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

+ **W.P.(C) 3081/2016**

ALL INDIA INSTITUTE OF MEDICAL SCIENCES

..... Petitioner

Through: Mr. R.K. Gupta & Mr. A.K. Singh,
Advocates.

versus

FLORENCE SAHOTRA

..... Respondent

Through: Mr. Paritosh Budhiraja & Ms. Surabhi
Maheshwari, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

25.04.2017

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1. The petitioner All India Institute of Medical Sciences (AIIMS) has preferred the present writ petition to assail the order dated 30.04.2015 passed by the Central Administrative Tribunal Principal Bench, New Delhi (CAT/ Tribunal) in O.A No.1954/2012, whereby the Tribunal has allowed the Original Application filed by the respondent and directed the petitioner to finalise the pension and other retiral dues payable to the respondent applicant after verification of her record and completion of other formalities. The respondent has also been awarded interest @ 6% with effect from filing of the application, i.e. 29.05.2012 till the date of payment.

2. At the outset, we would like to record our anguish on account of this frivolous petition being filed by the petitioner/ AIIMS. As would appear from the following observations, this petition has been filed despite the fact that the legal position stands well-settled and there was absolutely no doubt about the merit of the respondent's case.

3. The respondent was initially appointed to the post of Sister Grade-II in the petitioner institute with effect from 12.12.1981 on ad-hoc basis. Subsequently, she was regularised on 25.10.1985. She was appointed as Tutor in Nursing vide order dated 26.11.1991 on temporary basis and continued as such for six years.

4. The respondent applied for and she was sanctioned one month's leave from 10.04.2002 to 09.05.2002 for visiting her ailing aunt staying in United Kingdom. The respondent, however, did not resume duties on the expiry of the said period and instead sought extension of her leave by 315 days, i.e. up to 20.03.2003 on the ground that the condition of her aunt had deteriorated further.

5. The petitioner sent a memorandum dated 22.08.2003 to the respondent conveying their rejection of her request for further extension of her leave due to exigency of work and in the interest of patient care services. Vide memorandum dated 22.03.2002 she was granted leave subject to the condition that she would not seek further extension of leave from abroad and would join duty on expiry of the same. She was asked to report for duty by 30.08.2003. She was warned against action in case she did not so join duty and remained wilfully absent.

6. In response to the said memorandum, the respondent sent a communication on 15.09.2003 again asserting that the medical condition of her aunt was not stable. She sought extension of leave by some more time and she stated that she would join her duties by 30.04.2004. She further stated that if the condition of her aunt did not improve, she would have no option but to seek voluntary retirement from service. Accordingly, she enclosed a letter seeking voluntary retirement dated 19.04.2004. In this application seeking voluntary retirement, she, inter alia, stated that “... .. *I hereby submit voluntary retirement from the services of the All India Institute of Medical Sciences Nursing Sister Grade I (HR) w.e.f. 31 July 2004. The period between the date of this application and 31 July 2004 may be considered as notice period*”.

7. The petitioner did not respond to this application of the respondent seeking voluntary retirement, and instead, issued another memorandum dated 05.05.2004. The respondent was asked to report for duty by 08.05.2004, failing which she was threatened with action including termination of her services.

8. The respondent then sent a communication dated 24.05.2004 informing the petitioner that she would be joining her duties on or before 15.07.2004. The respondent, accordingly, reported for joining duties on 14.07.2004. The respondent claimed that she was forced to give her resignation from service and, consequently, she was left with no option, but to tender her resignation from service w.e.f. 10.04.2002 vide letter dated 14.07.2004. The respondent was relieved from service retrospectively w.e.f. 10.04.2002 even though she gave her letter of resignation only on

14.07.2004.

9. The respondent then sought release of her pension, gratuity and other retiral benefits. Since the same were not released, she made a detailed representation on 25.04.2011. In her representation, she stated that her ad-hoc service has to be counted for the purpose of examining her eligibility to get pension and other retiral benefits. She also placed reliance on several decisions in support of her submission. Since the petitioner did not grant the reliefs sought by the respondent, she filed the aforesaid Original Application.

10. The Tribunal, in the impugned order, takes note of Rule 26 of the Central Civil Services (Pension) Rules, 1972, which was sought to be relied upon by the petitioner. The petitioner's submission before the Tribunal and also before us is that resignation from service or post, unless it is allowed to be withdrawn in public interest, would entail forfeiture of past service. The submission is that since the respondent had tendered her resignation, she forfeited her past service and is not entitled to any pension and other retiral benefits.

11. Reliance is also placed on Rule 48A, which permits a Government servant who has 20 years of qualifying service to give notice of not less than three months in writing to the appointing authority to retire from service. The submission is that the substantive service of the respondent was only with effect from 25.10.1985 and, consequently, even on the date of tendering her resignation, i.e. 14.07.2004, the respondent had not completed 20 years of qualifying service.

