



\$~4

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

LPA 1201/2024 & CM APPL. 72899/2024

GOVT. OF NCT OF DELHI AND ORS.

.....Appellants

Through: Mr. Gaurav Dhingra and Mr.
Shashank Singh, Advocates.

versus

N NAGARJUNA RAO & ANR.

.....Respondents

Through: Mr. Padma Kumar Senior Advocate
for R-1.

Mr. T. Bhaskar Gowtham, Advocate
for R-2.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TEJAS KARIA

ORDER

%

19.01.2026

1. The present Appeal is filed against the judgment dated 29.05.2024 (“**Impugned Judgment**”) passed by the learned Single Judge in W.P.(C) 7240/2019 (“**Writ Petition**”) allowing the Writ Petition in terms of deeming clause in proviso to Rule 114A of the Delhi School Education Rules, 1973 (“**DSER**”), which provides that if no approval is received from the Director within thirty days, then the approval would be deemed to have been received after the expiry of such a period. The Impugned Judgment also holds that Respondent No. 1 continued in the service with Navodhya Vidyalaya Samiti (“**NVS**”) on deputation beyond the sanction period of deputation ending on 15.02.1992 and not joining the parent department after the expiry of the deputation period would not attract Rule 12(2) of CCS (Leave) Rules, 1972 (“**Leave Rules**”) read along with Rule 26 of CCS (Pension) Rules, 1972 (“**Pension Rules**”). Accordingly, the period of service of Respondent No. 1 with effect from 01.02.1997 until 01.07.1995 i.e., the date on which NVS



absorbed Respondent No. 1, was held to be eligible for computing the pro-rata pensionary benefit by considering the said period as qualifying service.

2. Respondent No. 1 was appointed as an Upper Division Clerk on 01.02.1977 at Smt. Durgabai Deshmukh Memorial Senior Secondary School, New Delhi, which is an aided school controlled and managed by Andhra Education Society (“**Andhra School**”), a linguistic minority.

3. Respondent No. 1 was selected by NVS, which is under the Ministry of Human Resources Development (DoE), for being appointed on deputation to the post of Office Superintendent in NVS School *vide* offer of appointment dated 16.06.1990 on the condition that the deputation on transfer would be for a period of two years, subject to Respondent No. 1’s lien on the post held in Andhra School for the said two years and, thereafter, he would be repatriated / taken back on or before the expiry of normal deputation period of two years.

4. Additionally, NVS School also reserved the right of accepting or rejecting retention of Respondent No.1’s services on permanent basis after or before the expiry of deputation period. Accordingly, Respondent No. 1 was relieved of his duties at Andhra School and joined NVS School on 31.07.1990. Andhra School obtained due sanction and approval from Appellant No. 2 for sending Respondent No. 1 on deputation to NVS School for a period of two years. Initially, Andhra School kept the lien of Respondent No. 1 on the previous post for a period of two years and, subsequently, it was extended from time to time on specific request of NVS. During the extended period of deputation, repatriation order was issued on 17.03.1994 terminating the deputation on 13.09.1994, however, upon the request of Respondent No. 1 for an extension of deputation by six months, NVS School withdrew the repatriation order. Thereafter, further extensions were sought by NVS School and acceded by Andhra School till 11.10.1995. In the meanwhile, Respondent No. 2 refused his consent for promotion to



the post of Head Clerk in Andhra School as he had given his consent for absorption in NVS School on 09.11.1995.

5. On 05.02.1996, NVS School issued Memorandum seeking willingness of Respondent No. 1 to be absorbed in NVS and, if agreed, tender technical resignation to Andhra School with effect from 30.06.1995. On 28.02.1996, Respondent No. 1 submitted his technical resignation to NVS and the same was forwarded to Andhra School. On 16.03.1996, Andhra School accepted the technical resignation of Respondent No. 1 with effect from 30.06.1995, which was conveyed to Appellant No. 1. Pursuant to the acceptance of technical resignation, NVS permanently absorbed Respondent No. 1 on 25.03.1996.

