



2024:DHC:9526



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

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Date of Decision: 29th November, 2024

+ W.P.(C) 3764/2019

SATYA NARAIN AGRAWAL

.....Petitioner

Through: Mr. Yashpal Singh, Mr. A. Gautam
and Mr. Himanshu Baliyan, Advocates.

versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Mr. Dev P. Bhardwaj, CGSC with
Ms. Anubha Bhardwaj, CGSC for UOI/R-1 to 4
and 6.

Mr. Sudipto Sircar, Advocate for R-5.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India seeking a direction to the Respondents to pay *pro rata* pension to the Petitioner.
2. Facts to the extent relevant and necessary for deciding the present writ petition are that Petitioner was selected and appointed in the Civilian Cadre of Indian Air Force on 02.06.1960 and joined as Civilian Store Keeper, Grade-IV at the Equipment Depot, Air Force, Kanpur. On being selected for appointment as Deputy Executive Assistant in Grade-1 Officers' cadre in Hindustan Aeronautics Limited ('HAL'), Kanpur, Petitioner was relieved by the Air Force vide letter dated 14.11.1969 to take up the new assignment. Petitioner joined HAL w.e.f. 15.11.1969, without any break in service and



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on retention of lien. Petitioner was confirmed with HAL on 15.05.1970 and submitted his resignation to the Air Force on 16.06.1970, which was accepted and Petitioner was allowed lien from 15.11.1969 to 15.05.1970 and a sum of Rs.452/- was paid by HAL for the period of lien towards his leave salary and pension contribution.

3. It is further averred that Petitioner was promoted in HAL as Administrative Officer (Law) on 01.01.1973 and confirmed on the said post on 21.01.1973. Consequent upon his selection as Company Secretary in National Textile Corporation (UP) Ltd., Kanpur ('NTC'), on 23.05.1975 Petitioner joined NTC from where he was relieved in October, 1998 after serving for 23 years and 05 months in different capacities. From 2008, Petitioner started pursuing his case for grant of *pro rata* pension as well as 37 days' earned leave with the Air Force and as averred, vide letter dated 27.11.2008, the organisation supported his case. It is further averred that on 25.03.2010, Air Headquarters directed the release of *pro rata* pension to the Petitioner and this was followed by a letter dated 05.05.2010 written by Headquarters, Maintenance Command, Air Force, Nagpur. Petitioner avers that between 2011 to 2017 he was representing to all the concerned authorities including Ministry of Defence and Principal Controller of Defence Accounts (Pensions) ['PCDA (P)'], Allahabad but vide letter dated 30.08.2017, he was informed by PCDA (P) that Petitioner was not eligible for *pro rata* pension in light of letter dated 24.05.2017 written by 29 Ed., Air Force, Chakeri, Kanpur. Later, in 2019, Petitioner filed the present writ petition claiming *pro rata* pension.

4. Mr. Yashpal Singh, learned counsel appearing on behalf of the Petitioner submits that the Petitioner is entitled to *pro rata* pension from the



Air Force as he has rendered a service of 09 years 11 months and 12 days with the Air Force and a combined service of 15 years with HAL and the pension be divided between the two organisations. Respondents are factually incorrect in calculating the period of service as 09 years 05 months and 12 days, as the qualifying service must include the period from 15.11.1969 to 15.05.1970, for which Petitioner was paid leave salary and pension contribution by HAL. Relying on Rule 49(3) of Central Civil Services (Pension) Rules, 1972 ('1972 Rules'), it is submitted that Petitioner in fact has more than 10 years of qualifying service by virtue of this Rule which provides that in calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one half-year and reckoned as qualifying service.

5. Mr. Yashpal Singh also places reliance on the Rule 44 (8) of Central Civil Services (Pension) Rules, 2021 ('2021 Rules') to contend that in case of a Government Servant who has rendered a qualifying service of nine years and nine months or more but less than 10 years, his qualifying service for the purpose of this Rule shall be 10 years and he shall be eligible for pension in accordance with Rule 44 (1) which provides a qualifying service of not less than 10 years to become eligible for pension.

