



2024:DHC:8614-DB



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

+ W.P.(C) 15522/2024 and CM APPLs. 65173-74/2024

GOVT OF NCT OF DELHI AND ANRPetitioner

Through: Mrs. Avnish Ahlawat, Standing
Counsel with Mr. Nitesh Kumar Singh, Ms.
Laavanya Kaushik, Ms. Aliza Alam and Mr.
Mohnish Sehrawat, Advocates

versus

ANANG PAL SINGHRespondent

Through: Respondent in person

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT (ORAL)

% **07.11.2024**

C.HARI SHANKAR, J.

1. The respondent retired from the services of the petitioner on 31 July 2022. Immediately upon his retirement, the petitioner was released his pension, gratuity and commutation of pension.

2. Aggrieved by the fact that he has not been paid the leave encashment and CGEGI¹, the respondent petitioned the Central Administrative Tribunal² by way of OA 1585/2023.

3. During the pendency of the OA, the leave encashment and

¹ Central Government Employees' Group Insurance, cited, in the impugned judgement, as "CGEIS"

² "the Tribunal", hereinafter



CGEGI were released on 19 December 2023.

4. In these circumstances, the respondent restricted his claim before the Tribunal to interest for the period of delay in releasing leave encashment and CGEGI.

5. In as much as one of the grounds, which was urged by the petitioner before the Tribunal was that there was no provision under which interest could be paid for delay in releasing leave encashment, the respondent placed reliance on the judgment of the Supreme Court in *S.K. Dua v State of Haryana*³, in which the Supreme Court held that even if there was no statutory basis for grant of interest on delayed release of retiral dues, the employee could always seek interest before a writ Court, in para 14 of the report:

“14. In the circumstances, *prima facie*, we are of the view that the grievance voiced by the appellant appears to be well founded that he would be entitled to interest on such benefits. If there are statutory rules occupying the field, the appellant could claim payment of interest relying on such rules. If there are administrative instructions, guidelines or norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. *But even in absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of “bounty” is, in our opinion, well founded and needs no authority in support thereof.* In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition *in limine* even without issuing notice to the respondents.”

(Emphasis supplied)

6. The main contention of the petitioner, as the respondent before the Tribunal, which has been echoed by Ms. Avnish Ahlawat, learned

³ (2008) 3 SCC 44



Standing Counsel, before this Court, is that there were certain amounts due from the respondent to the petitioner in respect of which the petitioner was in continuous communication with the respondent, seeking details from the respondent so as to finalize accounts, with which the respondent was not forthcoming. The contention of the petitioner is, therefore, that even if there was delay in release of the leave encashment and CGEGI, the respondent himself was responsible for the delay for not being forthcoming with the details which the petitioner had sought so as to finalize accounts and close the matter.

7. This contention has not been accepted by the Tribunal. The Tribunal has held that even if there were any amounts due from the respondent, that could not constitute a basis for delaying payment of leave encashment and CGEGI. Apropos leave encashment, the Tribunal has placed reliance on Rule 39(3) of the Central Civil Services (Leave) Rules, 1972, which reads as under :

“The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him. On conclusion of the proceedings, he will become eligible to the amount so withheld after adjustment of Government dues, if any.”

8. In view of the aforesaid and following the judgment of the Supreme Court in *S.K. Dua*, the Tribunal has directed the petitioner to pay interest on the leave encashment and CGEGI, for the delay in disbursal thereof, at GPF rates.



9. Paras 5.1 to 5.4 and 6 of the impugned judgment of the Tribunal may be reproduced thus:

“5.1. It is admittedly clear that the respondents have delayed the payment of leave encashment and CGEIS for the period of one and a half year. The leave encashment is like a private property akin to pension and gratuity. The Hon’ble Apex Court in *State of Jharkhand & Ors. v Jitendra Kumar Srivastava and Anr*⁴. in Civil Appeal No. 6770 of 2013 decided on 14.08.2013 held that:

“7. It is an accepted position that gratuity and pension are not the bounties. An employee earns these benefits by dint of his long, continuous, faithful and un-blemished service. Conceptually it is so lucidly described in *D.S. Nakara and Ors. v Union of India*⁵ by Justice D.A. Desai, who spoke for the Bench, in his inimitable style, in the following words:

“The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service?

What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

The antiquated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in *Deokinandan Prasad v State of Bihar and Ors.*⁶ wherein this Court authoritatively ruled that pension

⁴ (2013) 12 SCC 210

⁵ (1983) 1 SCC 305

⁶ (1971) 2 SCC 330



is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon any one's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in *State of Punjab and Anr. v Iqbal Singh*⁷.”

