



2024:DHC:2559



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order: 19th March, 2024**
+ W.P.(C) 10479/2016
RANBIR SINGH YADAV Petitioner

Through: Appearance not given.

versus

DELHI TRANSPORT CORPORATION Respondent

Through: Mrs. Avnish Ahlawat, Standing Counsel, GNCTD (Services) with Mr. Nitesh Kumar Singh, Ms Laavanya Kaushik, Ms Aliza Alam and Mr. Mohnish Sehrawat, Advocates.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 226 and 227 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

“a) Issue a writ of certiorari or any other appropriate writ , order or direction calling for the complete records of the respondent on the subject before this Hon'ble High Court to valuate and pass proper Orders.

b) Issue an appropriate writ in the nature of mandamus or any other writ, order or direction quashing or modifying the impugned Order/Award dated 27.05.2016 passed by the Ld. POLC in LCA no. 17/2009 depriving the petitioner from the



rights of the Pensionary Benefits.

c) Issue an order or direction to the respondent or provide the Provisional Pension to the petitioner from the next date of his retirement i.e. 01.10.2002 till finalization of the case.

d) pass such other and further order as this Hon'ble Tribunal may deem fit and proper in the interest of justice.”

2. The case of the petitioner/claimant is set out in view of the following facts:

- a. The petitioner was in the employment of the respondent corporation since the year 1963 as a Conductor. It is stated that on one occasion, the petitioner was caught and challaned by the checking staff of the corporation for taking a lesser amount than the actual fare and therefore, was dismissed from his service.
- b. Thereafter, a domestic inquiry was conducted against the petitioner which concluded in his dismissal from service on 15th July, 1976. The respondent corporation then filed an application under Section 33 (2) (b) of the Industrial Disputes Act, 1947 (hereinafter “the Act”), for approval of the above said dismissal which was allowed vide order dated 6th July, 1982.
- c. Aggrieved by the above, the petitioner raised an industrial dispute with respect to the validity of the inquiry held against him. The matter was referred to the Labour Court, wherein, in ID No. 577/1986, vide the award dated 26th



February, 1990, it was *inter alia* held that the domestic inquiry against petitioner was illegal and unjustified. Accordingly, the respondent corporation was directed to reinstate the petitioner with full back wages.

- d. The above said award was challenged by the respondent corporation in writ petition bearing W.P (C) no. 280/1991. In the meanwhile, vide an order dated 19th November, 1991 in the above said petition, the respondent corporation was directed to pay the petitioner his last drawn wages, under Section 17B of the Act.
- e. Subsequently, the above said writ petition was dismissed vide judgment dated 25th April, 2007. Aggrieved by the same, the respondent corporation filed an appeal bearing LPA No. 89/2007 which was dismissed as withdrawn with the liberty file a review petition. Accordingly, the respondent corporation filed a review petition bearing no. 226/2008 and the same was also dismissed vide order dated 15th January, 2016.
- f. In the meanwhile, the petitioner superannuated on 30th September, 2002.
- g. Consequently, the petitioner filed an LCA no. 17/2009 before the learned Labour Court seeking release of his retiral dues and pension. The learned Labour Court passed an award dated 27th May, 2016, whereby, it dismissed the



petitioner's claim. Being aggrieved by the same, the petitioner has approached this Court seeking setting aside of the impugned award dated 27th May, 2016.

3. Learned Counsel appearing on behalf of the petitioner submitted that the impugned award has been passed without taking into consideration the entire facts and circumstances of the case and therefore, is liable to be set aside being bad in law.

4. It is submitted that the learned Labour Court failed to appreciate that the petitioner workman was not allowed to rejoin his duties despite the direction of the Labour Court vide order dated 26th February, 1990 passed in ID No. 577/1986 and he was compelled to retire on superannuation on 30th September, 2002.

5. It is submitted that pursuant to the above said award, the respondent corporation paid the back wages to the petitioner and continued to pay till the date of his retirement, i.e., 30th September, 2002, however, it did not pay him the increment and consequential benefits of promotion. Furthermore, even though the petitioner is entitled to pension, however, the same was denied to him by the respondent corporation.

6. It is submitted that while dismissing the petitioner's claim, the learned Court below failed to consider the settled position of law and various government rules/instructions on the subject.

