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

\+ **W.P.(C) 3184/2017 and C.M. APPL. 13858/2017 (stay)**

DELHI DEVELOPMENT AUTHORITY ..... Petitioner

Through: Mr. Arun Birbal, Advocate.

versus

HARCHANDA ..... Respondent

Through: Mr. Gagandeep Singh, Advocate.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% **24.02.2020**

1. By way of this writ petition, the Delhi Development Authority ('DDA') has challenged a judgment dated 21st September, 2016 passed by Central Administrative Tribunal, Principal Bench, New Delhi ('CAT') in Original Application ('OA') No. 2876/2012 (***Harchanda v. DDA***).

2. The facts, which are not in dispute, are that the Respondent, who has since died and is represented by his legal heirs impleaded as Respondents, was employed as a security guard on work charged basis by way of an appointment letter dated 16th July, 1984, with effect from 6th March, 1984. He was regularised on the completion of three years of service on 6th March, 1987, and he retired on 30th June, 1994 after attaining the age of superannuation. After his retirement on 30th June, 1994, the Respondent was paid Rs. 3143/- on 7th February, 1995 as service gratuity. After about 18

years of such payment, the Respondent filed the OA praying for a direction to the DDA for payment of pensionary benefits and gratuity along with interest. The issue in the present petition lies within a narrow compass, i.e. whether the Respondent had completed ten years of service on the date of his retirement, so as to enable him to claim pension from the Petitioner.

3. The case of the Petitioner is that from 6th March, 1984 to 5th March, 1987, the Respondent was merely working as a work charged employee due to temporary exigencies of work, because of which strict rules of recruitment were not insisted upon. It is pertinent to note here that on the date of his joining, 6th March, 1984, the Respondent was already about 50 years of age, and there was no question of him being taken into regular employment. Before the CAT also, the DDA filed a reply upon issuance of notice, mentioning therein that since the Respondent's period of service was only 8 years, 9 months, and 24 days, which was less than the qualifying period of 10 years prescribed under Rule 49 of the Central Civil Services (Pension) Rules, 1972 ('Rules'), he was not eligible for pension.

4. The Respondent passed away on 29th September, 2012 during the pendency of the OA and was substituted by his legal heirs. A rejoinder was filed by the said legal heirs in November, 2013. By way of the impugned order dated 21st September, 2016, the OA filed by the Respondent against the DDA was allowed in the following terms:

> "12. Considering the discussion in the preceding paras, it can be concluded that the original applicant was appointed in the pay scale of RS.196-3-200-EB-232 in Work Charge establishment on temporary regular basis, and not in the category of

employees covered by the EO No. 130 dated 10.01.1991 and 14.07.2006. The original applicant being in a regular scale was entitled for counting his full service from the date of appointment to the date of superannuation for the purpose of pensionary benefits.

13. In the light of above, the respondents are directed to work out the pensionary benefits of the original applicant in accordance with the rules by counting his entire service from 06.03.1984 to 30.06.1994 as fully eligible for the purpose of pensionary benefits and grant him pensionary benefits, including arrears with an interest of 9%, after adjusting the amount already paid to him as service gratuity in the year 1995. OA is allowed. No costs."

5. Notice was directed to issue in the present writ petition on 17th April, 2017. In the meantime, some legal heirs of the Respondent had also passed away, and their legal heirs were brought on record by way of an order dated 14th March, 2019 and the amended memo of parties was taken on record. Since records of the proceedings before the CAT were filed by the Petitioner, the Court chose to rely upon the counter-affidavit and rejoinder already filed before the CAT.