5.2. The ratio of the above judgment of the Hon'ble Apex Court (*Srivastava case*), it can be safely said that leave encashment and CGEIS benefits are like private property. These benefits cannot be withheld without following due procedure sanctioned by statutes or statutory provision. Provision for withhold leave encashment have clearly been mentioned in the Rule 39 (3) of CCS Leave Rules 1972, which reads as follows:

“The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him. On conclusion of the proceedings, he will become eligible to the amount so withheld after adjustment of Government dues, if any.”

5.3. In the instant case, the respondents have not adhered to statutory provision under Rule 39 (3) as mentioned above. There is no specific order at the time of the retirement or thereafter withholding leave encashment invoking such a clause. In view of this, the administrative action on the part of the respondents withholding the leave encashment is without any statutory basis.

5.4. The contention by the learned counsel for the respondents that there was some outstanding amount of advance pending recovery from the applicant have been effectively countered by the learned counsel for the applicant as mentioned in the two paragraphs from his rejoinder quoted above. The respondents

⁷ (1976) II LLJ 337 (SC)



ultimately released the leave encashment and CGEIS without resorting to any recovery the alleged outstanding advance. It is clear that no such outstanding amount was pending against the applicant. Even if there was any outstanding amount pending, the respondents should have issued to a formal recovery order giving opportunity to the applicant for payment of such outstanding amount or recovery from the applicant.

6. In view of the above, the present OA is allowed. Applying the ratio of judgment of the Hon'ble Apex Court in S.K. Dua (supra) case and the respondents are directed to pay interest as applicable @ GPF rate to the applicant for the period of delay from the date of retirement till the date of payment of such amounts. This shall be carried out within a period of eight weeks' from the date of receipt of certified copy of this order."

10. Aggrieved by the aforesaid decision, the GNCTD has approached this Court by way of the present writ petition.

11. We have heard Mrs. Avnish Ahlawat, learned Standing Counsel for the petitioner at length.

12. Having heard the learned counsel for the petitioner and having perused the record, we find no reason to interfere with the judgment of the Tribunal.

13. Mrs. Ahlawat has reiterated, before this Court, the contention which was advanced before the Tribunal, which was that there were certain amounts due from the respondent against advances which were availed by him for utilization in the office, and that it was only because the respondent was not forthcoming with the details on the basis of which the said amounts could be settled, that a decision was taken to disburse leave encashment only after the amounts were settled.



14. She emphasises the fact that the respondent had received all other retiral benefits except leave encashment and CGEGI.

15. We are unable to accept the ground urged by Mrs. Avnish Ahlawat as a justification for delay in disbursal of leave encashment and CGEGI to the respondent.

16. Apropos leave encashment, the only provision under which leave encashment can be withheld, in whole or in part, is contained in Rule 39(3) of the CCS (Leave) Rules. The said sub-Rule applies *only where there are disciplinary proceedings or criminal proceedings pending against the officer on the date of his retirement*. In such a situation, the competent authority is entitled to withhold leave encashment in whole or in part if in his view there is possibility of some money becoming recoverable from the employee concerned *on conclusion of the proceedings against the officer*.

17. In the present case, indisputably, there were no disciplinary or criminal proceedings pending against the respondent on the date of his retirement. Nor was he under suspension.

18. We are in entire agreement with the Tribunal that, in these circumstances, the disbursal of leave encashment and CGEGI could not have been delayed, merely on the ground that according to the petitioner, certain amounts were due from the respondent and that the respondent was not forthcoming with the requisite details, on the basis of which accounts could be settled.



19. There was, therefore, clear unjustified delay in release of the leave encashment and CGEGI to the respondent.

20. Interest is a natural and legal accretion on principal, and its entitlement flows from the principle of restitution. The Supreme Court has held in *S.K. Dua* that, even if there is no statutory basis for grant of interest on delayed payment of retiral benefits, such interest can be granted by writ petition under Article 226 of the Constitution of India. Inasmuch as the Tribunal was exercising the jurisdiction which otherwise is exercised by a writ court, following the decision of the Seven Judge Bench of the Supreme Court in *L. Chandra Kumar v UOI*⁸, we are of the opinion that the Tribunal was within its jurisdiction in directing payment of interest on the leave encashment and CGEIS for the delay in disbursal thereof.

21. We do not feel that any case for issuance of notice is made out.

22. The writ petition is accordingly dismissed *in limine*.

23. The petitioner is granted four weeks' time to comply with the orders passed by the Tribunal.

C.HARI SHANKAR, J

DR. SUDHIR KUMAR JAIN, J

NOVEMBER 7, 2024/yg

⁸ (1995) 1 SCC 400