REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.7159 of 2014

DELHI TRANSPORT CORPORATION ….Appellant

versus

BALWAN SINGH & ORS. ….Respondents

J U D G M E N T

SANJAY KISHAN KAUL, J.

1. The respondents are all ex-employees of the appellant/Delhi Transport Corporation (for short 'DTC'), who availed of the Voluntary Retirement Scheme (for short 'VRS'). The respondents have, however, been held disentitled to pension on account of exclusion of period when they remained absent without authorisation for which period they were

held not entitled to salary. In ***D.T.C. v. Lillu Ram,***[1] such exclusion was upheld with the consequence that the ex-employees would not get pensionary benefits, having not completed 10 years of qualifying service. In the present appeal, two Hon'ble Judges of this Court, after examining ***Lillu Ram's***[2] case opined that a reconsideration by a larger Bench, of that view, was required. As a sequitur, the present appeal has been placed before us.

2. A perusal of the reference order dated 9.11.2016, shows that the disagreement with the view taken in ***Lillu Ram***[3] case emanated on various accounts: (a) if the employee has been sanctioned leave without pay, why such period should be treated as a period of unauthorised absence; (b) non-consideration of relevant rules such as Rules 27 & 28 of the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as the 'Pension Rules') and FR 17-A of the Fundamental Rules; (c) no adverse effect should be visited on the employee to receive pension, unless given notice by the appropriate authority, by an entry in the service book or through other notice, that his absence will be treated as unauthorised absence and will not be counted towards qualifying service

1(2017) 11 SCC 407
2 (supra)
3 (supra)

for pension; (d) the VRS is permissible only on completion of 10 years of service and, thus, it may be unjust and harsh to inflict the employee with adverse consequences, in the absence of such notice.

3. The relevant facts for determination of the issue before us are that the employees of the appellant-Corporation were governed by the Employees Contributory Provident Fund Scheme. In terms of Office Order No.16 dated 27.11.1992, the introduction of a pension scheme in DTC as applicable to the Central Government employees was announced, on sanction having been obtained from the Central Government. This pension scheme was to be operated by the LIC on behalf of DTC and the date of effect of the pension scheme was retrospective, w.e.f. 3.8.1981, with the option to the existing employees and those who retired w.e.f. 3.8.1981 to opt for this pension scheme or continue to be governed by the Employees Contributory Provident Fund Scheme. Prospectively, the pension scheme was to apply compulsorily. The retired employees, however, were required to refund the employer's share under the Employees Provident Fund Act, in the event of their opting for the pension scheme.

4. It appears that despite all intentions, the scheme that had to be

operated by LIC was not implemented till 1995, when it was implemented by the appellant-Corporation itself. The other development in proximity to the announcement of the scheme was the announcement of the VRS on 3.3.1993. In order to avail of this Scheme, the eligibility conditions required an employee to have completed 10 years of service in the appellant-Corporation, or completed 40 years of age. Sub-clause (g) of Clause 4 of the Scheme provided for pensionary benefits as per Office Order No.16 dated 27.11.1992.

5. It appears that considerable litigation ensued in respect of both these aspects, on various accounts, *inter alia* on the issue of the eligibility for pension for persons who had put in 10 years or more of qualifying service, but less than 20 years. All these different issues have been settled in proceedings before the Delhi High Court or before this Court. Suffice to say that there is no controversy now, in view of the judicial pronouncements that there is no embargo in the pension rules that an employee having put in more than 10 years of service but less than 20 years would earn *pro rata* pension if he avails of the VRS.

