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

Judgment reserved on: September 24, 2015
Judgment delivered on: October 05, 2015

\+   **W.P.(C) 6675/2015 & CM No.12175/2015**

HARISH C. RAI

..... Petitioner

Through   Mr.Ankur Chhibber, Adv.

versus

GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY & ORS

..... Respondents

Through   Mr.Mukul Talwar, Sr. Adv. with Ms.Anita Sahani and Mr.Vipin Singh, Advocates

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

V.KAMESWAR RAO, J

The present petition has been filed by the petitioner seeking the following reliefs:

> *"a) issue a writ of certiorari for quashing the order dated 30.6.2015 whereby the respondents have withheld the leave encashment and gratuity of the petitioner and issue a writ of mandamus directing the respondents to release the leave encashment and gratuity of the petitioner along with interest.*
>
> *b) Issue a writ of certiorari to quash the show cause notice dated 19.6.2015 issued by the respondents."*

2.   As is clear from the reliefs prayed for, the respondents have withheld

the leave encashment and gratuity of the petitioner on the date, he superannuated from service. The petitioner at the relevant point of time was working as Controller of Examinations with the respondent Nos.1 to 3.

3. It is the case of the petitioner in the writ petition that the withholding of the leave encashment and gratuity was because of the pendency of three vigilance cases against him, being RC 46(A)/2009, 47(A) 2009 and RC 722009(E)0061, which aspect is clear from the impugned order dated June 30, 2015. According to the learned counsel for the petitioner, insofar as RC 722009(E)0061 is concerned, the petitioner has been discharged by the Trial Court at the time of framing of charge. No appeal was filed against the said discharge order by the CBI. Only one appeal has been filed by CBI against the discharge of Sh. Om Dalal. Insofar as RC 46(A)/2009 is concerned, the charge-sheet in the said case was issued in February, 2014 and the Enquiry Officer has submitted the report in January, 2015 to the disciplinary authority. The petitioner has come to know that the Enquiry Officer has exonerated the petitioner and has held that the charge has not been made out against the petitioner. Despite the report having been submitted in January, 2015, the same has not been put up before the Board of Management for approval. It was also averred by the petitioner that the report placed before the Board of Management on July 09, 2015 has been accepted by the Board of Management. Similarly, in RC 47(A) 2009 the charge-sheet was issued in February, 2014 and the report was submitted in October, 2014 by the Enquiry

Officer exonerating the petitioner. Despite the report having been submitted and the Board of Management having assembled on November 07, 2014 and February 23, 2015 the same was not placed before the Board of Management with mala-fide intentions to harass the petitioner.

4. It was the case of the petitioner that he has come to know that the report placed before the Board of Management on July 09, 2015 has been accepted by the Board. According to the petitioner, in view of the aforesaid he is entitled to leave encashment and gratuity.

5. On the show cause notice dated June 19, 2015, it was the case of the petitioner that the same was issued with vindictive attitude. The subject matter of the show cause notice was enquired into by appointing a Committee which submitted its report on September 23, 2012, wherein the Committee has absolved the petitioner of the charge. The report of the Committee dated September 23, 2012 was placed before the Board of Management on November 29, 2012, when in the said meeting the Members of the Board of Management came to the conclusion that the petitioner be absolved and exonerated of the charge levelled against him. Despite the acceptance of the said report by the Competent Authority, the issuance of show cause notice in respect of the same charge amounts to double jeopardy.

