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* IN THE HIGH COURT OF DELHI AT NEW DELHI

*Reserved on: 03.12.2025
Pronounced on: 07.01.2026*

+ **W.P.(C) 16226/2024**
SMT NIRAMAL DEVIPetitioner
Through: Mr.Shanker Raju and
Mr.Nilansh Gaur, Advs.

versus

GOVERNMENT OF NCT OF DELHI AND ANR

.....Respondents
Through: Mrs.Avnish Ahlawat, SC for
GNCTD (Services) with
Mr.Nitesh Kumar Singh,
Ms.Aliza Alam and
Mr.Mohnish Sehrawat, Advs.

CORAM:

**HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE MADHU JAIN**

JUDGMENT

NAVIN CHAWLA, J.

1. This petition has been filed by the petitioner challenging the Order dated 08.12.2023 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the, 'Tribunal') in O.A. 3400/2019, titled *Smt. Nirmal Devi (Group 'B') v. Government of NCT of Delhi Through Chief Secretary & Anr.*, by which the learned Tribunal has been pleased to dismiss the O.A. filed by the petitioner seeking release of the retiral benefits, including the pension of the late husband of the petitioner.



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BRIEF FACTS:

2. It is the case of the petitioner that the late husband of the petitioner was appointed as Junior Lecturer in A&U Tibbia College, Karol Bagh, Delhi on 13.12.1978. Thereafter, he was granted proforma promotion to the post of Reader w.e.f. 01.12.1996. The late husband of the petitioner had applied, through direct recruitment, to the post of Principal, A&U Tibbia College, and was appointed to the said post on 30.01.1997.

3. A complaint was received against the late husband of the petitioner for not having the requisite qualifications as per the Recruitment Rules for being appointed to the post of Principal. Based on the said complaint, an inquiry was conducted and the late husband of the petitioner was removed from the post of Principal *vide* Order dated 10.12.1998.

4. It is the case of the petitioner that late husband of the petitioner had sought Earned Leaves from 10.09.1998 to 25.09.1998 (16 days); from 11.12.1998 to 30.12.1998 (20 days); and from 31.12.1998 to 30.01.1999 (31 days), in total 67 days, which was duly approved by the respondents *vide* Order dated 27.03.1999, and the salary for the period from December 1998 to January 1999, was also paid by the respondents *vide* salary slip dated 29.10.2001.

5. It is the case of the petitioner that after multiple rounds of litigation, and in terms of the liberty granted by this Court *vide* its Order dated 09.02.2018 in W.P.(C) 2072/2011 titled ***Dhanwantri Kumar Vats v. GNCT of Delhi & Ors.***, the petitioner made a representation dated 20.06.2018 to the respondents seeking retiral benefits, including the pension of the late husband of the petitioner,



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contending therein that since the late husband of the petitioner had completed more than 20 years of qualifying service up to the date of his superannuation, which he would have attained on 31.03.2007, the late husband of the petitioner would be entitled to retiral benefits for the entire service rendered by him since 13.12.1978, and the petitioner, being the widow of the late employee, is also entitled to consequential family pension with arrears.

6. The respondents, while rejecting the representation of the petitioner, by its above Order dated 04.12.2018, had, *inter alia*, stated as under:

“Since Sh. D. K. Vats had not reported/joined back on his duties to the previous post i.e. Lecturer in the Department of Rasa Shastra, after his removal from the post of Principal on 10/12/1998 & till his superannuation. Thereafter, earned leave from 11/12/1998 to 30/01/1999 which was sanctioned vide order dated 27/03/1999 can not be treated as regularized as he had not joined his duties after expiry of these earned leaves. Thus, late Dr. D.K. Vats had performed duty in his whole service from 13/12/1978 to 10/12/1998 which was not completed 20 years.”

7. The petitioner had filed the above O.A. challenging the Order dated 04.12.2018 by which the respondents had rejected the representation claiming pension/family pension and other retiral benefits due to the late husband of the petitioner.

