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

+ W.P.(C) 4341/2016

H.K. SHARMA

..... Petitioner

Through: Mr. Virendra Rawat, Adv.

versus

GOVT. OF NCT OF DELHI & ORS

..... Respondents

Through: Mr. N.S. Arora, Adv. with Ms. Sunita Mehra, DEO, GNCTD, Zone-17.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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21.07.2017

1. The present petition has been filed by the petitioner with the following prayers:

“ It is, therefore, most respectfully and humbly prayed that this Hon’le Court may be pleased to:

- a) Issue a writ of mandamus directing the respondents to release all the pensionary benefits alongwith all arrears forthwith with interest @10% P.A. till the date of payment to petitioner in accordance with law; and*
- b) Issue a writ of mandamus directing the respondents to release all terminal benefits, gratuity, leave encashment and other benefits available to petitioner to petitioner in accordance with law alongwith arrears forthwith with interest @10% P.A. till the date of payment to petitioner;*
- c) Pass such other and further order (s) as this Hon’ble Court may deem fit and proper in the circumstances of the case.”*

2. Mr. Virendra Rawat, learned counsel appearing for the petitioner

concedes that petitioner shall not be entitled to Pension and Gratuity, at this stage. He also concedes that petitioner is only entitled to provisional pension. The only issue according to him is the grant of Leave Encashment.

3. Learned counsel appearing for the respondents would vehemently argue that the petitioner is not entitled to leave encashment also in view of pendency of criminal proceedings.

4. I am unable to agree with the said submission of the learned counsel for the respondents for the simple reason that under Rule 39 (3) of the CCS (Leave Rules), 1972, which I reproduce hereunder, the leave encashment can be withheld only in the eventuality, the officer is under suspension or while disciplinary or criminal proceedings are pending against him and there is possibility of some money becoming recoverable from him on the conclusion of the proceedings against him. There is no denial to the fact that criminal proceedings which are pending against the petitioner are pursuant to the FIR No. 41/2015 registered against the petitioner under the Provisions of 506/509 of the IPC.

“39(3) 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. The statement of complainant Smt. Asha Rani, W/o Dharmender Kumar, R/o-E-1854A, Krishan Vihar, Delhi is to the following effect:

“I reside with my family at the aforesaid and I am a teacher in Shree Mahavir Vishwa Vidhiyapeth, A-6, Paschim Vihar. The principal of my college, who is also my chacha-father-in-law too used to talks to me in vulgar language and as a woman I feel shame and melancholy. He often gives me threatening too and says if I told anybody about his activities then she will face dire-consequences.”

6. Suffice to state that the allegations against the petitioner does not relate to any pecuniary loss having been caused to the respondents. I also note in its communication dated 18th January, 2011 the Ministry of Finance, Department of Revenue referred to clarification issued by DOP&T under Rule 39 (3) to the effect leave encashment, should be resorted to in those cases where there is likelihood of some money becoming due for instance where the proceedings are on account of embezzlement of government funds or loss of public money etc.

7. I also note the Division Bench of this Court in Para 13 of ***National Fertilizers Ltd. v. A.K. Maitra, LPA 792/2011 and LPA 793/2011*** decided on 21st December, 2011, has held as under:

“13. The CCS (CCA) Rules are concerned with relationship between the government as the employer and its servant/employee. The same are not intended to provide otherwise. Thus what has to be recoverable within the meaning of Rule 39(3) of the CCS (Leave) Rules supra has to be the loss occasioned by the employee to the employer. The said rule cannot be made applicable for recovery of other dues. The amount if any due under Section 50 of FERA cannot be said to be recoverable on account of relationship of employer or employee but is by way of penalty for contravention of provisions of FERA. Rather, Sections 57 &

70 of FERA also provide for mode of recovery of such penalty amounts. There is no provision for attachment in anticipation of penalty being levied. If it were to be accepted that Rule 39(3) supra can be invoked in the case of any government dues, then the government as employer would be entitled to withhold Leave Encashment in the event of pendency of any prosecution even if unrelatable to the employment, which the employee at the time of superannuation may be facing and which may also be punishable with fine or for that matter, any other government dues viz. electricity / water charges etc. even. The same cannot be the purport of the Rule 39(3) aforesaid.”

8. In view of above discussion, the petition is allowed to the extent that respondent shall release the leave encashment to the petitioner in accordance with the Rules which was due on 28th February, 2015 with interest @ 9% per annum computed from the date of retirement till the date of payment within six weeks from the receipt of the copy of the order.

The petition is disposed of.

V. KAMESWAR RAO, J

JULY 21, 2017/jg