

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

% **Date of decision: 2nd March, 2021.**

+ **W.P.(C) 11304/2018 & CMs No.43849/2018 (for permission to place additional documents on record), 43850/2020 (for stay), 2525/2020 (of respondent for directions), 18724/2020 (of respondent for vacation of stay) & 22928/2020 (of respondent for directions)**

**SOUTH DELHI MUNICIPAL CORPORATION
& ORS**

.....Petitioners

Through Mr. Arun Birbal, Adv.

Versus

ANJU

..... Respondent

Through Dr. Ashwani Bhardwaj, Adv.

AND

+ **CONT.CAS(C) 408/2020**

ANJU

..... Petitioner

Through: Dr. Ashwani Bhardwaj, Adv.

Versus

**GYANESH BHARTI, COMMISSIONER SDMC
& ORS.**

..... Respondents

Through: Mr. Arun Birbal, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

1. W.P.(C) No.11304/2018 impugns the order dated 23rd April, 2018 of the Central Administrative Tribunal (CAT), Principal Bench, New Delhi, in OA No.3140/2017 preferred by the respondent.

2. W.P.(C) No.11304/2018 came up first before this Court on 22nd October, 2018, when notice thereof was ordered to be issued and the operation of the order dated 23rd April, 2018 of CAT stayed.

3. The factual matrix in the OA, as noted by CAT in the impugned order, is (i) the respondent was appointed as a Primary Teacher, by the erstwhile Municipal Corporation of Delhi (MCD), on 18th October, 1995; (ii) on trifurcation of MCD in the year 2012, the respondent was allocated to the petitioner South Delhi Municipal Corporation (SDMC); (iii) the respondent, on 30th September, 2016, claiming to have completed 21 years of service, applied, under Rule 48-A of the Central Civil Services (CCS) (Pension) Rules, 1972 enabling a government servant to, on completing 20 years of qualifying service, apply for VRS, after giving not less than three months' notice to the Appointing Authority, stating that the said communication be treated as a three months' notice with effect from 19th October, 2016; (iv) the respondent, on completion of three months' notice period, vide letter dated 18th January, 2017 asked to be relieved from duty, stating that as per the instructions from the District Education Officer, South Zone, on 16th January, 2017, she was advised that her VRS notice has been accepted and official orders will be sent through post in due course; (v) the respondent was relieved of her duties and handed over charge to the Principal of the School where she was working; (vi) the respondent, vide communication dated 24th April, 2017, requested for release of her pensionary benefits and when the same were not released, reminders dated 27th April, 2017, 28th April, 2017, 2nd May, 2017, 15th May, 2017, 1st June, 2017 and 19th June, 2017 were sent; (vii) the respondent, vide letter dated 18th April, 2017, was informed that her request for VRS had not been

approved because she had not completed qualifying service of 20 years and was asked to join duty with immediate effect; (viii) vide another letter dated 21st July, 2017, the respondent's request for VRS was rejected, explaining that she had not completed 20 years of qualifying service since the Extra-Ordinary Leave (EOL) taken by her on medical ground of her daughter did not count as qualifying service, thereby reducing total number of service to 18 years and three months; the respondent was again asked to immediately join duty; and, (ix) impugning the said communications dated 18th April, 2017 and 21st July, 2017, the OA had been filed.

4. CAT, in the impugned order has further noted that it was the contention of the respondent, (a) that the respondent has served three months' notice effective from 19th October, 2016 and her VRS became effective on the date of expiry of the said notice period i.e. on 18th January, 2017; (b) that the High Court of Punjab and Haryana in **Kulwant Kaur Vs. State of Punjab** 2002 SCC OnLine P&H 1288 has held that authorities cannot take a somersault by saying that the qualified service was less than 20 years, after allowing the employee to proceed on voluntary retirement; (c) that the respondent was granted child care leave from 19th October, 2010 to 15th February, 2011 i.e. of 120 days; that the respondent, vide her letter dated 3rd February, 2011 had requested for extension of her child care leave from 16th February, 2011 to 31st March, 2012 due to the medical problems of her daughter; (d) that the respondent, vide her representation dated 24th February, 2011, had requested that if her child care leave was not extended, she may be granted leave without pay; (e) that however the Competent Authority of the petitioner SDMC chose to sanction EOL from 16th February, 2011 to 31st March, 2012, inspite of the fact that there was 610

days of child care leave still available to the credit of the respondent; (f) that the respondent, vide her representations dated 30th May, 2011 and 5th August, 2014, had requested for her EOL to be converted into child care leave but no action had been taken; and, (g) that as per the earlier orders of the Tribunal in ***Raj Pal Gaindh Vs. Union of India*** 1987 SCC OnLine CAT 195 and in ***P.N.M. Elayadam Vs. Union of India*** 1993 SCC OnLine CAT 260, a notice given for VRS to the Appointing Authority does not require acceptance and after expiry of notice period of three months, an employee is deemed to have retired on the date of completion of three months of notice period.