7. It is submitted that as per the law, where the service of an employee has not been forfeited on the orders of any Court of law and the payment of wages/dues of the employee has been made for the period when the



employee remained out of the organization, the said period has to be treated as qualifying service for the purpose of pension benefits under CCS/Fundamental Rules (Pension).

8. It is submitted that as per paragraph 9 of the Office Order no. 16 dated 27th November, 1992, issued by the respondent Corporation, it is settled law that in case any employee of the respondent does not exercise any option within the prescribed period of 30 days, he shall be deemed to have opted the pension scheme benefits.

9. It is further submitted that as per the management's record, the petitioner did not fill any option form in view of paragraph 9 of the Office Order 16 dated 27th November, 1992 and therefore, the petitioner is deemed as "pension optee".

10. It is submitted that since the respondent owed the petitioner certain pensionary benefits, he had filed an application under Section 33(C)(2) of the ID Act, thereby, seeking recovery of the money, however, the learned Labour Court failed to consider the same in entirety.

11. It is submitted that in light of the submissions made hereinabove, the learned Labour Court erred in appreciating the correct facts and settled legal principles which make the impugned award liable to be set aside.

12. In view of the foregoing submissions, it is submitted that the petitioner is entitled to the pension benefits as claimed and hence, the instant petition may be allowed.

13. *Per Contra*, learned counsel appearing on behalf of the respondent corporation vehemently opposed the instant petition submitting to the effect



that the same is liable to be dismissed being devoid of any merit.

14. It is submitted that the instant petition is not maintainable in view of the fact that the order dated 15th January, 2016 passed by this Court in review petition bearing no. 226/2008 was sought to be implemented by the petitioner by moving an application under Section 33(C)(2) of the ID Act, whereas the said order was fully implemented even before filing of the above said application.

15. It is submitted that in the above said claim, the petitioner averred that the respondent did not pay his retirement benefits amounting to Rs.3,75,937/- along with the interest upon his superannuation on 30th September, 2002 and the said benefits amounted to Rs.3,75,937/- along with the interest.

16. It is submitted that vide order dated 15th January, 2016, this Court had dealt with the issue of payment of retirement dues and noticed the fact that a sum of Rs.2,09,744/- was paid to the petitioner towards back wages from July, 1976 to July, 1990 and thereafter, the respondent continued paying his salaries to him until he got superannuated.

17. It is further submitted that vide order dated 15th January, 2016, this Court had directed the respondent corporation to release the gratuity and provident fund to the tune of Rs.2,65,460/- payable to the present petitioner, thus, the claim sought by the petitioner before the learned Court below already stands paid.

18. It is submitted that the respondent corporation had admittedly paid a sum of Rs.8,96,293/- upto 30th September, 2002 which also included a sum



of Rs.2,09,794.08/- towards wages under Section 17B of the ID Act.

19. It is submitted that an employee who gets contributory provident fund (hereinafter “CPF”), in any case, is not entitled to pension. Employee's share of contributory provident fund to the tune of Rs.1,48,954/- was already released to the petitioner in the year 2004. It was the employer’s contribution which was to the tune of Rs. 1,37,167/- and was paid with interest pursuant to the directions of this Court in its order dated 15th January, 2016.

20. It is submitted that once the CPF is paid and accepted, no pension is payable and since the petitioner has received full corpus of CPF, he is not entitled for any pension as the same stands paid.

21. It is further submitted that the learned Labour Court has rightly held that the CPF corpus has been consumed by the petitioner and therefore, the respondent corporation cannot be directed to pay the same amount twice and thus, the petitioner is not entitled for pension.

22. In view of the foregoing submissions, it is submitted that the instant petition may be dismissed.

23. Heard the learned counsel for the parties and perused the record.

24. It is the case of the petitioner that the learned Labour Court wrongly held that he is not entitled for any retirement and pension dues and the learned Court failed to consider the Office Order no. 16 and other Fundamental Rules by virtue of which he is entitled for the dues. Hence, the petitioner prays that the impugned award may be set aside and the petitioner be granted his retirement dues including the pension.

25. In rival submission, the respondent contends that it was admitted by



the petitioner that he has got all the dues upto the date of his termination to which he was entitled to and the same was duly admitted by him in the cross-examination. It is also admitted that CPF has been paid, and thus, the petitioner is not entitled for pension. Hence, the respondent submits that the instant petition may be dismissed.

26. The issue before the learned Court below was to decide whether the workman is eligible to receive the terminal benefits consequent to his retirement or whether the management has paid the entire benefits. Therefore, this Court shall adjudicate upon whether the issues stated hereinabove were rightly decided by the learned Court below.

