



2025:DHC:6686-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 07.08.2025

+ **W.P.(C) 3737/2023 & CM APPL. 14573/2023**

UNION OF INDIA

.....Petitioner

Through: Mr.Mukul Singh, CGSC with
Ms.Ira Singh & Mr.Aryan
Dhaka, Advs.

versus

RAJ BALA AND ORS

.....Respondents

Through: Mr.K.G. Sharma & Mr.K.S.
Badalia, Advs. for R-1
Mr.Yeeshu Jain, ASC with
Ms.Jyoti Tyagi, Ms.Priya
Shukla, Mr.Aveeraj Sharma &
Mr.Sumit Kumar, Advs. for R-2
Mr.Rakesh Kumar, SC for
MCD
Mr.Deepak Thukral &
Ms.Megha Gupta, Advs. for
R-4

+ **W.P.(C) 11511/2023**

RAJ BALA

.....Petitioner

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Badalia, Advs.

versus

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Ms.Ira Singh & Mr.Aryan
Dhaka, Advs. for R-1
Mr.Yeeshu Jain, ASC with
Ms.Jyoti Tyagi, Adv. for R-2
Ms.Beenashaw Soni, SC for
MCD with Ms.Mansi Jain, Adv.
for MCD

CORAM:



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

NAVIN CHAWLA, J. (ORAL)

1. These petitions have been filed by the petitioners, challenging the Order dated 21.07.2022 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the 'Tribunal') in O.A. No. 4070/2017, titled ***Raj Bala v. Union of India & Ors.***, whereby the learned Tribunal disposed of the said O.A. filed by Ms. Raj Bala (who shall hereinafter be referred to as the 'petitioner') with the following directions:

"9. Therefore, in our view, it would be the most appropriate course to dispose of this O.A. with a direction to the competent authority in the Department of School Education and Literacy, Government of India, to take a decision and convey the same. in accordance with the rules governing the subject upon the aforesaid communication dated 26.08.2021 signed by the Deputy Director of Education, District South West-B-1, Najafgarh, New Delhi - 110043, within a period of eight weeks from the date of receipt of a copy of this orders Subsequently, a period of six weeks is allowed to the Government of Haryana, Municipal. Corporation of Delhi and the Department of Education, Government of Delhi to take necessary follow action on the advice/ direction issued by the Government of India and issue appropriate orders in this regard."

2. The petitioner had filed the above O.A. before the learned Tribunal, praying for the following reliefs:

"(a) to quash the order/letter dated 28.06.2017 sent by the SDMC (respondent No.3)



demanding an amount of Rs. 2,75,468/- alongwith simple interest @ 6% per annum from the applicant towards pro-rata contribution to pensionaru/retirement benefits;

(b) to direct/order the State Government of Haryana .through its Director General Elementary Education, Govt. of Haryana (respondent No.1) to pay forthwith the pro-rata contribution towards pension/gratuity etc., amounting to Rs. 2,75,468/- alongwith simple interest @ 6% per annum of the applicant for the services rendered by the applicant for the period from 23.04.1988 to 28.07.1999 to the SDMC (respondent NO3);

(c) to direct the respondent NO.3 (SDMC) to release and pay the pro-rata contribution towards pension/gratuity etc. of the applicant for the services rendered by her for the period from 23.04.1988 to 23.11.2010 to the GNCT of Delhi (respondent NO.2), alongwith interest at applicable rates, so that the retirement benefits of the applicant can be settled without any undue delay;

d) to direct the SDMC (respondent no.3) to give all consequential benefits of seniority, promotions, etc. based on combined service, alongwith financial benefits/arrears with monthly compounded interest to the applicant retrospectively;

(e) pass any other/further order(s) in favour of the applicant, as deemed fit and proper in the facts and circumstances of the case and in the interest of justice.”

3. Before proceeding further, we shall give a brief background of the facts from which the present petitions arise.

4. The petitioner was appointed as a primary teacher (JBT) with the Government of Haryana on 23.04.1988. Her services were



regularized with effect from 31.12.1990. She applied for a post with the Municipal Corporation of Delhi (in short, 'MCD') through proper channels, and upon her selection, was relieved by the State of Haryana on 28.07.1999, pursuant to the acceptance of her technical resignation. She joined the MCD with effect from 29.07.1999.

5. Subsequently, she was appointed as a Trained Graduate Teacher (TGT) (Hindi) with the Directorate of Education, Government of NCT of Delhi, on 24.11.2010. She superannuated from service on 31.08.2018 and was thereafter re-employed for a period of two years, from 01.09.2018 to 14.08.2020.

6. Aggrieved by the non-release of her pensionary benefits by the Government of NCT of Delhi, and by the demand raised upon her to deposit an amount of Rs. 2,75,468/- along with interest at the rate of 6% per annum towards pro-rata contribution to pensionary/retiral benefits as a precondition for the release of her pensionary benefits by the Government of NCT of Delhi, she approached the learned Tribunal by way of the above O.A.