6. The respondent No.1 has filed the counter-affidavit wherein it was averred that on the date when the petitioner had retired i.e. June 30, 2015, the following cases/departmental proceedings were pending against him:-

1	CBI Case No. RC 56(A)/2009 (Chennai)- against Sh. H. C. Rai, Director, Research Project Monitoring Cell, IP the then Advisor E&T, AICTE on deputation basis), where CBI sought prosecution Sanction of Sh. H.C. Rai in the matter	The prosecution sanction was granted. The case is pending with the CBI and as per the communications received from CBI, ACB, Chennai, the case is under trial before the Hon'ble Principle Special Judge for CBI cases, Chennai and is in pre-charge stage. The matter was posted for next hearing on 02-07-2015 and is in pre charge state.
2	CBI Case No. RC-0722009 (E) 0061 regarding Echelon Institute of Technology, Faridabad- against Sh. R.A. Yadav, Chairman, AICTE & (others including Sh. H.C. Rai, Director, Research Project Monitoring Cell, IP the then Advisor E&T, AICTE on deputation basis.)	The CVC vide their letter dated 03-06-2015 had advised University to proceed for disciplinary proceedings as advised by commission OM dated 10-08-2011. As per the directions of BOM, taken by Agenda item 60.6 the University contacted the office of CVC and other agencies for collection of relevant documents for initiating disciplinary proceedings against Sh. H.C. Rai. A one man inquiry committee consisting of Sh. G.K. Marwah , IAS (Retd.) has been constituted to look into the matter and submit its report on the basis of relevant material as available.
3	RC 46(A)/2009 against Shri Harish C Rai (A-I) former Advisor (E&T), AICTE (HQrs) New Delhi and others –investigated by the Central Bureau of Investigation.	After investigation, the CBI advised that there are sufficient materials for initiating a regular departmental action for a major penalty against the petitioner. Consequently, after obtaining the 1st stage advise from the CVC a departmental inquiry was conducted in which the petitioner was exonerated. The matter was placed before the Disciplinary authority (Board of Management), in its 61st meeting, who have accepted the report of the Inquiry officer and have directed the University to seek 2nd Stage advise.
4	CBI Report in RC MAI 2009 A 0047 related to VKK college of Engineering, Chennai received from Head of Branch SPE: CBI:ACB:Chennai, CBI Anti Corruption Branch, Shastri Bhawan, Chennai – 6 for Regular Departmental Actions for Major Penalty Proceedings against Sh. H.C. Rai (A-I). the then Advisor, AICTE, New Delhi on Deputation.	After investigation, the CBI advised that there are sufficient material for initiating a regular departmental action for a major penalty against the petitioner. Consequently, after obtaining the 1st stage advise from the CVC a departmental inquiry was conducted in which the petitioner was exonerated. The matter was placed before the Disciplinary authority (Board of Management), in its 61st meeting, who have accepted the report of the

		Inquiry officer and have directed the University to seek 2nd Stage advise.
5	Report received from SP, ACB, CBI, Nagpur related to KDK College of Engineering, Nagpur –regarding Regular Department Action against Sh. Harish C. Rai.	A one man inquiry committee consisting of Sh. G.K. Marwah, IAS (Retd.) has been constituted to look into the matter and submit its report on the basis of material as available.
6	To report for information regarding recovery of Rs. 50,000/- from Prof. H.C. Rai, former Controller of Examination (Planning) In compliance of the order no. F.No. 10 1.257 1B II Admn.(s)/2006/468 9 dated 18.05.2015 of the AICTE in pursuance of the directions of the Hon'ble Supreme Court of India in the matter of Parshvanath Charitable trust and Ors. Vs. ACITE and Ors reported as **(2013) 3 SCC 385.**	Rs. 50000/- has been deducted from the salary of Prof. Harish Rai, which shall be sent to AICTE for onward submission to Supreme Court Legal Services Committee.
7	Matter related to imposition of penalty on Sh. Dinesh Nautiyal, Assistant and his subsequent appeal and the approval of the Appellate Authority.	As per the decision of the BOM taken in its 60th meeting the legal opinion has been obtained and a show cause notice has been issued to Prof. H.C. Rai.

7. The respondent No.1 justified the withholding of the leave encashment on the basis of Rule 39 (3) of the CCS (Leave) Rules, which empowers the Competent Authority to withhold the whole or part of the cash equivalent of earned leave if the employee retires from service on attaining the age of retirement while disciplinary or criminal proceedings are pending against him, if in view of such authority there is a possibility of some money being recoverable from the employee on conclusion of the proceedings against him. They also rely upon Rule 9 and Rule 69 of CCS (Pension) Rules, which empowers the Competent Authority to withhold in full or in part gratuity if any departmental or judicial proceedings are pending.