27. In the impugned award, the learned Labour Court held that the petitioner is not entitled to recovery of any dues and accordingly dismissed the claim. The relevant extracts of the impugned award is as under:

“....5. In order to substantiate the case, the claimant tendered his affidavit in evidence as Ex.WW1/A mentioning all the facts stated in statement of claim. He deposed that he had joined the management as conductor and badge no. 3144 was allotted to him. His last posting was Hari Nagar Depot-II, New Delhi. His service was terminated on 15.07.1976. An application filed by the management U/s 33(2)(b) of the Act was dismissed by the Tribunal holding the enquiry illegal. Vide award dated 26.02.1990, the management was directed by the labour court to reinstate him with full back wages. The award was challenged by the management by way of W.P.C No. 280/91 wherein he had moved an application U/s 17(B) of the Act and the management was directed to pay wages to him. The management paid him back wages and continued to pay till the date of his retirement i.e. 30.09.2002, but it did not pay him the increment and consequential benefit of promotion. He is



entitled to pension also, but pension was also not paid to him. The writ petition filed by the management against reinstatement award was dismissed by the Hon'ble High Court on 25.07.2007. Thereafter, he sent notices dated 17.05.2007 & 31.01.2008 to the management for payment, but both went unreplyed. He deposed that up to December, 2008, he is entitled to a sum of Rs.3,75,957/-.

6. The management examined its Deputy Manager Sh. Rudal Shah as MW1. He deposed that case of the workman has neither been adjudicated nor admitted by the management and hence, it is not maintainable. The management has already paid a sum of Rs. 8,96,293/- to the claimant and after receipt of that amount, nothing is due towards it. Before it, the management had filed an application U/s 33(2)(b) of the Act which was allowed. Against approval order, the claimant had filed a writ petition, but his writ petition was dismissed against which he did not file any appeal etc. and hence, the order passed by the Hon'ble High Court in the writ petition of the claimant against approval order has attained finality and hence, he is not entitled to any amount.

11. It is correct that despite order of the Hon'ble High Court for reinstating the claimant, he was not rejoined by the management.' For opting for pension, it was not required that, the claimant should be on duty. Even without joining duty, he should have written a letter to the management that he was opting for pension. Admittedly, he did not place on record any document which may suggest that he had given intimation -to the management that he was opting for pension. It has not been disputed by the claimant that he has received a sum of Rs.1,48,954/- from the management in 2004 as PF. It is not disputed that employer's share of CPF was Rs.1,37,1611-. As per his own bank statement, he has been paid a sum of



Rs.2,92,135/- i.e. employer's share of CPF to the tune of Rs.1,37,167/- alongwith interest @ S.5% per annum. It means that corpus of CPF, from which he was to be paid pension, has been consumed by himself. It may be true that the management may not have disclosed to him that after consumption of that corpus, he would not be entitled to pension. But the fact of the matter remains the same that the CPF corpus has been consumed by the claimant himself. The management cannot be directed to pay the same amount twice. So, it is held that the claimant is not entitled to any pension.

Issue No.3:

12. Consequent to decision on issue nos. 1 & 2, it is held that claimant is not entitled to any relief from the management. Petition U/s 33-C(2) of the I.D. Act, is dismissed. Parties to bear their own costs. Order is passed accordingly. File be consigned to record room....”

28. Upon perusal of the above extracted paragraphs of the impugned award, it is observed that the petitioner had deposed in his examination that he is entitled to a sum of Rs.3,75,957/- up to December, 2008. With regard to the same, the respondent corporation examined MW1, i.e., the Deputy Manager, and who deposed that the petitioner workman has been already paid a sum of Rs.8,96,293/- and nothing further is due towards the petitioner.

29. The petitioner had submitted before the learned Labour Court that a certain amount of sum towards the benefit of promotion is due. In respect of the same, the respondent corporation argued that the petitioner's demand is on account of various promotions and commission, however, in examination, the petitioner could not depose as to when he was given



promotion and what his salary should be as per various commissions as alleged. It was also argued that the petitioner in his cross examination admitted the factum of receiving entire dues to which he was entitled to, until his termination. The respondent further submitted that pursuant to the order dated 15th January, 2016, passed by this Court in the review petition, the respondent had made entire payment to the petitioner and hence, nothing is due.

