



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

% **Reserved on: July 02, 2024**

Pronounced on: July 24, 2024

+ **W.P.(C) 11159/2019**

JAI KARAN

.....Petitioner

Through: **Mr. Pardeep Dahiya, Advocate**

Versus

DELHI JAL BOARD AND ORS.

.....Respondents

Through: **Ms. Sangeeta Bharti, Standing
Counsel for DJB with Ms. Vidushi
Gupta, Advocate**

CORAM:

**HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE GIRISH KATHPALIA**

JUDGMENT

SURESH KUMAR KAIT, J

1. The petitioner-Jai Karan, by way of present writ petition under Article 226 of the Constitution of India, has sought an order in the nature of Writ of Certiorari seeking quashing of order dated 17.10.2018 passed in O.A. No.622/2013 by the learned Central Administrative Tribunal, Principal Bench, New Delhi (Tribunal) as well as setting aside of G.I., M.F., O.M. No.F.12(1)-E.V/68 dated 14.05.1968 and O.M. No.12011/1/85-ESTT.(C) dated 10.03.1986, issued by the Department of Personnel & Training, Government of India. In addition, a writ of mandamus also is sought to the



respondents to grant the petitioner benefit of service on work charge basis and to determine his qualifying service with full pension, gratuity and other benefits for the services rendered by him.

2. The petitioner claims to have been appointed on the post of Assistant Pump Driver (APD) in Delhi Development Authority (DDA) in the year 1972. He was made permanent by DDA on 01.03.1974 and was transferred to respondent No.1-Delhi Jal Board (DJB) on 13.01.1996, as then DJB was under MCD. The petitioner worked as a regular employee in DJB from 13.01.1976 till 31.12.2005, i.e. till the date of his superannuation. Petitioner claims to have received full and final payment of gratuity, pension and other retiral benefits from the respondents.

3. According to petitioner, after receiving his dues from the respondent No.1-DJB pursuant to his superannuation, he learnt about wrong calculation of his dues in respect of his qualifying service period. The petitioner then made a representation dated 04.11.2011 to respondent-DJB requesting to recalculate his dues and to clear the same.

4. In response to his representation, the respondent No.1-DJB vide letter dated 25.11.2011 mentioned that the net qualifying period of service rendered on work charge from 01.03.1974 till 09.01.1991 was at 50% and subsequently, from 09.01.1991 till 31.12.2005 has been considered full excluding non-qualifying services of two years. Thus, petitioner's net qualifying period of service was considered to be 21.5 years and the petitioner was accordingly paid his benefits.

5. According to petitioner, he made an RTI application dated 17.12.2011 requesting the department to furnish him copies of calculation of his gratuity, GPF fund, pension, however, the same was never supplied.



6. The petitioner claims to have made an appeal before the appropriate authority on 19.11.2012. During the hearing in the appeal, respondent-DJB provided a copy of Circular dated 22.02.2008 and the appeal stood disposed of in terms thereof.

7. On 09.09.2014, the petitioner approached the learned Tribunal by filing O.A. No.622/2013 wherein the respondent-DJB vide reply dated 18.11.2013 contested the claim of petitioner. In its reply, the respondent-DJB relied upon the Circular dated 22.02.2008 to contest his claims. On petitioner's request, the learned Tribunal, vide order dated 03.09.2014, permitted the petitioner to challenge the vires of aforesaid decisions.

8. The petitioner thus filed an application dated 09.09.2014 seeking amendment in O.A. challenging the afore-noted decisions dated 14.05.1968 and 10.03.1986 passed by the Government of India and also got Department of Personnel & Training impleaded as respondent No.3.

9. The learned Tribunal, vide order dated 17.10.2018, dismissed the OA No.622/2013 holding as under:

“9. The applicant in the OA is aggrieved by the fact that only 50% of length of service rendered by him as daily wager or work charged employee has been counted by the respondents for the sake of grant of pension. The Oms dated 14.05.1968 and 10.03.1986 have discussed this situation exclusively. That there can be no intervention in respect of such executive directions has clearly been brought out by the respondents in their counter affidavit.

10. On perusing the aforementioned circulars, I am unable to find any error in the directions/guidelines contained therein. In any case these guidelines would apply to all such similarly situated employees and cannot be considered arbitrary or violative of Article



*14 of the Constitution of India, as alleged in the OA.”
[Emphasis supplied.]*

10. Being aggrieved, the petitioner has preferred the present writ petition on the ground that the learned Tribunal, while passing the impugned order dated 17.12.2018, did not take into consideration the judgment cited by him. The learned Tribunal failed to consider the rules which govern the pensionary benefits of government servants and has instead relied upon the afore-noted two orders dated 14.05.1968 and 10.03.1986 passed by the Government of India which had no application in case of petitioner. The petitioner has relied upon Rule 14 of CCS (Pension) Rules, 1972 to submit that qualifying service of a government servant, the continuous service rendered by a Government employee shall qualify whether it is temporary or officiating.