8. As far as show cause notice dated June 19, 2015 is concerned, they would justify the show cause notice, as on the culmination of the proceedings against one Mr.Dinesh Nautiyal a penalty of withholding of increment without cumulative effect for a period of one year was imposed on him on a charge related to tampering the OMR Sheet. The matter was placed before the Board of Management in its 60th Meeting held on February 23, 2015 which while approving the action relating to Mr.Dinesh Nautiyal directed that considering the fact that the petitioner's son's answer book was changed, as accepted by Mr.Dinesh Nautiyal, and the petitioner was the beneficiary of the wrong doing, the University must seek legal opinion for initiating action against the beneficiary and in these circumstances the show cause notice dated June 19, 2015 was issued to the petitioner on the ground that after the Board's decision in its 53rd meeting exonerating the petitioner, in the sense that the statement of Sh. Dinesh Nautiyal which was not relied upon earlier has not only been accepted as true but the concerned employee has also been punished.

9. The petitioner in his rejoinder, more specifically to the cases referred to by the respondent No.1 in the counter-affidavit, has stated as under:-

> *"(i) CBI Case No. RC56A/2009 –In the present case the petitioner has already has been exonerated by the Hon'ble High Court of Chennai in Criminal Revision No. 1510/2013 vide its judgment dated 29.7.2015.*
>
> *(ii) CBI Case No. RC0722009(E)0061- In the said case the*

petitioner has been discharged by the Court of Shri Talwant Singh, Special Judge, CBI New Delhi, vide its judgment dated 30.08.2011 and no appeal has been filed by the CBI against the discharge order of the petitioner. Only one Criminal Revision was filed being Criminal Revision No. 196/2012 against Shri Om Dalal which is pending in the Hon'ble High Court of Delhi. Thus, admittedly as of today nothing is pending against the petitioner in respect to the said case in any criminal court and nor is there any charge sheet issued to the petitioner in respect to the said case by the respondents.

(iii) RC No. 46(A)/2009 – In respect to the said case the respondents had conducted an inquiry and the said inquiry exonerated the petitioner of all the charges and the said exoneration report has been accepted by the Board of Management in its meeting dated 9.7.2015 being Agenda Item No. 61.17.

(iv) RC No. MA12009A0047 – In respect to the said case the respondents had conducted an inquiry and the said inquiry exonerated the petitioner of all the charges and the said exoneration report has been accepted by the Board of Management in its meeting dated 9.7.2015 being Agenda Item No. 61.18.

(v) Report received from SP, ACB, CBI, Nagpur – In respect to the said case no charge sheet has been issued to the petitioner till date and the petitioner has superannuated on 30.06.2015. So therefore nothing as of today is pending against the petitioner in the said case.

(vi) Recovery of Rs. 50,000/- A sum of Rs. 50,000/- has

been deducted from the Gratuity of the petitioner in respect to an order passed by the Hon'ble Supreme Court. Though the petitioner was not responsible during the said period however, the same has no impact on stoppage of the gratuity to be paid to the petitioner.

(vii) The said issue has already been decided by the Inquiry which had exonerated the petitioner and the same having been accepted by the Board of Management, the respondents cannot against re-agitate the same issue."

10. During the course of the submissions, Mr.Ankur Chhibber, learned counsel for the petitioner has reiterated the submissions made by the petitioner in the pleadings apart from contending that there is no case pending against the petitioner for the respondents to withhold the gratuity and leave encashment. On the show cause notice dated June 19, 2015, he would reiterate the submission made in the writ petition that having been exonerated by the Committee, whose report has been accepted by the Board of Management the show cause notice need to be set aside.