30. Taking into consideration that the petitioner had admitted the fact that the entire amount to which he was entitled to from the date of termination till his retirement stands paid by the respondent, the learned Court below held that the petitioner cannot be held to be entitled to any further amount on account of alleged promotion and commission.

31. Thereafter, with respect to the issue of pension, the petitioner had argued that the management has not paid any amount thereto. The respondent, in this regard submitted that as per the circular of the management, all of its employees are given with an option to 'opt' or 'to not opt' for pension. The employee who opts for pension has to make the management aware in writing about the same, otherwise, it is deemed that he was not opting for pension.

32. It was submitted before the learned Court below that the petitioner had not given any intimation with regard to his 'option' and due to the said reason; he was not given any pension. Furthermore, pension is paid to an employee from corpus known as CPF wherein, the corporation deducts a certain sum from the employee's salary as part of his contribution towards



his pension and equal amount is also deposited by the employer. The respondent corporation also contended that they have already released the petitioner's share amounting to Rs.1,48,954/- from the corpus to the petitioner in the year 2004 and the employer's contribution to the tune of Rs.1,37,167/- has also been paid on 16th February, 2016 alongwith interest. Thus, whatever, the petitioner is claiming already stands paid to him and hence, he is not entitled to any pension.

33. In regard to the above, the petitioner workman had argued that despite the order of reinstatement, he was not allowed to rejoin his duties and thus, the respondent's contention that he was given an option to opt for pension cannot be accepted. The petitioner further admitted to receiving full corpus of CPF, however, it was argued that the respondent should have disclosed the fact that he shall not be entitled to pension after the disbursal of the above said amount.

34. The learned Labour Court held that the contention of the petitioner that he could not opt for pension as he was not on duty does not hold any force. The petitioner could have opted for pension even if he was not allowed to join his duty by writing a letter to the respondent's management, and any such document in this regard has not been placed on the Labour Court's record.

35. In view of the above, this Court is of the view that the entire payment forming part corpus of CPF out of which the pension was to be provided already stands paid to the petitioner. The receipt of the amount of Rs. 1,48,954/- as provident fund; Rs. 2,92,135/- as employer's share of CPF has



not been disputed by the petitioner. The learned Labour Court had also taken a similar view in paragraph number 11 of the impugned award holding that the respondent corporation cannot be directed to pay the amount twice and therefore, the petitioner cannot be held to be entitled to the pension.

36. The fact of the matter lies in the admitted position of the parties wherein the respondent avers and admits to payment of certain amount(s) from the petitioner's corpus of CPF, and also that the petitioner had admitted the receipt of the said amount out of the corpus from which the pension was to be paid. Furthermore, there is no quarrel about the fact that the petitioner did not opt for the pension and the same can be appreciated by stating that as per the rules of the pension scheme of the respondent, an employee has to intimate about his option *qua* pension, however, the petitioner himself remained negligent towards it and did not submit his intimation to the respondent. Moreover, the petitioner has not produced any evidence with respect to the same and nowhere has it been shown by the petitioner that he approached the respondent to opt pension. The view of the learned Labour Court in this regard that even though the petitioner was not allowed to rejoin his duties and the same did not stop him from opting for pension, is correct.

37. At this stage, this Court deems it imperative to set out the law with regard to Article 226 of the Constitution of India under which the instant petition has been filed. It is a settled position of law that in order to invoke the writ jurisdiction of this Court, it has to be proved that the Court below has exceeded or usurped its jurisdiction, or acted illegally; or in contravention to any law, or there is an error on the face of the record.



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38. With regard to the facts of the present matter, this Court is of the considered view that the present matter is completely a question of facts and that the stance taken by the learned Labour Court does not suffer from any infirmity. The petitioner has failed to show any error apparent on the face of the impugned award and the arguments advanced in furtherance to the same do not hold any water. There is nothing on record of this Court to imply that the learned Court below has acted in contravention to any law. Therefore, the instant petition is liable to be dismissed.

39. In light of the above discussions of facts and law, this Court is of the view that there is no infirmity or illegality in the impugned award dated 27th May, 2016, passed by the learned POLC-XVII, KKD Courts, Delhi, in LCA no. 17/2009 and the same is, hereby, upheld.

40. Accordingly, the instant petition stands dismissed. Pending applications, if any, also stands dismissed.

41. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MARCH 19, 2024

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Click here to check corrigendum, if any