

(2020) 12 DEL CK 0055

In the Delhi High Court

Case No : Civil Writ Petition No. 5424 Of 2017

Delhi Transport Corporation & Anr.

APPELLANT

Vs

Jai Kumar Jain

RESPONDENT

Date of Decision : 02-12-2020

Acts Referred:

Code Of Civil Procedure, 1908 — Order 47 Rule 1, Order 47 Rule 2

Citation : (2020) 12 DEL CK 0055

Hon'ble Judges : Dhirubhai Naranbhai Patel, CJ; Prateek Jalan, J

Bench : Division Bench

Advocate : Avnish Ahlawat, Nitesh Singh, Dwarka Sawle

Final Decision : Dismissed

Judgement

Siddharth Mridul, J

CM APPL.27697/2020 (Exemption)

Exemption granted subject to all just exceptions.

The application is disposed of accordingly.

REVIEW PET.175/2020

1. The present review petition under Order XLVII Rules 1 and 2 of the Code of Civil Procedure, 1908 read with Delhi High Court Rules has been

instituted by Mr. Jai Kumar Jain, the respondent herein, seeking review of the judgment and order dated 24.12.2019, passed by this Court in W.P.(C)

5424/2017, titled as "Delhi Transport Corporation & Anr. vs. Jai Kumar Jain" and W.P.(C) 5649/2017, titled as "Jai Kumar Jain vs. The

Chairman-cum-M.D., Delhi Transport Corporation & Anr.", whereby this Court has rejected the order dated 09.03.2017, passed by the learned

Central Administrative Tribunal, Principal Bench, New Delhi in O.A.

No.4296/2014, titled as Jai Kumar Jain vs. The Chairman-cum-M.D., Delhi Transport Corporation & Anr.

2. This Court vide the said judgment and order dated 24.12.2019, which is under review, noted the facts of the case in paragraphs 3 and 4 thereof, as follows:

3. In brief, the case of the Petitioner (DTC) is that the Respondent was selected as a Retainer Crew Conductor on 2nd September, 1982 and he was put on training for two months. He qualified the written test held on 19th October, 1982 and he was offered appointment to the post of Retainer Crew and accordingly appointed as such on 5th November, 1982 at the rate of Rs.17.70 per day. On 6th May, 1983 the Respondent was brought on monthly rates of pay and he was put on probation for a period of one year. On 27th November, 1992 a pension scheme was introduced by DTC and Respondent opted for this scheme. However, the same scheme could not materialise and ultimately it was introduced in November, 1995.

4. In the meantime, on 3rd March, 1993 a Voluntary Retirement Scheme (VRS) was introduced by the DTC. Employees, who had already put in ten years of service or had attained forty years of age, were eligible to apply. Respondent sought voluntary retirement and accordingly he was granted the same with effect from 30th April, 1993. Total qualifying period of service rendered by Respondent was calculated as 9 years, 7 months and 10 days after deducting 134 days leave without pay. Accordingly, Respondent was paid the ex-gratia encashment, accumulative leave, notice salary and gratuity, etc on 12th October, 1993. The employee's share of Contributory Provident Fund (CPF) was released to the Respondent on 24th November, 1993. As he had not put in ten years qualifying service so, he was not entitled to pension. The employer's share of CPF was also released on 21st June, 1996.

3. The judgment and order dated 24.12.2019, of which review is sought, came to the following finding:

8. We have heard the arguments of the parties and we have perused the record. There had been a number of judgments relied on by the either side. However, the entire controversy regarding the calculation of the period qualifying for grant of pension has been finally put to rest by the judgment of the Hon'ble Supreme Court in the matter of Delhi Transport Corporation vs.

Balwant Singh & Ors. Civil Appeal No.7159 of 2014 decided on 26th February, 2019. The controversy before the Honâ??ble Supreme Court was that the Respondents were ex- employees of DTC who had opted for VRS, however, they were not granted pension on account of exclusion of period when they remained absent without authorisation. After discussing the law prevailing as well as the decision of the Government of India and the relevant pension rules, the Honâ??ble Supreme Court has reached to the conclusion that only the leaves taken during the service period for which leave salary is payable are to be counted and if an employee had availed leave for which no payment was made by the employer, the said period is to be excluded from the period for counting the admissibility of pension. Relevant portion of the judgment is reproduced here under:

â??20. In our view, the only aspect which is required to be considered is the requirement of the specific rule of the Pension Rules, which provides for admissibility of pension. No one, including the respondents can be permitted to plead that they would be unaware of the Pension Rules, which have a statutory force and whose benefit they seek to avail. In fact, the VRS itself, more specifically clause (g), makes these very Rules applicable. Rule 21 is quite clear in its terms, i.e., â??all leave during service for which leave salary is payableâ? would count. The corollary is that if an employee is not paid leave, that period has to be excluded from the period to be counted for admissibility of pension. Rule 2(1)(Q), while defining â??qualifying serviceâ? provides for service rendered while on duty â??or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under these rules.â? Thus, the period of leave for which salary is payable would be taken into account for determining the pensionable service, while the period for which leave salary is not payable would be excluded. The Rule is crystal clear and does not brook any two interpretations. It is a well settled principle of interpretation that when the words of a statute are clear and unambiguous, there cannot be a recourse to any principle of interpretation other than the rule of literal construction.

