

# Janardan Sharma vs Gncet Of Delhi, Through Its Chief ... on 12 January, 2023

**Author: V. Kameswar Rao**

**Bench: V. Kameswar Rao, Anoop Kumar Mendiratta**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 6998/2021

JANARDAN SHARMA

Through: Mr. Varun Mudgil, Mr. M  
Mudgal, Mr. Bhupender S  
Sanjay Baniwal, Mr. Rak  
Mr. Vijay Kumar and Mr.  
Mudgal, Advocates

versus

GNCT OF DELHI, THROUGH ITS CHIEF SECRETARY  
& ORS.

..... Responde  
Through: Ms. Vibha Mahajan Seth and  
Ms.Divyanshi Anand, Advocates.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

% 12.01.2023

1. The challenge in this petition is to an order dated July 7, 2021 passed in R.A. No.86/2020 filed in O.A. No.942/2020 and order dated September 25, 2020, passed in O.A. No.942/2020 passed by Central Administrative Tribunal ('Tribunal', in short), whereby the Tribunal has rejected the Original Application as well as Review Application filed by the petitioner.

2. The claim of the petitioner in the O.A. No.942/2020 was with the following prayers:

"a. To consider the Applicant's service of 28 years in the Post of Part-Time Vocational Banking Teacher as regular one as per the decision of Hon'ble Supreme Court in, Secretary, State of Karnataka & Ors. v. Uma Devi 2006 (4) SCC 1 and Applicants' 28 years of service shall be considered as a qualifying service for the purpose of receiving Pension and other benefits; and/or b. To give post retirement/superannuation benefits like Pension, Health Card Facility, Bonus, etc. to the Applicant along with all monetary benefits, with consequential reliefs; and c. To award cost of the litigation to the Applicant."

3. In substance, the claim of the petitioner before the Tribunal was to consider the period of 28 years put in by him as a part-time Vocational Teacher as a qualifying service for the purpose of pension

and other post- retirement benefits.

4. Suffice to state, the petitioner was engaged as a part-time Teacher and continued to work as such till he attained the age of superannuation on March 26, 2020. It is a conceded fact that the petitioner who was not granted the benefits of gratuity had approached this Court by way of Writ Petition being W.P. (C) 11154/2019, seeking payment of gratuity, which was allowed and the petitioner was granted gratuity.

5. It is also a conceded position that petitioner along with other similarly placed teachers had approached the Tribunal seeking regularisation of their services in O.A.No.1025/96. The Original Application was dismissed on August 2, 2000. Concedingly, the said judgment has not been challenged by the petitioner or other similarly placed persons. Therefore, the claim of the petitioner with regard to regularisation of his services has attained finality.

6. If that be so the petitioner cannot be granted pension and post- retirement benefits because he was not a regular employee. This we say so, in view of the provisions in the Pension Rules, which contemplates that the rules shall be applicable only to the Civilian Government Servants, who are appointed substantively to civil services and posts connected therewith. It is also stated that, the Rules cannot be made applicable to persons who were engaged on casual and daily wage employment, and also to persons paid from contingencies. There is no dispute that the petitioner was being paid from the contingencies.

7. The plea of Mr. Varun Mudgil, learned counsel for the petitioner is by relying upon the judgment of the Supreme Court in the case of Prem Singh vs. State of Uttar Pradesh & Ors., (2019) 10 SCC 516. We perused the said judgment. The said judgment is primarily with regard to work-charged employee and the period put in by the work-charged employee. The issue of regularisation was also raised and decided by the Supreme Court wherein, it was held that the employees who have worked in work-charged establishment, putting in 30-40 years of service and their appointment not being against any particular project, their services ought to have been regularised. The said judgment is clearly distinguishable on facts.

8. It is a fact that the petitioner has not challenged the judgment of the Tribunal, whereby, the claim of the petitioner along with others for regularisation of service was rejected. In the absence of the petitioner not holding the post of Teacher on substantive basis, he cannot be treated as a regular Teacher working under the Directorate.

9. No doubt, the petitioner has worked for 28 years as part-time Vocational Teacher, which otherwise would have qualified for the pension and other post-retirement benefits, but the fact remains that, in the absence of any challenge to the judgment rejecting the claim of regularisation, it must be held that the petitioner was not holding a substantive position as a Teacher. In the absence of the said status, the Pension Rules shall not be applicable and the petitioner shall not be entitled to count the period of 28 years of engagement as a qualifying period for the purpose of pension.

10. We are in agreement with the conclusion reached by the Tribunal. The Tribunal while rejecting the Original Application, has held in paragraph 7 as under:

".....

7. The applicant, in fact made an effort to get his services regularized by filing OA 1025/1996. The very basis for filing that OA was that unless the services are regularized, he may not get the pension and other benefits. Once the OA was dismissed and the order passed therein has become final, there is no way that the applicant can get the pensionary benefits.

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11. In view of above discussion, we do not see any merit in the present petition. The petition stands dismissed.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

JANUARY 12, 2023/R