6. During the extended period of deputation, no approval of Appellant No. 1 was obtained by Andhra School. However, the pension contribution was retained by Andhra School. On 14.06.2001, Andhra School submitted all the documents related to the release of pro-rata pension of Respondent No. 1 to Appellant No. 1. On 16.08.2001, Appellant No. 1 sought certain information in connection with the release of pension to Respondent No. 1, which was provided by Andhra School *vide* letters dated 04.01.2002, 03.03.2006 and 07.03.2006.

7. On 10.03.2006, Respondent No. 1 made a representation for release of pro-rata pension. On 28.09.2006, Andhra School requested Appellant No. 1 for granting *ex-post facto* sanction for the technical resignation. On 23.04.2009, Respondent No. 1 requested Andhra School to take him back with continuity in service as there was no break in service.

8. Respondent No. 1 filed W.P. (C) 5014/2011 before this Court seeking pension benefit as Respondent No. 1 was due to retire from NVS without any pension as NVS was a non-pensionary organization. *Vide* order dated 09.03.2018, the said petition was disposed of directing Appellant No. 1 to consider grant of *ex-post facto* approval to Respondent No. 1's technical



resignation within a period of twelve weeks. It was also observed in the said order that if Appellant No. 1 comes to a conclusion that submission of technical resignation was a mere formality, it shall expeditiously process Respondent No. 1's case for grant of pension as claimed.

9. *Vide* order dated 15.09.2018, Appellant No. 1 rejected the request for grant of *ex-post facto* approval for technical resignation in view of the provisions of Rule 12(2) of Leave Rules, since Respondent No. 1 was on continued absence of five years from Andhra School and consequently, had deemed to have resigned from the post of Andhra School. As a result, Respondent No. 1 was also denied any pensionary benefit under the provision of Rule 26(1) of Pension Rules, unless the resignation was withdrawn in the public interest by the appointing authority.

10. Being aggrieved by the said order dated 15.09.2018, Respondent No. 1 preferred the Writ Petition.

11. The main controversy decided by the Impugned Judgment is whether the service rendered by Respondent No. 1 during the period from 01.02.1977 to 01.07.1995 would qualify as continuous service for the purpose of computing pro-rata pension. Although Andhra School supported the claim of Respondent No. 1 for pro-rata pension based on computation of the period between 01.02.1977 and 01.07.1995, the Appellants opposed the claim on the ground that the extension of deputation period by Andhra School was unilateral and without obtaining the approval of Appellant No. 1. Therefore, Rule 12(2) of the Leave Rules became applicable and it resulted in deemed resignation of Respondent No. 1 on account of leave from Andhra School for a period exceeding five years post 15.02.1992, on which date the sanctioned deputation period expired. Further, approval under Rule 114A of DSER was not obtained from Appellant No. 1 for resignation of Respondent No. 1 from services of Andhra School, resulting in forfeiture of past service as per Rule 26 of Pension Rules.



12. We have heard the learned counsel for the parties. To appreciate the applicability of Rule 114A of DSER, Rule 12 (2) of Leave Rules and Rule 26 of the Pension Rules, it would be apposite to reproduce the said rules:

“114A. Resignation

The resignation submitted by an employee of a recognised private school shall be accepted within a period of thirty days from the date of the receipt of the resignation by the managing committee with the approval of the Director

Provided that if no approval is received within 30 days, then such approval would be deemed to have been received after the expiry of the said period.”

“12. Maximum amount of continuous leave

(2) Unless the President, in view of the exceptional circumstances of the case, otherwise determines, a Government servant who remains absent from duty for a continuous period exceeding five years other than on foreign service, with or without leave, shall be deemed to have resigned from the Government service: Provided that a reasonable opportunity to explain the reasons for such absence shall be given to that Government servant before provisions of sub-rule (2) are invoked.

Provided that this rule shall not apply to a case where leave is applied on medical certificate, in connection with a disability.”

“26. Forfeiture of service on resignation.

(1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service.

(2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.

(3) The order accepting the resignation should clearly indicate that the Government servant has resigned to join another appointment with proper permission and a specific entry to this effect shall also be made by the Head of Office in the service book of the Government servant.

(4) Interruption in service in a case falling under sub-rule (2), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government



servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to him.

