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

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Judgement reserved on **16.09.2021**
Judgement pronounced on **28.10.2021**

+ **W.P.(C) 3984/2021, CM Nos.12053/2021 & 12055/2021**

NORTH DELHI MUNICIPAL CORPORATION Petitioners
Through: Ms Namrata Mukim, Standing
Counsel with Ms Garima Jindal, Adv.

versus

DR. NIZAM ELAHI & ANR. Respondents
Through: Mr K.P Gupta, Adv. for R-1.
Mrs Avnish Ahlawat, Standing
Counsel/GNCTD (Services) for R-2
with Mr Nitesh Kumar Singh, Mrs
Tania Ahlawat & Ms Palak
Rohemetra, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE TALWANT SINGH

RAJIV SHAKDHER, J.

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Background:-

1. This writ petition is directed against the order dated 29.02.2020, passed by the Central Administrative Tribunal (in short “the Tribunal”) in O.A. No.4548/2018.

1.1. Respondent no.1 is the original applicant. He had approached the Tribunal to assail the order dated 13.12.2017, passed by the petitioner i.e., North Delhi Municipal Corporation [in short ‘NDMC’].

1.2 In effect, the relief that respondent no.1 had sought before the Tribunal was that he should be granted *a pro-rata* pension, for the service rendered by him, in his capacity as Assistant Teacher in the schools run by NDMC, between 05.10.1977 and 06.11.1991. It is important to note that, in this period, respondent no.1 had also included two years, which was the period for which he held lien over his earlier post on his appointment as a Lecturer with respondent no.2/State Council of Educational Research and Training [in short “SCERT”].

1.3 Thus, respondent no.1 sought a direction *qua* NDMC for payment of *pro-rata* pension with effect from 07.11.1991 i.e., the date when he was finally absorbed by SCERT. As indicated above, the period spanning between 05.10.1977 and 06.11.1991 included two years of lien which he held i.e., between 07.11.1989 and 06.11.1991. Respondent no.1 was appointed as a Lecturer with the SCERT, on 07.11.1989.

1.4. Shorn of verbiage, the admitted position is that SCERT is an autonomous body constituted under the Societies Registration Act, 1860, and works under the aegis of the Government of National Capital Territory of Delhi [in short “GNCTD”]. There is also no dispute that SCERT is not

an organization, which confers pensionary benefits on its employees.

1.5. It is in these circumstances that respondent no.1 approached the NDMC for the grant of *pro-rata* pensionary benefits for a period of service spanning 14 years, which included two years of lien.

2. The Tribunal ruled in the favour of respondent no.1, and accordingly, directed the NDMC to grant respondent no.1 *pro-rata* pension from the date he stood finally absorbed in SCERT, *albeit*, as per rules.

2.1. Furthermore, via the impugned order, the NDMC was also directed to pay to respondent no.1 arrears of pension, within 8 weeks of the receipt of a copy of its order, along with interest calculated at the prevailing General Provident Fund (GPF) rates, for the periods for which the payments of respective instalments of pension were delayed.

2.2. The record shows that, before the Tribunal, the NDMC resisted the abovementioned O.A., broadly, on the following grounds:-

- (i) Respondent no.1 had resigned from NDMC (i.e., its predecessor-in-interest), and therefore, was not entitled to a pension.
- (ii) Pension cannot be paid by a “non-pensionable body” in which a government servant was absorbed. In this regard reliance was placed on Rule 37(3) of the Central Civil Services (Pension) Rules, 1972¹ [hereafter referred to as "the CCS (Pension) Rules"].
- (iii) The Delhi High Court, vide order dated 30.10.2017, in W.P.(C) No.9509/2017 had, inter alia, directed the NDMC to consider the representation of respondent no.1, and while doing so, should have had

¹"37. Pension on absorption in or under a corporation, company or body

(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"

regard to the Office Memorandum (OM) dated 20.08.1984 [sic 29.08.1984] issued by the Department of Personnel and Training (DoPT). This OM was not considered in the order impugned before the Tribunal.

(iv) Respondent no.1 was not entitled to the pension, as he had not completed the minimum qualifying service for grant of pension, which is 20 years.

2.3. For the reasons given in the impugned order passed by the Tribunal, the aforementioned contentions made on behalf of the NDMC were rejected.

