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

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**W.P.(C) 2022/2017 & CM APPL. 8937/2017 (Stay)**

**THE NATIONAL INSTITUTE OF HEALTH  
AND FAMILY WELFARE & ANR.**

.... Petitioners

Through: Mr V.S.R. Krishna and Mr Shashank  
Kumar, Advocates.

versus

**DR. PRATIMA MITRA & ORS**

..... Respondents

Through: Ms. Harvinder Oberoi, Advocate for  
R-1.  
Mr Bhagwan Swarup Shukla, CGSC  
with Mr Gokul Sharma, Advocates  
for UOI.

**CORAM:  
JUSTICE S. MURALIDHAR  
JUSTICE TALWANT SINGH**

**ORDER  
06.12.2019**

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1. The National Institute of Health and Family Welfare ('NIHFW') and the Ministry of Health and Family Welfare ('MHFW') have filed this petition against an order dated 19<sup>th</sup> November, 2016, as amended by an order dated 17<sup>th</sup> January, 2017, passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('CAT') in OA No.100/1698/2014 and MA No.100/189/2017 respectively, whereby a direction has been issued to the Petitioners herein to grant pensionary benefits to Respondent No.1 herein, taking into account the services rendered by her in the NIHFW.

2. Respondent No.1 joined the National Institute of Health Administration and Education ('NIHAE') on 11<sup>th</sup> January, 1977, as Research Assistant. Later on, NIHAE was merged with the National Institute of Family Planning ('NIFP'), which resulted in creation of the NIHFW. On 20<sup>th</sup> September, 1982, Respondent No.1 was promoted as Training Officer (Hospital Administration) in the Department of MCHA with effect from 20<sup>th</sup> September, 1982. She was appointed as Research Assistant on deputation on foreign service terms in a project titled 'Logistics and Supply of Drugs in M.P.' from 1<sup>st</sup> November, 1985 to 31<sup>st</sup> October, 1986. Respondent No.1 resumed at the NIHFW thereafter and was appointed as Lecturer (MCHA) with effect from 3<sup>rd</sup> May, 1989.

3. On 25<sup>th</sup> May, 1989, Respondent No.1 tendered her resignation as Lecturer (MCHA) to join as a Deputy Director in the National Institute of Public Cooperation and Child Development ('NIPCCD') (Respondent No.2 herein). She was relieved from the services of NIHFW, after acceptance of her resignation, with effect from 31<sup>st</sup> May, 1989. It is the case of the NIHFW that till March, 1995, she was granted lien in the post of the Deputy Director in NIPCCD.

4. With effect from 17<sup>th</sup> August 1992, Respondent No.1 tendered her resignation as Director, NIPCCD and ceased to be its employee with effect from 19<sup>th</sup> August, 1992. It is stated that she was granted encashment of 26 days earned leave by an order dated 30<sup>th</sup> October, 1992.

5. Thereafter, by the appointment letter dated 1<sup>st</sup> September 1992, Respondent No.1 joined another outside funded project with effect from 19<sup>th</sup>

August, 1992, and continued till 31<sup>st</sup> March, 1997. During this time, Respondent No.1 had been appointed as Reader (Management Sciences) with the India Population Project.

6. Respondent No.1 was appointed as a Reader (Nursing Administration) with the NIHFW and continued as such between 1<sup>st</sup> April, 1997 and 12<sup>th</sup> August, 2002.

7. The case of the Petitioners is that under Rule 26 of the CCS (Pension) Rules, 1972, once the past service was forfeited, the qualifying period for receiving pension did not exist. According to the Petitioners, after acceptance of the resignation of Respondent No.1 from the NIHFW, there was a complete severance in terms of Rule 26 of the CCS (Pension) Rules, 1972, and that the past service would stand forfeited.

8. In the impugned order, it is noted as a matter of fact that Respondent No.1 had served two autonomous bodies i.e. NIHFW, 11<sup>th</sup> January, 1977 to 12<sup>th</sup> August, 2002 and NIPCCD from, 31<sup>st</sup> May, 1989 to 18<sup>th</sup> August, without any break in service. Further, her claim that her lien with the NIHFW continued while she worked in NIPCCD, was not denied by NIHFW. In terms of Rules 13 and 14 of the CCS (Pension) Rules, 1972, if a government servant, after having served a State Government, joined the Central Government, the service rendered by him/her in the State Government, is to be reckoned for the purposes of pensionary benefits. However, the State Government would share the burden of the pensionary benefit on a *pro rata* basis.