(5) The appointing authority may permit a person to withdraw his resignation in the public interest on the following conditions, namely:-

- (i) that the resignation was tendered by the Government servant for some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and the request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation;*
- (ii) that during the period intervening between the date on which the resignation became effective and the date from which the request for withdrawal was made, the conduct of the person concerned was in no way improper;*
- (iii) that the period of absence from duty between the date on which the resignation became effective and the date on which the person applies for permission to withdraw the resignation is not more than ninety days;*
- (iv) that the post, which was vacated by the Government servant on the acceptance of his resignation or any other comparable post, is available.*

(6) Request for withdrawal of a resignation shall not be accepted by the appointing authority where a Government servant resigns his service or post with a view to taking up an appointment in or under a private commercial company or in or under a corporation or company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the Government.

(7) When an order is passed by the appointing authority allowing a person to withdraw his resignation and to resume duty, the order shall be deemed to include the condonation of interruption in service but the period of interruption shall not count as qualifying service.

(8) A resignation submitted for the purpose of rule 35 or rule 36 shall not entail forfeiture of past service under the Government.”

13. A conjoint reading of the above Rules shows that the resignation of an employee of a recognized private school is required to be accepted within a period of thirty days from the date of receipt of the resignation by the Managing Committee with the approval of Appellant No. 1. If such approval



is not received within a period of thirty days, then there is a deemed approval after expiry of the said period of thirty days.

14. In the present case, the stand of Appellant No. 1 is that Rule 114A of DSER stood violated as no approval was sought for accepting the resignation of Respondent No. 1 by Andhra School. It is not disputed that the resignation tendered by Respondent No. 1 was technical in nature, which was pursuant to his absorption by NVS. Andhra School had communicated the acceptance of the technical resignation by Respondent No. 1 to Appellant No. 1 in March, 1996. Further, on 07.06.1996, Appellant No. 1 conveyed the approval for confirming Sh. A.R. Nandan, U.D.C. of Andhra School with effect from 01.07.1995 in response to letter dated 06.05.1996 sent by Andhra School to Appellant No. 1 clearly stating that Respondent No. 1 had submitted his resignation as he was absorbed by NVS. This clearly shows that Appellant No. 1 was informed about resignation of Respondent No. 1 and there was no objection by Appellant No. 1 with regard to the said resignation within a period of thirty days from the date of such communications. Accordingly, there was a deemed approval by Appellant No. 1 for the resignation of Respondent No. 1 in terms of Rule 114A of DSER. As a result, Rule 114A of DSER is not applicable in the facts of the present case.

15. Rule 12(2) of Leave Rules would be applicable if an employee is on an unauthorized leave exceeding five years. In this case, Andhra School did not obtain sanction of Appellant No. 1 for extending the deputation period. Because prior sanction of Appellant No. 1 was not obtained for extending the period of deputation, it cannot be said that Respondent No. 1 was on leave from Andhra School during the extended period of deputation. In fact, Respondent No. 1 was continuously working at NVS School. Therefore, the period between 15.02.1992 and 01.07.1995 cannot be termed as an unauthorized leave. Accordingly, Rule 12(2) of Leave Rules is not



applicable in the facts of the present case. Consequently, Rule 26 of Pension Rules also does not apply as there was no voluntary resignation resulting in forfeiture of past service.

16. As Respondent No. 1 was absorbed by NVS, he tendered technical resignation from Andhra School as recognized by the Office Memorandum dated 11.02.1988 (“OM”) issued by Department of Personnel and Training, Government of India. The OM clearly provides that a Government Servant, who has been selected for a post in a Central Public Enterprises / Central Autonomous Body, may resign from the service of Government with a view to secure employment in a Central Public Enterprise, which will not entail forfeiture of service for the purpose of retirement / terminal benefits if proper permission for such resignation is obtained.

17. As approval of Appellant No. 1 is deemed to have been obtained as per Rule 114A of DSER and as Respondent No. 1 cannot be treated to be on unauthorized leave from 15.02.1992 to 01.07.1995, Rule 26 of Pension Rules cannot be made applicable in view of the OM.