6. We have heard the arguments of the parties and gone through the records.

7. Counsel for the Petitioner has relied upon Rule 14 of Chapter 3 of the Rules, which deals with the qualifying service for grant of pension. Specifically, reliance has been placed upon a Ministry of Finance Office Memorandum ('OM') dated 14th May, 1968, which deals with the calculation of the qualifying period of service in respect of work charged employees. The same is reproduced hereunder:

"COUNTING HALF OF THE SERVICE PAID FROM CONTINGENCIES WITH REGULAR SERVICE:

Under Article 368 of the CSRs (Rule 14), periods of service paid from contingencies do not count as qualifying service for pension. In some cases, employees paid from contingencies are employed in types of work requiring services of whole-time workers and are paid on monthly rates of pay or daily rates computed and paid on monthly basis and on being found fit brought on to regular establishment. The question whether in such cases service paid from contingencies should be allowed to count for pension and if so, to what extent has been considered in the National Council and in pursuance of the recommendation of the Council, it has been decided that half the service paid from contingencies will be allowed to count towards pension at the time of absorption in regular employment subject to the following conditions, viz.:-

> (a) Service paid from contingencies should have been in a job involving whole-time employment (and not part-time) for a portion of the day).
>
> (b) Service paid from contingencies should be in a type of work or job for which regular posts could have been sanctioned, e.g., malis, chowkidars, khalasis, etc.
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> (c) The service should have been one for which the payment is made either on monthly or daily rates computed and paid on a monthly basis and which though not analogous to the regular scale of pay should bear some relation in the matter of pay to those being paid for similar jobs being performed by staffs in regular establishments.
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> (d) The service paid from contingencies should have been continuous and followed by absorption in regular employment without a break.

> (e) Subject to the above conditions being fulfilled, the weightage for past service paid from contingencies will be limited to the period after 1st January, 1961, for which authentic records of service may be available."

8. Further reliance has been placed on Finance and Accounts Circular No. 13 issued by the DDA which is reproduced hereunder:

> "Sub: Application of Central Civil Services (Pension) Rule 1972 opt the officer and staff of Delhi Development Authority extending pensionary benefits to work-charged employees regularized from 10th Jan, 1991.
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> The Authority vide its Resolution No. 16/95 dated 23.02.1995 has resolved that half of the service period paid from work charged contingencies be counted for calculation of pensionary /gratuity benefits, as contained under Government of India decision dated 14th May, 1968 under Chapter-3 of CCS Pension Rules 1972 (copy enclosed for ready reference) to the work-charges staff of the Authority subject to following:
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> > i) Cases already decided need not be re-opened; cases of employees who have wither retired / died before 10th Jan, 91 will also not be covered.
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> > ii) The benefits of the aforesaid proposal would be admissible only to those of the work-charged staff who were in DDA as on 10th Jan. 1991 (excluding slum wing which stands transferred to MCD). In such cases of transferred employee to the MCD after 10th Jan, 91 employer's Contribution of C.P.F. will be resumed by the DDA.
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> Consequent to above Resolution of the Authority following action needs to be taken by the Drawing and Disbursing

officers.

a) The Employer's Contribution (Authority’s Shares of C.P.F. along with interest will be payable to al the retired non-regular work-charged staff on the legal heirs of the deceased non-regular work-charged staff, if the same had not been paid earlier.

b) In cases of employees transferred to MCD along with transfer of service of the colonies after 10th Jan., 91 the date from which all work-charged staff in DDA was declared treated as regularized work-charged staff. It may be ensued that employer's contribution (Authority’s share) of CPF along with interested is resumed/recovered) from the MCD, if paid earlier, and pro-rate pensionary benefits per counting half of the work-charged service period rendered in DDA towards qualifying service, is made to the MCD.

(c) In case of non-regular work-charged staff transferred along with transferred to services of colonies to MCD, prior to 10th Jan, 1991 only Employer’s (DDA’S) share towards C.P.F. along with interest is to be mod to MCD. If not already paid.”

9. Reliance has also been placed on an office order dated 14th July, 2006 of the DDA, which is reproduced hereunder:

“Vide E.O. No. 130 dated 10.01.1991 (Copy enclosed as Annexure-I) issued under the signature of Commissioner (Personnel) the decision of the Lt. Governor, Delhi/Chairman, Delhi Development Authority, treating all the Work-Charged employees of DDA as part of Regular Work-Charged Establishment, was conveyed. These orders were made effective from the date of issue of the said E.O. i.e. from 10.01.1991.

The Delhi Development Authority has reconsidered this matter in its meeting held on 24.03.2006 vide agenda item No.