6. Learned counsel for the Petitioner relies on the judgment of the Division Bench of this Court in *Shivmangalrai v. Union of India and Ors.*, **2018 SCC OnLine Del 12848**, to dispel any opposition on the applicability of 2021 Rules and argues that in the said decision, Petitioners were initially appointed in a temporary capacity but were regularised on 28.03.1972 and despite the fact that their initial appointment was prior to the enactment of 1972 Rules, the Rules were made applicable to the Petitioners and they were



held entitled to pensionary benefits.

7. Learned CGSC, *per contra*, opposes the writ petition. Preliminary objection is taken by the learned counsel that the writ petition is barred by delay and laches. It is urged that the cause of action, if any, arose in favour of the Petitioner in the year 1969 when he was relieved from Air Force and Petitioner has chosen to file this writ petition only in the year 2019. Petitioner cannot be permitted to re-open a stale issue after almost five decades.

8. Without prejudice, it is contended that even on merits, Petitioner has no case under Rule 49(3) of 1972 Rules or Rule 44(8) and (10) of 2021 Rules. Insofar as Rule 49(3) is concerned, it is argued that Rule 49(3) came into force only from 28.06.1983 and is not applicable retrospectively to Government Servants who retired prior to the said date. Since Petitioner's case relates to *pro rata* pension for the period 02.06.1960 to 14.11.1969, he cannot seek the benefit of Rule 49(3) and in support also relies on Rule 5(1) which provides that any claim to pension or family pension shall be regulated by the provisions of these Rules in force at the time when a Government Servant retires or is retired or is discharged or is allowed to resign from service or dies, as the case may be.

9. It is further argued that case of the Petitioner was taken up with PCDA (P), Allahabad for grant of *pro rata* pension, however, the same was rejected as the Petitioner does not have minimum 10 years of qualifying service as required under Rule 49(1) of 1972 Rules. It is also argued that reliance of the Petitioner on Rule 44(8) of 2021 Rules is wholly misplaced as 2021 Rules came into force only from the date of their publication in the official Gazette and do not have retrospective application.



10. Mr. Yashpal Singh, learned counsel for the Petitioner contests the preliminary objection of delay and laches and submits that Supreme Court has from time to time held that pension is a continuous cause of action and even otherwise in matters of retiral benefits, liberal approach must be taken and claimants should not be non-suited on these technicalities as pension is not the bounty of the State. Reliance is placed on the judgment of this Court in ***Dr. Dilip Kumar v. Indian Council of Agricultural Research (ICAR) and Others, 2022 SCC OnLine Del 3807***, for the proposition that the plea of delay and laches cannot be taken into account with respect to claims of pensionary benefits.

11. Heard learned counsels for the parties and examined their contentions.

12. It is an undisputed fact that Petitioner joined the Indian Air Force on 02.06.1960 and was relieved on 14.11.1969 on tendering technical resignation, Petitioner joined HAL w.e.f. 15.11.1969 and was paid leave salary and pension contribution by HAL for the period 15.11.1969 to 15.05.1970. After serving HAL, Petitioner joined NTC on 23.05.1975 and was relieved in October, 1998, after rendering service of 23 years and 05 months. The short issue that this Court is called upon to decide is whether Petitioner is entitled to *pro rata* pension for the period he served with Air Force between 02.06.1960 and 14.11.1969.

13. Insofar as preliminary objection of delay and laches is concerned, strictly speaking, counsel for the Petitioner is right in his submission that pension is a continuing wrong and ordinarily, Courts are liberal in entertaining claims of retiral benefits, even if there are delay and laches *albeit* restricting the arrears to 03 years prior to the claimant approaching the



Courts. Therefore, this Court is not dismissing this writ petition on delay and laches.

