

(2011) 03 DEL CK 0334

In the Delhi High Court

Case No : Writ Petition (C) No. 2650 of 2010

Jagdish Chand

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

Date of Decision : 11-03-2011

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 26
Constitution of India, 1950 — Article 226, 227
Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations,
1952 — Regulation 9

Citation : (2011) 03 DEL CK 0334

Hon'ble Judges : Veena Birbal, J;Anil Kumar, J

Bench : Division Bench

Advocate : Anil Mittal, for the Appellant; J.N. Aggarwal, for the Respondent

Judgement

Veena Birbal, J.—By way of this petition under Articles 226 & 227 of the Constitution of India, Petitioner has prayed for quashing the order dated 5th December, 2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (herein after referred to as the Tribunal) in T.A Nos. 627/2009 & 845/2009 wherein both the T As have been dismissed and no relief is granted to Petitioner.

2. Briefly stated, the facts of the case are that:

Petitioner had joined as a Conductor with Respondent in 1963. According to Petitioner, he fell ill in August, 1985 as a result of which he could not join duties. On being declared fit in November, 1985, Respondent did not allow him to join the duties. Ultimately, on 24th December, 1985, his services were terminated. Petitioner raised an industrial dispute before the Labor Court. The industrial dispute was decided in his favor vide award dated 4th February, 1998 wherein Petitioner was granted reinstatement with continuity of service but without back wages. Pursuant to the award of the Labor Court, Petitioner was reinstated in service with continuity of service.

On 11th August, 2000, Petitioner requested the Respondent by writing a letter seeking retirement from service with immediate effect on account of ailment of his wife. Respondent turned down the request vide letter dated 7th September, 2000. On 22nd September, 2000, Petitioner again submitted a letter seeking resignation from service. Respondent did not respond to the said letter. After three months, Petitioner presumed that his request for resignation had been accepted by the Respondent. On 18.01.2001, Respondent sent a letter to the Petitioner wherein it was stated that Petitioner had been absenting from 7th September, 2000 and was called upon to immediately report for duty. Again Respondent had written a letter to the Petitioner on 11th June, 2001 stating that he was absenting from duty and was asked to join the duty immediately. On 15th June, 2001, Petitioner informed the Respondent that as he had already resigned/taken voluntary retirement from his job, he was not under any obligation to report for duty. On 27th July, 2001, Respondent served charge sheet to Petitioner for unauthorized absence from 7th September, 2000.

On 14th August, 2001, Petitioner had filed a writ petition being WP(C) 5001/2001 before this Court praying for quashing of aforesaid charge sheet and also for issuance of direction to Respondent to declare the Petitioner as having retired from service w.e.f. 22nd December, 2000. This Court vide order dated 20.08.2001 issued notice to Respondent and had stayed the final outcome of the inquiry during the pendency of petition. The Respondent had filed a counter affidavit in the said petition wherein a stand was taken that in the enquiry proceedings charge against Petitioner was not proved. However, even thereafter Petitioner remained absent. During the pendency of the proceedings, Respondent had also filed an affidavit to the effect that vide letter dated 6th March, 2003 Petitioner had been informed that he would retire from service on 31st July, 2003 and would be entitled to GPF and Gratuity. It is stated that Petitioner had also opted for pension vide letter dated 06.03.2003 and had made his wife as nominee. During the pendency of aforesaid writ petition, Respondent had superannuated the Petitioner w.e.f 31st July, 2003. On 5th September, 2003, Respondent also issued a letter informing the Petitioner about the details of net qualifying service wherein out of total service of 38 years, 10 months & 30 days, period of 12 years, 6 months and 1 day and another period of 10 years, 8 months & 30 days was deducted from qualifying service and net qualifying service had been shown as 15 years, 8 months & 9 days.

