

Dtc Vs. Karan Singh

Dtc Vs. Karan Singh

SooperKanoon Citation : sooperkanoon.com/957295

Court : Delhi

Decided On : May-29-2013

Judge : V. Kameswar Rao

Appellant : Dtc

Respondent : Karan Singh

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment Reserved on May 20, 2013 Judgment Delivered on May 29, 2013 W.P.(C) 9029/2011 DTC
Petitioner Represented by: Ms. Avnish Ahlawat with Mr.Vibhav Mishra, Advocates
Versus KARAN SINGH Respondent Represented by: Ms.Rashmi B.Singh,
Advocate CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE
MR. JUSTICE V.KAMESWAR RAO V.KAMESWAR RAO, J.

1. In this writ petition challenge is to the order dated August 09, 2011 passed by the Central Administrative Tribunal, Principal Bench allowing TA No.1068/2009 directing the petitioner to pay to the respondent pension with arrears and interest at the rate applicable under the Provident Fund Scheme. The direction also includes to consider the respondents request for payment of commuted pension in accordance with Rules.

2. The facts are not disputed. The respondent had joined the petitioner corporation as Retainer Crew on May 27, 1983 and ultimately brought on monthly rate conductor with effect from November 27, 1983. W P (C) 9029/2011 1 o

3. On November 27, 1992 the petitioner corporation introduced a pension scheme under which the employees of the corporation, who had already retired as also the existing employees were to give a consent if they opted to shift from the existing CPF scheme to the pension scheme. The respondent herein opted for pension.

4. On March 03, 1993 a voluntary retirement scheme was introduced by the petitioner corporation under which those employees who had put in 10 years of service or had attained 40 years of age were eligible to apply for voluntary retirement. The respondent sought voluntary retirement with effect from April 30, 1993. The request for voluntary retirement was accepted by the petitioner corporation. Pursuant to accepting the voluntary retirement request of the respondent the petitioner corporation released the respondents contribution towards CPF by way of a cheque. The provident fund was also settled. The respondent took the payment without demur.

5. After nine years respondent sent a notice claiming pension and upon the same being refused he filed WP(C) No.7295/2002 in this Court which was transferred to the Tribunal when a notification was issued requiring service disputes pertaining to employees of DTC to be transferred to the Tribunal where the writ petition was registered as TA No.1068/2009 and has been allowed vide order dated August 09, 2011.

6. The claim of the respondent had to be dismissed on account of the reasoning of a Division Bench of this Court disposing of a large number of writ petitions, lead matter being WP(C)No.14027/2009 W P (C) 9029/2011 2 of 8 DTC Vs. Madhu Bhushan decided on August 10, 2010 wherein those who had opted for pension but had received the amount in the Contributory Provident Fund which included even the managements share and had filed writ petitions after couple of years; say for instance nine years as in the instant case. We quote. The Division Bench observed as under:28. Suffice would it be to state that a bare perusal of the orders referred to by learned counsel, evidence that a printed proforma has been used. The same pertained to the earlier VRS Schemes. It is settled law that rights are determined not with reference to the language of the proforma but the statute or the scheme applicable. The said two petitioners submitted offers to be voluntarily

retired under the schemes notified on 5.12.1994 and 8.12.1995. Further, they received the cheques tendered to them which included the managements share in the Contributory Provident Fund Account. These cheques were received by them on 31.3.1995 and 31.10.1995 respectively. They encashed the cheques. We may note that these two petitioners had filed writ petitions in the year 2005 and 2007 respectively laying a claim for pension which were transferred to the Central Administrative Tribunal and registered as TA No. 689/2009 and the TA No.1385/2009 respectively, which have been dismissed by the Tribunal vide impugned order dated 23.9.2009. The claim of these writ petitioners would even otherwise be barred by the law of limitation. The principle that right to receive pension is a continuous cause of action is not available to them inasmuch as qua them, the issue was whether they were entitled to receive dues as per Contributory Provident Fund Scheme W P (C) 9029/2011 3 of 8 or under the pension scheme. They were paid full dues when they retired on 31.3.1995 and 31.10.1995 respectively as per the Contributory Provident Fund Scheme and if they had any grievance pertaining to the same, it had to be brought before a competent Court within at most 3 years thereafter.

7. Even otherwise, on merits also we find that the respondent has no case. The stand of the petitioner corporation before the Tribunal is that the respondent had only put in 9 years, 1 month and 25 days of service and not 10 years which is a pre-requisite for grant of pension. According to them the respondent was on leave without pay for a period of 98 days and that period would not be reckoned as qualifying service for the purpose of pension. The respondent disputes this aspect and states that as he had put in 9 years, 11 months and 5 days of service, and in terms of Rule 49 (3) of the Pension Rules which stipulates, In calculating the length of qualifying service, fraction of area equal to three months and above shall be treated as a completed one half-year and reckoned as qualifying service. He has completed 10 years of qualifying service and entitled to the pension.

