

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

% Judgment delivered on: 24.04.2014

+ W.P.(C) 337/2014

ASHOK KUMAR AHLUWALIA PETITIONER

VERSUS

**THE CHAIMAN & MANAGING DIRECTOR
NATIONAL FERTILIZERS LIMITED RESPONDENT**

ADVOCATES WHO APPEARED IN THIS CASE:

For the Petitioner : Ms. Anju Bhattacharya, Advocate

For the Respondent: Mr. Ghanshyam Joshi, Advocate

CORAM :-

HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. By virtue of this writ petition, two reliefs are sought. First, that a mandamus be issued to the respondent to release the amount withheld on account of leave encashment and gratuity payable to the petitioner. Second, a writ of certiorari be issued to quash the letter dated 17.12.2013 whereby, the retirement dues of the petitioner have been withheld.

2. The said reliefs have been sought in the background of the following broad facts :-

2.1 On 30.05.1975 the petitioner joined the National Fertilizer Limited (NFL) as a Field Demonstrator. Evidently, on 03.06.1998, Central Bureau of Investigation (CBI) filed a charge-sheet qua the petitioner and other officials with regard to the allegations of infraction of law. The board

allegation is that supplies were made to one AAR KAY Enterprises Ltd., without accepting advance.

2.2 On the very same aspect, a departmental enquiry was initiated against the petitioner, in June, 2004.

2.3 The petitioner was exonerated of all charges levelled against him in the departmental proceedings, as the charges framed, in those proceedings, could not be proved. Consequently, by an order dated 04.05.2006, the competent authority, decided to drop the charges levelled against the petitioner.

2.4 The petitioner, thereafter, made a representation; (albeit after nearly seven years) on 28.08.2013, for release of his gratuity and leave encashment dues as he was to retire on 29.11.2013. Apparently there was no response to this representation. Resultantly, upon superannuation, the petitioner made yet another representation to the respondent for release of his dues. This representation was made on 02.12.2013.

2.5 NFL, finally, replied to the pleas made by the petitioner vide a communication dated 17.12.2013. By this communication NFL indicated to the petitioner that, since criminal proceedings against him were pending, settlement of dues payable towards gratuity and leave encashment, would be made, only on completion of the criminal proceedings.

3. It is in this background that the petitioner approached this court by way of the captioned writ petition.

4. Notice in this writ petition was issued on 17.01.2014. After issuance of notice, a counter affidavit has been filed on behalf of the respondent.

5. Ms. Bhattacharya, who appears for the petitioner has contended that the petitioner, having been exonerated of all charges in the departmental proceedings, the dues payable to the petitioner towards leave encashment and gratuity, cannot be withheld. She submits that, there is no provision under the extant rules governing the retired employees of NFL which empowers NFL to withhold dues payable towards gratuity and leave encashment pending conclusion of criminal proceedings.

6. Mr. Joshi, learned counsel for the respondent, on the other hand, referred me to Rule 35A of the NFL Employees (Conduct, Discipline and Appeal) Rules. Based on Rule 35A, it was contended by Mr. Joshi that the expression 'judicial proceedings', adverted to, in the said rule, would cover criminal proceedings, and hence, the petitioner would not be entitled to release of dues towards gratuity, at this stage.

6.1 In so far as release of dues towards leave encashment is concerned, Mr. Joshi relies upon the instructions issued by the Personnel Department of NFL which are contained in letter dated 10.09.1996.

6.2 Notably, in so far as the dates and events extracted hereinabove are concerned, these are not disputed, by Mr. Joshi.

7. Therefore, all that I am required to do is construe the true meaning and intent of the provisions of Rule 35A and the letter dated 10.09.1996. It would be trite to state that true meaning and intent of a provision is best discernible by its plain language unless it is clothed in ambiguity. Rule 35A, in my opinion clearly confines the right of NFL to withhold payment of gratuity in order to recover whole or part of any pecuniary loss caused to NFL if, the delinquent employee is found, in a disciplinary proceeding or judicial proceeding, to have been guilty of offences / misconduct, as

mentioned in sub-section (6) of section 4 of the Payment of Gratuity Act, 1972 or to have caused pecuniary loss to the NFL by misconduct or negligence, during his service including service rendered on deputation or on re-employment after retirement.

7.1 For the sake of convenience, the said rule is extracted herein below in entirety.

“..35A. Withholding of Gratuity during the pendency of disciplinary proceedings

During the pendency of disciplinary proceedings, the disciplinary authority may withhold payment of gratuity, for ordering the recovery from gratuity of the whole or part of any pecuniary loss caused to the Company if the employee is found in a disciplinary proceeding or judicial proceeding to have been guilty of offences / misconduct as mentioned in sub-section (6) of section 4 of the Payment of Gratuity Act, 1972 or to have caused pecuniary loss to the Company by misconduct or negligence, during his service including service rendered on deputation or on re-employment after retirement. However, the provisions of Section 7(3) and 7(3-A) of the Payment of Gratuity Act, 1972 should be kept in view in the event of the delayed payment, in case the employee is exonerated..”

7.2 A Reading of the Rule clearly brings to fore the fact that there is no power vested in NFL to firstly, withhold dues payable towards leave encashment. Secondly, the power to withhold gratuity, to recover wholly or partly pecuniary loss caused to NFL, is confined to a finding returned either in the disciplinary proceeding or in a judicial proceeding in relation to offences / misconduct referred to in Section 4(6) of the Payment of Gratuity Act, 1972 (in short PGA). Gratuity, can also be withheld to recover pecuniary loss caused to NFL due to misconduct or negligence of the

delinquent employee. The question then is : what is the meaning to be ascribed to the expression 'judicial proceeding' in the context of Rule 35A. The setting of an expression is important, as the meaning is contextual. The expression 'judicial proceeding', by itself, bereft of setting, would clearly include even a criminal proceeding but, when read in the context of the fact that it is preceded by the expression "disciplinary proceeding" and, followed by, the words, "guilty of offences / misconduct as mentioned in sub-section (6) of Section 4 of the Payment of Gratuity Act, 1972 or to have caused pecuniary loss to the company misconduct or negligence", it would bring within its ambit a proceeding other than criminal proceedings.

7.3 It may be useful to bear in mind the provisions of Section 4(6) of the PGA. The said provisions get triggered only in a case which results in termination of an employee. In this case, the petitioner, retired from service on 29.11.2013, after he was fully exonerated on 04.05.2006. Therefore, having regard to the fact that criminal proceedings do not fall within the purview of Rule 35A, the argument advanced on behalf of the respondent to withhold gratuity, cannot be accepted.

7.4 As regards reliance on instruction dated 10.09.1996 is concerned, it clearly indicates that it is applicable during the pendency of disciplinary proceedings to provision for a possible loss / damage caused, as may be determined, in such proceedings. As indicated above, the disciplinary proceedings have already come to an end; in which, the petitioner has been fully exonerated.

7.5 This view broadly finds a resonance in the judgment of the Supreme Court in the case of *State of Jharkhand and Ors. Vs. Jitendra Kumar Srivastava and Anr.*, AIR 2013 SCC 3383.

8. In these circumstances, the respondent is directed to release the dues payable to the petitioner qua leave encashment and gratuity with simple interest at the rate of 8% p.a. as expeditiously as possible, though not later than eight weeks from today.

9. With the aforesaid observations in place, the captioned petition is disposed of.

RAJIV SHAKDHER, J

APRIL 24, 2014

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