

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

+ **Date of Decision: 3rd July, 2017**

% **W.P.(C.) No. 5410/2017**

DELHI TRANSPORT CORPORATION & ANR. Petitioners

Through: Ms.Avnish Ahlawat & Mr.Anuj
Dewan, Advocates.

versus

BRAHAM PRAKASHRespondent

Through: Mr.Sudarshan Rajan & Mr.Arjun
Gadhoke, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J. (ORAL)

Caveat No.588/2017

Since Mr.Sudarshan Rajan appears for the Caveator, caveat stands discharged.

W.P.(C.) No. 5410/2017 & CM No.22779/2017 (for stay)

1. The Petitioner-Delhi Transport Corporation (hereinafter referred to as 'Corporation') has by the present writ petition impugned the order dated 08.02.2017 passed by the Central Administrative Tribunal, Principal Bench,

New Delhi whereby the original application filed by the Respondent seeking grant of pension under the Pension Scheme has been allowed.

2. The admitted facts as noticed by the Tribunal are that the Respondent (applicant before the Tribunal) was an Electrician Grade-I in the Petitioner-corporation and had been dismissed from service on 29.07.1992. The Respondent, aggrieved by his dismissal from service, had raised an industrial dispute wherein the Labour Court had vide its Award dated 18.08.2011 directed his reinstatement in service.

3. It is also admitted that pursuant to the Labour Court's Award the Respondent was reinstated in service vide order dated 01.12.2011. The Petitioner-corporation had thereafter challenged the said order before the Single Judge and thereafter filed an LPA before a Division Bench and both the writ petition and LPA of the Petitioner stood dismissed.

4. As noticed by the Tribunal, it is an admitted fact that the Petitioner had introduced a Pension Scheme vide its office order dated 27.11.1992 according to which the employees in service were supposed to give options as to whether they were opting for the Pension Scheme or the Employees Contributory Provident Fund Scheme. Para 9 of the Pension Scheme - which is reproduced herein below, specifically provided that in case of no option being exercised by any employee, he would be deemed to have opted for the Pension Scheme benefits. Para 9 of the Scheme reads as under:-

“9. If any of the employee of DTC, who does not exercise any option within the prescribed period of 30 days or quits service or dies without exercising an option or whose option is incomplete or conditional or ambiguous, he shall be deemed to have opted the Pension Scheme Benefits.”

5. After his reinstatement in service, pursuant to order dated 01.12.2011, the Respondent submitted representations dated 14.03.2013 and 30.07.2013 to the Petitioner seeking benefit of the Pension Scheme, but no decision was taken thereupon by the Petitioner till his superannuation on 31.08.2013. Even after his superannuation in service, the Respondent made further representations seeking grant of pension but the Petitioner vide its order dated 12.08.2014 rejected his claim for grant of pensionary benefits, by relying on the decision dated 29.10.2013 of its 'Disputes Settlement Committee', which had opined that since as per the service book of the Respondent, it was a case of pension not opted, he was not entitled for pensionary benefits.

6. Being aggrieved by the action of the DTC, the Respondent approached the Tribunal by way of the aforesaid OA No.3713/2014 seeking a direction for quashing of the order dated 12.08.2014, whereby his request for grant of pensionary benefits had been rejected and also prayed for a direction to the DTC to grant pension and other ancillary benefits to him in terms of the Pension Scheme dated 27.11.1992.

7. In the counter affidavit filed by the Petitioner herein (respondent in the OA) there was no denial to the factual averments made by the Respondent regarding his dismissal vide order dated 29.07.1992 and consequent reinstatement vide order dated 01.12.2011 and also qua his representations dated 14.03.2013 and 30.07.2013 seeking grant of pension, but the Petitioner denied the claim of the Respondent by relying on the decision of its Disputes Settlement Committee and prayed for dismissal of the OA.

8. The Tribunal has, after consideration of the admitted facts, come to the conclusion that since the Respondent (applicant therein) was admittedly not in service of the DTC at the time of introduction of the Pension Scheme - having been reinstated on 01.12.2011, there was no question of him opting, or not opting, for pension under the Pension Scheme in 1992. The Tribunal was also of the opinion that since the Respondent-applicant was not in service of the DTC at the time when the Pension Scheme was introduced, it could not be held against him that he had not opted for pension at the relevant time, and the balance of convenience clearly lay in his favour for his claim of pension in accordance with Para 9 of the said Pension Scheme dated 27.11.1992, which, as noticed above provides for a deemed option for Pension Scheme benefits in respect of employees who had not consciously opted out of the said Scheme.

9. The Tribunal accordingly allowed the OA with a direction to the present petitioner to treat the Respondent-applicant, as having opted for the Pension Scheme in accordance with Para 9 of the Scheme, and further directed the petitioner to grant him all consequential benefits such as commutation etc. as per the Pension Scheme.

10. The Petitioner aggrieved by the impugned order has challenged the same by mainly contending that Clause 9 of the Pension Scheme would have no application in cases where the employee already stood dismissed from service when the Scheme was introduced, and by further contending that there was an entry in the Respondent's service book which showed that he had not opted for pension and, therefore, contended that the order of Tribunal was perverse and illegal and liable to be set aside.

11. We have heard the arguments of Ms.Avnish Ahlawat, learned counsel for the Petitioner and given our thoughtful consideration to the same.

12. The admitted facts are that when the Pension Scheme was introduced, the Respondent was not in service and therefore, he obviously could not have exercised any option. Further, it is also an admitted fact that the Respondent was reinstated in service only on 01.12.2011 and had made two representations dated 14.03.2013 and 30.07.2013 before his superannuation seeking pensionary benefits as per Pension Scheme dated 27.11.1992.

13. Since it is also an admitted fact that as per Clause 9 of the Scheme, a failure to exercise any option would result in a deemed option for the Pension Scheme benefits, the only question which falls for our consideration is whether, merely because the service book of the Respondent contains a note that he had not opted for pension, he can be denied the benefit of pension, even though, it is an admitted fact that soon after his reinstatement and prior to his superannuation, he had made representations seeking benefit of Pension Scheme.

14. The plea raised by the Petitioner that the Respondent is not entitled to the benefit of pension since there is an entry to the contrary in his service book is liable to be rejected, as admittedly, the Petitioner has failed to show any document either before the Tribunal or before this Court that the Respondent had ever submitted any option to remain out of the Pension Scheme.

15. We are of the opinion that in the light of the admitted factual position that the Respondent had, before his superannuation, made repeated representations seeking coverage under the Pension Scheme, the mere

presence of an entry in the service book to the effect the Respondent had opted out of Pension Scheme cannot be a ground to reject the claim of the Respondent for pension.

16. As noticed above, the Respondent was not in service when the Pension Scheme was introduced and therefore, as rightly held by the Tribunal, he would be entitled to claim benefit of Para 9 of the Scheme and is, therefore, entitled to be treated as having opted for the Pension Scheme.

17. We find no error in the impugned order. The writ petition is devoid of any merit and the same is dismissed. No order as to costs.

18. The pending application is also dismissed as infructuous.

REKHA PALLI, J

VIPIN SANGHI, J.

JULY 03, 2017/gm