11. It is also the submission of Mr.Chhibber that as far as the reliance placed by the respondent on Rule 9 and Rule 69(1)(c) of the Pension Rules is concerned, the same is misplaced and the proceedings having culminated, the gratuity need to be paid to the petitioner.

12. That apart, in terms of Rule 39 (3) of the CCS (Leave) Rules, which also contemplates, the said rule can be invoked if the disciplinary and

criminal proceedings are pending if in view of such authority there is a possibility of some money being recoverable from the employee on conclusion of the proceedings against him, then only the employer can withhold the leave encashment. According to him, the charge does not relate to a possibility of recovery of money from the petitioner. Even on that ground the respondents could not have withheld the leave encashment. He would rely upon the judgment of this Court in the case of ***Union of India vs. R. Vasudevan, W.P.(C) 1424/2012 decided on March 14, 2012*** to contend that this Court has held that Rule 69(1)(c) would apply only where departmental or judicial proceedings are pending on the date of retirement. It would not apply where departmental or judicial proceedings are initiated after retirement as the gratuity becomes payable immediately on retirement. That apart, he also relies upon the judgment of this Court in the case of ***GNCTD of Delhi & Anr. vs. K. Srivatsan, W.P.(C) 2495/2012, decided on April 30, 2012*** that departmental proceedings used in Rule 69(1)(c) is only when a charge-sheet has been issued and the deeming provision under Rule 9(6) is relevant only for the purpose of Rule 9.

13. On the other hand, Mr.Mukul Talwar, learned Senior Counsel for the respondents would submit that the writ petition was filed by the petitioner on July 13, 2015 when admittedly atleast one criminal proceeding being CC No.1/2012 was pending before the Principal Special Judge for CBI Cases, Chennai. The judgment of the Madras High Court dated July 29, 2015

discharging the petitioner was filed by the petitioner with the rejoinder was a later development, after his retirement. The non-disclosure of the pendency of the criminal case before the Principal Special Judge for CBI Cases, Chennai is a deliberate suppression by the petitioner only to seek interim relief from this Court. The present proceedings being under Article 226 of the Constitution of India, it is liable to be dismissed on the ground of suppression. He would rely upon the following judgments in support of his contentions:-

> *"i.(2002) 100 DLT 391*
> *ii. Rajabhai v. Vasudev reported as AIR (1964) SC 345*
> *iii. Har Narain v. Badri Das reported as AIR (1963) SC 1558*
> *iv. Asiatic Engineering Co. v. Achhru Ram reported as AIR (1951) Allahabad 746 (Full Bench)*
> *v. The king v. Williams reported as (1914) 1 KB 608*
> *vi. Rex v. Kensington Income Tax Commissioners reported as (1917) 1 KB 486*
> *vii. Udai Chand v. Shankar Lal reported as AIR (1978) SC 765*
> *viii. S.P. Chengalvaraya Naidu (Dead) by LRs. v. Jagananath (Dead) by LRs and Ors reported as AIR (1994) SC 853*
> *ix K D Sharma Vs Steel Authority of India reported as (2008) 12 SCC 481*
> *x. Amar Singh vs. UOI & Ors. reported as (2011) 7 SCC 69*
> *xi. Business enterprises (P) Ltd. Vs. State of Bihar & Ors. reported as (2004) 7 SCC 166 SJS*
> *xii Arunima Baruah Vs. UOI & Ors. reported as (2007) 6 SCC 120"*

14. He would also state that the present petition is premature inasmuch as on the date of filing of writ petition when criminal proceeding being CC No.1/2012 was pending before the Principal Special Judge for CBI Cases,

Chennai and the petitioner however based his entitlement to gratuity and leave encashment on the ground that subsequently by an order dated July 29, 2015, the High Court of Judicature at Madras had quashed the criminal proceedings and discharged the petitioner, therefore, on the date when the writ petition was filed, the petition was premature and the same needs to be dismissed on that ground. That apart, it is his submission that in terms of Rule 39(3) of CCS (Leave) Rules and Rule 9 & 69 of CCS (Pension) Rules the leave encashment and gratuity have been rightly withheld. He would also state that the details of the proceedings given by the respondent No.1 in its counter-affidavit can be divided into four categories, which are as under:-