8. The learned Tribunal dismissed the O.A. filed by the petitioner by further observing that the Earned Leaves of 67 days between 10.09.1998 to 30.01.1999 sanctioned in his favour, was conditional on the husband of the petitioner joining back the service on his reversion; as the husband of the petitioner had not joined back, the conditional



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sanction of leave could not be given effect to and he had less than 20 years of qualifying service. We quote from the Impugned Order as under:

“12.1 In the instant case, the applicant’s husband was sanctioned earned leave on 18.02.1999 for 67 days from 10.09.1998 to 31.01.1999, but with a condition that the applicant’s husband has to join at the reverted Cadre to avail this benefit. The applicant’s husband choose not to challenge this conditional earned leave. The conditional sanctioning of leave is placed as Annexure A/6 (Colly) and the relevant condition has been reproduced in paragraph 3 above.

12.2. The applicant’s husband choose not to agitate against the said conditional leave. Instead, he agitated against his reversion from the post ‘of Principal to the parent cadre and did not join in the College thereafter. Hence, his period of service with the respondents remained prior to sanctioning of the said leave. The said leave order they sanctioned E.L. for 67 days for three periods:

- (a) 10.09.1998 to 25.09.1998- 16 days*
- (b) 11.12.1998 to 30.12.1998- 20 days*
- (c) 31.12.1998 to 30.01.1999- 31 days*

It implies that the respondents have taken the rejoining of the applicant’s husband on 26.09.1998 as effective on the substantive post. But because of his non-joining, the subsequent continuous period was considered as conditional earned leave. Accordingly, they have concluded that the applicant’s husband had effective service from 13.12.1978 to 10.12.1998.

12.3. I tend to agree with the stand taken by the respondents that applicant’s husband choose not to challenge the conditional earned leave sanctioned on 27.03.1999 and choose not to join back in the College after his reversion from the post of Principal. Hence, he had less than 20 years qualifying service with the respondents. As the applicant’s husband did not have 20 years of qualifying service, he



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was not entitled for pension. As the applicant's husband was not entitled for pensionary benefits, the applicant is also not entitled for any family pension."

9. Aggrieved thereof, the petitioner has filed the present petition.

SUBMISSIONS BY THE LEARNED COUNSEL FOR THE PETITIONER:

10. The learned counsel for the petitioner submits that the learned Tribunal has failed to appreciate that there is no material on record to demonstrate that the Earned Leaves granted to the late husband of the petitioner were subject to any condition, express or implied. It is contended that neither the Leave Sanction order dated 27.03.1999 nor any contemporaneous record reflects that the Earned Leaves were conditional upon the husband of the petitioner rejoining service upon the expiry of the leave period, and in the absence of any such stipulation, the respondents were not justified in treating the said leave as anything other than valid and authorised service.

11. The learned counsel further submits that, in law, Earned Leave constitutes a statutory and vested right of a Government servant, accruing by virtue of service rendered and governed by the applicable service rules. Such leave cannot be retrospectively rendered *non est* or conditional by the respondents on the basis of subsequent events, particularly when no such condition was imposed at the time of its grant.

12. The learned counsel submits that the premise adopted by the learned Tribunal, that the Earned Leave was dependent upon the husband of the petitioner joining back the service after expiry of such leave, is wholly misconceived and unsupported by the record, and on



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this ground alone, the Impugned Order is liable to be set aside.

13. He further submits that the respondents, *vide* salary slip dated 29.10.2001, had duly released the salary for the Earned Leave period to the late husband of the petitioner, thereby, regularising the Earned Leave for the said period. He further submits that in the present case, the respondents, having regularized the period of absence by grant of Earned Leave, which at the time of grant was not conditional to joining, should have reckoned the said period of Earned Leave towards qualifying service of the petitioner's late husband, which would make the qualifying service as 20 years.

14. He submits that, therefore, the late husband of the petitioner was entitled to pension w.e.f. 01.02.1999 with arrears, and the petitioner is entitled to family pension with arrears w.e.f. 09.04.2012 when the husband of the petitioner had demised.