> 27/2006 and on 28.06.2006 vide agenda item No. 70/2006 and has, in partial modification of the aforesaid E.O. dated 10.01.1991 decided to give effect to the regularization from Work-Charged to Work-Charged employees completed 3 years of continuous service as Work-Charged or w.e.f. 1983, whichever is later.
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> It is advised to implement the above decision of the Authority.
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> The terms and conditions and entitlements of the Work-Charged staff on regularization to the Work-Charged (Regular), stated in the aforesaid E.O. dated 10.01.91 will remain unchanged."

10. Counsel for the Respondents has, on the other hand,relied upon a judgment of two-judge Bench of the Supreme Court in ***Prem Singh v. State of Uttar Pradesh, (2019) 10 SCC 516*** dated in Civil Appeal No. 6798/2019 and other connected matters wherein the Supreme Court has held as under:

> "31**.** In the aforesaid facts and circumstances, it was unfair on the part of the State Government and its officials to take work from the employees on the work-charged basis. They ought to have resorted to an appointment on regular basis. The taking of work on the work-charged basis for long amounts to adopting the exploitative device. Later on, though their services have been regularised. However, the period spent by them in the work-charged establishment has not been counted towards the qualifying service. Thus, they have not only been deprived of their due emoluments during the period they served on less salary in work-charged establishment but have also been deprived of counting of the period for pensionary benefits as if no services had been rendered by them. The State has been benefitted by the services rendered by them in the heydays of their life on less salary in work-charged establishment.
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> 32**.** In view of the Note appended to Rule 3(8) of the 1961 Rules, there is a provision to count service spent on work-

charged, contingencies or non-pensionable service, in case, a person has rendered such service in a given between period of two temporary appointments in the pensionable establishment or has rendered such service in the interregnum two periods of temporary and permanent employment. The work-charged service can be counted as qualifying service for pension in the aforesaid exigencies.

33**.** The question arises whether the imposition of rider that such service to be counted has to be rendered in-between two spells of temporary or temporary and permanent service is legal and proper. We find that once regularisation had been made on vacant posts, though the employee had not served prior to that on temporary basis, considering the nature of appointment, though it was not a regular appointment it was made on monthly salary and thereafter in the pay scale of work-charged establishment the efficiency bar was permitted to be crossed. It would be highly discriminatory and irrational because of the rider contained in the Note to Rule 3(8) of the 1961 Rules, not to count such service particularly, when it can be counted, in case such service is sandwiched between two temporary or in-between temporary and permanent services. There is no rhyme or reason not to count the service of work-charged period in case it has been rendered before regularisation. In our opinion, an impermissible classification has been made under Rule 3(8). It would be highly unjust, impermissible and irrational to deprive such employees benefit of the qualifying service. Service of work-charged period remains the same for all the employees, once it is to be counted for one class, it has to be counted for all to prevent discrimination. The classification cannot be done on the irrational basis and when respondents are themselves counting period spent in such service, it would be highly discriminatory not to count the service on the basis of flimsy classification. The rider put on that work-charged service should have preceded by temporary capacity is discriminatory and irrational and creates an impermissible classification.

34**.** As it would be unjust, illegal and impermissible to make

> aforesaid classification to make Rule 3(8) valid and non-discriminatory, we have to read down the provisions of Rule 3(8) and hold that services rendered even prior to regularisation in the capacity of work-charged employees, contingency paid fund employees or non-pensionable establishment shall also be counted towards the qualifying service even if such service is not preceded by temporary or regular appointment in a pensionable establishment.
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> 35**.** In view of the Note appended to Rule 3(8), which we have read down, the provision contained in Regulation 370 of the Civil Services Regulations has to be struck down as also the instructions contained in Para 669 of the Financial Handbook".

11. Learned counsel for the Respondent on the basis of the aforesaid observations of the Supreme Court argues that the total period spent by the Respondent as work-charged employee is to be added as part of his qualifying service for pension and that, as such, he had completed ten years of service as on the date that he retired.