8. The Tribunal while allowing the TA was primarily of the view that since the respondent was allowed to take voluntary retirement from service with effect from April 30, 1993 in terms of the Voluntary Retirement Scheme which stipulated an employee who has completed 10 years of service in the petitioner corporation or

completed 40 years of age was qualified to be admitted to voluntary W P (C) 9029/2011 4 of 8 retirement and the respondent has been allowed to retire under the Scheme, he was entitled to the pensionary benefits and there was no question of refusing them later. The Tribunal relies upon the order passed by this Court in LPA No.33/1998 wherein this Court has held once VRS has been granted the DTC cannot be permitted to back out of the said commitment.

9. Learned counsel for the petitioner, before us, has reiterated the submissions made before the learned Tribunal. The learned counsel for the respondents relied upon a judgment of this Court in LPA No.1187/2006 decided on November 24, 2006 wherein this Court has held that once VRS has been granted the DTC cannot be permitted to back out of the said commitment and is stopped from doing so.

10. Before we advert to the issues, which fall for our consideration, we may point out that the petitioner corporation has reckoned the service of the respondent from November 27, 1983, whereas, the respondent states that it should be from May 27, 1983. In any case this aspect may not be material for the ultimate outcome of the case.

11. The question which arises for our consideration whether the respondent is entitled to count the period of 98 days of leave without pay for the purpose of qualifying service of 10 years, to be eligible for grant of pension? Rule 21 of the CCS (Pension) Rules, 1972, stipulates leave during service for which leave salary is payable and all extraordinary leave granted on medical certificate shall count as qualifying service. In other words, it is only such leave for which salary is payable shall count as qualifying service. In this case the W P (C) 9029/2011 5 of 8 leave was without pay. Hence, the period of 98 days shall necessarily be excluded for the purpose of qualifying service of 10 years, the respondents total qualifying service would come to 9 years, 1 month and 25 days (total service rendered is 9 years, 5 months and 3 days). Rule 49 (3) of CCS Pension Rules, 1972 would not benefit the respondent for the reasons (1) the same is not applicable as the service is not above 3 months, (2) even if applicable the service would be 9 years, 6 months and 0 days. Further if the service of the respondent is reckoned from

May 27, 1983 and the period of 98 days is excluded then also the total period of service put in by the respondent is 9 years, 7 months and 8 days. In that eventuality also the benefit of Rule 49 (3) would not be applicable to the respondent as the same is attracted when the period is equal to 3 months and above which shall be treated as completed one half year. In this case beyond a period of 6 months i.e. second half the respondent has not put in 3 months of minimum service to seek the benefit of Rule 49 (3).

12. The reliance placed by the learned counsel for the respondent on the decision of this Court in LPA No.1186/2006 DTC v. Ved Prakash decided on November 24, 2006 is concerned, the same is not applicable in the facts of this case as in that case this Court was satisfied that the respondent had served DTC from August 18, 1982 to April 30, 1993. It was in that background the observations of this Court has to be read not in the facts of this case as has been done by the Tribunal. Moreover the issue is no more res integra, having been decided by the Supreme Court as in Civil Appeal No.11440/2011, W P (C) 9029/2011 6 of 8 DTC Vs. Lillu Ram wherein Supreme Court has held as under:22. The minimum qualifying service which is required for earning pensionary benefits finds place in Rule 49 of the Pension Rules. For the sake of convenience, Rule 49 is reproduced hereinbelow:49. Amount of pension.- (1) in the case of government servant retiring in accordance with the provisions of these Rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half months emoluments for every completed six-monthly period of qualifying service. (2) to (4) (5) & (6) xxxxx xxxxx N.A.

23. Thus, looking to the matter from all angles, we are of considered opinion that even though Respondent had completed 10 years of service for being entitled to claim VRS but he had certainly not become entitled to claim pensionary benefits as he had not put in qualifying service of 10 years with the Appellant.

24. Conjoint reading of Rule 3 (1) (q) and Rule 49 of the Pension Rules quoted hereinabove, make it abundantly clear that only those employees would become entitled to pensionary benefits, who had put in 10 years of qualifying service.

25. Looking to the facts of this case, where Respondent/employee had remained absent, without any sanction unauthorisedly for a long period of 486 days during the period of 10 years W P (C) 9029/2011 7 of 8 of service, he had put in with the Appellant, he would fall short of completing 10 years of qualifying service.

26. As mentioned hereinabove, there are two different things one with regard to grant of VRS and another with regard to entitlement for pensionary benefits. First one is governed under the VRS whereas the second one is governed under the Statutory Rules. Merely because his application for voluntary retirement was accepted, automatically, he would not become entitled for grant of pensionary benefits.

13. In view of the above, we allow this writ petition and set aside the order of the Tribunal dated October 21, 2011 in TA No.1068/2009.

14. No costs. (V.KAMESWAR RAO) JUDGE (PRADEEP NANDRAJOG) JUDGE
MAY 29.2013 mm W P (C) 9029/2011 8 of 8

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com