2.4. We may also add that, reference to the order of this court dated 30.10.2017, passed in W.P.(C) No. 9509/2017, has been made in the impugned order passed by the Tribunal, as respondent no.1, on an earlier occasion, had approached this court. The reason respondent no.1 had turned to this court was simply this - although, he had retired from SCERT, after being permanently absorbed, on 31.08.2009, his continuous efforts to seek *pro-rata* retiral benefits had not yielded any fruits, and that his entreaties with the Public Grievance Commission [hereafter referred as “PGC”] had resulted in the same fate.

2.5. Pertinently, as noted above, respondent no.1 before approaching the High Court, *via* the aforementioned writ petition, had approached the PGC. The PGC, vide order dated 08.03.2017, after noting that respondent no.1 had completed only 12 years in service with NDMC, concluded that respondent no. 1 was ineligible for grant of *pro-rata* pension, in terms of the OM dated 20.08.1994 [sic 29.08.1994].

2.6. This court, however, disposed of the abovementioned writ petition, giving liberty to respondent no.1 to file a representation with the NDMC with a further direction that, if such representation is filed, it shall be dealt

with by the NDMC. The NDMC was, thus, directed to pass a speaking order uninfluenced by the order dated 08.03.2017, passed by the PGC. Besides this, the NDMC was directed to refer to the OM dated 20.08.1984 [sic 29.08.1994] as also its communication dated 17.09.2010. It is this direction, which led to the NDMC passing the order dated 13.12.2017, which was assailed, as noted at the very outset, by respondent no.1 before the Tribunal.

2.7. Given this backdrop, arguments on behalf of the NDMC were advanced by Ms Namrata Mukim, while on behalf of respondent no.1, arguments were put forth by Mr K.P. Gupta. Insofar as SCERT was concerned, submissions were made by Mrs Avnish Ahlawat.

Submissions on behalf of the Petitioner:-

3. The arguments of Ms Mukim can, broadly, be paraphrased as follows:

(i) SCERT had failed to deposit on behalf of respondent no.1, his leave salary and pension grant certificate, within two years, as stipulated. Although the stipulated two years ended on 06.11.1991 [since respondent no.1's two-year lien was approved on 06.11.1989], the SCERT moved in this direction after nearly 20 years i.e., on 14.07.2011.

(ii) Though Rule 37(1) of the CCS (Pension) Rules applies to respondent no.1, as contended by him, it should have its full play. In other words, the said rule has to be applied "in accordance with the orders of the Central Government applicable to him".

(iii) Rule 37(3) of the CCS (Pension) Rules is not applicable in the instant case, since it applies to autonomous bodies, which have in place a pension scheme; SCERT does not have a pension scheme in place.

(iv) OM dated 29.08.1984 governs the case of respondent no.1. In particular, emphasis was placed on sub-para (i) in paragraph 3(b).

(v) A close perusal of the relevant parts of the OM dated 29.08.1984 would show that a permanent central government employee borne on the pensionable establishment is entitled to *pro-rata* retiral benefits on absorption only, under the provisions of OM No.26(18)EV(B)/75 dated 08.04.1976, as amended from time to time, issued by the Ministry of Finance. Thus, in terms of the OM dated 08.04.1976, a government servant on being permanently absorbed by an autonomous body, could seek *pro-rata* pensionary benefits, if he/she exercises the option within six months of absorption. Where an option is not exercised within the stipulated timeframe, the concerned employee would automatically receive gratuity and lumpsum amount, instead of the pension worked out in consonance with commutation tables obtaining on the date from which *pro-rata* pension, gratuity, etcetera would be disbursable.

(vi) Since respondent no.1 had not exercised his option within six months, he could only get gratuity and lumpsum amount, in place of pension in terms of option (b) outlined in sub-para (iii) in paragraph 4 of the OM dated 08.04.1976.

(vii) The contention advanced on behalf of respondent no.1, that OM dated 08.04.1976, to the extent that it required an employee to exercise his option [which is based on the author's note given at page 442 of Swamy's Pension Compilation 24th Edition – 2020] within six months, has been superseded, is misconceived for the reason that it applies to organizations which have a pension scheme; however, SCERT does not have a pension scheme. Therefore, what applies to respondent no.1, as indicated above, is clause (b) sub-para (iii) in paragraph 4 of the OM dated 08.04.1976.