21. The endeavour to refer to Rules 27 & 28 of the Pension Rules is of no avail, as those are dealing with the effect of interruption in service which may result in forfeiture of past service. In the present case, there has been no forfeiture of past service.

22. Insofar as the Government decision dated 28.2.1976 is concerned, that elucidates the requirement of a prompt entry into the service record, but

this certainly cannot supersede the Rule. The position would be no different for SR 200, SR 202 and the other Government of India Order dated

24.6.1966. It is trite to say that as per Kelsen's Hierarchy of Legal Norms, the Grundnorm, being the Constitution of India, the applicable

hierarchy would be as under:

1) The Constitution of India.

2) Statutory Law, which may be either Parliamentary Law or Law made by the State Legislature.

3) Delegated legislation which may be in the form of rules, regulations etc. made under the Act.

4) Administrative instructions which may be in the form of GOs, Circulars etc.

23. In the given facts of the present case, we will have to take note of an important aspect, i.e., the respondents were not governed by these Rules,

but by the Employees Contributory Provident Fund Scheme. The Pension Scheme was sought to be introduced only couple of months before the VRS,

and that too was not implemented till 1995. Not only that, it was not implemented through the LIC but ultimately by the appellant-Corporation itself,

much later in 1995. Thus, the occasion for making any entries for this leave period in the service record, in terms of the Rules did not even arise at the

stage when the VRS was applied. There may have been some significance to these aspects if the Pension Rules were already applicable over a

period of time and entries had not been made, though, even there, it would not be in supersession of the plain language of the Rule.

24. We have, thus, no hesitation in coming to the conclusion that to avail of the benefit of Pension Rules, an employee must qualify in terms of the

Rules. In the present case, the respondents unfortunately do not do so, as the period which is sought to be excluded from their qualifying service is one

where they have admittedly not been paid leave salary. The qualifying period for the VRS would have to be governed by that Scheme and cannot ipso

facto be imported into the entitlement of pension, contrary to the plain wordings of the Pension Rules. We see no conflict in this, apart from the fact

that the Pension Rules came into force actually much later, though the intention was announced just before the VRS. The respondents were governed

prior to that by the Employees Contributory Provident Fund Scheme.

25. We may, however, notice here that while the result may be the same as in Lillu Ram's case, our reasoning is slightly different from that view.

26. We, thus, allow the appeal and set aside the impugned order, leaving the parties to bear with their own costs.

27. However, to avoid any grave hardship, if any payments have been made to the respondents, especially in view of the interim order dated

23.7.2014, the applicant-Corporation will not claim any refund of such amount already paid.

9. Admittedly, in the present case, the qualifying service of the Respondent for consideration of payment of pension is less than 10 years as he was

appointed at monthly rates of pay with effect from 6th May, 1983 and his date of VRS is 30th April, 1993. So, total service of the Applicant is 9 years,

11 months and 24 days, out of which he was either on leave without pay or under suspension for 134 days. Accordingly, his qualifying service comes

down to 9 years, 7 months and 10 days. There is no ground to add his previous service when he was working on daily wages till 6th May, 1983 in the

qualifying period.

10. Hence, the Respondent has not completed 10 years of qualifying service for grant of pension in view of the judgment of the Hon'ble Supreme

Court in the matter of Delhi Transport Corporation v. Balwant Singh & Ors. (supra). No relaxation can be granted in calculating the qualifying period

for pension. The period of leave without pay is to be deducted from the total qualifying service and there is no ground to add the period of the daily

wages service of the Petitioner in the qualifying service. Hence, the impugned order dated 9th March, 2017 of the CAT in OA No. 4296/2014 cannot

be sustained and the same is hereby set aside.

4. The present review petition is essentially predicated on the argument that this Court in the said judgment and order dated 24.12.2019 under review

erroneously failed to reckon the period during which the review petitioner was working on daily-wages, towards the calculation of his qualifying

service for pension. It is argued in this behalf that the same tantamount to mis-application of the settled principles of law and erroneous exercise by

this Court of its power of judicial review.

5. In our considered view, the review petitioner is seeking to re-argue and re-

agitate his claim for pension, primarily on the ground that the judgment and order dated 24.12.2019, of which review is sought, is erroneous in law and contrary to the well-settled principles, enunciated in various decisions

rendered by the Honâ??ble Supreme Court of India, including the decision of the Constitution Bench in Secretary, State of Karnataka & Ors. vs.

Uma Devi reported as 2006 (4) SCC I.

6. We have heard learned counsel appearing on behalf of the review petitioner at length and find that the grounds on which review has been sought,

are beyond the purview of the mandate of law, in relation to the review of a decision and is, therefore, devoid of merit.

7. The review petition is accordingly dismissed. There shall be no order as to costs.