of the order dated 08.08.2013 is quoted hereunder:

The issue before us was with respect to grant of pension to the respondent. The respondent was denied the benefit of pension on the ground that he did not have the required 10 years of service. In the order under review dated May 29, 2013, we have

inter alia concluded that since the respondent did not have the 10 years requisite service he was not entitled to pension. In this review application the respondent is seeking review on the ground that a period between March 15, 1983 and May 26, 1983, when he was undergoing training, should also be taken into consideration for computing 10 years of service.

On a pointed query to the learned counsel for the respondent whether such a plea was taken before the Tribunal and this Court, the answer was in the negative. The fact that he was undergoing training was in his knowledge and there was no occasion for the Corporation to meet such a stand of the respondent.

Having heard the counsel for the parties we are of the view that a new case is sought to be set up by the counsel for the respondent which is not tenable. We had decided the writ petition on the basis of pleadings filed before the Tribunal.

6. The aforesaid judgment dated 29.05.2013, and order passed in the review application No.399/2013 dated 08.08.2013 would operate as constructive res judicata. The principle of constructive Res judicata does not permit the respondent to raise a claim based on the same cause of action. The principle ensures that finality is attached to the lis; as public interest, equity and good conscience mandate that there is an end to litigation, no person is vexed twice and the public time and money is not consumed by a person by raising piecemeal or part claims. In ***Devi Lal Modi vs. STO***, AIR 1965 SC 1150, it was held that principles of constructive res judicata are a part of the doctrine of res judicata and applicable to writ proceedings, for it is

a part of public policy. In ***Direct Recruit Class II Engg. Officers' Assn. V. State of Maharashtra***, (1990) 2 SCC 715 it was held:

“35..... an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with the subject-matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive res judicata underlying Explanation IV of Section 11 of the Civil Procedure Code was applied to writ case. We, accordingly hold that the writ case is fit to be dismissed on the ground of res judicata.”

Recently, in ***Shiv Chander More and Others vs. Lieutenant Governor and Others*** (2014) 11 SCC 744, after referring to earlier decisions, the Supreme Court observed:

*“24. It is in the light of the above authoritative decisions of this Court no longer open to the appellants to contend that the principles of constructive res judicata would not debar them from raising the question which, as observed earlier, could and indeed ought to have been raised by them in the previous round of litigation. The High Court was, in that view of the matter, perfectly justified in holding that the plea sought to be raised by the appellants in the purported exercise of liberty given to them by the orders of this Court dated 9-4-2008 in ***Lt. Governor v. Shiv Chander More*** was not legally open and should not be allowed to be urged.”*

7. In view of the aforesaid dictum, the question of entitlement for pension could not have been revisited and agitated all over again in O.A.

No.43/2014, after the same question was earlier raised in TA No.1068/2009. The settled and concluded cause could not have been urged on the pretext that a point or contention which could have been raised was not raised earlier and required consideration.

8. Secondly, we notice that the respondent was appointed as a Retainer to Conductor vide order dated 24.05.1983 after he had qualified the written test on 13.05.1983. It is at this stage that the respondent was engaged as a regular employee by the petitioner – Corporation. Before this, the respondent had undergone a training in terms of the office memorandum dated 09.02.1983. This aspect was noticed by the Division Bench in their judgment dated 29.05.2013, while deciding the question as to whether the respondent had rendered qualifying service of ten years. It was held that the respondent had rendered total qualifying service of 9 years, 5 months and 3 days and Rule 49(3) of CCS Pension Rules would not be applicable. The Division Bench had observed:

“The question which arises for our consideration “whether the respondent is entitled to count the period of 98 days of leave without pay for the purpose of qualifying service of 10 years, to be eligible for grant of pension?” Rule 21 of the CCS (Pension) Rules, 1972, stipulates leave during service for which leave salary is payable and all extraordinary leave granted on medical certificate shall count as qualifying service. In other words, it is only such leave for which salary is payable shall count as qualifying service. In this case the W.P.(C) 9029/2011 6 of 8 leaves was without pay. Hence, the period of 98 days shall necessarily be excluded (sic) for the purpose of qualifying service of 10 years, the respondent’s total qualifying service would

come to 9 years, 1 month and 25 days (total service rendered is 9 years, 5 months and 3 days). Rule 49(3) of CCS Pension Rules, 1972 would not benefit the respondent for the reasons (1) the same is not applicable as the service is not above 3 months, (2) even if applicable the service would be 9 years, 6 months and 0 days. Further if the service of the respondent is reckoned from May 27, 1983 and the period of 98 days is excluded then also the total period of service put in by the respondent is 9 years, 7 months and 8 days. In that eventuality also the benefit of Rule 49 (3) would not be applicable to the respondent as the same is attracted when the period is equal to 3 months and above which shall be treated as completed one half year. In this case beyond a period of 6 months i.e. second half the respondent has not put in 3 months of minimum service to seek the benefit of Rule 49(3). “

9. In view of the aforesaid, we allow the present writ petition and set aside the impugned order dated 19.02.2015 and the directions given therein. O.A. No.43/2014 will be treated as dismissed. No order as to costs.

SANJIV KHANNA, J

NAJMI WAZIRI, J

MARCH 15, 2016/acm