Submissions on behalf of Respondent No. 1:-

4. The arguments of Ms Mukim were refuted by Mr Gupta. Mr Gupta,

thus, made the following submissions:

- (i) The OM dated 08.04.1976 was superseded by the Department of Pension and Pension Welfare OM No.4(12)/85-P & PW, dated 31.03.1987, and therefore, what remained of the OM dated 08.04.1976 is found in Appendix-7 of the Swamy's Pension Compilation 24th Edition – 2020. In other words, the requirement to submit one's option was done away with.
- (ii) In any event, respondent no.1 is entitled to *pro-rata* pension, as per the CCS (Pension) Rules, and in this context, reference needs to be made to Rules 49 (2), 36 & 37(1) & (3). It is well established that, in case of any conflict and/or inconsistency between a statutory rule and administrative instructions i.e., the relevant OM, the statutory rules would prevail.
- (iii) The delay committed by SCERT in depositing its share of leave salary and pension grant cannot be used to penalize respondent no.1.
- (iv) The argument advanced on behalf of NDMC that, respondent no.1 had resigned from the post of Assistant Teacher and had not superannuated, is untenable. Respondent no.1 had only submitted his technical resignation for the purposes of being absorbed by SCERT. [See Rule 37 and Rule 26(7) of the CCS (Pension) Rules.] Resignation submitted by respondent no.1 to fulfil the purpose of the provisions of Rule 37 cannot result in forfeiture of past service, undergone with NDMC.
- (v) There is no delay on the part of respondent no.1 in demanding *pro-rata* pension from NDMC. The right to claim *pro-rata* pension got triggered only when respondent no.1 reached the age of superannuation i.e., on 31.08.2009. Within one year of retirement, respondent no.1, *vide* communication dated 31.08.2010, had sought the release of his *pro rata* pensionary benefits.

Submissions on behalf of Respondent No. 2:-

5. Mrs Ahlawat on behalf of the SCERT submitted that no pension scheme has been framed by the SCERT. Respondent no.1's claim of *pro-rata* pension lies with NDMC.

5.1. In support of her plea, she relied upon a Division Bench judgment of this court dated 18.01.2016, passed in W.P.(C) No.11610/2015, titled *Devendra Pal Singh v. Govt. (NCT of Delhi)*, 2016 SCC OnLine Del 1319.

Analysis and Reasons:-

6. Having examined the record and considered the arguments advanced on behalf of the parties, what has emerged is as follows:

(i) Respondent no.1 was employed as an Assistant Teacher in the Department of Education (DOE) by Municipal Corporation of Delhi [now "NDMC"], on 05.10.1977.

(ii) Respondent no.1 worked in the aforementioned post in various schools functioning under the aegis of DOE, between 06.10.1977 and 06.11.1989.

(iii) On 07.11.1989, respondent no.1 joined the SCERT as a Lecturer, upon being relieved on 06.11.1989. The relieving order was passed by the Assistant Education Officer (AEO), MCD, Urban Area. The said order granted a two-year lien for this purpose in favour of respondent no.1.

(iv) Respondent no.1 was permanently absorbed by SCERT on 07.11.1991. Towards this end, respondent no.1 submitted his technical resignation on the same date i.e., 07.11.1991 to the AEO, DOE, MCD.

(v) Respondent no.1 retired from the service of SCERT, on 31.08.2009.

(vi) On 31.08.2010, respondent no.1 wrote to DOE. *Via* this communication, respondent no.1 sought payment of his retiral benefits,

including pension, gratuity, GPF and GIS. In this communication, respondent no.1 had highlighted the fact that, although he had retired on 31.08.2009, he had not been paid his retiral benefits up until then.

(vii) In response thereto, on 17.09.2010, DOE wrote to the Principal of District Institute of Education and Training that, he was entitled to the following benefits:

*“GPF;
Gratuity for 14 years (12 year service + 2 year lien period);
pension on the basis of 14 years of service.”*

It was specifically noted in this communication that respondent no.1 did not have any earned leave in his account.

(viii) The petitioner attempted to agitate his grievance in the first instance before the PGC. The PGC, vide order dated 08.03.2017, rejected respondent no.1's appeal for *pro rata* pension, as indicated hereinabove.