12. The further submission of the petitioner is that the respondent had sought to resign from her services and not to seek voluntary retirement on 14.07.2004, and thus, she was not entitled to pension and other retiral benefits.

13. The Tribunal has rejected all these submissions and a perusal of the impugned order shows that the said rejection is premised on well-settled legal position.

14. So far as the computation of qualifying service is concerned, the Tribunal has taken note of Rule 13 of the CCS (Pension) Rules. The said rule reads as follows:

“13. Commencement of qualifying service

Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he taken charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity:

Provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post:

Provided further that –

(a) in the case of a Government servant in a Group ‘D’ service or post who held a lien or a suspended lien on a permanent pensionable post prior to the 17th April, 1950, services rendered before attaining the age of sixteen years shall not count for any purpose, and

(b) in the case of a Government servant not covered by Clause (a), service rendered before attaining the age of eighteen years shall not count, except for compensation

gratuity,

(c) the provisions of Clause (b) shall not be applicable in the cases of counting of military service for civil pension under Rule 19.”

15. It is not in dispute that the petitioner's initial ad-hoc appointment on 12.12.1981 was converted, without any break, into a regular appointment w.e.f. 25.10.1985. The submission of the petitioner, that subsequently she was appointed as Tutor in Nursing vide order dated 26.11.1991 on temporary basis, and thus her regular appointment got effaced, has only to be stated to be rejected. Despite her appointment on temporary basis as Tutor in Nursing, she continued to retain her status as a regular Sister Grade - II. On a plain reading of Rule 13 of the CCS (Pension) Rules, it is clear that the qualifying service of the petitioner had to be counted from initial date of ad-hoc appointment, i.e. 12.12.1981 and not from 25.10.1985, or any other date as contended by the petitioner. Pertinently, the Tribunal has taken note of the decision in ***Kesri Devi Vs. Municipal Corporation of Delhi***, 113 (2004) DLT 135, the facts whereof are similar to the facts of the present case.

16. From the aforesaid, it is evident that the respondent had more than 20 years of qualifying service on the date on which she tendered her resignation. The submission of her resignation by the respondent from a retrospective date, is neither here nor there. The resignation submitted in July 2004, could not have related back to the year 2002, merely because the respondent had gone on leave in the year 2002. She did not lose her status as a regular employee while on leave. She, in fact, rejoined her service on 14.07.2004.

17. The respondent having completed 20 years of service, the resignation tendered by her is liable to be treated as an application for voluntary retirement. Pertinently, the respondent had sought voluntary retirement by giving three months notice, as taken note of hereinabove, and there was no rejection of the said application by the petitioner. By force of proviso to Rule 48A(2), the retirement of the respondent became effective from the date of expiry of the said notice period.

18. The Tribunal has taken note of the decision of this Court in ***Shanti Devi Vs. DTC*** Writ Petition (C) No. 4871/2010, decided on 15.10.2012, wherein the resignation tendered by the employee after 28 years of service was treated as an application for seeking voluntary retirement since the employee had consciously stated that his resignation may be accepted keeping in view his 28th years of service. In the present case, as noticed hereinabove, the respondent initially made her application to seek voluntary retirement. The same was not actioned and entailed deemed acceptance under the proviso to Rule 48A(2) of the CCS Pension Rules. Even in the present case, the respondent while tendering her resignation on 14.07.2004, firstly, mentioned the date of her joining as 12.12.1981 and the fact that she has proceeded on leave on 10.04.2002, she also requested, “*that my dues be also settled at an early date.....*”. Thus, the intention of the respondent clearly was not to resign from her job while foregoing her right to claim pension and other retiral benefits. The said application, in any event, is liable to be construed as a communication seeking voluntary retirement. The Tribunal has also referred to its own earlier decision in ***Amar Singh Vs. NCT of Delhi & Others***, O.A. No.1619/2012 decided on

10.04.2013, wherein the Tribunal has taken the view that Rule 26 requires a liberal interpretation, and a wider meaning should be given to it. Thus, merely because the respondent may have used the expression that she is “resigning” from service, she would not forfeit her service by resort to Rule 26, since she had rendered qualifying service on the date of the letter of resignation.

19. As noticed above, despite the aforesaid position being the well-settled by a catena of decisions, the petitioner has dragged the respondent to this Court; wasted public money; and the precious time of this Court. We do not approve such a litigious attitude on the part of the petitioner.

20. In these circumstances, we dismiss this petition with costs of Rs.50,000/-. The costs be paid to the respondent within two weeks.

VIPIN SANGHI, J

DEEPA SHARMA, J

APRIL 25, 2017

B.S. Rohella