12. On the other hand, learned counsel for the Petitioner DDA has argued that the said judgment is based upon the Uttar Pradesh Civil Services Regulations and the Uttar Pradesh Retirement Benefit Rules, 1961, which specifically exclude the time spent by a person as work-charged employee in the establishment. It is submitted that it was in this context that the Supreme Court struck down the said provision and held that the said period during which a person is work-charged employee is to be counted. In the present case, however, as per the circular of the Central Government, quoted hereinbefore as well as the circulars issued by the DDA, half of the service of the work-charged employee is already being considered for calculating

the period of qualifying service and that in view of this, the ratio of the judgment in ***Prem Singh*** *(supra)* is not applicable to the facts of the present case.

13. We are in agreement with the submission of the learned counsel for the Petitioner. The facts in ***Prem Singh*** *(supra)* are quite different from the one at hand as in that case the relevant rules did not allow any period spent as a work-charged employee to be counted while calculating the qualifying period of pension. In the present case, however, the aforesaid OM of the Government of India, as well as the circulars issued by DDA account for the said period by providing that half of such a period during which the workman had worked as work charged employee is to be counted towards the qualifying period for grant of pension.

14. It is also to be noted that the CAT has tried make a distinction between the case in hand and the cases contemplated in the above said OM dated 14th May, 1968 issued by Government of Indiafor the reason that appointment letter of the Petitioner had mentioned his pay scale to be a "regular" pay scale of Rs.196-3-200-EB-232.The mention of the Respondent's pay scale as "regular" has been taken to mean that he did not fall within the ambit of the OM dated 14th May, 1968. .

15. This interpretation in the Court's view is vague and is contrary to the intent of the Government when it issued the said circular. The operative portion of the OM in this regard is reproduced as under:-

> "(c) The service should have been one for which the payment is made either on monthly or daily rates computed and paid on a monthly basis and which though not analogous to the regular scale of pay should bear some relation in the matter of pay to those being paid for similar jobs being performed by staffs in regular establishments."

16. A reading of clause (c) of the said OM makes it abundantly clear that the mere usage of the word "regular pay scale" would not exclude employees who are either being paid daily or whose salary is not at all related to the salary being drawn by the regular employees, from the purview of the OM. This is plain from a reading of clause (c) in its entirety.

17. Accordingly, in the case of the Respondent here as well, the mere mentioning of regular pay scale cannot make him a regular employee of DDA with effect from 6th March, 1984; the date from which he was employed on work-charged basis at the age of 50 years. However, as per policy, he was regularised immediately on completion of three years' period with effect from 6th March, 1987 and he is to be considered as regular employee from the said date.

18. In view of the OM dated 14th May, 1968 and specifically, in view of the Circular No. 13 issued by DDA, half of the period for which the Respondent had worked as a work-charged employee is to be added to the period of his regular employment and, as such, the total qualifying period comes to 8 years, 9 months and 24 days, which is less than a period of ten years.

19. The other contention raised on behalf of the Respondent is that the

Circular No. 13 was issued after his retirement so the same shall have no bearing on his case. Clause1 of the DDA's circular makes it clear that it shall have effect in respect of all the work charged staff who were working in DDA as on 10th January, 1991 and, as such, the same is applicable to the case of Shri Harchanda. Moreover, the office order dated 14th July, 2006 was issued as partial modification of the OM 10th January, 1991 and one more option for the date from which the regularization had to take place was provided i.e. either three years of continued service as work charge employee or w.e.f. 1983, whichever is later. In the present case, the three years' period had ended in 1987 and as such the Respondent had to be considered as regular with effect from 6th March, 1987 and not from 1983 as he was not in service on the said date.

20. In that view of the matter, the impugned judgment dated 21st September, 2016 of the Central Administrative Tribunal, Principal Bench ('CAT') in OA No. 2876/2012 is hereby set aside and it is held that Respondent had not completed the requisite period of ten years in regular service of DDA in order to enable him to get pensionary benefits from it.

21. The writ petition is allowed in these terms. No order as to costs. The pending application is also disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J.

FEBRUARY 24, 2020/nk