6.1. It is in these circumstances that, the petitioner approached this court, *via* W.P.(C) No.9509/2017, which was disposed of vide order dated 30.10.2017. This resulted in respondent no.1 filing a representation, which was disposed of by NDMC, vide order dated 13.12.2017. Respondent no.1 assailed the same before the Tribunal. The Tribunal, via the impugned order dated 29.02.2020, allowed the respondent's OA.

7. Therefore, apart from anything else, what is important to note are the reasons given by the NDMC, in its order dated 13.12.2017. A careful perusal of the order dated 13.12.2017 would show that NDMC rejected respondent no.1's plea for grant of pension on the following grounds, set out in the paragraphs 6 to 9 of its order, extracted hereafter:-

"6. It is [apparently[sic: apparent] from the above that there [sic] no provision exist [sic] in the CCS Pension Rule, 1972 where a [sic:an] employee can be granted pension with a qualifying service of less than 20 years.

7. Moreover, [sic: the] concurrence of Dy. Controller of Account of the City Zone, North DMC in this regard had already been obtained on 27.12.2012 wherein they had clearly mentioned that applicant is not admissible for grant of pension with a 14 years of qualifying service (including lien period). Copy of the Note Sheet (13/N) is enclosed for your kind perusal please.

8. As regard[s] to[sic] Pro-rata pension, in a reply of RTI, Accounts Officer (Pension), North DMC has supplied an [sic] information directly to you with a copy to the undersigned towards Pro-rata Pension vide their letter No.AO/(P)/NDMC/2015/D/57 dated 10.04.2015. Wherein they stated that Pro-rata pension is transferred from one pensionable establishment to another pensionable establishment only against his service rendered in previous organization for counting of his service for pension purpose irrespective of service rendered by the employee (copy attached).

9. Keeping the above in view, you are neither admissible for pension nor Pro-rata pension. Since you have rendered 14 years of service only (including two years lien period) with MCD as Assistant Teacher. Moreover, it is again clarified that you have resigned from Municipal service instead of superannuation.”

7.1. A careful perusal of the operative part of the said order, extracted above, would show that the reason furnished before us by Ms Mukim i.e., that respondent no.1 had failed to exercise his option within six months, in the terms of OM dated 08.04.1976, and therefore, he was not entitled to *pro-rata* pension, was not at all adverted to in the order dated 13.12.2017. This argument, it appears, was also not raised before the Tribunal, in the manner it is put forth before us, although, in paragraph 6 of the impugned order, there is a reference to OM dated 20.08.1984 [sic 29.08.1984], which in turn refers to the OM dated 08.04.1976.

7.2. Therefore, since the order dated 13.12.2017 did not advert to the purported failure on the part of respondent no.1 to exercise his option within six months, as provided in the OM dated 08.04.1976, this argument in law is not available to the NDMC to sustain the order dated 13.12.2017. The NDMC cannot improve its case by furnishing reasons for rejecting the claim of respondent no.1 for a grant of *pro-rata* pension which did not find mention in the order dated 13.12.2017. [See observations made in **Commissioner of Police, Bombay v. Gordhandas Bhanji**, 1952 SCR 135², which was cited with approval also in **Mohinder Singh Gill v. Chief Election Commr.**, (1978) 1 SCC 405³.]

8. Assuming for the moment that, this argument based on the OM dated 08.04.1976 can be advanced by the NDMC, even at this stage, in our view, the same is untenable for the reasons given hereafter:

8.1. Chapter V of the CCS (Pension) Rules sets out “Classes of Pensions

² “13. An attempt was made by referring to the Commissioner's affidavit to show that this was really an order of cancellation made by him and that the order was his order and not that of Government. We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

³ “8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in *Gordhandas Bhanji [Commr. of Police, Bombay v. Gordhandas Bhanji, AIR 1952 SC 16]* :

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”
Orders are not like old wine becoming better as they grow older.”

and Conditions Governing their Grant”, while Chapter VII adverts to “Regulation of Amounts of Pension” payable to an employee.

8.2. It is important to note that, Rule 36 of the CCS (Pension) Rules, *inter alia*, provides that "retiring pension" shall be granted to a person who retires, or is retired, in advance of the age of compulsory retirement, in accordance with the provisions of Rules 48 or 48-A of the said rules or Rule 56 of the Fundamental Rules or Article 459 of the Civil Service Regulations. The said rule also provides that "retiring pension" shall be granted to a government servant who, on being declared surplus, opts for voluntary retirement, as per the provisions of Rule 29, relating to voluntary retirement of surplus employees.

8.3. Insofar as those government employees are concerned, who are permitted to be absorbed, *inter alia*, in autonomous body, they are also eligible for "retiring pension", as provided under Rule 37(1) of the CCS(Pension) Rules- such employees are deemed to have retired from service from the date of their absorption.

8.4. Sub-rule (3) of Rule 37 of the CCS (Pension) Rules kicks in for exercise of an option for grant of pension, in a case where a government servant is absorbed in a body controlled or financed by the Central Government. Therefore, in such a body, where a pension scheme is in place, the government servant, who has been absorbed by the body concerned, has the option to either have the service rendered by him under the Central Government to be counted in that body for payment of a pension or instead to receive retiral benefits for the services rendered under the Central Government, in accordance with the orders issued by the Central Government.

8.5. Rule 38 applies to “Invalid pension”. Since we are not concerned with

this kind of pension, one need not advert to the said provision in detail.

8.6. Insofar as the regulation of amounts of pension is concerned, as indicated above, the provisions concerning the same are contained in Chapter VII of the CCS (Pension) Rules. In this context, Rule 48, *inter alia*, provides for a qualifying service period, which is 30 years.

8.6(a). However, a government servant has the leeway to retire from service, *albeit*, with a pension, after he has completed 20 years of qualifying service, provided he gives notice of not less than 3 months in writing to the appointing authority. The retirement will get triggered only if the notice of voluntary retirement is accepted by the appointing authority or the appointing authority does not refuse to grant permission for retirement before the expiry of the period specified in the said notice. Thus, the retirement becomes effective from the date of expiry of the period given in the notice, which in the ordinary course cannot be, as indicated above, less than three months.

8.6(b). Although, the government has the power to relax the same, under sub-rule 3-A(a) of Rule 48A of the CCS (Pension) Rules.

8.6(c). Furthermore, a government servant having once elected to voluntary retire from service, and having given the necessary notice in writing to the appointing authority is precluded from withdrawing the notice, except with the specific approval of such authority [see sub-rule (4) of Rule 48A]. There is a proviso added to it, which is, that the withdrawal request shall be made before the intended date of the employee's retirement.

8.6(d) Sub-rule (6) of Rule 48A says that the said rule does not apply to a government servant, who retires under Special Voluntary Retirement Scheme, relating to voluntary retirement of surplus employees or to those government servants, who retire upon being absorbed permanently, in an

autonomous body or public sector undertaking, to which he is on deputation at the time of seeking voluntary retirement.

8.7. A careful perusal of Rule 48 and 48A would show that both provisions do not apply to respondent no.1.

8.8. Therefore, the only provision which applies to respondent no.1 is Rule 49 CCS (Pension) Rules, which, *inter alia*, provides that, in case a government servant retires before completing a qualifying service of 10 years, he would be entitled to service gratuity, whereas a government servant, who retires after completing qualifying service of not less than 10 years, would be entitled to a pension.

8.8(a). The manner of calculation of gratuity, where applicable, or pension, as in the present case, is provided in sub-rule (1) and sub-rule (2) respectively, read with other sub-rules contained in Rule 49 of the CCS (Pension) Rules.

8.9. Therefore, the argument advanced on behalf of the NDMC [which is, one of the reasons given in the order dated 13.12.2017] that because respondent no.1 did not complete qualifying service of 20 years, he was not entitled to *pro-rata* pension, is untenable, on a plain reading of the provisions contained in the CCS (Pension) Rules, referred to hereinabove.

9. What is required to be noticed is that the CCS (Pension) Rules do not speak about the exercise of an option for grant of pensionary benefits, and therefore the purported requirement to exercise the option within the timeframe of six months seems completely otiose.

9.1. Ms Mukim, to buttress her submission, has relied upon that part of sub-rule (1) of Rule 37 of the CCS (Pension) Rules, which says that retirement benefits, if any, shall be determined in accordance with the orders of the Central Government applicable to a government servant, who is

absorbed in an autonomous body. Thus, for the sake of appreciating Ms Mukim arguments, the relevant part of the said rule is extracted hereafter:

“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.”

9.2. It is this plank that Ms Mukim has used in support of her argument that, the option for grant of pensionary benefits had to be exercised by respondent no.1 within six months of the date of his absorption by SCERT, in terms of the OM dated 08.04.1976. An extract of the relevant part of the OM dated 08.04.1976 has been provided by the NDMC on page 154 of the case file. The relevant part of the OM is extracted hereafter:

*“No.26(18)-EV(B)/75
GOVERNMENT OF INDIA
(Department of Expenditure)*

New Delhi, the 8th April, 1976

OFFICE MEMORANDUM

Subject : Permanent transfer of Government servants to Autonomous bodies – grant of retirement benefits.

Exercise of option:

(iii) Every Government servant is to exercise an option, within six months of his absorption, for either of the alternatives

indicated below :

- (a) Receiving the monthly pension and DCR Gratuity already worked out under the usual government arrangements.*
- (b) Receiving the gratuity and a lumpsum amount in lieu of pension worked out with reference to communication tables obtaining on the date from which the pro-rata pension gratuity etc would be disbursable.*

Where no option is exercised within the prescribed period, the officer will automatically be governed by alternative (b) above. Option once exercised shall be final. The option shall be exercised in writing and communicated by the Government servant concerned to the undertaking/autonomous body.

*S/d
Bimla Bharti
Asst. Director of Education”*

9.3. Furthermore, Ms Mukim has also referred to the OM dated 29.08.1984, which bears the title “*Mobility of Personnel between Central Government department and autonomous body-Counting of service for pension*”. In particular, Ms Mukim has laid emphasis on paragraph 3(b)(i) of the said circular, which reads as under :

- “3 xxx xxx xxx
- (b) Autonomous body where the Pension Scheme is not in operation:*
 - (i) A permanent Central Government employee borne on pensionable establishment, on absorption under such autonomous body will be eligible for pro-rata retirement benefits in accordance with the provisions of the Ministry of Finance O.M. No.26(18)EV(B)/75 dated the 8th April, 1976, as amended from time to time. In case of quasi-permanent or temporary employees, the terminal gratuity as may be admissible under the rules would be actually payable to the individual on the date when pro-rata retirement benefits to permanent employees become payable. However, in the case of absorption of a Government employee with CPF benefits, in such an autonomous organisation, the amount of his subscriptions and the Governments’ contribution, if any, together with interest thereon shall be*

transferred to his new Provident Fund account with the consent of that body.”

9.4. Mr Gupta, on the other hand, has relied upon Appendix-7 of Swamy's Pension Compilation 24th Edition-2020, on pages 440 and 442. On page 440 of this compilation, is appended the Government of India, Department of Pension and Pension Welfare O.M. No.4(12)/85-P&P.W. dated 31.03.1987, titled “*Permanent Transfer of Central Government Servants to Central Autonomous Bodies*”, and the extract given on page 442 of the very same compilation, which reads as follows :

***“Transfer of Central Government servants to
Central Autonomous Bodies***

[Earlier Consolidated Instructions]

***[Government of India, Ministry of Finance, Office
Memorandum No.26(18)-E.V(B)/75, dated the 8th April, 1976,
as amended from time to time]***

AUTHORS’ NOTE.- The portion of orders contained in these Consolidated Instructions which have been superseded by the Department of Pen. & Pen. Welfare, O.M. No.4(12)/85-P. & P.W., dated the 31st March, 1987 [Order(3) in this Section] is not printed. The remaining portion which is still current is only given.”

9.5. A perusal of the extract given on page 442 would show that, what was contained in the OM dated 31.03.1987, to the extent not carried forward, stood effaced/superseded. Therefore, the argument of Mr Gupta that the requirement of exercising the option qua pensionary benefits, as provided in the OM dated 08.04.1976 was done away with, in our view, deserves to be accepted as nothing to the contrary has been shown to us.

9.6. Ms Mukim's argument that the OM dated 31.03.1987 applied to only

those autonomous bodies, which had a pension scheme, also does not impress us, as that aspect is not contained in the amended OM dated 08.04.1976.

9.7. Given this position, the basis on which the NDMC seeks to resist the grant of *pro-rata* pension to respondent no.1 is evidently, without basis.

10. We are also in agreement with the contentions advanced on behalf of respondent no.1 that, there was no delay in his agitating his cause concerning the grant of *pro-rata* pension.

10.1. As adverted to hereinabove, after respondent no.1 had been informed that he would be given retiral dues other than *pro-rata* pension, he took up cudgels for grant of necessary relief, first before the DGC, then, in this court, in the first round, and thereafter, before the Tribunal, when order dated 13.12.2017 was passed by the NDMC.

11. Besides this, we also agree with respondent no.1 that merely because SCERT delayed the deposit of leave salary and pension grant certificate, his claim for *pro-rata* pension cannot be declined. The delay on the part of the SCERT, in our opinion, cannot be laid at the doorstep of respondent no.1.

11.1. In any event, we are of the view that, since pension is not a bounty, but money paid to a government servant to enable him to look after his affairs, once he has demitted office i.e., in the sunset period of his life. [See ***Deokinandan Prasad v. State of Bihar***, (1971) 2 SCC 330⁴, cited with

⁴ "31. The matter again came up before a Full Bench of the Punjab and Haryana High Court in *K.R. Erry v. State of Punjab* [ILR 1967 Punj & Har 278] . The High Court had to consider the nature of the right of an officer to get pension. The majority quoted with approval the principles laid down in the two earlier decisions of the same High Court, referred to above, and held that the pension is not to be treated as a bounty payable on the sweet will and pleasure of the Government and that the right to superannuation pension including its amount is a valuable right vesting in a government servant. It was further held by the majority that even though an opportunity had already been afforded to the officer on an earlier occasion for showing cause against the imposition of penalty for lapse or misconduct on his part and he has been found guilty, nevertheless, when a cut is

approval in *D.S. Nakara v. Union of India*, (1983) 1 SCC 305⁵.] These dues

sought to be imposed in the quantum of pension payable to an officer on the basis of misconduct already proved against him, a further opportunity to show-cause in that regard must be given to the officer. This view regarding the giving of further opportunity was expressed by the learned Judges on the basis of the relevant Punjab Civil Service Rules. But the learned Chief Justice in his dissenting judgment was not prepared to agree with the majority that under such circumstances a further opportunity should be given to an officer when a reduction in the amount of pension payable is made by the State. It is not necessary for us in the case on hand to consider the question whether before taking action by way of reducing or denying the pension on the basis of disciplinary action already taken, a further notice to show-cause should be given to an officer. That question does not arise for consideration before us. Nor are we concerned with the further question regarding the procedure, if any, to be adopted by the authorities before reducing or withholding the pension for the first time after the retirement of an officer. Hence we express no opinion regarding the views expressed by the majority and the minority Judges in the above Punjab High Court decision on this aspect. But we agree with the view of the majority when it has approved its earlier decision that pension is not a bounty payable on the sweet will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a government servant.

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33. Having due regard to the above decisions, we are of the opinion that the right of the petitioner to receive pension is property under Article 31(1) and by a mere executive order the State had no power to withhold the same. Similarly, the said claim is also property under Article 19(1)(f) and it is not saved by sub-article (5) of Article 19. Therefore, it follows that the order, dated June 12, 1968, denying the petitioner right to receive pension affects the fundamental right of the petitioner under Articles 19(1)(f) and 31(1) of the Constitution, and as such the writ petition under Article 32 is maintainable. It may be that under the Pension Act (Act 23 of 1871) there is a bar against a civil court entertaining any suit relating to the matters mentioned therein. That does not stand in the way of writ of mandamus being issued to the State to properly consider the claim of the petitioner for payment of pension according to law."