7. As noted hereinabove, the learned Tribunal, instead of adjudicating the merits of the claim of the petitioner, directed the Union of India to decide upon a communication dated 26.08.2021, issued by the Deputy Director of Education, District South West-B-(1), Najafgarh, New Delhi-110043.

8. Aggrieved by the aforesaid direction, the Union of India has filed the petition, being W.P.(C) 3737/2023, contending that no such direction could have been issued against it, while the petitioner has filed a petition, being W.P.(C) 11511/2023, contending that the



learned Tribunal has erred in not adjudicating the O.A. on merits and in failing to direct the Government of NCT of Delhi to release the pensionary benefits to the petitioner. The petitioner further prays for setting aside of the communication dated 28.06.2017, whereby the MCD directed her to deposit Rs. 2,75,468/- along with simple interest at the rate of 6% per annum, towards the purported pro-rata contribution of pension and gratuity for counting her past service from 23.04.1988 to 28.07.1999 rendered by her with the Government of Haryana, for the release of the pensionary and other retiral benefits. Other reliefs regarding pay fixation, etc., are also sought by the petitioner.

9. The learned counsel for the petitioner, placing reliance on the Office Memorandum bearing No. 28/10/84-Pension Unit dated 29.08.1984, submits that where an employee moves from a State Government to an autonomous/statutory body by tendering a technical resignation and following due process, a lump-sum amount determined as pro-rata pension is to be transferred by the Government/autonomous body where the employee was earlier employed to the account of the employee with the subsequent employer. This liability, however, cannot be fastened upon the employee. He submits that the Union of India, by a clarification dated 28.03.2022, has again reiterated the same position even with respect to the movement of an employee from a State Government to an autonomous body and *vice versa*.

10. He further submits that, in the present case, the petitioner had not received any pro-rata pension from the State of Haryana at the



time of submitting her technical resignation and joining her services with the MCD. The transfer of such an amount was a matter between the MCD and the State of Haryana, and therefore, the petitioner's pensionary benefits could not have been withheld, nor could any such demand have been raised against her. He also submits that the petitioner's pay fixation in the MCD was incorrect.

11. The learned counsel for the petitioner also places reliance on the Judgment of this Court in *Municipal Corporation of Delhi v. Shri Bhagwan Sahai*, 2011 SCC OnLine Del 1181; and *Municipal Corporation of Delhi v. R.K.S. Gaur & Ors.*, 2011 SCC OnLine Del 1064.

12. On the other hand, the learned counsel for the Government of NCT of Delhi submits that, in terms of the Office Memorandum dated 29.08.1984, the previous employer, that is, the State of Haryana, is required to transfer the pro-rata pension earned by the employee, that is, the petitioner, to the MCD, which would thereafter transfer the same to the Government of NCT of Delhi, which was the employer of the petitioner at the time of her superannuation. He submits that, accordingly, a claim was first made to the State of Haryana for the said amount, and in the absence of any response, to the petitioner. He submits that until the amount is deposited, the pensionary benefits of the petitioner cannot be released.

13. At the same time, the learned counsel for the State of Haryana places reliance on Note-3, Appended to the Haryana Civil Services (Pension) Rules, 2016, to submit that the liability to pay the pension rests only with the Government to which the employee belongs at the



time of retirement. He submits that there was no stipulation for the transfer of the pro-rata pension earned by the petitioner to the MCD or the Government of NCT of Delhi while accepting the technical resignation of the petitioner. He further submits that all admissible benefits were paid to the petitioner at the time of accepting her technical resignation. He admits that the pro-rata pension was not paid to the petitioner.

14. The learned counsel for the MCD submits that it did not receive the pro-rata pension from the State of Haryana when the petitioner joined service with MCD after tendering her technical resignation to the State of Haryana.

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

16. It cannot be disputed that in terms of the Office Memorandum dated 29.08.1984, and as clarified by the Union of India by its Circular dated 09.09.2022, since the petitioner had applied for and subsequently joined the MCD by submitting her application through proper channel and tendering her technical resignation upon her selection, she is entitled to count her past/previous services for the pensionary benefits. The Office Memorandum dated 29.08.1984 further provides as under:

“3. This matter has been considered carefully and the President has now been pleased to decide that the case of Central Government employees going over to a Central autonomous body or vice-versa and employees of the Central autonomous body moving to another Central autonomous body may be regulated as per the following provisions:-



(a) In case of Autonomous Bodies where Pension Scheme is in operation.

