

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

+ **W.P. (C.) No. 2480/2010 & C.M. No.4948/2010**

% **Date of Decision: 19.04.2010**

DELHI TRANSPORT CORPORATION PETITIONER
Through Mrs. Avnish Ahlawat, Advocate

Versus

M.P. GUPTA RESPONDENT
Through Nemo.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

MOOL CHAND GARG, J.

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1. This writ petition has been filed by the petitioner, Delhi Transport Corporation, against the order passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'the Tribunal') whereby the Original Application bearing No.1712/2009 filed under Section 19 of the Administrative Tribunals Act, 1985 has been allowed by the Tribunal. The Tribunal set aside the order passed by the petitioner in having withheld the gratuity, provident fund (share of both the parties, i.e., the respondent as well as the Government), leave salary arrears arising out of the 6th Central Pay Commission report and salary of suspension.

2. The case of the petitioner as projected before the Tribunal and discussed by the Tribunal in its order is as follows:

3. The allegation that the applicant had come across disproportionate wealth had surfaced during the year 2002. Chief Vigilance Officer had interrogated him. An FIR had been lodged and it is claimed that a case had been registered. However, the applicant submits that in effect all such proceedings are deemed as having come to be closed since he had been advised on 28.09.2006 that departmental disciplinary proceedings against him were contemplated. By the above order dated 28.09.2006, he had been placed under suspension, of course, two days before his superannuation date. The order referred to the circumstances in which the suspension was made. It had been stated that the Directorate of Vigilance, GNCTD vide their letter dated 08.09.2006 had forwarded RDA papers for initiation of departmental proceedings against the applicant for possession of assets disproportionate to his known source of income and non-declaring of property assets to the Department. It had also been alleged that he was deliberately evading the charge sheet and was on unauthorized absence. The applicant submits that although a charge sheet had been issued to him, on 19.09.2006, thereafter no steps had been taken. He was permitted to go on retirement.

4. According to him, he was a person who had not opted for pension and the legal position would have been that after the date of retirement, no disciplinary proceedings could have been continued against him. It is claimed that he has not formally advised about the alleged criminal cases or the FIR and it could well be stated that no criminal proceedings are pending against him. According to counsel Mr. Mittal, the Vigilance Department had withdrawn themselves from the scene and transferred over the files to the Corporation as, according to them, only departmental proceedings were warranted. Thus the argument is that since the employee has practically severed his connections

with the Department and had been permitted to go on retirement, he is not under the administrative control of the Corporation and the disciplinary proceedings have also lost relevance. In such circumstances, the charge sheet and suspension order issued to the applicant are now unauthorized and irregular. He states that the contributions made towards the provident fund have been reimbursed to him. So also the arrears of pay arising out of the pay revision have been paid. But the employers contribution to provident fund, gratuity, leave salary, and other related dues are still being detained without justification. The disciplinary proceedings against an employee cannot continue in respect of a person situated like the applicant, who is undisputedly not on the rolls of the DTC, especially in view of the judgment of the Delhi High Court in CW 5562/2003. Counsel had invited our attention to Paragraph 15 of the judgment, which could be extracted hereinbelow:

“There is a more serious and fundamental reason for concluding that the impugned orders cannot be sustained in law. The Supreme Court in its judgment reported as *State Bank of India Vs. A.M. Gupta & Ors.*, 1997 (8) SCC 60 held that where the employers, are public and statutory Corporations (like the DTC which is undoubtedly one), they cannot be permitted to proceed in the garb of disciplinary proceedings against employees who have ceased to be in the employment, and where service rules do not provide for continuation of such action after superannuation. Similarly, in a later judgment reported in *Chandru Singh & Ors. Vs. State of Rajasthan & Anr.* 2003 (6) SCC 545, the Court noticed another judgment namely, *High Court of Punjab & Haryana Vs. Ishwar Chand Jain*; 1999 (4) SCC 579. The Court held that a departmental proceeding can continue so long the employee is in service. It was held that in the event disciplinary proceeding is kept pending by the employer, the employee cannot be made to retire, there must be specific provisions in the pension rules enabling the withholding of a whole or part of the pension and confirmation of such proceedings, after retirement.”

Practically, Mr. Bhasin does not dispute the legal position but submits that the operative portion of the judgment, which requires disbursement of the dues, will not be attracted in the present case since the applicant is situated at a different position, namely, that criminal proceedings are pending against him. In case the applicant is convicted by the criminal court, he may forfeit the employers contribution of Provident Fund and also is likely to suffer loss of gratuity that might be otherwise payable to him. Other advantages claimed also, according to the counsel, dependent on the outcome of the criminal proceedings.

3. However, the Tribunal has not accepted the contentions of the petitioner and has observed as follows:

5. However, we find it difficult to accept the contention, as raised by Mr. Bhasin. The order dated 28.09.2006 gives an impression that the Vigilance Department had relegated to the Corporation right to proceed against the employee in respect of the lapses that had been noted against him. A mere registration of an FIR is insufficient to lead to a presumption that a criminal case is pending against person concerned. Of course, when disciplinary proceedings were initiated and the charge sheet had been issued, till the conclusion of the proceedings there would have been justification for withholding the payment of retirement benefits, but in plain terms the respondents are disabled from continuing the disciplinary proceedings as the applicant is no more under the disciplinary authority of the respondents. The charge sheet and suspension practically has become orders of no consequence.

6. It is evident that there were serious allegations against the applicant and he had been in possession of cash amounting to millions plus real estate in the form of building and lands, perhaps disproportionate to the known source of his income. But it is also a fact

that there was a failure on the part of the respondents to pin down him to the allegations at the appropriate time. Now, it is too late for them to contend that nevertheless the service benefits could be withheld. Therefore, we direct that the balance amounts of the employers contribution in the Provident Fund, leave salary arrears, and any other such benefits are to be given over to the applicant expeditiously. The gratuity payable to him also cannot be withheld since it could not be stated that he is, as of now, convicted of moral turpitude nor he has caused loss or damage to the employers property. The retention of amounts is, therefore, not authorized.

4. Accordingly, the Tribunal held that:

“7. The benefits, as the case may be, payable under the Payments of Gratuity Act, or the Scheme framed by the employer also should be paid with interest @ 6% per annum. We direct that such payments are to be made on or before 31.12.2009.”

5. We have heard the learned counsel for the petitioner. Mrs. Avnish Ahlawat was unable to tell us as to how the petitioner is entitled to withheld the gratuity/other dues of the respondent. Merely on registration of FIR in which challan has not yet been filed by the police and as the petitioner, who stands retired, has not proceeded departmentally against the respondent, no such action of withholding can be taken by the petitioner.

6. In these circumstances, it cannot be said that either the respondent is guilty of conviction of moral turpitude or is guilty of causing loss or damage to the employers' property. There is also nothing on record to prove that respondent has acted negligently qua

the interest of the petitioner. Thus, there is no reason as to how the dues payable to the respondent can be withheld.

7. For the foregoing reasons, we do not find any illegality or irregularity in the order of the Tribunal which would entail any interference by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India.

8. The writ petition is without any merit and it is, therefore, dismissed with no order as to costs.

9. The pending applications, if any, shall also stand disposed of.

MOOL CHAND GARG, J.

APRIL 19, 2010

'anb'

ANIL KUMAR, J.