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

\+ **W.P.(C) 11186/2017 & CM Nos.45757/2017 (for exemption), 45756/2017 (for stay)**

GOVT. OF NCT OF DELHI ..... Petitioner

Through: Mr.Saurabh Chadda, Advocate.

versus

SH. S. K. SHARMA ..... