(2012) 10 DEL CK 0081

In the Delhi High Court

Case No : Writ Petition (C) 4871 of 2010

Shanti Devi APPELLANT

Vs

Delhi Transport Corporation RESPONDENT

Date of Decision : 15-10-2012

Acts Referred:
Constitution of India, 1950 — Article 14

Citation : (2012) 10 DEL CK 0081

Hon'ble Judges : Siddharth Mridul, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Anil Mittal, for the Appellant; Arti Mahajan Shedha and Ms. Latika Choudhary, for the Respondent

Final Decision : Allowed

Judgement

Badar Durrez Ahmed, J.—This writ petition is directed against the order dated 21st May, 2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA 2384/2009. The petitioner is seeking her husband''s pension. The petitioner''s husband Sh. Dilbagh Singh was employed as a driver with Delhi Transport Corporation (DTC) and was employed with the DTC in 1978. On 27th October, 2006, the said Dilbagh Singh received a charge sheet of the same date in which there was an allegation that he had remained absent from duty without any permission and that the said act amounted to misconduct. He submitted a reply which was not found to be satisfactory and a detailed inquiry was ordered. Thereafter, the Inquiry Officer found the said Dilbagh Singh guilty as charged. Subsequently, the Disciplinary Authority issued a show cause notice to the said Dilbagh Singh requiring him to show as to why the punishment of removal from service be not imposed upon him. In response to the said show cause notice, Dilbagh Singh submitted his reply dated 18th August, 2007 which was to the following effect:-

To

The Depot Manager,

D.T.C., Dechaon Kalan Depot

New Delhi

Sub: Shri Dilbagh son of Shri Sultan Singh, Driver, B. No. 6996, PT No. 11077,

D.K. Depot--Reply to Show Cause Notice dated 8-8-2007.

Sir,

With reference to the above subject, I beg to state that I have more than 28 years service as a driver in the Corporation. I have always continued to work hard, honestly, sincerely, faithfully with devotion to my duty and to the best of my ability and capacity. I have an unblemished record of service. For sometime past I have ill health and I am unable to perform driving duties. It is prima facie most unfair that an employee who had served the Corporation during the period of his youth to throw him out in this manner when in his latter life he is naturally sick and on that account he is not able to work. For an employee his working organisation and the colleagues are his family and if he is unable to work due to natural sickness in his latter life he is nor treated in the manner it is being done with him.

As far as I remember I had opted for DTC pension and I am entitled to it and as per the Rules of pension, I am entitled to seek voluntary retirement when I am also entitled to get pensionary benefits with all other retirement benefits.

I hope that under no condition I will be deprived of my retirement benefits as absolutely necessary for my survival.

I may kindly be frankly informed as to what will be my various entitlements as a consequence of the fair action that should be taken against taking into account my long years of service and to be kind enough to me to assure the same to me.

I am sure that your honour will be pleased to consider my case true human perspective with dispassionate impartiality, free from bias, free from prejudice, with open mind so that I have your honour''s blessing which I need the most at this moment of life and difficulty. It is prayed that your honour will do justice to me.

Thanking you,

Yours faithfully,

(Dilbagh Singh)

Driver B. No. 6996, D.K. Depot, R/o. Village Ranhola, PO Nangloi

New Delh-41

Delhi, dated 18-8-2007

(underlining added)

2. At this stage itself, we may point out that Dilbagh Singh had made it clear that he had been working with the Corporation for a long period of 28 years and that he had been absent because of his ill health and that he did not want to give up his pension. In paragraph 2 of the above extracted portion, it is also clear that the said Dilbagh Singh was aware that he was entitled to pension as per the Pension Rules and that he was even entitled to seek voluntary retirement along with all pensionary benefits. In paragraph 3, he emphasized, once again, that he hoped that under no condition he would be deprived of his retrial benefits which was absolutely necessary for his survival.

3. In view of the reply given by Dilbagh Singh, the Disciplinary Authority reduced the proposed punishment of removal from service and imposed the punishment of reduction in pay to the initial stage of pay in the time scale of driver for three years. The said order was passed on 26th September, 2007 which reads as under:-

D.T.C.: DICHAON KALAN DEPOT: NEW DELHI-43.

No. DK/AI (T)/L-044/06/07/3224

Dated:-26-09-2007

The reply submitted by Dilbagh Singh, Driver B. No. 6996 P.T. NO. 11077 in response to Show Cause Notice issued vide Nd. DK/A1(T)/L-0/1/1/06/07/115 dated 08s:.93:2007 has been considered thoroughly, the proposed punishment is reduced and following punishment is, therefore, imposed upon him:-

Brought the employee concerned at initial stage- of pay in the

time scale of driver for three years

DEPOT MANAGER

D.K. DEPOT

Shri Dilbagh Singh, Driver,

B. No. 6996 P.T. No. 11077,

(Thr. T.T. (Sch.), D.K. Depot).

4. On the very same day, Dilbagh Singh submitted his "resignation" which was in Hindi. The English translation of the said letter dated 26th September, 2007 reads as under:-

To,

The Depot Manager,

Dichaon Kalan Depot,

Delhi Transport Corporation,

Delhi-110043.

Sir,

It is submitted that I am unable to do my duty on account of my ill health. Other than taking leave I have never been involved in any departmental proceedings concerning carelessness towards duty or any disobedience of supervisor. Thus keeping in view my 28 years of service, my resignation may kindly be accepted with immediate effect. It would be very kind of you.

Thanking you,

Yours faithfully,

(Dilbagh Singh)

Driver B. No. 6996,

PT. No. 110077

26-9-2007

(underlining added)

5. We would like to point out that even in this letter the said Dilbagh Singh made a specific mention that his "resignation" be accepted with immediate effect keeping in view his "28 years of service". It would appear from the above that the said Dilbagh Singh was very conscious of the fact that having completed 28 years of service he was entitled to seek retirement which would also enable him to draw his pension. It is also clear that Dilbagh Singh was earnestly hoping that his pension should not be disturbed.

6. On the same date, i.e., 26th September, 2007, the respondent directed Dilbagh Singh to deposit a sum of Rs. . 37,386/- with the Depot Cashier, D.K. Depot in lieu of three months notice salary in the first instance to enable the officer to process his "resignation case". Thereafter, the petitioner deposited the said sum of Rs. . 37,386/-. The resignation of Dilbagh Singh was accepted by letter dated 29th October, 2007 which was to the following effect:-

The resignation tendered by Sh. Dil Bagh Singh S/o. Sh. Sultan Singh, Driver B. No. 6996, P.T. No. 11077, vide his application dated 26-09-07, has been accepted w.e.f. 26-09-2007 (A.N.) under clause 9(c) of the D.R.T.A.(Condition of Appointment and Service) Regulations, 1952, as he has already deposited a sum of Rs. 37386/- (Thirty Seven Thousand Three Hundred Eighty Six only) towards three months notice salary with the Depot cashier vide CR No. 438699 dated 26-09-2007.

7. Subsequently, the said Dilbagh Singh was paid other retrial benefits such as gratuity and his share of provident fund but was not paid the pension. As a

result, Dilbagh Singh submitted a representation to the DTC that he be paid the pension. By a letter dated 21st January, 2009, the respondent informed the said Dilbagh Singh that his representation was considered but that he was not found eligible for DTC pension in terms of Rule 26 of the CCS(Pension) Rules, 1972.

8. On 27th July, 2009, the said Dilbagh Singh died on account of his ailments. Thereafter, the said Dilbagh Singh''s widow, the petitioner herein (Shanti Devi) filed the said OA 2384/2009 which has been dismissed by virtue of the impugned order dated 21st May, 2010.

9. We find that the impugned order of the Tribunal has placed main reliance on the decision of the Supreme Court in the case of Union of India (UOI) and Others Vs. Braj Nandan Singh, wherein Rule 26 of the CCS(Pension) Rules, 1972 has been discussed and interpreted by the Supreme Court in the following manner:-

Rule 26 as the heading itself shows relates to forfeiture of service on resignation. In clear terms it provides that 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. The language is couched in mandatory terms. However, sub-rule (2) is in the nature of an exception. It provides that 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. Admittedly this is not the case in the present appeal. Rule 5 on which great emphasis was laid down by the learned counsel for the respondent deals with regulation of claims to pension or family pension. Qualifying service is dealt with in Chapter III. The conditions subject to which service qualifies are provided in Rule 14. Chapter V deals with classes of pensions and conditions governing their grant. The effect of Rule 26 sub-rules (1) and (2) cannot be lost sight of while deciding the question of entitlement to pension. The High Court was not justified in its conclusion that the rule was being torn out of context. After the past service is forfeited the same has to be excluded from the period of qualifying service. The language of Rule 26 sub-rules (1) and (2) is very clear and unambiguous. It is trite law that all the provisions of a statute have to be read together and no particular provision should be treated as superfluous. That being the position after the acceptance of resignation, in terms of Rule 26 sub-rule (1) the past service stands forfeited. That being so, it has to be held that for the purpose of deciding question of entitlement to pension the respondent did not have the qualifying period of service. There is no substance in the plea of the leaned counsel for the respondent that Rule 26 sub-rules (1) and (2) has limited operation and does not wipe out entitlement to pension as quantified in Rule 49. The said Rule deals with amount of pension and not with entitlement.

10. The learned counsel for the petitioner submitted before us that the petitioner''s case is not one of ''resignation'' which ought to be dealt with under Rule 26 of the CCS(Pension) Rules, 1972 but one of ''retirement'' under Rule 48-A of the said Rules. He submitted that he had taken the specific plea in the OA

which is clear from paragraph-12 as well as Ground (iii) thereafter. The said paragraph 12 and said ground (iii) read as under:-

12. The respondent by its letter dt. 21-1-2009 informed Sh. Dilbagh Singh that he was not found eligible for receipt of DTC pension as he has resigned from service and was not eligible for pension in view of rule 26 of CCS Pension Rules, 1972. Copy of letter dt. 21-1-2009 is Annexure-G hereto. It may be mentioned here that as per section 48 of CCA Pension Rules, 1972, on the basis of which pension scheme has been implemented in DTC, an employee can be seek retirement from service after he had put in 20 years of service and the employee would be entitled to all pensionary benefits etc.

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(iii) because as per section 48 of CCA Pension Rules, 1972, on the basis of which pension scheme has been implemented in DTC, an employee can be seek retirement from service after he had put in 20 years of service and the employee would be entitled to all pensionary benefits etc.;

11. A similar plea has been taken in the present writ petition in paragraph 16 as also in Ground (iii).

12. According to the learned counsel for the petitioner, since the said Dilbagh Singh was keen that his pension should not be disturbed, he made a prayer in response to the said show cause notice that he may not be removed from service. According to the learned counsel for the petitioner if that was the concern of Dilbagh Singh, then, why would he ''resign'' under Rule 26 and forfeit his entire qualifying service as also his right to receive pension. Then, there was no need for him to have even responded to the said show cause notice and he could very well have suffered the punishment of removal from service.

13. On the other hand, the learned counsel for the respondent submitted that there is a clear distinction between ''resignation'' and ''retirement''. She submitted that this distinction has been clearly brought out in the Supreme Court''s decision in the case of UCO Bank and Others Vs. Sanwar Mal, , wherein the Supreme Court observed as under:-

9. We find merit in these appeals. The words "resignation" and "retirement" carry different meanings in common parlance. An employee can resign at any point of time, even on the second day of his appointment but in the case of retirement he retires only after attaining the age of superannuation or in the case of voluntary retirement on completion of qualifying service. The effect of resignation and retirement to the extent that there is severance of employment (sic is the same) but in service jurisprudence both the expressions are understood differently. Under the Regulations, the expressions "resignation" and "retirement" have been employed for different purpose and carry different meanings. The pension scheme herein is based on actuarial calculation; it is a sell-financing scheme, which does not depend upon budgetary support and consequently it constitutes a

complete code by itself. The scheme essentially covers retirees as the credit balance to their provident fund account is larger as compared to employees who resigned from service. Moreover, resignation brings about complete cessation of master and servant relationship whereas voluntary retirement maintains the relationship for the purposes of grant of retrial benefits, in view of the past service. Similarly, acceptance of resignation is dependent upon discretion of the employer whereas retirement is completion of service in terms of regulations/ rules framed by the bank. Resignation can be tendered irrespective of the length of service whereas in the case of voluntary retirement, the employee has to complete qualifying service for retrial benefits. Further, there are different yardsticks and criteria for submitting resignation vis-?-vis voluntary retirement and acceptance thereof. Since the pension regulations disqualify an employee, who has resigned, from claiming pension, the respondent cannot claim membership of the fund. In our view, Regulation 22 provides for disqualification of employees who have resigned from service and for those who have been dismissed or removed from service. Hence, we do not find any merit in the arguments advanced on behalf of the respondent that Regulation 22 makes an arbitrary and unreasonable classification repugnant to Article 14 of the Constitution by keeping out such class of employees. The view we have taken is supported by the judgment of this Court in the case of Reserve Bank of India and Another Vs. Cecil Dennis Solomon and Another, . Before concluding we may state that Clause 22 is not in the nature of penalty as alleged. It only disentitles an employee who has resigned from service from becoming a member of the Fund. Such employees have received their retrial benefits earlier. The pension scheme, as stated above, only provides for a second retrial benefit. Hence there is no question of penalty being imposed on such employees as alleged. The pension scheme only provides for an avenue for investment to retirees. They are provided avenue to put in their savings and as a term or condition which is more in the nature of an eligibility criterion, the scheme disentitles such category of employees as are out of it.

14. She submitted, in the context of the above observations of the Supreme Court, that ''resignation'' and ''retirement'' carry different yardsticks and criteria for submitting the same and acceptance thereof. In this context, she submitted that if the said Dilbagh Singh had requested for retirement under Rule 48-A of the said Rule, the considerations would have been different. Since Dilbagh Singh had sought resignation, the authority concerned may have felt, as that would entail forfeiture of past service, the same ought to be accepted. On the other hand, had Dilbagh Singh sought retirement under Rule 48-A, perhaps the considerations would have been different and the Appointing Authority may not have granted the permission for retirement.

15. Upon considering the arguments advanced by the counsel for the parties, we are of the view that only question which arises for consideration in the present case is whether the petitioner, in fact, sought ''retirement'' or ''resignation''? In so far as Rule-26 is concerned, there is no doubt that if the present case is

considered to be one of ''resignation'', then it would clearly entail forfeiture of past service and the petitioner would not be entitled to claim any pension. On the other hand, if we look at Rule 48-A of the said Rules, it is apparent that a Government servant after having completed 20 years of qualifying service can retire after giving notice of not less than three months in writing to the Appointing Authority. Sub-rule 2 of Rule 48-A makes it clear that the notice of voluntary retirement would require acceptance by the Appointing Authority. The proviso thereto stipulates that where the Appointing Authority does not refuse to grant permission for retirement before the expiry of the period specified in the notice, the retirement would become effective from the date of expiry of the said period. Sub-rule (3-A) (a) further stipulates that the Government servant may make a request in writing to the Appointing Authority to accept notice of voluntary retirement of less than three months giving reasons therefor. The said Rule 48-A to the extent relevant reads as under:-

48-A. Retirement on completion of 20 years'' qualifying service

(1) At any time after a Government servant has completed twenty years'' qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service.

Provided that this sub-rule shall not apply to a Government servant, including scientist or technical expert who is-

(i) on assignments under the Indian Technical and Economic Cooperation (ITEC) Programme of the Ministry of External Affairs and other aid programmes,

(ii) posted abroad in foreign based offices of the Ministries/Departments,

(iii) on a specific contract assignment to a foreign Government, unless, after having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year.

(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority :

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

(3) Deleted.

(3-A)(a) A Government servant referred to in sub-rule (1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reasons therefor;

(b) on receipt of a request under clause (a), the appointing authority subject to the provisions of sub-rule (2), may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the Government servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

16. It is obvious that if the case of Dilbagh Singh was one of ''retirement'' then, clearly, in view of Rule 48-A, he would be entitled to pension and, consequently, the petitioner would be entitled to pension.

17. After having considered the entire factual matrix of this case, we are of the view that though Dilbagh Singh had used the word ''resignation'' in his letter dated 26th September, 2007, he did not intend to give up his claim of pension. It is because of this that we are of the opinion that he actually contemplated on seeking retirement under Rule 48-A. This is also discernible from the reply to the show cause notice dated 18th August, 2007. It should also be remembered that there was no further proceeding pending or contemplated against the said Dilbagh Singh inasmuch as he had already been awarded the punishment on 26th September, 2007 itself. On that date after having received the punishment order, the said Dilbagh Singh submitted the so called letter of ''resignation''. We feel that if he had sought to avoid the fact that his pension should not be disturbed he would not have taken the step of ''resignation'' which clearly entailed, in terms of Rule 26 of the said Rules, forfeiture of past service, which in turn meant denial of pension. This would be like jumping from the frying pan into the fire. It is obvious that when Dilbagh Singh submitted the letter dated 26th September, 2007 he had ''retirement'' in his mind. We cannot also say that respondents were oblivious to this fact because the reply submitted by the petitioner on 18th August, 2007 to the show cause notice issued to him clearly sets out the fact that the said Dilbagh Singh did not want any disturbance in so far as his pension was concerned. The authorities clearly knew and were aware of the fact that if Dilbagh Singh resigned, Rule 26 would be triggered and therefore, he would not get any pension. They also knew that if Dilbagh Singh''s case was considered to be one of ''retirement'', Rule 48-A would become applicable and therefore, he would be entitled to receive pension. Therefore, the respondents cannot claim to be ignorant of this factual aspect of the matter.

18. We may also point out that the distinction between ''voluntary retirement'' and ''resignation'' is primarily based on as to whether the person concerned had the qualifying service or not. If the Government servant concerned had the qualifying service and he sought to leave the service, it could very well be treated as retirement from service. While a ''resignation'' could be sought at any point of time, even a few days after a government servant was appointed, ''voluntary retirement'' could only be sought if the Government servant had the prescribed qualifying service.

19. In the present case, the said Dilbagh Singh admittedly had more than 20 years of qualifying service and therefore, he could have sought voluntary

retirement under Rule 48-A. There was no impediment on his invoking the said Rule 48-A. Therefore, we are of the view that when the said Dilbagh Singh submitted the so called ''resignation'' letter on 26th September, 2007, he actually sought voluntary retirement under Rule 48-A. On the basis of this factual understanding, Rule 48-A would be applicable and not Rule 26 of the said Rules.

20. As a result of the foregoing discussion, the impugned order dated 21st May, 2010 passed by the Central Administrative Tribunal is set aside.

21. The petitioner is entitled to claim the pension in respect of her deceased husband Dilbagh Singh subject to verification of the record and subject to any deduction that may have to be made on account of withdrawal of the employer''s shares of provident fund, if any.

22. The arrears of pension be paid to the petitioner within eight weeks with interest at the GPF rate from the dates the payments became due. The writ petition is allowed as aforesaid. There shall be no orders as to costs.

