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

\+ W.P.(C) 14010/2018

SURINDER KUMAR ..... Petitioner

Through Ms. Sneha and Mr. Suren Uppal, Advocates with petitioner in person.

versus

UNION OF INDIA AND ORS. ..... Respondents

Through Mr. Rajinder Dhawan with Mr. B.S. Rana, Advs. for R-2.

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

<u>O R D E R</u>

% 27.01.2020

By the instant petition, the petitioner, in effect, seeks issuance of a Writ of Mandamus for being applied CONCOR Superannuation Pension Scheme in his favour w.e.f. 01.01.2007.

Concisely, the facts emerging from the record are that the petitioner, who was initially employed with RITES–a CPSE, in the year 1989, came to join the respondent no.2–Container Corporation of India Limited (CONCOR) on deputation w.e.f. 16.06.2000, and, was later absorbed in regular service w.e.f 21.04.2006. He superannuated on 31.07.2018. It is the case of the petitioner that on 06.08.2013, CONCOR had introduced a contributory pension scheme effective from 01.01.2007. Relevant to the context, the salient features thereof, are as under:

"1. The Scheme is effective from 01.01.2007 applicable for the regular employees, who were on the rolls of the Corporation as on 01.01.2007 and for the employees joined thereafter.

2. *The Scheme is applicable to only those employees who have put in a minimum of 15 years of service in the Corporation prior to superannuation.*"

The conditions of its applicability or the eligibly conditions thereof, were however superseded and amended, as follows:

> "*2. The Scheme is applicable to all regular employees in IDA Pay Scale and superannuating in CONCOR after completion of 15 years of service with the company or having combined services of 15 years in CONCOR and other CPSE with similar scheme.*"

Later, in pursuance of OM dated 03.08.2017 issued by the Government of India, Ministry of Heavy Industries and Public Enterprises, a decision is said to have been taken to dispense with the requirement of minimum of 15 years of service in CPSE and applied by CONCOR. In other words, the requirement of 15 years of regular service was dispensed with.

The petitioner who had joined CONCOR on 16.06.2000, initially on deputation, was absorbed on 21.04.2006. At times, he is said to have requested CONCOR to make deductions from his salary towards his contribution for being entitled to pension under the subject scheme but CONCOR did not respond. Atleast, none has come to be pointed out during the course of hearing. CONCOR however opposes the relief sought by the petitioner on the premise that at the time the scheme was made applicable w.e.f. 01.01.2007 vide its communication dated 06.08.2013, the petitioner did not fulfil the eligibility criteria of minimum 15 years of service. Similar is the contention as regards the applicability of the amendment carried out and communicated vide letter dated 17.02.2014. According to CONCOR, the petitioner was not entitled to the benefit even under the amended scheme inasmuch as the stipulation of combined service of 15 years in CPSEs with similar scheme was not fulfilled by him inasmuch as RITES, at the relevant time, did not have the similar scheme and therefore, the petitioner's case was not covered even as per amendment communicated vide letter dated 17.02.2014. As regards the applicability of the scheme in pursuance of OM dated 03.08.2017, the plea raised on behalf of CONCOR is that though the existing requirement of superannuation and of minimum of 15 years of service in the CPSE was dispensed with for pension, it had no retrospective effect.In addition thereto, CONCOR opposes such relief on the premise that the scheme is founded on the principle of contributions and in the absence of any contributions made by the petitioner, he could not be extended any benefit under the scheme.

Though, the scheme originally made applicable vide its communication dated 06.08.2013 provided for its application only to those employees who had put in minimum 15 years of service in CONCOR prior to superannuation, such stipulation was superseded/amended with the issuance of the letter dated 17.02.2014 and later, on the issuance of the OM dated 03.08.2017. Importantly with the issuance of OM dated 03.08.2017, the very stipulation of minimum of 15 years of service in the CPSE was dispensed with. It appears, it was so adopted by CPSEs. Such dispensation is not shown to have been done with prospective effect only. In the given factual conspectus, the initial joining of the petitioner with CONCOR w.e.f. 16.06.2000 cannot be simply ignored on the premise that the petitioner came to be absorbed only w.e.f. 21.04.2006. Then, when the contributory pension scheme came to be introduced only in the year 2013 and made applicable w.e.f. 01.01.2007, will it not imply that from the date of its applicability w.e.f. 01.01.2007, the payable contributions of the employees were to be recovered thereunder? If that be so, why the same principle would not be followed in the case of the petitioner as well? More so, when the petitioner had made requests for deduction of his contribution from his salary, which representations, the CONCOR on its part is not shown to have even responded to. In the considered view of the Court therefore, these vital aspects require to be considered by CONCOR, in the first instance.

For the foregoing reasons, the writ petition is disposed of with a direction to the respondent no.2–CONCOR to treat the instant petition as a representation of the petitioner and having afforded an opportunity of hearing to the petitioner, pass a speaking order on its merits within four months from today and be communicated to the petitioner immediately. Should the petitioner feel aggrieved thereof, he would be at liberty to approach the Court afresh.

Petition stands disposed of in the above terms.

A. K. CHAWLA, J

JANUARY 27, 2020
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