Aggrieved with the letter dated 6th March, 2003 and letter dated 5th September, 2003, Petitioner filed WP(C) No. 12942/2005 before this Court praying for issuance of appropriate writ to quash the aforesaid letters and also to declare that Petitioner having retired w.e.f 22nd December, 2000 and to calculate the net qualifying service after giving benefit of period for which he was out of service i.e 23rd December, 1985 to 24th June, 1998 as the Labor Court had awarded him continuity of service. The Petitioner did not make any grievance about other deduction of 10 years, 8 months and 30 days leave without pay from net qualifying service.

3. On account of change of jurisdiction, both the writ petitions being WP(C) 5001/2001 & 12942/2005 were transferred to the Tribunal and were renumbered as T.A No. 627/2009 & 845/2009 respectively.

4. As regards quashing of charge sheet dated 27th February, 2001, the stand of Respondent in the counter affidavit before Tribunal was that charge was not proved against the Petitioner and the IO had discharged the Petitioner from the allegations leveled in the charge sheet as such petition in this regard had become in fructuous before the Tribunal.

5. The other contention of the Petitioner before the Tribunal was that he had tendered his resignation on 22nd September, 2000 and there was no response from the side of Respondent, as such the resignation was deemed to have been accepted w.e.f. 22.12.2000 under Regulation 9(c) of the DRTA (Conditions of Appointment of Service) Regulations, 1952 and Petitioner stood retired from service w.e.f 22nd December, 2000 as such, was entitled for all retrial benefits from the said date.

6. The stand of the Respondent in the counter affidavit before the Tribunal was that Respondent had never accepted the resignation till date as the same was conditional one. Respondent had also stated in the counter affidavit that after retirement Petitioner had filled up option for DTC Pension but did not submit pension form and a letter dated 21.9.2006 was written to Petitioner for doing the needful. It was their further stand that as and when he would complete the formalities his case would be processed further.

7. The Tribunal vide impugned order dated 05.10.2009 dismissed both the T As by holding that it was a case of resignation of service by the Petitioner and by resignation the past service of Petitioner stood forfeited under Rule 26 of CCS (Pension) Rules, 1972 and did not grant any relief to Petitioner.

8. Learned Counsel for the Petitioner has contended that the finding of the Tribunal to the effect that by resigning Petitioner had forfeited his past services is erroneous and contrary to law. It is contended that by resignation past service can't be forfeited. It is further submitted that the stand of Respondent throughout had been that it had never accepted the resignation. Rather Respondent had charge sheeted him for alleged unauthorized absence after the resignation dated 22.09.2000. Respondent had also issued letters dated 18.1.2001, 11.6.2001 calling him to report for duty. During the pendency of writ petition before it was transferred to the Tribunal, on 6.3.2003 a letter was issued to Petitioner informing that the Petitioner would retire from the service of Respondent/Corporation w.e.f 31st July, 2003 and had superannuated him on 31st July, 2003. Respondent had also issued letter dated 5th September, 2003 wherein it is stated that Petitioner had retired from service on 31.7.2003 and the net qualifying service is shown therein. It is contended that Respondent nowhere had taken a stand in counter affidavit before the Tribunal that they had accepted resignation as such Petitioner had forfeited the past service. It is contended that

finding of Tribunal is contrary to record. It is submitted that to put an end to controversy and that Petitioner is also advancing in age and without prejudice to his rights and contentions, Petitioner is not pressing the contention of having resigned from service w.e.f. 22.12.2000 and accordingly Petitioner be treated as having superannuated from service w.e.f. 31.7.2003 as is the case of Respondent.

9. Learned Counsel for Respondent has not refuted that the stand of Respondent throughout had been that Respondent had never accepted the resignation dated 22.9.2010 as the same was conditional one and the documents referred above were also not denied before the Tribunal or before this Court.