14. On merits, however, Petitioner has no case as he is not entitled to *pro rata* pension for the period he served with the Indian Air Force. There can be no quarrel that under Rule 49(1) of 1972 Rules, a Government Servant is required to complete 10 years of qualifying service for grant of pension. In case, the Government Servant retires in accordance with the provisions of these Rules before completing qualifying service of 10 years, he is entitled to service gratuity calculated at the rate of half-month's emoluments for every completed six monthly period of qualifying service. Significantly, Rule 49 deals with '*amount of pension*' and Rule 49(3) on which heavy reliance is placed by counsel for the Petitioner provides that in calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one half-year and reckoned as qualifying service. There is no provision in the Pension Rules which provides relaxation in the qualifying service of 10 years and none has been pointed out by counsel for the Petitioner. The substantive provision i.e. Rule 49(1) mandates a minimum period of 10 years as qualifying service for pension and short of that the Government Servant is only entitled to service gratuity. Petitioner's claim for *pro rata* pension is based on a misreading of Rule 49(3). On a plain reading, this sub-Rule does not relax the qualifying service of 10 years but only provides a methodology for calculating the length of qualifying service once the Government Servant has to his credit a minimum qualifying service of 10 years.

15. Second argument of Mr. Yashpal is that even if it is assumed that Petitioner is not entitled to the benefit of Rule 49(3), he is entitled to pension



by virtue of Rule 44(8) of 2021 Rules, which envisages a situation where a Government Servant has rendered qualifying service of nine years and nine months or more but less than 10 years and provides that this service will be treated as 10 years and the Government Servant will become eligible for pension in accordance with Rule 44(1). This Rule is pressed by taking the period of service rendered by the Petitioner in Air Force together with the lien period in HAL and calculating the same as 09 years 11 months and 12 days. This argument deserves to be rejected for multiple reasons. First of all, the factual narrative that Petitioner has rendered 09 years 11 months and 12 days combined service with Air Force and HAL for the purpose of pension is incorrect. The qualifying service for *pro rata* pension in Air Force is 09 years 05 months and 12 days and Petitioner cannot take the service in HAL *albeit* on lien for calculating qualifying service in the earlier organisation. No law permits the Petitioner to include the service in HAL and on a pointed query, counsel has been unable to point out any such provision under the Pension Rules. Secondly, Rule 44(8) is a part of 2021 Rules which came into force on the date of their Notification in the official Gazette by virtue of Rule 1 thereof and no retrospective effect has been given to these Rules. Sub-rule (8) of Rule 44 is a provision which was introduced for the first time in the 2021 Rules by way of amendment and did not exist in the 1972 Rules. It needs no reiteration that an amendment to the Rules will have a prospective application unless the Rules contain a provision giving them retrospective effect. Therefore, Petitioner cannot claim the benefit of Rule 44(8). In my view, Petitioner cannot re-open his claim for *pro rata* pension at this stage by placing reliance on 2021 Rules. Reliance by the learned counsel on the judgment of the Division Bench of this Court in



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Shivmangalrai (supra) is misplaced as in the said case, the issue before the Court was whether CCS (Pension) Rules were applicable to the locally recruited employees of Indian Missions/Posts abroad and in this context, the Division Bench observed that indisputably, Petitioners were initially appointed in a purely temporarily capacity but were subsequently regularised against sanctioned posts on 28.03.1972 and in this context, held that the contention of the Respondents for exclusion of Petitioners from applicability of Pension Rules deserved rejection inasmuch as Rule 2(f) excluded the applicability to persons locally recruited for service in diplomatic, consular or other Indian establishments in foreign countries. It was held that as per temporary service Rules, even a Government servant, who renders temporary service, is entitled for pension and the Court granted relief to the Petitioners for grant of pensionary benefits. This judgment does not deal with the controversy arising in the present case *albeit* it must be noticed that even the Division Bench while granting pensionary benefits to the Petitioners therein held that pension will be payable only to those who render not less than 10 years of service.

16. For all the aforesaid reasons, Petitioner cannot be granted *pro rata* pension as he falls short of the minimum 10 years qualifying service. Writ petition is accordingly dismissed being bereft of merits.

JYOTI SINGH, J

NOVEMBER 29, 2024/shivam