SUBMISSIONS BY THE LEARNED COUNSEL FOR THE RESPONDENTS:

15. On the other hand, the learned counsel for the respondents reiterates that the Earned Leave sanctioned in favour of the late husband of the petitioner, was granted subject to a clear and unequivocal condition that upon expiry of the sanctioned leave period, he would report back and resume his duties on reversion.

16. He further submits that since the late husband of the petitioner failed to report back for duty upon the expiry of the sanctioned Earned Leave, the very basis on which such leave had been granted stood vitiated. In view thereof, he was not entitled to claim or derive any benefit arising out of the said leave sanction, as the condition



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precedent attached thereto remained unfulfilled. He submits that the period of absence following the sanctioned leave could not be treated as duly authorised service for any purpose whatsoever.

ANALYSIS AND FINDINGS:

17. We have considered the submissions made by the learned counsels for the parties.

18. The limited issues arising from the facts of the present case are whether the Earned Leaves of 67 days taken by the late husband of the petitioner, are to be counted for determining the qualifying service, and if so, even after counting the said period as qualifying service, whether the late husband of the petitioner is entitled to the retiral benefits, including pension.

19. Before adjudicating on the facts, we may quote from the Order dated 27.03.1999 passed by the Executive Officer A & U Tibbia College, *vide* which the respondents had sanctioned the Earned Leave of the late husband of the petitioner, as under:

Shri D.K. Vats Ex Principal working in Tibbia College in
granted days leave as under:

Earned Leave
10.9.98 to 25.9.98 - 16 days
11.12.98 to 30.12.98 - 20 days
31.12.98 to 30.1.99 - 31 days
67 days

The accounting balance of earned leave HPL in this account
will be as under:

1. Earned Leave 3 days
2. H.I.L

Verified that the above named employee would be actually
continued to officiate in the post but for his/her proceeding on
leave.

Certified that the above named employees is liked return on
the expiry of leave to duty at the same/similar status from while
he/she proceeds on leave.



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20. A bare reading of the above letter would show that the respondents, while sanctioning the Earned Leave to the late husband of the petitioner, had not stipulated any condition suggesting that such leave shall only be regularised if the late husband of the petitioner would report back and resume his duties on reversion.

21. We may herein note that the Supreme Court in *Bachhittar Singh v. State of Punjab & Anr.*, 1962 SCC OnLine SC 11, has held that for an opinion to amount to a decision of the Government, it must be communicated to the person concerned in form of a speaking order. In the present case, the respondents, having not stipulated any condition in the Office Order dated 27.03.1999 or any subsequent order, cannot later claim that the Earned Leaves granted to the late husband of the petitioner were rendered ineffective due to non-reporting for duty.

22. Moreover, we may also note that the respondents themselves, *vide* salary slip dated 29.10.2001, had duly released the salary for the Earned Leave period to the late husband of the petitioner, thereby, regularising the Earned Leaves for the said period. Therefore, the respondents cannot now claim that the Earned Leaves taken by the late husband of the petitioner cannot be considered for calculating the qualifying service for the grant of pension.

23. From the above narration of facts, it is evident that the late husband of the petitioner had completed over 20 years in service, by including the 67 days of Earned Leaves sanctioned in his favour, thereby, entitling him to pension, and the petitioner the family pension on his death.



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24. We, accordingly, set aside the Impugned Order passed by the learned Tribunal and direct the respondents to release the pension of the late husband of the petitioner till his death, and thereafter, family pension to the petitioner, subject to other compliances, within a period of eight weeks from today along with interest at the rate of 6% per annum.

25. We, however, further clarify that the pensionary benefits of the husband of the petitioner/family pension of the petitioner shall be calculated on the basis of the fact that the husband of the petitioner had superannuated from service at the post of Lecturer.

26. The petition is allowed in the above terms.

NAVIN CHAWLA, J

MADHU JAIN, J

JANUARY 07, 2026/sg/VS