5. CAT, in the impugned order has recorded, that the petitioner SDMC contested the OA aforesaid, pleading (I) that the respondent, pursuant to the communications dated 18th April, 2017 and 21st July, 2017 impugned in the OA, had already re-joined her duties on 10th August, 2017; (II) that the respondent had not exhausted the departmental remedies available to her; (III) that the respondent was not relieved of her duties nor had she produced any order of relieving issued by the petitioner SDMC; (IV) that the respondent's request for conversion of EOL from 16th February, 2011 to 31st March, 2012 and thereafter from 1st April, 2012 to 31st March, 2014, to child care leave, was barred by time; (V) that the respondent had not completed 20 years of qualifying service, to be eligible for VRS; (VI) that after deducting the EOL availed of by the respondent on three different occasions, her effective qualifying service was of 18 years and three months; and, (VII) that the respondent had availed EOL in three different spells i.e. from 1st April, 2011 to 31st March, 2012, from 1st April, 2012 to 31st March, 2014 and from 1st April, 2014 to 5th May, 2016, totaling to 1130 days and hence

her qualifying service got reduced to 18 years three months instead of 21 years and three months.

6. CAT, in the impugned order has reasoned, (A) that on 30th September, 2016, when the respondent applied for VRS, she had already put in 21 years and three months of service; (B) that the respondent had availed of child care leave earlier and had requested for further extension of the same, but for reasons best known to the petitioner SDMC, they did not accede to her request and instead regularized her period of absence beyond child care leave period by sanctioning EOL, notwithstanding the respondent was having 610 days child care leave to her credit; (C) that such action of the petitioner SDMC was not only harsh but unjustifiable; (D) that as per the decision dated 28th February, 1976 of the Government of India, if EOLs are not being recorded in the Service Book, such leave cannot be treated as non-qualifying for the purpose of calculation of the qualifying years of service for retiral benefits and the petitioner SDMC had not denied the averment of the respondent that the EOLs sanctioned to her were not entered into her service book; (E) that the respondent, on 10th August, 2017 had not re-joined her duties voluntarily but had been compelled to do so; (F) that though there was no order relieving the respondent of her charge but the then Principal under whom the respondent was then working had relieved the respondent and taken over charge from her; if the Principal had any kind of doubt, nothing prevented him from checking the factual position regarding the fate of the respondent's application for VRS; (G) that as per Rule 48-A of the CCS (Pension) Rules, after expiry of three months' notice period, VRS is deemed to have become effective; and, (H) that in the entirety of facts, the respondent was entitled to avail VRS. Accordingly, CAT vide the

impugned order directed the petitioner SDMC to pass necessary orders granting VRS to the respondent with effect from 18th January, 2017, with consequential benefits but without interest, within three months thereof. It was further directed that the respondent shall continue in service till the orders granting VRS were issued and all consequential benefits paid and would continue to get her salary/emoluments for the period of service rendered till she gets formally relieved by the petitioner SDMC.

7. In the aforesaid scenario, the respondent filed CM No.2525/2020 in this Court, pleading (i) that on inspection being allowed to her of her service record pursuant to the order dated 24th October, 2019 in the writ petition, she did not find any entry or order showing that her request for extension of child care leave from 16th February, 2011 to 31st March, 2012 was not admissible and/or rejecting the said request; that she also did not find any entry or order showing that her request for conversion of EOL to child care leave was ever considered and final order passed; that she could not find any entry showing that EOL would be treated as non-qualifying service; (ii) that as per the provisions of voluntary retirement, all leave during service for which leave salary is payable and all extraordinary leave granted on medical certificate shall count as qualifying service for pension; (iii) that the respondent had sought child care leave and in the alternative EOL, by submitting a medical certificate that her only daughter was suffering and to take care of her daughter; (iv) that no reason had been given for denying child care leave to the respondent; and, (v) that the petitioner SDMC was not releasing to the respondent the benefits of pay fixation under the CCS Revised Pay Rules, 2016, Modified Assured Career Progression Scheme (MACP) admissible with effect from 18th October, 2015 and bonus for the

years 2016-2017. Accordingly, directions in the application for release of all the aforesaid benefits were sought.