> *"i. Criminal Proceedings: There were two criminal proceedings initiated against the Petitioner as detailed in S. Nos. 1 & 2 of the Table in the Counter Affidavits (one of which was admittedly pending on the date of the filing of the Writ Petition);*
>
> *ii. Departmental proceedings in which the final report has been submitted:- The proceedings detailed at S.No. 3 & 4 of the above said table relate to complaints made against the Petitioner and investigated by the CBI who had advised there was sufficient material for initiating a regular departmental action for imposing a major penalty against the Petitioner. The first stage advice was received from the Central Vigilance Commission in the following terms. "The reference made by the university has been examined. Taking into account the facts of the case, the commission would advise initiation of*

major penalty proceedings against Sh. H C Rai (A_1) Former advisor AICTE in agreement with disciplinary Authority". Consequently, a departmental enquiry was conducted but in the enquiry report, the Petitioner has been exonerated. In terms of Section 17 of Central Vigilance Commission Act, the Answering Respondent sought the second stage advice from the CVC vide its letter dated 24th June, 2015. In response thereto, the Answering Respondent received a letter dated 25-06-2015 from the CVC directing it to place the matter before the Disciplinary Authority before seeking the second stage advice. In compliance thereto the matter was placed before the Disciplinary Authority (Board of Management) in its 61st meeting who have accepted the enquiry reports and resolved that the second stage advice of the CVC may be obtained. In pursuance of the resolution of the BOM, the Answering Respondent sought the second stage advice from, the CVC vide its letter dated 18-09-2015.

Exercising its powers under Section 17 of the CVC Act, the CVC may disagree with the report of the Enquiry Officer while giving its second stage advice and in that case, the matter will have to be reconsidered by the Disciplinary Authority. The departmental proceedings are therefore still pending against the Petitioner and the gratuity and leave encashment has been rightly withheld by the Respondent under Rule read with Rule 69 of the Pension Rules.

iii. <u>Departmental proceedings initiated on 30.06.2015</u>:

At Sl. Nos. 2 and 5 of the above said table, the Respondent has given details of two enquiries that were constituted on 30-06-2015 regarding two separate complaints received by the CBI *against the Petitioner and others while the Petitioner was posted as Adviser (E&T), AICTE on deputation. The departmental proceedings are still pending. It is the case of the Respondent that even though no charge sheet has been served upon the Petitioner by the Enquiry Committee, the gratuity can still be withheld under Rule 69 of the Pension Rules, since the deeming clause appearing in Rule 9 does not apply to Rule 69 reliance is placed on the judgment of the Division Bench in K. Srivatsan's at para 9. Reliance is also placed upon a judgment of a Coordinate Bench of this Hon'ble Court in K.R. Subbanna's case wherein it has been held that the conjoint reading of Rules 9 and 69 leave no room for doubt that an enquiry can be initiated even post retirement (paras 6 and 7). It is noteworthy that this question was not dealt with by the Division Bench in R. Vasudevan's case relied upon by the Petitioner. In any case, the Petitioner has not sought any relief against the initiation of the departmental proceedings detailed at S. No. 2 and 5 of the above said table.*

iv. <u>Fine imposed by the Hon'ble Supreme Court and the show case notice issued to the petitioner</u>: At S. Nos. 6 and 7 of the above said table, the Respondent has detailed the circumstances in which the Hon'ble Supreme Court had imposed a fine upon the officers of the AICTE responsible for the Acts in question. After an enquiry Rs. 50,000/- was recovered by the AICTE from the salary of the Petitioner in compliance thereto after holding an enquiry.