11. The petitioner has also placed reliance upon the decision rendered by Hon'ble Punjab & Haryana High Court in Civil Writ Petition No.2684/1983 titled as ***Kesar Chand Vs. State of Punjab*** which was upheld by Hon'ble Supreme Court in ***Dakshin Haryana Bijli Vitran Nigam and Others Vs.. Bachan Singh*** (2009) 15 SCC 793.

12. During the course of hearing, learned counsel for petitioner submitted that the learned Tribunal failed to consider that receiving pension and other gratuity benefits has been recognized as right to property by the Constitution Bench of the Hon'ble Supreme Court in ***Deokinandan Prasad Vs. State of Bihar*** (1971) 2 SCC 330.

13. On the other hand, the stand of respondent-DJB in its counter-affidavit filed before the learned Tribunal was that as per provisions



contained in the impugned OMs issued by the Government of India, only 50% of length of service has to be taken into account for calculating the pension of an employee who was initially a daily work wager or work charge employee who subsequently was regularized by the employer.

14. The respondent-DJB averred that it is well settled law that vires of law or rule or an executive action can only be tested by a court on very limited grounds which are namely (i) Executive or legislators had no power to legislate or issue subordinate legislation or had no competence to issue executive order; (ii) the action is irrational; and (iii) there is non-observance of principles of nature justice. [(1984) 3 ALL ER 935].

15. Also averred that there was no violation of principles of natural justice or any procedure impropriety committed by the respondents while issuing the impugned OMs and so, the claim of petitioner deserves to be rejected.

16. The arguments advanced by learned counsel representing both the sides were heard at length and the material placed before this Court as well as decisions cited have also been perused.

17. It is not in dispute that petitioner had joined services of DDA on the post of Pump Driver in the year 1972 and was declared permanent on 01.03.1974. He was transferred to respondent No.1-Delhi Jal Board (DJB) on 13.01.1996, where he worked as regular employee till 31.12.2005. Between the years 2006-2007 petitioner realized wrongful calculation of service period and thus, made a representation to DJB on 04.11.2011 to refix his pay and clear the outstanding dues.

18. On 12.12.2012 DJB provided the petitioner the copy of Circular dated 22.02.2008 premised whereupon his net qualified service period on work



charge, was taken at 50% from 01.03.1974 till 09.01.199. In the appeal preferred by the petitioner, the learned Tribunal while relying upon O.M. No. F.12(1) E.V/68 dated 14.05.1968 and further OM No. 12011/1/85-Estt (C) dated 10.03.1986, held that there can be no intervention in the executive directions and application of these guidelines cannot be considered arbitrary or violative of Article 14 of the Constitution of India.

19. This Court has also gone through the guidelines mentioned in dated O.M. 14.05.1968, wherein it has been mentioned that for the purpose of calculation of pension, half the service paid from contingencies will be allowed to count towards pension at the time of absorption in regular employment. Further, O.M. dated 10.03.1986 also mentions that half the service paid from contingencies will be allowed to be counted for the purpose of terminal gratuity as admissible under the CCS (TS) Rules, 1965.

20. Reliance placed by petitioner upon decision in **Keshar Chand (Supra)**, wherein period of service spent by an employee in a work-charged establishment before his regularisation was not taken into consideration for determining his qualifying service and thus, it was held that after the services of a work-charged employee have been regularized, he becomes a public servant under the Government and is paid by it. However, the said decision is of no assistance to the case of petitioner as in the said case, Punjab Civil Service Rules were applicable.

21. Also, in **Dakshin Haryana Bijli Vitran Nigam (Supra)**, the appellant therein had in the light of instructions dated 6.8.1993 issued by the Haryana State Electricity Board (HSEB), for grant of benefit of work-charge service towards pensionary benefits, exercised his option for being governed under the pension scheme on 20.12.1994 but despite his reminders, the



respondents fixed his pension and other benefits from the date of his regularization in service and thereby ignoring his period of work charge capacity.

22. In our opinion, both the decisions relied upon by the petitioner are distinguishable on facts and are thus, not applicable to the case of petitioner. The case of petitioner is covered under O.M. No. F.12(1) E.V/68 dated 14.05.1968 and further OM No. 12011/1/85-Estt (C) dated 10.03.1986, and thus, learned Tribunal is in no error to hold that directions spelt out therein are required to be followed.

23. Finding no merit in the present petition, it is accordingly dismissed. Pending application, if any, also stand disposed of as infructuous.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

JULY 24, 2024

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