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

\+ W.P.(C) 8626/2021

ASHOK KUMAR .....Petitioner

Through: Mr. Nitin Singh and Mr. Shashank Shekhar, Advs.

versus

UNION OF INDIA .....Respondent

Through: Mr. Vikrant N. Goyal, Sr. PC with Ms. Nishu, Mr. Aditya Shukla and Ms. Shivani Yadav, Advs. for UOI.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

% 16.01.2025

C. HARI SHANKAR, J.

1. The petitioner instituted OA 1325/2021 before the Central Administrative Tribunal[1], contending that, he had worked with the respondent since 2001, even though he was substantively appointed only in 2009 and regularized in 2011. His claim before the Tribunal was for continuity of service from the year 2001.

2. The Tribunal has, even while recognizing the fact that, in certain circumstances, a claim for continuity of service could lie,

[1] "the Tribunal" hereinafter

noted that the petitioner did not have, with him, any appointment order or any other documents showing that he was a regular employee of the respondent from 2001. The petitioner candidly acknowledged, before the Tribunal, that he had no appointment order. The petitioner was only relying on certain identity cards which have been issued to him by the respondent. The photocopies of the said identity cards have also been placed on record. The Tribunal has held, in the impugned order, that issuance a mere identity card and entry passes do not confer right to an employee to claim continuity of service.

3. Following this reasoning, the Tribunal has dismissed the petitioner's OA against which the petitioner has approached this Court.

4. We have heard Mr. Nitin Singh, learned Counsel for the petitioner, and Mr. Vikrant N. Goyal, learned Senior Panel Counsel for the respondent, at some length.

5. We regret our inability to come to the aid of the petitioner. It is trite that, in order to seek a remedy, a right must exist[2]. The right must be predicated on cogent and acceptable material. There is admittedly no appointment order appointing the petitioner from 2001. There are no salary slips reflecting payment of salary to the petitioner. On this aspect, Mr. Nitin Singh's contention is that his client was always paid in cash. No proof of such payment is forthcoming. There

[2] *Ubi jus, ibi remedium*

are no attendance registers recording the petitioner's attendance, and it is not even the petitioner's case before the Tribunal that any such attendance registers were maintained. There is nothing to indicate that the petitioner was, even with some degree of regularity, serving the respondent from 2001 to 2009. The respondent's case is that the petitioner was only called intermittently for duty as and when occasion arose, for which he was regularly paid.

6. Clearly, in the face of these facts, no right enures in favour of the petitioner to seek continuity of service from 2001.

7. Mr. Nitin Singh has also sought to place reliance on the judgment of the Supreme Court in the case of ***Prem Singh v State of Uttar Pradesh***[3] and has specifically drawn attention to para 33 of the report in that case which read thus:

> "33. The question arises whether the imposition of rider that such service to be counted has to be rendered in-between two spells of temporary or temporary and permanent service is legal and proper. We find that once regularisation had been made on vacant posts, though the employee had not served prior to that on temporary basis, considering the nature of appointment, though it was not a regular appointment it was made on monthly salary and thereafter in the pay scale of work-charged establishment the efficiency bar was permitted to be crossed. It would be highly discriminatory and irrational because of the rider contained in the Note to Rule 3(8) of the 1961 Rules, not to count such service particularly, when it can be counted, in case such service is sandwiched between two temporary or in-between temporary and permanent services. There is no rhyme or reason not to count the service of work-charged period in case it has been rendered before regularisation. In our opinion, an impermissible classification has been made under Rule 3(8). It would be highly unjust,

[3] **(2019) 10 SCC 516**

> impermissible and irrational to deprive such employees benefit of the qualifying service. Service of work-charged period remains the same for all the employees, once it is to be counted for one class, it has to be counted for all to prevent discrimination. The classification cannot be done on the irrational basis and when respondents are themselves counting period spent in such service, it would be highly discriminatory not to count the service on the basis of flimsy classification. The rider put on that work-charged service should have preceded by temporary capacity is discriminatory and irrational and creates an impermissible classification."

8. ***Prem Singh,*** in our view, is clearly distinguishable. That was a case in which there was proof of appointment of the petitioner Prem Singh from 1965, albeit on work charge basis. The factors which have persuaded in the Supreme Court to grant relief to ***Prem Singh,*** as envisaged in para 33, clearly do not apply to the petitioner. The issue before the Supreme Court in that case was the constitutionality of Rule 3(8) of the U.P. Retirement Benefit Rules 1961, which reads as under:

> "3. In these rules, unless is anything repugnant in the subject or context—
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> *****
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> (8) "Qualifying service" means service which qualifies for pension in accordance with the provisions of Article 368 of the Civil Services Regulations:
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> Provided that continuous temporary or officiating service under the Government of Uttar Pradesh followed without interruption by confirmation in the same or any other post except—
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> (i) periods of temporary or officiating service in a non-pensionable establishment;

(ii) periods of service in a work-charged establishment; and

(iii) periods of service in a post paid from contingencies shall also count as qualifying service.

Note. – If service rendered in a non-pensionable establishment work-charged establishment or in a post paid from contingencies falls between two periods of temporary service in a pensionable establishment or between a period of temporary service and permanent service in a pensionable establishment, it will not constitute an interruption of service."

9. The Supreme Court has observed that the question before it was whether the Rule under challenge, in requiring the service, for the purpose of continuity, to be rendered between two spells of temporary or temporary and permanent services was legal or proper. The petitioner in that case had subsequently been regularised. The Supreme Court held, in these circumstances that, once the petitioner had been regularised on a vacant post, had worked prior to that on temporary basis and had also been permitted to cross the efficiency bar, Rule 3(8) resulted in an unreasonable restriction on the petitioner's service rights.

10. There is no similarity even between the issue in controversy in ***Prem Singh*** and the present case, much less on facts. ***Prem Singh*** cannot, therefore, come to the aid of the petitioner.

11. We, therefore, find no reason to dislodge the judgment of the Tribunal, which is accordingly affirmed.

12. The writ petition is dismissed.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

JANUARY 16, 2025*/aky*

Click here to check corrigendum, if any