9. The CAT also referred in the impugned order to an OM dated 26<sup>th</sup> December, 1977, of the Ministry of Finance, clarifying that:

“if a government servant in Central Government joins another department, then the pension liabilities are not allocated between the departments of the Central Government”

10. It was noted by the CAT in the impugned order that in the present case, the two autonomous bodies were under two separate Ministries of the Central Government, and that the Pension Rules would therefore be applicable. The CAT took the view that with the qualifying service of the Petitioner being 20 years, and with her lien in NIHFW continuing, it could safely be assumed that she had rendered continuous service therein, till she resigned i.e. 12<sup>th</sup> August, 2002, to take up the foreign assignment. It was noted further that even if the service rendered by Respondent No.1 in NIPCCD was to be ignored, for the purposes of pension, yet she qualified for pension in NIHFW, where she had served for more than 20 years.

11. This Court has heard the submissions of Mr. V.S.R. Krishna, learned counsel appearing for the Petitioners and Ms. Harvinder Oberoi, learned counsel appearing for Respondent No.1.

12. Mr. Krishna referred to Rule 26 of the CCS (Pension) Rules, 1972, where resignation from one service, would entail forfeiture of the past service in that organization. However, the Court finds that in terms of Rule 26 (2) of the CCS (Pension) Rules, 1972, the resignation shall not entail forfeiture of past service, if it was submitted to take up “with proper permission, another appointment, whether temporary or permanent under the

government where service qualifies”.

13. In the present case, it is seen that Respondent No.1 joined NIPCCD, the fact of which was in the full knowledge of the NIHFW. While she was at the NIPCCD, a letter was written by NIPCCD to NIHFW on 7<sup>th</sup> November, 1991, requesting information about terminal benefits, if any, paid to her and also to bear the pensionary and gratuity liability in respect of the services rendered by her at NIHFW from 11<sup>th</sup> January, 1977 to 30<sup>th</sup> May, 1989. However, this was no response by the NIHFW to the said letter.

14. When Respondent No.1 was again appointed as Reader in the IPP-VI Project, a letter dated 4<sup>th</sup>/6<sup>th</sup> August, 1992 was written by NIHFW to her, stating *inter alia* as under:

“The Institute will make payment of Leave Salary and Pension Contribution out of the funds of IPP-VI. The other terms and conditions remain the same as conveyed in Institute's Memo, of even number dated 6th July, 1992. You are, requested to join the post latest by 20th August, 1992 failing which offer will be treated as withdrawn.”

15. It appears, therefore, that there was no question of there being any break in her service. Even her appointment order dated 1<sup>st</sup> September, 1992, clarifies that Respondent No.1 would be on probation for a period of one year, on the “temporary post of Reader (Management Sciences) in the time-bound project “India Population Project”, upto 31<sup>st</sup> March, 1995, on a regular pay scale. In other words, after she resigned from NIPCCD and joined back NIHFW, even while the lien continued, she continued with NIHFW till 12<sup>th</sup> August, 2002. There was, therefore, effectively no break in

her service.

16. It is submitted by Mr. Krishna that Respondent No.1 had to return money constituting the encashment of the earned leave, for there to be no break in her service with NIHFW. The Court finds that way back on 30<sup>th</sup> October/2<sup>nd</sup> November, 1992, an Office Order No.113/1992 was issued by NIPCCD, granting to the Respondent No.1 the cash equivalent of 26 days earned leave (being half of 53 days of earned leave), on the date of cessation of her services at NIPCCD i.e. 19<sup>th</sup> August, 1992. At no time thereafter did the NIHFW write to Respondent No.1 about her having to return the above earned leave money. On its part, NIPCCD also never asked for return of any such money. There is no such plea taken before the CAT by the Petitioners that since Respondent No.1 did not return the aforementioned money, constituting the 26 days' earned leave, she cannot be granted pensionary benefits. The only argument before the CAT was concerning Respondent No.1 having the minimum number of years of qualifying service for the purposes of her pension, and this was answered in the affirmative by the CAT.

17. Having carefully perused the impugned order of the CAT, this Court is unable to find any error having been committed therein, particularly in directing that pensionary benefits should be granted to Respondent No.1, taking into account the continuous service rendered by her for over 20 years at NIHFW.

18. For all of the aforementioned reasons, the Court finds no reason to

interfere with the impugned order passed by the CAT. The petition is accordingly dismissed. The pending application is also disposed of. No costs.

**S. MURALIDHAR, J.**

**TALWANT SINGH, J.**

**DECEMBER 06, 2019**  
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