(i) Where a Central Government employee borne on pensionable establishment is allowed to be absorbed in an autonomous body, the services rendered by him under the Government shall be allowed to be counted towards pension under the autonomous body irrespective of whether the employee was temporary or permanent in Government. The pensionary benefits will, however, accrue only if the temporary service is followed by confirmation. If he retires as a temporary employee in the autonomous body he, will get terminal benefits as are normally available to temporary employees under the Government. The same procedure will apply in the case of employee of the autonomous bodies who are permanently absorbed under the Central Government.

The Government/autonomous body will discharge its pension liability by paying in lumpsum as a one-time payment, the pro-rata pension/service gratuity/terminal gratuity and DCRG for the service upto the date of absorption in the autonomous body/Government, as the case may be. Lumpsum amount of the pro-rata pension will be determined with reference to commutation table laid down in CCS (Commutation of Pension) Rules, 1981, as amended from time to time.

(ii) A Central Government employee with CPF benefits on permanent absorption in an autonomous body will have the option either to receive CPF benefits which have accrued to him from the Government and start his service afresh in that body or choose to count service rendered in Government as qualifying service for pension in the autonomous body by foregoing Government's share of CPF contributions with interest, which will be paid to the concerned autonomous body by the concerned Government Department. The option shall be exercised within one year from



the date of absorption. If no option is exercised within stipulate period, employee shall be deemed to have opted to receive CPF benefits. The option once exercised shall be final.”

17. The same was subsequently extended for movement between the State Government and and Autonomous/Statutory Body, *vide* 28.03.2022.

18. A reading of the above would show that, upon the petitioner joining the MCD, which is an autonomous/statutory body created under the Municipal Corporation of Delhi Act, 1958, it was the MCD which was to discharge the pension liability to the petitioner. The Government of Haryana was to discharge its pro-rata pension liability by making a lump-sum, one-time payment of the pro-rata pension, etc., up to the date of absorption of the petitioner. As noted hereinabove, the learned counsel for the State of Haryana has stated that no such lump-sum payment had been released to the petitioner.

19. The petitioner had thereafter moved from MCD to the Government of NCT of Delhi. The liability to pay the pensionary benefits shall thereafter fall upon the Government of NCT of Delhi. The Government of NCT of Delhi could not have withheld the same from being paid to the petitioner on account of the pro-rata pension not being deposited by the State of Haryana or by the petitioner with it.

20. In the absence of any amount having been paid to the petitioner by the State of Haryana towards pro-rata pension, the claim of the Government of NCT of Delhi upon the petitioner to deposit the same



is, therefore, not justified.

21. In *Shri Bhagwan Sahai* (supra), in a similar situation, this Court held as under:

“24. Forwarding the papers to the Directorate of Education, Govt. of NCT of Delhi by the petitioner was also not dependent upon exercising any option in terms of office memorandum dated 29th August, 1984 which was adopted by the Municipal Corporation of Delhi/petitioner on 1st May, 1987 retrospectively from 29th August, 1984. No option from the respondent was required for forwarding the appropriate papers of the respondent reflecting the period of service with the State Govt. and period of service after absorption with the Municipal Corporation of Delhi by the petitioner to the Directorate, Govt. of NCT. Option as contemplated under Office Memorandum dated 29th August, 1984 and resolution of petitioner was either to retain the retiral benefits received from earlier employer or to surrender the retiral benefits received with interest to the employer where the employee was absorbed so as to receive retiral benefits of combined period of service. The respondent No.1 though had not received any retiral benefits from Government of U.P and therefore in his case he was not liable to surrender any retiral benefits after exercising his option. Respondent however, had exercised the option on 20th November, 1984 to receive retiral benefits on the basis of combined service i.e service with the Government of U.P and service with petitioner. No rational reason has been canvassed as to why such an option could not to be considered, especially, since the office memorandum dated 29th August, 1984 which was adopted by the petitioner on 1st May, 1987 was adopted retrospectively from 29th August, 1984. If the resolution was adopted retrospectively, then, anything done pursuant to the resolution dated 29th August, 1984 would also be ratified and shall become



valid and the plea of the petitioner that even if the office memorandum dated 29th August, 1984 was ratified on 1st May, 1987 retrospectively from 29th August, 1984, the option ought to have been exercised after 1st May, 1987, in the opinion of this Court, is devoid of any logic and reflects complete nonapplication of mind by the petitioner.

25. Perusal of para-6 of the Resolution No. 1381 Item No. 39, contemplating exercise of option also reveals that if an employee wants to get the benefit of past service after retirement, such an employee must surrender the benefits received from previous employer in order to get pensionary benefits on the basis of combined services. It is logical that if an employee has already received pensionary benefit from previous employer, in order to get the pensionary benefits from the combined services, the pensionary benefits already received from the earlier employer ought to be surrendered by such an employee. It is not the case of any of the authorities that respondent had received the pensionary benefits either from the State of Uttar Pradesh or from the Municipal Corporation of Delhi. If that be so, there was no justifiable reason to deny respondent's entitlement for pensionary benefit on the basis of combined services from the State of Uttar Pradesh and Municipal Corporation of Delhi, the documents for which were to be forwarded to the Directorate of Delhi Administration as the respondent had retired from the Directorate of Education, Govt. of NCT.

26. In the circumstances, we have no hesitation to hold that the stand of Municipal Corporation of Delhi, petitioner is utterly illogical and contrary to their own resolutions and the office memorandum of Govt. of India dated 29th August, 1984. This is not even the case of the petitioner that forwarding the case of the respondent to the Directorate of Education, Govt. of NCT regarding the service rendered by the respondent before his



absorption in the Municipal Corporation of Delhi will make the petitioner liable in any manner for the service rendered by the respondent to the Government of U.P. In the circumstances the respondent has been deprived of his pension on account of an illegal stand taken by the petitioner that the respondent had not exercised his option in terms of resolution of Petitioner dated 1st May, 1987 and that the petitioner is not liable to forward appropriate papers to the Directorate Government of NCT from where the respondent had retired so as to finalize his papers for his pensionary benefits.

27. In the circumstances, the petitioner has failed to raise any grounds or show any illegality, un-sustainability or any perversity in the order of the Tribunal dated 24th November, 2009 in TA No. 906/2009 titled as „Bhagwan Sahai Vs. Govt. of NCT of Delhi & Anr.“ to entail any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The petitioner is liable to forward all the requisite papers regarding the service of the respondent with Municipal Corporation of Delhi and his service before his absorption with the petitioner rendered to the State of U.P which may be required by the Directorate of Education, Government of NCT to finalize the pension of the respondent after his retirement. The petitioner will do the needful with six weeks of receipt of copy of this order.”

22. In **R.K.S. Gaur & Ors.** (supra), this Court again reiterated as under: -

“20. The petitioner could not have denied grant of complete pension to the respondent No.1 after computing his service rendered with the Government of Sikkim, on the ground that pro-rata pension contribution of the Government of Sikkim of Rs.1,38,320/- has not been deposited by the respondent No.2, in case



the petitioner is entitled for the said amount from respondent no.2. The item no.29 of resolution No.1381 does not contemplate that unless and until the previous employer will deposit their contribution, even if the previous employer is liable for the same, the pension shall not be paid to the absorbed employee on his retirement. The only restriction contemplated under the said item No.29 of resolution No.1381 is that if the employee had received the benefit from the previous employer then the absorbed employee will surrender the benefit received from the previous employer. This aspect has been further clarified in the office memorandum dated 29th August, 1984, Clause 5(2) which categorically states that when no terminal benefits for the previous service has been counted as qualifying service for pension only and in no case, the pension contribution liability will be accepted from the employee concerned. Admittedly the respondent No.1 had not received the prorata pensionary benefits from the previous employer, State Government of Sikkim and in the circumstances the right of the respondent No.1 to claim pension on the basis of combined service i.e. the service rendered with the State Government of Sikkim, respondent No.2 and the petitioner could not be denied to the respondent No.1 in any manner. Thus the condition that the amount of Rs. 1,38,320/- with interest, should be deposited by the Govt. of Sikkim or by the petitioner, and then only would his past services be counted while computing the terminal benefits by the petitioner in letter dated 13th November, 2003 cannot be validated under the terms of the policy adopted by the petitioner itself. Nor was any such condition informed to the respondent no. 1 at the time of his absorption.

21. Even if on account of no plea on behalf of petitioner, it is entitled to recover the pro-rata contribution of the pension payable to the respondent No.1 on account of services



rendered by him with respondent No.2 on the ground that the office memorandum of 9th October, 1986 does not pertain to Autonomous Statutory Corporations. The petitioner may be entitled to claim the amount from the respondent No.2, but it cannot deny the full pension of combined service to the employee i.e respondent No.1 in the facts and circumstances. The resolution No.1381 item No.29 also does not contemplate that the absorbed employee in the autonomous statutory corporation will not be entitled for the full pension unless the pro-rata contribution is given by the previous employer to the autonomous statutory Corporation. In the circumstances, on any of the grounds raised by the petitioner, combined service pension to the respondent No.1 i.e for the period of service rendered with respondent No.2 and period of service rendered with petitioner cannot be denied."

23. In view of the above, we set aside the impugned order passed by the learned Tribunal and dispose of these petitions by directing the Government of NCT of Delhi to release the pensionary benefits of the petitioner within a period of eight weeks from today. The petitioner shall also be paid interest at the rate of 6% per annum for the delayed payments. The Government of NCT of Delhi shall further pay the costs of Rs. 25,000 to the petitioner.

24. The petitions, along with the pending application, are disposed of with the above directions.

NAVIN CHAWLA, J

MADHU JAIN, J

AUGUST 7, 2025/rv/DG