6. Insofar as the present controversy is concerned, it appears that the Delhi High Court opined in favour of the employees and SLPs were

dismissed leaving the question of law open till the appellant-Corporation pointed out that the question of law needed to be settled, in view of a large number of cases coming up on this aspect. It is in these circumstances that the issue was examined in ***Lillu Ram's***[4] case. A reference was made to Rule 3(1)(q) of the Pension Rules, which reads as under:

> "**3. Definitions:**
> In these rules, unless the context otherwise requires –
>
> (1) (a) to (p) xxxx xxxx xxxx xxxx
>
> (q) 'Qualifying Service' means service rendered while on duty or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under these rules;"

7. It was opined that since the leave availed of was treated as absence from duty in an unauthorised manner, that period ought not to be counted towards the "qualifying service" as the very definition of "qualifying service" means service rendered while on duty or otherwise. Since the Pension Rules had been adopted, the provisions of the Pension Rules would have to be applied for determining the eligibility. A reference was also made to Rule 49(1) of the Pension Rules, which reads as under:

> "**49. Amount of Pension:**

4 (supra)

(1) In the case of a 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 month's emoluments for every completed six monthly period of qualifying service."

The conclusion, thus reached was that absence without sanction is unauthorised leave, which would have to be excluded from the period of qualifying service, for determining the period of 10 years of qualifying service for admissibility of pension, and that when a person is entitled to seek VRS on completion of 10 years of service, that would not *ipso facto* imply that this period would also have to be counted for purposes of admissibility of pension.

8. On behalf of the appellant-Corporation, Ms. Avnish Ahlawat, learned counsel sought to draw sustenance for her argument from Rule 21, which reads as under:

"**21. Counting of periods spent on leave**

All leave during service for which leave salary is payable [and all extraordinary leave granted on medical certificate] shall count as qualifying service :

Provided that in the case of extraordinary leave [other than extraordinary leave granted on medical certificate], the appointing

authority may, at the time of granting such leave, allow the period of that leave to count as qualifying service if such leave is granted to a Government servant –

(i) *omitted*.

(ii) due to his inability to join or rejoin duty on account of civil commotion; or

(iii) for prosecuting higher scientific and technical studies."

9. It was, thus, her contention that when the Rule itself is clear that the counting of period for pension, in respect of leave availed of, would be admissible only where "leave salary is payable," and there are only two exceptions as stipulated in the proviso, it was not for this Court to add or subtract from the Rule.

10. She further contended that reference to Rules 27 & 28 of the Pension Rules would not be appropriate as those provisions dealt with the effect of interruption in service and condonation of interruption in service. The Rules read as under:

"**27. Effect of interruption in service**

(1) An interruption in the service of a Government servant entails forfeiture of his past service, except in the following cases:-
(a) authorized leave of absence;

(b) unauthorized absence in continuation of authorized leave of absence so long as the post of absentee is not filled substantively;

(c) suspension, where it is immediately followed by reinstatement, whether in the same or a different post, or where the Government servant dies or is permitted to retire or is retired on attaining the age of compulsory retirement while under suspension;

(d) transfer to non-qualifying service in an establishment under the control of the Government if such transfer has been ordered by a competent authority in the public interest;

(e) joining time while on transfer from one post to another.

(2)Notwithstanding anything contained in sub-rule (1), the [appointing authority] may, by order, commute retrospectively the periods of absence without leave as extraordinary leave.

28. Condonation of interruption in service

(a) In the absence of a specific indication to the contrary in the service book, an interruption between two spells of civil service rendered by a Government servant under Government including civil service rendered and paid out of Defence Services Estimates or Railway Estimates shall be treated as automatically condoned and the pre-interruption service treated as qualifying service.

(b) Nothing in Clause (a) shall apply to interruption caused by resignation, dismissal or removal from service or for participation in a strike.

(c) The period of interruption referred to in Clause (a) shall not count as qualifying service."

11. The contention, thus, was that an interruption in service would

entail forfeiture of past service, unless it fell within clauses (a) to (e) of sub-rule (1) of Rule 27 of the Pension Rules.

12. FR 17-A of the Fundamental Rules also deals with unauthorised absence without prejudice to the provisions of Rule 27 of the Pension Rules but none of those provisions would apply in the facts of the present case.