8. The aforesaid CM No.2525/2020 came up before this Court on 22nd January, 2020, when the counsel for the petitioner SDMC stated that since as of then, respondent had completed 20 years of qualifying service for the purposes of VRS, the petitioner SDMC will once again consider her request for VRS on the basis of her application already available.

9. In view of the aforesaid, directing the petitioner SDMC to take fresh decision on the respondent's application for VRS and directing the petitioner SDMC to in the meanwhile release the MACP benefits due to the respondent, CM No.2525/2020 was adjourned to 21st April, 2020.

10. On 17th September, 2020, the counsel for the petitioner SDMC informed that the respondent's request for VRS has been accepted with effect from 11th September, 2020 and that the benefits under the MACP due to the respondent shall be released.

11. At this stage, it may be mentioned that the respondent filed Cont.Cas.(C) No.408/2020 complaining that the petitioner SDMC had not complied with the directions contained in the orders dated 11th July, 2019 and 22nd January, 2020 in the writ petition.

12. As would be obvious from the aforesaid facts, though the writ petition was preferred impugning the order of CAT directing the petitioner SDMC to, within three months therefrom, pass necessary orders granting VRS to the respondent with effect from 18th January, 2017 with consequential benefits and to also continue to pay salary/emoluments to the respondent till the period of order of her VRS was passed but the petitioner SDMC itself has now, as informed on 17th September, 2020, accepted the request of the

respondent for VRS with effect from 11th September, 2020. Vide order dated 17th September, 2020, taking note of the said development, it was ordered that only consequential orders remained to be passed in this petition.

13. We find the respondent to have filed CM No.22928/2020 in this Court, pleading (a) that the petitioner SDMC, on 15th September, 2020 sought to restrain the respondent from logging into the online teaching portal and from marking her attendance; (b) that the petitioner SDMC, by passing the order dated 11th September, 2020 had tried to overreach the orders passed by the Court as well as the judgment dated 23rd April, 2018 of CAT; (c) that the petitioner SDMC, by accepting the VRS application of the respondent with effect from 11th September, 2020, has rendered the order of CAT redundant; (d) that as of 11th September, 2020, the respondent has completed 24 years and 11 months of service but the petitioner SDMC in the order dated 11th September, 2020 has stated that the respondent has completed 20 years of service only on 22nd January, 2020; and, (e) that the arrears due to the respondent under the MACP Scheme had not been released till then. Relief of, directing the order dated 11th September, 2020 to be kept in abeyance, is sought in the application.

14. As would be obvious from the above, the petitioner SDMC has accepted VRS of the respondent with effect from 11th September, 2020. The only question which remains to be decided, in terms of order dated 17th September, 2020 in this petition, is the consequential orders to be passed.

15. Having considered the controversy, we are of the view that in a challenge to rejection of the application for voluntary retirement, the correctness and validity of the earlier refusal of the petitioner SDMC, to extend child care leave to the respondent and/or of the grant of EOL to the

respondent, could not have been decided and have indeed not been decided by CAT even in the impugned order. CAT granted relief to the respondent, merely on the basis of the respondent having been relieved. Now that, during the pendency of this petition, the petitioner SDMC was permitted to consider afresh, the application of the respondent for voluntary retirement and on such consideration, has accepted the same, the need to go into the correctness of the same reasoning of CAT is not felt.

16. We accordingly dispose of the writ petition and the contempt case with the following directions:

(I) The application of the respondent for VRS is deemed to have been accepted with effect from 11th September, 2020.

(II) All the retiral benefits due to the respondent, be computed, taking the respondent to have voluntarily retired with effect from 11th September, 2020 and be released to the respondent, together with benefit of MACP and all salary due till the respondent served, within 90 days hereof, failing which the same shall incur interest @ 9% per annum from the expiry of 90 days till the date of payment.

RAJIV SAHAI ENDLAW, J.

AMIT BANSAL, J.

MARCH 02, 2021

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