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

+ W.P.(C) 9326/2015

% ***Date of Judgment : 29th September 2015***

GOVT. OF NCT OF DELHI & OTHERS ..... Petitioners
Through : Sanjay Ghose, ASC, GNCTD.

Versus

BHAGWAT SWAROOP ..... Respondent
Through : None.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

<u>G.S.SISTANI, J. (ORAL)</u>

<u>C.M. No. 21600/2015</u>

1. Exemption allowed subject to just exceptions.

2. Application stands disposed of.

<u>W.P.(C) 9326/2015</u>

3. This writ petition is directed against the order dated 27.08.2014 passed by the learned Central Administrative Tribunal (for short 'the Tribunal'), Principal Bench, New Delhi in OA No. 2342/2011, whereby the Tribunal allowed the said OA filed by the respondent herein and issued a direction to the petitioners to pay simple interest at the rate of 12% for the delayed payment of leave encashment w.e.f. 01.03.2010 till the date of payment.

4. The facts of the present case, in brief, are that the respondent retired from the post of Principal of Government Boys Senior Secondary School, Mohan Garden, New Delhi on 28.02.10. However, the

amount of leave encashment was not paid to him despite his request and the same was ultimately disbursed on 07.06.2011 after lapse of about 15 months. He, therefore, filed OA No. 2342/2011 before the Central Administrative Tribunal, Principal Bench. The learned Tribunal directed the petitioners to pay simple interest at the rate of 12% per annum for the delayed payment of leave encashment w.e.f 01.03.2010 till the date of payment. Aggrieved by the order of the learned Tribunal, the petitioners preferred a Writ Petition (civil) No. 5143/2012 before this court challenging the order of the Central Administrative Tribunal dated 04.11.2011. This court set aside the order of the Tribunal and restored the OA with directions for the learned Tribunal to go into the factual aspect of the matter as raised by the petitioners. On 27.08.14 the Central Administrative Tribunal passed an order wherein it upheld its earlier order. Aggrieved by the order of the Tribunal, the petitioners have filed this writ petition.

5. Mr. Sanjay Ghose, learned counsel for the petitioners submits that as per the rules, leave encashment is not a pensionary benefit, and therefore the respondent was not entitled to any interest. A further submission has been made by the learned counsel for the petitioner that the respondent was himself responsible for the delay.

6. Learned counsel for the petitioners further submits that there is no provision under the CCS (Leave) Rules, for payment of interest on the delayed payment of leave encashment, the same being a benefit granted under the leave rules and not a pensionary benefit.

7. The case of the respondent is that the respondent immediately after retirement made a request to the petitioners to grant him leave

encashment in terms of Rule 39(2) (a) of the CCS (Leave) Rules, 1972, yet the same was not paid and was withheld for about 15 months, and as such, he is entitled to get interest for the delay which has occurred in payment leave encashment.

8. We have heard learned counsel for the petitioners and considered the submissions and also carefully examined the order passed by the Central Administrative Tribunal. The case of the petitioners is that the interest on the leave encashment amount as demanded by respondent cannot be granted. The short issue that arises is whether any interest, at all, is payable on the delayed payment of the leave encashment amount to the respondent.

9. At the outset, before delving into the merits of the submissions made by the learned counsel, the relevant statutory provision requires to be noticed which reads as under:

Rule 39 (2) (a) of CCS (Leave) Rules, 1972 provides as under:

> *"(2) (a) Where a Government servant retires on attaining the normal age prescribed for retirement under the terms and conditions governing his service, the authority competent to grant leave shall, suo moto, issue an order granting cash equivalent of leave salary for both earned leave and half pay leave, if any, at the credit of the Government servant on the date of his retirement subject to a maximum of 300 days;"*

10. After perusing the aforesaid provision, it clearly shows that it casts a duty upon the authority competent to take steps of his own to ensure that cash equivalent to leave salary for both earned leave and half pay leave, if any, to the credit of the Government servant to the

maximum of 300 days is disbursed immediately after his retirement. Thus, the contention of the petitioner that the respondent was himself responsible for the delay does not hold good as the competent authority shall *suo moto* issue an order granting cash equivalent of leave salary.

11. This court in the case of ***Government of NCT of Delhi v. S.K. Srivastava WP(C) No. 1186/2012*** which was decided on 29.02.2012, had decided that interest would be payable on delayed payment of the leave encashment amount where the delay is on account of no fault on the part of the employee.

In this case it was observed as under:

> *"4. The learned counsel for the petitioner states that all other dues had been paid to the respondent along with interest at the GPF rate, but since there was no provision in the leave rules for grant of interest, that is why the present petition has been filed.* ***We do not agree with the submission made by the learned counsel for the petitioner that because there are no rules providing for grant of interest, the respondent would not be entitled to the same. There is also no bar to the grant of interest whenever the leave encashment amount is delayed for no fault on the part of the employee.*** *The government has retained the money from the year 2000 till 2011, which, in any event, was due to the respondent in the year 2000 itself, particularly in view of the fact that even the conditions specified in Rule 39(3) had not been complied with. Consequently, grant of interest on the said amount at the GPF rate by the Tribunal cannot be faulted. In any event, we may also point out that between 2000 and 2011, because of inflation, the real value of the amount that was due to the respondent had substantially eroded, the payment of interest at the GPF rate would only be a kind of balm applied to the injury*

suffered by the respondent. It may, in fact, actually turn out that the petitioner would not be paying anything more in real terms than what it was liable to pay in the year 2000."

12. The Hon'ble Supreme Court in the case of ***Vijay L. Mehrotra v. State of U.P. & Ors. (2001) 9 SCC 687***, had granted interest on, *inter alia*, the delayed payment of the leave encashment amount at the rate of 18% per annum. The relevant part of the judgement is as under :

    "3. In case of an employee retiring after having rendered service, it is expected that all the payment of the retiral benefits should be paid on the date of retirement or soon thereafter if for some unforeseen circumstances the payments could not be made on the date of retirement."

13. In the instant case, there is no reason or justification for not making the payment for months together. In our opinion, there are no laches or negligence on the part of the respondent. Since in the aforementioned case, the Supreme Court had directed that interest be paid at as high a rate as 18% per annum on both gratuity as well as the leave encashment amount, we see no reason to interfere with the directions of the Tribunal granting interest at the rate of 12% per annum for the delayed payment of leave encashment.
14. In view of above, we find no infirmity in the Order dated 27.08.2014 passed by the Tribunal. The petitioners, in our view, have not made out a case for judicial review. Resultantly, the writ petition is without any merit and the same is dismissed.

C.M. No. 21599/2015 (Stay)

15. In view of the order passed in the writ petition, the application is rendered infructous.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 29, 2015
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