At S. No. 7 of the above said table, the Respondent has detailed the circumstances in which a fresh Show Cause

Notice was issued to the Petitioner regarding a compliant against him that while working as Controller of Examinations in the Respondent university one of his subordinate tampered with the OMR sheets of the Petitioner's son who had appeared in the Common Entrance Test for the B.Tech Course, in order to cause a benefit to him. Though in a separate enquiry conducted, the Petitioner was exonerated, the subordinate officer was found guilty and punished. At the time of imposing the penalty upon the Subordinate Officer, the Disciplinary Authority directed the legal opinion be obtained, in pursuance of which a Show Cause Notice was issued to the Petitioner."

15. Suffice to state, he would justify the impugned action.

16. Insofar as show cause notice dated June 19, 2015 is concerned, it is his submission that in response to the show cause notice dated June 19, 2015 the petitioner has filed the reply and the same is likely to be put up before the Board of Management, the disciplinary authority. On that basis he seeks the dismissal of the writ petition.

17. Having heard the learned counsel for the parties and perused the submissions filed, the only issue needs to be decided in this writ petition is, whether on the date of superannuation of the petitioner any disciplinary proceeding/criminal proceeding were pending against the petitioner, which would result in withholding of leave encashment and gratuity in terms of Rule 39(3) of the CCS (Leave) Rules and Rules 9 and 69 of the Pension Rules.

18. Insofar as case at serial No.1 is concerned, even though criminal proceeding were pending on the date of retirement of the petitioner but the High Court at Chennai in Criminal Revision No.1510/2013 vide its judgment dated July 29, 2015 has discharged the petitioner as on date. That be so, there is no criminal case pending against the petitioner. Similarly insofar as case at serial No.2 above is concerned, the petitioner stands discharged by the Criminal Court vide its judgment dated August 30, 2011. No appeal has been filed by the CBI against the discharge of the petitioner.

19. Insofar as cases at serial Nos.3 & 4 above are concerned, I am unable to accept the submission of Mr.Ankur Chhibber that the report of the Enquiry Officer wherein he has exonerated the petitioner stands accepted by the Board of Management, the disciplinary authority, for the simple reason a reading of the relevant agenda item and the decision taken by the Board of Management, which I reproduce as under, does not reveal so:-

"Agenda Item No.61.17	*Submission of the Report of Inquiry Authority constituted as per the decision of the Board of Management in its 55th meeting held on 24.09.2013 pertaining to CBI case No. RC 46(A)/2009 to enquire into the charges framed against Prof. H.C. Rai, the then Advisor (AICTE), on deputation, & Controller of Examination (P), GGS Indraprastha University, who has now retired on 30.06.2015 after attaining the age of superannuation.*

The Board accepted the recommendations of the Inquiry Authority and directed the University to send the report of the Inquiry Authority to Central Vigilance Commission for 2nd stage advice.

As per the report submitted by the Inquiry Authority, the findings as given in the Inquiry report are reproduced below:-

"Findings:
With the analysis of the available documents and evidence adduced during the inquiry in view, the charges are held not proved."

Agenda Item No.61.18	*Submission of the Report of Inquiry Authority constituted as per the decision of the Board of Management in its 55th meeting held on 24.09.2013 pertaining to CBI case No. RC 47(A)/2009 to enquire into the charges framed against Prof. H.C. Rai, the then Advisor (AICTE), on deputation, & Controller of Examination (P), GGS Indraprastha University, who has now retired on 30.06.2015 after attaining the age of superannuation.*

The Board accepted the recommendations of the Inquiry Authority and directed the University to send the report of the Inquiry Authority to Central Vigilance Commission for 2nd stage advice.

As per the report submitted by the Inquiry Authority, the findings as given in the Inquiry report are reproduced below:-

"Findings:
With the analysis of the available documents and evidence adduced during the inquiry in view, the charge is held not proved."