13. On the other hand, learned counsel for the respondents sought to draw our attention to the Government of India decision M.F., O.M. No.F.11 (3)-E. V (A)/76 dated 28.2.1976, reproduced as "Government of India's decisions" set out just below Rule 21 of the Pension Rules, which reads as under:

> "**GOVERNMENT OF INDIA'S DECISIONS**
>
> **(1) Need for making proper entries for treatment of extraordinary leave for pensionary benefits. -** Under Rule 21 of the CCS (Pension) Rules, 1972, extraordinary leave granted on medical certificate qualifies for pension. The Appointing Authority may, at the time of granting extraordinary leave, also allow the period of such leave to count as qualifying for pension if the leave is granted to a Government servant –
>
> (i) due to his inability to join or rejoin duty on account of civil commotion, or
>
> (ii) for prosecuting higher technical and scientific studies.
>
> Extraordinary leave taken on other grounds is treated as non-

> qualifying and, therefore, a definite entry is to be made in the service records to that effect. Entries regarding service being qualifying or otherwise are required to be made simultaneously with the event. Even where this is not done, it should still be possible to rectify the omission during the period allowed for preparatory action, i.e., from two years in advance of the retirement date up to eight months before retirement. At the end of that period, however (i.e., when the actual preparation of the pension papers is taken in hand), no further enquiry into past events or check of past records should be undertaken. Specific entries in the service records regarding non-qualifying periods will be taken note of and such periods excluded from the service. All spells of extraordinary leave not covered by such specific entries will be deemed to be qualifying service."

14. Learned counsel emphasised that a definite entry is required to be made in the service record latest by 8 months before retirement. All spells of extraordinary leave not covered by such specific entry would be deemed to be qualifying service.

15. Learned counsel also drew our attention to SR 200 of the Supplementary Rules (hereinafter referred to as the 'SR'), which reads as under:

> "S.R. 200. Every period of suspension from employment and every other interruption of service must be noted, with full details of its duration, in an entry made across the page of the Service Book and must be attested by the Attesting Officer. It is the duty of the Attesting Officer to see that such entries are promptly made."

16. Learned counsel also referred to the Government of India Order No. M.F., O.M. No.F.18 (7)-E. V (B)/65-Part-V dated 24.6.1966, the relevant extract of which reads as under:

> "**Government of India's Orders**
>
> **(1) Annual verification of services.** -
>
> xxxx xxxx xxxx xxxx
>
> NOTE 2. – Questions affecting pension or the pensionable service of a Government servant which for their decision depend on circumstances known at the time, should be considered as soon as they arise and should not be left over for consideration until the Government servant retires or is about to retire. Definite decisions should be arrived at on all such questions in consultation with the Audit Officer and/or the Accounts Officer, as the case may be, where necessary and recorded in the Service Book quoting reference to the orders of the Competent Authority.
>
> …. …. …. …. …. …."
>
> **(2) Need for proper maintenance of Service Book to eliminate delay in payment of pension. –**
>
> xxxx xxxx xxxx xxxx
>
> 3. The orders of the Competent Authority regarding the counting or otherwise of periods of extraordinary leave or periods preceding breaks in service as qualifying for pension should be obtained invariably at the same time as the occasion arises and not later. Such orders should be noted in the Service Book. Unless otherwise shown in the Service Book, it will be presumed that the orders of Competent Authority have been obtained and the periods of extraordinary leave and periods preceding break in service will

count for pension.

…. …. …. …. …. ….”

17. Learned counsel, thus, emphasised the importance of every interruption of service required to be noted with full details of its duration, and its entry made in the service book, as also the inadvisability of consideration of question affecting pension or pensionable service being left until the Government servant retires or is about to retire.

18. Learned counsel also contended that possibly, the respondents may not have availed of the VRS had they been told that they would not get the benefit of pension in view of what is stated aforesaid by the appellant-Corporation, and to deprive them subsequently of it would be unfair and unjust, apart from it being an adverse decision made without notice to them.

19. We have examined the contentions of learned counsel for the parties and the judgment in ***Lillu Ram's***[5] case and the order of reference dated 9.11.2016.

