

@31

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 7159 OF 2014

D.T.C.

Appellant(s)

VERSUS

BALWAN SINGH & ORS.

Respondent(s)

O R D E R

This appeal is preferred by the employer-Delhi Transport Corporation (in short 'the DTC') against some employees who were permitted to retire under Voluntary Retirement Scheme (in short 'the VRS') and involves a simple question as to whether for the purposes of pension their qualifying service of ten years will include the period in which they were treated to be on leave without pay. The contention on behalf of the appellant is that the period of leave without pay must be treated in law to be equivalent to unauthorised absence from duty and hence not countable towards qualifying

2

service. In the impugned judgment of Delhi High Court rendered on 13th October, 2011 reliance has been placed upon several judgments of the High Court wherein a categorical view was taken that unless the employee is given a notice by entry into the service book or otherwise that he is guilty of unauthorised absence, the period of absence accepted as leave without pay cannot be treated as unauthorised absence and cannot be excluded from the qualifying service for want of notice to the employee directly or indirectly conveying that such period of absence will dis-entitle him to any benefits like pension etc. beyond the salary. On behalf of the appellant reliance has been placed upon a judgment of this Court in the case of S DTC vs. Lillu Ram which was rendered on 14th December, 2011 passed in C.A. No. 11440 of 2011. Although the said judgment proceeds on the factual premise that the employee had been absent unauthorisedly for a long period of 486 days on the basis of service book produced before the Court and perused by it, according to learned counsel for the appellant, there was no specific entry in the

3

service book of Lillu Ram that he was unauthorisedly absent, rather this Court treated 486 days of leave without pay to be unauthorised absence and held that such days of absence will not be counted towards qualifying service. We were shown photo copy of service book of Lillu Ram in support of the aforesaid submission. The judgment in the case of Lillu Ram (supra) rendered by a Division Bench does not show any consideration or reasons as to why when factually the employee had been sanctioned leave without pay, such period was treated by this Court to be a period of unauthorised absence. Even the relevant rules such as Rules 27 & 28 of the Central Civil Service (Pension) Rules, 1972 or F.R.17-A of the Fundamental Rules on which reliance has been placed by the respondents was not noticed or considered. Prima facie, we are of the view that no adverse effect can be permitted upon the right of the employee to receive pension unless he was given notice by appropriate entry in the service book or

through other notice that his absence will be treated as unauthorised absence and will not be

4

counted towards qualifying service for pension. In absence of such notice, after the respondent-employee has taken voluntary retirement under VRS and that too on the ground that he has completed ten years of service, it may be unjust and very harsh to inflict him with such adverse consequences. No doubt in sub rule (2) of Rule 28 of the Pension Rules which relates to condonation of interruption of service, an opportunity of representation is required to be given to the employee before making entry in service book regarding forfeiture of past service only, but there appears to be some substance in the submission that Rules of Natural Justice may be attracted even in other similar situation where the entry is regarding unauthorised absence, if it is to have the effect of break in service adversely affecting the length of qualifying service for pension. In our considered view, the judgment rendered by the Division Bench in case of Lillu Ram (supra) requires re-consideration by a larger Bench. For that purpose, the matter may be brought to the notice of the Hon'ble the Chief Justice of India.

5

Since the respondent-employee, as per interim orders are getting only 50% of the pension, we are of the view that hearing of this matter needs to be expedited.

â- |.....J
(SHIVA KIRTI SINGH)

â- |.....J
(R. BANUMATHI)

NEW DELHI

November 09, 2016

6

ITEM NO.2 COURT NO.11 SECTION XIV
S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 7159/2014

D.T.C.

Appellant(s)

VERSUS

BALWAN SINGH & ORS.

Respondent(s)

(office report)

Date : 09/11/2016 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVA KIRTI SINGH

HON'BLE MRS. JUSTICE R. BANUMATHI

For Appellant(s) Dr. Monika Gusain, Adv.

Mrs. Avnish Ahlawat, Adv.

For Respondent(s) Mr. Narottam Vyas, Adv.

Mr. S.C. Varma, Adv.

Mr. T. R. B. Sivakumar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

In our considered view, the judgment rendered by the Division Bench in case of Lillu Ram (supra) requires re-consideration by a larger Bench. For that purpose, the matter may be brought to the notice of the Hon'ble the Chief Justice of India.

Since the respondent-employee, as per interim

orders are getting only 50% of the pension, we are of the view that hearing of this matter needs to be expedited.

(NEELAM GULATI)

COURT MASTER

(MADHU NARULA)

COURT MASTER