18. The learned Counsel for Respondent No. 1 has relied upon the decision of the Supreme Court in **K. Phani Ramesh v. Dy. Director, Navodaya Vidyalaya & Ors.** (2002) 9 SCC 506, wherein it is held as under:

“3. The grievance of the appellant is that the appellant had been deputed and that he had lien over the post with the 3rd respondent which was available for a period of two years from the date of deputation and that period not having elapsed when he went back, his parent employer’s refusal to take him back on employment is bad. The facts cannot be disputed. If that is so, he should have been employed in St. Ann’s High School on repatriation. The approach of the 3rd respondent is too technical and when this appellant’s repatriation came to an end, he should have been accommodated in the parent department. The lien in the post is commensurate with his deputation which came to an end on 11-11-1993. Though the appellant had been sent on deputation by the 3rd respondent on 7-10-1991, that term actually came to an end on 11-11-1993. In the result we direct the 3rd respondent to take back the appellant in its employment in its institution. However he will not be entitled to any



back wages. The order made by the High Court is set aside and the appeal is allowed accordingly.”

19. He further relied upon the decision in ***Umapati Choudhary v. State of Bihar & Anr.*** (1999) 4 SCC 659, wherein the Supreme Court held as under:

“8. Deputation can be aptly described as an assignment of an employee (commonly referred to as the deputationist) of one department or cadre or even an organisation (commonly referred to as the parent department or lending authority) to another department or cadre or organisation (commonly referred to as the borrowing authority). The necessity for sending on deputation arises in public interest to meet the exigencies of public service. The concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not. In the case at hand all the three conditions were fulfilled. The University, the parent department or lending authority, the Board, the borrowing authority and the appellant, the deputationist, had all given their consent for deputation of the appellant and for his permanent absorption in the establishment of the borrowing authority. There is no material to show that the deputation of the appellant was not in public interest or it was vitiated by favouritism or mala fide. The learned Single Judge in the previous writ petition had neither quashed the deputation order nor issued any direction for its termination. Indeed the learned Single Judge had dismissed the writ petition. No material has been placed before us to show that between November 1987 when the judgment of the Single Judge was rendered and December 1991 when the Division Bench disposed of the writ petition filed by the appellant the petitioners of the previous case had raised any grievance or made any complaint regarding non-compliance with the directions made in the judgment of the learned Single Judge. In these circumstances the Division Bench was clearly in error in declining to grant relief to the appellant. Further, the appellant has, in the meantime, retired from service, and therefore, the decision in the case is relevant only for the purpose of calculating his retiral benefits.”

20. Accordingly, in our considered opinion, the entire period of deputation ought to be computed for granting the pro-rata pension to Respondent No. 1 and, therefore, there is no infirmity with the Impugned Judgment as it has rightly held that the period between 01.02.1977 till



01.07.1995 shall be considered as a continuous service for giving Respondent No. 1 benefit of pro-rata pension for that period.

21. In view of the above discussion, the objections raised by the Appellants are technical in nature. We entirely agree with the conclusion in the Impugned Judgment that the period of service of Respondent No. 1 from 01.02.1977 till 01.07.1995 ought to be counted towards qualifying service for the purpose of pro-rata pension.

22. In any event, during the extended period of deputation, the pension contribution was retained by Andhra School. When Andhra School submitted all the documents related to the release of pro-rata pension of Respondent No. 1 to Appellant No. 1 on 14.06.2021, Appellant No. 1 sought certain information in connection with the release of pension to Respondent No. 1 on 16.08.2001, which was provided by Andhra School *vide* letters dated 04.01.2002, 03.03.2006 and 07.03.2006. This clearly shows that the rejection of the request for grant of *ex-post facto* approval for technical resignation and denial of any pensionary benefit *vide* order dated 15.09.2018 passed by Appellant No. 1 pursuant to direction by this Court in order dated 09.03.2018 in W.P. (C) 5014/2011 filed by Respondent No. 1 was totally unsustainable.

23. Accordingly, the direction to the Appellants to calculate pro-rata pensionary benefit to Respondent No. 1 and release the same in accordance with law in the Impugned Judgement does not require any interference in this Appeal.

24. In view of the above, the present Appeal along with the pending Application stands dismissed. There shall be no order as to cost.

DEVENDRA KUMAR UPADHYAYA, CJ

TEJAS KARIA, J

JANUARY 19, 2026/ap/sms

LPA 1201/2024

Page 10 of 10