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CENTRAL ADMINISTRATIVE TRIBUNAL:PRINCIPAL BENCH

OA.No.2743 of 1999

New Delhi, this 6th day of November 2000

HON'BLE SHRI M.P. SINGH, MEMBER(A)

Desh Raj  
Language Teacher (Retd.)  
R/o Vill. & P.O. Chirori  
Dist. Ghaziabad (U.P.)  
at present at New Delhi .. Applicant

(By Advocate: Shri U.S. Chaudhary)

versus

1. Director of Education  
Govt. of N.C.T. Delhi  
Directorate of Education  
Old Sectt. Delhi
2. Vice Principal  
Govt. Boys Sec. School  
Vijay Nagar  
Delhi-110009
3. Govt. of N.C.T. of Delhi  
through its Chief Secretary  
5 Sham Nath Marg  
Delhi
4. Union of India  
through Secretary  
Ministry of Human Resources Development  
Department of Education  
New Delhi. ... Respondents

(By Advocate: Mrs Neelam Singh)

ORDER(Oral)

The applicant is aggrieved by Memorandum dated 29.11.1999 issued by Respondent No.2 whereby his claim for counting the service rendered in Government recognised and aided school for pensionary benefits has been denied.

2. The facts of the case as stated by the applicant are that he had initially worked as Assistant Teacher in Gandhi Harijan Higher Secondary School, Braham Puri, Delhi, with effect



from 1.11.1969 to 16.9.1979. On 17.9.1979, the applicant was transferred to M.C.D. Primary School Harijan Basti, Poorvi Gokal Pur, Delhi having being declared surplus. Besides the applicant, 77 other teachers of the above said school were also declared surplus and were transferred to M.C.D. Primary Schools and other Government Schools under the Directorate of Education, Delhi. The applicant was paid his Provident Fund amount by Gandhi Harijan Higher Secondary School for the aforesaid period. Therefore, the applicant requested Government Boys Secondary School, Vijay Nagar for permission to deposit the aforesaid amount with interest for the period commencing from 1.11.1969 to 16.9.1979 for the purpose of counting his service for pensionary benefits. According to the applicant all the other 77 teachers who were declared surplus and absorbed along with him have been permitted to deposit the management share of Provident Fund amount with interest and the said period of service with the aided school has been allowed to be counted for the purpose of pensionary benefits. The applicant has completed all the required formalities to permit him to deposit the management share of Provident Fund to settle his pensionary benefits by counting his past service. However, respondent no.2 vide memorandum dated 29.11.1999 has rejected the request of the applicant on the ground that he

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did not opt for the scheme within one year of joining the Government service. Aggrieved by this, he has filed this OA seeking directions to quash and set aside the impugned memorandum dated 29.11.1999 and to direct the respondents to count the service rendered by the applicant in Gandhi Harijan Higher Secondary School Braham Puri, Delhi, towards pensionary benefits and grant him all pensionary benefits with interest at the rate of 24% per annum.

3. The respondents in their reply have stated that the option of counting the past service should have been exercised by the applicant within one year vide Directorate's letter dated 18.6.1996. The applicant was declared surplus from Gandhi Harijan Higher Secondary School Braham Puri, Delhi and he was absorbed in M.C.D. on the terms and conditions of the Commissioner's letter dated 18.6.1979 which stipulates that the service rendered in the said school shall not be counted for the purpose of pension and gratuity. Moreover, the instant application is time barred as neither the applicant represented in M.C.D. for counting the past service from 1.11.1969 to 16.9.1979 nor he exercised the option within one year of joining the Government service.

4. Heard both the learned counsel for the rival contesting parties and perused the records.



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5. From the records placed before me I find that the service rendered in Autonomous Bodies under State Governments and vice-versa for the purpose of pensionary benefits is regulated in accordance with the <sup>instructions of</sup> letter dated 12.7.1988 (Annexure A/2) issued by the Ministry of Human Resource Development. The relevant portion of the instructions contained in letter dated 12.7.1988 is as follows:-

"The above said benefit has been extended by the Ministry of Personnel, Public Grievances and Pension, Department of Pension & Pensioners Welfare O.M.28(10)/84-P & PW-Vol.II dated 7.2.86 and 27.5.88. These orders will apply to the employees of the Central Government moving to State Autonomous Bodies of the State Governments and their Autonomous Bodies and vice-versa who are in service on the date of issue of the aforesaid orders irrespective of the date of their absorption. All the cases pertaining to the counting of service of teachers rendered by them in Aided/recognised schools in Delhi and outside Delhi prior to coming over to Delhi Admn. for pensionary benefits may be settled accordingly."

6. During the course of the arguments the learned counsel for the respondents brought to my notice a copy of the Commissioner's letter dated 18.6.1979 and Resolutions No.128 dated 28.6.1979 and No.138 dated 2.8.1979 of the Standing Committee of the Municipal Corporation Delhi. After perusing the letter/resolutions it is seen that the orders issued by the Ministry of Human Resource Development to regulate the period of service rendered by the teachers in aided/recognised schools in Delhi have been

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issued in July 1988 whereas a copy of the letter/resolutions submitted by the learned counsel for the respondents relate to earlier period. The instructions issued by the Department of Personnel & Training and Ministry of Human Resource Development which are of a later date will, therefore, supersede the earlier instructions issued by the Commissioner of Municipal Corporation Delhi. Moreover, the letter dated 25.2.1988 issued by Ministry of Human Resources Development (Annexure A/1) further clarifies the position by stating that the qualifying service rendered in aided school will be counted for the purpose of pension. As regards the point of limitation raised by the learned counsel for respondents it is a settled law by the Supreme Court, that the claim of retirement benefits is a continuous cause of action.

7. In view of the aforesaid facts, I find that this is a fit case to direct the respondents to count the past service of the applicant rendered by him in Gandhi Harijan Higher Secondary School, Braham Puri, Delhi, for the purpose of pensionary benefits.

8. For the reasons stated above, the OA is allowed and the order dated 29.11.1999 is quashed and set aside. Respondents are directed to count



the services of the applicant rendered by him in Gandhi Harijan Higher Secondary School, Braham Puri, Delhi, for the period from 1.11.1969 to 16.9.1979 towards pensionary benefits and grant him all consequential retirement benefits. This shall be done within a period of three months from the date of receipt of a copy of this order. No order as to costs.

  
(M.P. Singh)  
Member (A)

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