

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 31.01.2019

+

W.P.(C) No.4274/2007

D.T.C.

..... PETITIONER

Through Ms.Bhakti P. Sethi, Adv.

versus

RADHA KISTO

... RESPONDENT

Through Nemo.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. Vide the present petition, the petitioner/DTC has impugned the Award dated 18th February, 2006 whereby the respondent's application under Section 33-C (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act"), claiming an amount of Rs.18,965/- was allowed by the learned Labour Court.

2. The brief facts as emerge from the record are that the respondent was appointed as a Mechanic with the petitioner/DTC on 31st July, 1957 and had retired on 31st March, 1988 after rendering service of 30 years and 8 months. Upon his retirement, the respondent was, in accordance with the Pension Scheme of the DTC/petitioner, sanctioned pension when he realised that he had been paid all his terminal dues by treating his service only as 29 years 3

months and 19 days as against his actual service of 30 years and 8 months.

3. Feeling aggrieved by the grant of lesser amount to him towards his terminal dues which included not only his Provident Fund but also arrears of pension, the respondent approached the learned Labour Court on 30th December, 1998 by way of an application under Section 33-C (2) of the Act. The petitioner's claim as set out in his aforesaid application is reproduced hereinbelow below for the sake of clarity:-

Annexure "A"

Claim in Brief:-

- | | | |
|----|---|---------|
| 1. | Difference of EPF vide para 5 of the petition | 9766.82 |
| 2. | Difference of commutation value vide Para-7 of the petition. | 2510.40 |
| 3. | Difference of Arrear of Pension vide Para-7 of the petition. | 880.10 |
| 4. | Arrear of un-paid Dues pending from 1.4.88 subject to verification from office Record after implementation of IVth Pay Commission which has not been intimated despite repeated requests. | 5807.65 |
| 5. | Interest on the above as to be determined the Hon'ble Court. | _____ |

Total:- 18964.97

(Rs. Eighteen thousand nine hundred sixty five only)."

4. The petitioner filed a reply opposing the respondent's claim and stated therein that the respondent had not worked for 30 years and 8 months as claimed but had only worked for 29 years 3 months and 19 days. In its reply before the learned Labour Court, no material averments were however made by the petitioner, as to how the period of service rendered by the respondent was only 29 years 3 months and 19 days instead of 30 years and 8 months as claimed by him. Learned counsel for the petitioner does not dispute the fact that no documents were filed before the learned Labour Court to demonstrate that the respondent despite having been in service from 31st July, 1957 to 31st March, 1988 i.e. for 30 years and 8 months could be treated as having been in service only for a period of 29 years 3 months and 19 days. In these circumstances, the learned Labour Court after considering the material on record and relying on a letter dated 19th August, 1988 issued by the petitioner itself, wherein it had been categorically stated that the respondent had remained in service for 30 years and 8 months, allowed the respondent's application and vide its impugned Award directed the petitioner to pay the sum of Rs.18,965/- to the respondent within two months failing which the same was directed to be paid with interest at the rate of 12% per annum.

5. Being aggrieved by the aforesaid Award, the petitioner/DTC has filed the present petition under Articles 226 & 227 of the Constitution of India. While issuing notice, this Court had vide its order dated 27th July, 2007, stayed the operation of the impugned Award subject to the petitioner depositing the awarded amount in this Court within three weeks. I am informed that the said amount was

duly deposited by the petitioner and has been kept in a Fixed Deposit Receipt which has been renewed from time to time.

6. The only plea of learned counsel for the petitioner before this Court is that the learned Labour Court has failed to appreciate that even though the respondent was in service for a period of 30 years and 8 months, a period totalling 346 days i.e. 11 months 16 days during his entire service, when he was on leave without pay, has to be treated as a non-qualifying period. She thus contends that this period was rightly excluded from his service of 30 years and 8 months and the respondent was, therefore, correctly paid all his terminal dues by excluding his non-qualifying service of 346 days. Learned counsel for the petitioner also draws my attention to the tabulation filed as Annexure 2 of the writ petition and, by placing reliance thereon, submits that once it is evident that the petitioner had been on leave without pay for 346 days, he could not get any benefit for the said period. She, therefore, prays that the findings of the learned Labour Court that the respondent had worked for 30 years and 8 months service, is perverse and liable to be set aside.

7. Since none appears for the respondent despite pass over, the arguments of the learned counsel for the petitioner, have been considered. I have also perused the impugned order and the records. Even though there is merit in the contention of the learned counsel for the petitioner that the period during which an employee remains on unauthorised leave without pay, has to be first generally, excluded from his qualifying service, the factum of unauthorised leave without pay has to be first established by the employer before depriving the

employee of the benefits for the said period.

8. In the facts of the present case, I am unable to appreciate as to how the petitioner can claim that the respondent was indeed on unauthorised leave without pay for 346 days as is being sought to be contended for the first time before this Court by merely placing reliance on a tabulation filed with the present petition and that too in the face of the admitted position that the petitioner did not take any such plea before the learned Labour Court.

9. A perusal of the petitioner's reply before the learned Labour Court as also of the impugned Award, clearly shows that petitioner had merely stated that the respondent had served for 29 years 3 months and 19 days. Neither any plea regarding the respondent having remained on unauthorised leave without pay for 346 days was taken nor any documents in support thereof were produced before the Court. Even before this Court no documents to substantiate the tabulation have been filed by the petitioner.

10. In these circumstances, the learned Labour Court was fully justified in coming to the conclusion that the respondent had served the petitioner for 30 years and 8 months and was, therefore, entitled to receive all his terminal benefits by counting his entire service of 30 years and 8 months. I find absolutely no infirmity in the impugned Award. The writ petition is dismissed with no orders as to costs.

11. The record also shows that the respondent had expired on 10th December, 2010 during the pendency of the present petition and his legal heirs were brought on record vide order dated 13.02.2013. It is, therefore, directed that the amount already deposited by the petitioner

be released to the legal heirs of the petitioner along with any accrued interest thereon.

(REKHA PALLI)
JUDGE

JANUARY 31, 2019/aa