20. It must be read to mean that the Board has accepted the recommendations of the enquiry officer in the manner in which it has been given but at the same time the Board has qualified its decision with a direction to the University to send the report of the enquiry officer to Central Vigilance Commission for second stage advice. There is no dispute that under the instructions issued by the Government of India, the second stage advice needs to be taken. The same is in consonance with Section 17 of the CVC Act. As far as the submission of Mr.Chhibber that the Board of Management was required to take the second stage advice of the Central Vigilance Commission before accepting the enquiry report is concerned, suffice to state that the acceptance of the enquiry report is to mean, acceptance of the report for further action thereon i.e. taking second stage advice of the Central Vigilance Commission. In any case, when under the instructions the advice of the Central Vigilance Commission is to be taken and such an intention has been expressed by the Board of Management and when no communication has been sent to the petitioner exonerating him of the charges, this plea of Mr.Chhibber needs to be rejected. Till such time the decision of the Board is communicated to the petitioner, the decision cannot be said to be final insofar as the petitioner is concerned. But one submission made by Mr.Chhibber with regard to Rule 39(3) of CCS (Leave) Rules is appealing inasmuch as according to him the said Rule contemplates withholding of leave encashment only if in the opinion of the employer some money is recoverable from the

employee on the conclusion of the proceedings. Whether the charges framed against the petitioner are such, which may entail recovery of money, at least the impugned order dated June 30, 2015, doesn't reflect so. It appears, this aspect has not been looked into by the respondent Nos.1 to 3 from this perspective. Since I have concluded that the cases at serial Nos.3 & 4 above were legally said to be pending on the date of retirement and also as on date, the leave encashment can be withheld, if the charges are such, some money is recoverable. The counter-affidavit also does not advert to the aspect, that charges framed are such, which may entail recovery of money. I may note here, the counsel for the University in his written arguments, has stated that the departmental enquiries at serial No. 3 and 4 can result in a fine which have to be recovered from the terminal benefits and the invocation of Rule 39(3) is valid. In the facts, I direct the Competent Authority keeping in view the subject matter of the charges qua the cases at serial Nos.3 & 4 to take a decision on the release of leave encashment, keeping in view the mandate of Rule 39(3) of the CCS (Leave) Rules. The consideration must be effected within four weeks from the date of receipt of order.

21. Insofar as cases at serial Nos.5 & 7 are concerned, it is noted that there are neither criminal proceedings pending nor any departmental charge-sheets have been issued to the petitioner. The appointment of Mr.G.K. Marwah is only to conduct a Fact Finding Enquiry, which cannot be said to be an enquiry under the Conduct Rules which may entail action under Rules 9 & 69 of the

CCS (Pension) Rules and Rule 39(3) of the CCS (Leave) Rules.

22. Insofar as the case at serial No.6 is concerned, at the most the cost imposed by the Supreme Court can be recovered by the respondent No.1 and nothing more. The same cannot be a ground to withhold the gratuity. In any case as I have held that in view of the cases at serial Nos.3 & 4 above which were pending on the date of superannuation of the petitioner because of which the gratuity was not payable, if ultimately the Competent Authority is of the view that pursuant to the advice given by the Central Vigilance Commission that the charges have not been proved against the petitioner and the enquiry report is accepted, the case at serial No.6 above would not come in the way or cannot be construed as disciplinary proceedings pending against the petitioner for withholding the gratuity.

23. On the issue of show cause notice dated June 19, 2015 to which the petitioner has already submitted his reply and the stand of the respondent that the same is likely to be put up before the Board of Management i.e. the disciplinary authority, I say nothing further except that the Board of Management shall take into consideration all the pleas taken by the petitioner in his reply for arriving at a considered decision.

24. In view of the above discussion, suffice to state the petitioner is not entitled to the release of the gratuity. The release of leave encashment would be in terms of the decision to be taken by the Competent Authority in view of the directions given in para No. 20 above.

25. The writ petition is accordingly disposed of.

26. No costs.

<u>CM No.12175 /2015</u>

In view of the order passed in the writ petition, the present application is dismissed as infructuous.

V. KAMESWAR RAO
(JUDGE)

OCTOBER 05, 2015/km