5 (supra)

20. In our view, the only aspect which is required to be considered is the requirement of the specific rule of the Pension Rules, which provides for admissibility of pension. No one, including the respondents can be permitted to plead that they would be unaware of the Pension Rules, which have a statutory force and whose benefit they seek to avail. In fact, the VRS itself, more specifically clause (g), makes these very Rules applicable. Rule 21 is quite clear in its terms, i.e., "all leave during service for which leave salary is payable" would count. The corollary is that if an employee is not paid for leave, that period has to be excluded from the period to be counted for admissibility of pension. Rule 3(1)(q), while defining "qualifying service" provides for service rendered while on duty "or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under these rules." Thus, the period of leave for which salary is payable would be taken into account for determining the pensionable service, while the period for which leave salary is not payable would be excluded. The Rule is crystal clear and does not brook any two interpretations. It is a well settled principle of interpretation that when the words of a statute are clear and unambiguous, there cannot be a recourse to any principle of

interpretation other than the rule of literal construction.[6]

21. The endeavour to refer to Rules 27 & 28 of the Pension Rules is of no avail, as those are dealing with the effect of interruption in service which may result in forfeiture of past service. In the present case, there has been no forfeiture of past service.

22. Insofar as the Government decision dated 28.2.1976 is concerned, that elucidates the requirement of a prompt entry into the service record, but this certainly cannot supersede the Rule. The position would be no different for SR 200, SR 202 and the other Government of India Order dated 24.6.1966. It is trite to say that as per Kelsen's Hierarchy of Legal Norms, the *Grundnorm*, being the Constitution of India, the applicable hierarchy would read as under:

> "(1) The Constitution of India.
>
> (2) Statutory Law, which may be either Parliamentary Law or law made by the State Legislature.
>
> (3) Delegated legislation which may be in the form of rules, regulations etc. made under the Act.
>
> (4) Administrative instructions which may be in the form of GOs, Circulars etc."

6*Swedish Match AB v. Securities and Exchange Board, India* AIR (2004) SC 4219

23. In the given facts of the present case, we will have to take note of an important aspect, i.e., the respondents were not governed by these Rules, but by the Employees Contributory Provident Fund Scheme. The Pension Scheme was sought to be introduced only couple of months before the VRS, and that too was not implemented till 1995. Not only that, it was not implemented through the LIC but ultimately by the appellant-Corporation itself, much later in 1995. Thus, the occasion for making any entries for this leave period in the service record, in terms of the Rules did not even arise at the stage when the VRS was applied. There may have been some significance to these aspects if the Pension Rules were already applicable over a period of time and entries had not been made, though, even there, it would not be in supersession of the plain language of the Rule.

24. We have, thus, no hesitation in coming to the conclusion that to avail of the benefit of Pension Rules, an employee must qualify in terms of the Rules. In the present case, the respondents unfortunately do not do so, as the period which is sought to be excluded from their qualifying service is one where they have admittedly not been paid leave salary. The qualifying period for the VRS would have to be governed by that

Scheme and cannot *ipso facto* be imported into the entitlement of pension, contrary to the plain wordings of the Pension Rules. We see no conflict in this, apart from the fact that the Pension Rules came into force actually much later, though the intention was announced just before the VRS. The respondents were governed prior to that by the Employees Contributory Provident Fund Scheme.

25. We may, however, notice here that while the result may be the same as in ***Lillu Ram*'s**[7] case, our reasoning is slightly different from that view.

26. We, thus, allow the appeal and set aside the impugned order, leaving the parties to bear their own costs.

27. However, to avoid any grave hardship, if any payments have been made to the respondents, especially in view of the interim order dated 23.7.2014, the appellant-Corporation will not claim any refund of such amount already paid.

……J.
[S.A. Bobde]

7 (supra)

...……J.
[Sanjay Kishan Kaul]

...……J.
[Deepak Gupta]

New Delhi.
February 26, 2019.