In fact, the stand of the Respondent is that Petitioner was superannuated on 31st July, 2003 and letter dated 06.03.2003 has been relied upon to substantiate the stand. This shows resignation dated 22.09.2000 was never acted upon and Respondent continued treating the Petitioner in his service till he was superannuated. No letter or order is brought on record to show that resignation of Petitioner was ever accepted by Respondent. According to Respondent also the resignation dated 22.09.2000 was conditional, as such, same was not accepted. In these circumstances, it was not open for the Respondent to contend that by resignation Petitioner had forfeited his past service. We are fortified in our views in view of the letters of Respondent dated 18.01.2001, 11.6.2001 asking the Petitioner to join the duty, letter dated 6th March, 2003 of Respondent informing the Petitioner that he would retire on 31st July, 2003, letter dated 5th September, 2003 informing the Petitioner about net qualifying service after superannuation record as well as stand taken in the counter affidavit of Respondent before Tribunal.

10. In view of above discussion, the request of learned Counsel for Petitioner is accepted and the finding of the Tribunal that by resignation Respondent has forfeited past service is set aside and it is taken that Petitioner has superannuated on 31.07.2003 on attaining the age of 60 years as is accepted by Petitioner and which is also the stand of Respondent.

11. The other contention of Petitioner challenging the impugned order is that vide letter/order dated 5th September, 2003, the Respondent had not counted period of 12 years, 6 months & 1 day as qualifying service i.e the period for which the Petitioner remained out of job after his removal till reinstatement. It is contended that the said period ought to have been counted in the net qualifying service for the purposes of pension as the labor court vide award dated 4th February, 1998 had granted the Petitioner reinstatement with continuity of service. It is contended that there is no clear finding of Tribunal in respect of above contention of Petitioner.

The relevant portion of the award of the Labor Court dated 4th February, 1998 in favor of Petitioner is as under:

11. The A/R for the workman relied upon decision of our own High Court in Rahul Butalia Vs. State Bank of India, Allahabad. In both of these cases, the employee

remained absent without leave and still the action of the management was held to be illegal for want of opportunity of hearing. In the instant case, MW1 had categorically admitted workman, neither any enquiry was held. Thus, it is clear that it is a case of termination and not an abandonment and therefore, the workman is entitled for reinstatement with continuity in service.

12. However, as regards back wages, it may be observed though the burden of providing alternative gainful employment lay upon the management as per DB decision of our own High Court reported as 1982 LIC 1978 which it has failed to do so. Still, the past record of the employee shows that he used to remain on leave without pay during major part of the year. When he was not interested in pay while on the pay rolls of the management, there is no justification for awarding him wages for the period, he was not on the pay roll. Thus, I find that he is not entitled to back wages.

The aforesaid award has not been challenged by the Respondent. It is admitted position that in view of the above award, Petitioner had been granted reinstatement with continuity of service also but without back wages. Under these circumstances, Respondent ought to have counted period of 12 years, 6 months & 1 day in net qualifying service for the purpose of computing pension. Reference in this regard is made to J.K. Synthetics Ltd. Vs. K.P. Agrawal and Another,

Further the stand of Respondent in the counter affidavit before Tribunal was that due to inadvertence the aforesaid period could not be counted in qualifying service.

12. It is admitted position that earlier as per the Respondent's own document dated 05.09.2003, the net qualifying service was 15 1/2 years after deduction. As per the award of the Labor Court, Respondent has been granted continuity of service from 23rd December, 1985 to 24th June, 1998. Giving the benefit of continuity of service, the net qualifying service comes to more than 28 years. Learned Counsel for Petitioner has also placed on record letter dated 12.10.2007 of Respondent by way of additional documents wherein the gratuity amount has been given to Petitioner after taking into consideration the net qualifying service of 28 years, 2 months and 10 days. The aforesaid letter has not been controverted by counsel for Respondent nor the payment of gratuity amount to the Petitioner which is stated in the above said letter is denied.

13. In view of the above discussion, the impugned order dated 5th October, 2009 of the Tribunal is set aside. The Respondent is directed to pay the pension to the Respondent w.e.f. date of superannuation i.e. 31.7.2003 after giving benefit of continuity of service as awarded by Labor Court while calculating net qualifying service for the purpose of pension. The arrears be paid within four weeks.

14. Writ petition stands disposed of in the above terms with no order as to costs.