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

\+ W.P.(C) 12281/2018 with C.M. No. 47592/2018

SHRI ASU LAL AND ORS. ..... Petitioners

Through: Mr. Mahesh Srivastava and Mr.Vaibhav Manu Srivastava, Advocates.

versus

DELHI MILK SCHEME ..... Respondent

Through: Ms. Arti Bansal, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE A. K. CHAWLA

O R D E R

% 16.11.2018

1. The petitioner has preferred the present writ petition to assail the order dated 03.04.2018 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('the Tribunal') in OA No.1309/2018. The Tribunal had rejected the said original application wherein the petitioner has sought a direction to the respondent-Delhi Milk Scheme ('DMS') to grant them pension from the date of their appointment in the DMS till the date of their absorption in Haryana Dairy Development Co-operative Federation Ltd. ('HDDCF').

2. The dates of joining the duties, the dates on which they became permanent in the DMS and the dates of transfer to HDDCF in respect of the

petitioners are the following:-

“NAME	DATE OF JOINING	DATE OF QUASHI PERMANENT CAPACITY	DATE OF TRANSFER TO HDDFC
Asu Lal	19.04.1973	18.04.1976	09.12.1980
Ashok Kumar Srivastava	09.08.1975	10.09.1980	06.02.1981
Kanchhid Singh Sharma	28.08.1972		05.12.1980
S M Salam	17.03.1976		24.01.1981”

3. Of their own volition, the petitioners sought permission and were permitted to join the HDDCF. After retirement from HDDCF, the petitioners raised a demand that they be granted pension by the DMS. The DMS refuted this claim by stating that for the period the petitioners rendered service in DMC, they would be granted proportionate pension. However the petitioners claimed pension not just for the period that they served the DMS, but also for the period during which they served the HDDCF-till they were formally absorbed in that organisation, i.e. 11.04.1986. The petitioners sought to place reliance on Rule 37 of the CCS (Pension) Rules, 1972, which reads as follows:-

> “**37. Pension on absorption in or under a corporation, company or body**
>
> (1) A Government servant who has been permitted to be absorbed in a service or post in or under a Corporation or Company wholly or substantially owned or controlled by the Central Government or a State Government or in or under a Body controlled or financed by the Central Government or a State Government, shall be deemed to have retired from service from the date of such absorption

and subject to sub-rule (3) he shall be eligible to receive retirement benefits if any, from such date as may be determined, in accordance with the orders of the Central Government applicable to him.

EXPLANATION. – Date of absorption shall be –

i) in case a Government employee joins a corporation or company or body on immediate absorption basis, the date on which he actually joins that corporation or company or body;

ii) in case a Government employee initially joins a corporation or company or body on foreign service terms by retaining a lien under the Government, the date from which his unqualified resignation is accepted by the Government.

(2) The provisions of sub-rule (1) shall also apply to Central Government servants who are permitted to be absorbed in joint sector undertakings, wholly under the joint control of Central Government and State Governments/Union Territory Administrations or under the joint control of two or more State Governments/Union Territory Administrations.

(3) Where there is a pension scheme in a body controlled or financed by the Central Government in which a Government servant is absorbed, he shall be entitled to exercise option either to count the service rendered under the Central Government in that body for pension or to receive retirement benefits for the service rendered under the Central Government in accordance with the orders issued by the Central Government.

EXPLANATION. - Body means autonomous body or statutory body."

4. The Tribunal had rejected the petitioners' claim and, in our view, rightly so. It is well settled that pension is also emoluments for services rendered during the qualifying period. The petitioners did not render service with the DMS after they were appointed in HDDCF, on the dates indicated

hereinabove; no deduction from their salaries were made and no deposits were made in the pension fund after they started serving with HDDCF. The DMS could not have been burdened with the liability to pay pension to the petitioners for the period during which the petitioners services were rendered with the HDDCF. If the petitioners have a claim against the HDDCF, it is for them to pursue the same with that organisation. We find no justification for the relief claimed by the petitioners.

Dismissed.

VIPIN SANGHI, J

A. K. CHAWLA, J

NOVEMBER 16, 2018
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