⁵"20. The antiquated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in *Deokinandan Prasad v. State of Bihar* [(1971) 2 SCC 330 : AIR 1971 SC 1409 : 1971 Supp SCR 634 : (1971) 1 LLJ 557] wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in *State of Punjab v. Iqbal Singh*. [(1976) 2 SCC 1 : 1976 SCC (L&S) 172 : AIR 1976 SC 667 : (1976) 3 SCR 360]

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27. Viewed in the light of the present day notions pension is a term applied to periodic money payments to a person who retires at a certain age considered age of disability; payments usually continue for the rest of the natural life of the recipient. The reasons underlying the grant of pension vary from country to country and from scheme to scheme. But broadly stated they are (i) as compensation to former members of the Armed Forces or their dependents for old age, disability, or death (usually from service causes), (ii) as old age retirement or disability benefits for civilian employees, and (iii) as social security payments for the aged, disabled, or deceased citizens made in accordance with the rules governing social service programmes of the country. Pensions under the first head are of great antiquity. Under the second head they have been in force in one form or another in some countries for over a century but those coming under the third head are relatively of recent origin, though they are of the greatest magnitude. There are other views about pensions such as charity, paternalism, deferred pay, rewards for service rendered, or as a means of promoting general welfare (see *Encyclopaedia Britannica*, Vol. 17, p. 575). But these views have become otiose.

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29. Summing up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in kind is when you give your best in the hey-day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation or for service rendered. In one sentence one can say that the most practical *raison d'être* for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.

30. The discernible purpose thus underlying pension scheme or a statute introducing the pension scheme must inform interpretative process and accordingly it should receive a liberal construction and the courts may not so interpret such statute as to render them inane (see *American Jurisprudence*, 2d, 881).

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36. Having set out clearly the society which we propose to set up, the direction in which the State action must move, the welfare State which we propose to build up, the constitutional goal of setting up a socialist State and the assurance in the Directive Principles of State Policy especially of security in old age at least to those who have rendered useful service during their active years, it is indisputable, nor was it questioned, that pension as a retirement benefit is in consonance with and in furtherance of the goals of the Constitution. The goals for which pension is paid themselves give a fillip and push to the policy of setting up a welfare State because by pension the socialist goal of security

cannot be denied by the State on the ground of purported delay and/or laches, as long as the government servant is eligible for grant of pensionary benefits. The cause of action to claim the same survives, as long as they are not paid. [See *Union of India v. Tarsem Singh*, (2008) 8 SCC 648⁶.]

of cradle to grave is assured at least when it is mostly needed and least available, namely, in the fall of life."

⁶ "4. The principles underlying continuing wrongs and recurring/successive wrongs have been applied to service law disputes. A "continuing wrong" refers to a single wrongful act which causes a continuing injury. "Recurring/successive wrongs" are those which occur periodically, each wrong giving rise to a distinct and separate cause of action. This Court in *Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneswar Maharaj Sansthan* [AIR 1959 SC 798] explained the concept of continuing wrong (in the context of Section 23 of the Limitation Act, 1908 corresponding to Section 22 of the Limitation Act, 1963): (AIR p. 807, para 31)

"31. ... It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury."

5. In *M.R. Gupta v. Union of India* [(1995) 5 SCC 628 : 1995 SCC (L&S) 1273 : (1995) 31 ATC 186] the appellant approached the High Court in 1989 with a grievance in regard to his initial pay fixation with effect from 1-8-1978. The claim was rejected as it was raised after 11 years. This Court applied the principles of continuing wrong and recurring wrongs and reversed the decision. This Court held: (SCC pp. 629-30, para 5)

"5. ... The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time-barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion, etc., would also be subject to the defence of laches, etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1-8-1978 without taking into account any other consequential relief which

Conclusion:-

may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation, the application cannot be treated as time-barred....”

6. In *Shiv Dass v. Union of India* [(2007) 9 SCC 274 : (2007) 2 SCC (L&S) 395] this Court held: (SCC p. 277, paras 8 & 10)

“8. ... The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.

10. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. ... If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years.”

7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

8. In this case, the delay of sixteen years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to sixteen years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances.”

12. The NDMC will pay the retiral benefits, as directed by the Tribunal, as expeditiously as possible, though not later than three weeks from the date of the receipt of a copy of this order; bearing in mind the fact that respondent no.1 retired from service on 31.08.2009, and he is today 72 years of age and claims to be suffering from financial hardships on account of non-payment of pension.

13. Thus, for the foregoing reasons, we find no merit in the writ petition.

13.1. The writ petition is accordingly, dismissed. Consequently, pending applications shall also stand closed.

14. The costs will follow the result.

15. The parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

TALWANT SINGH, J

OCTOBER 28 , 2021

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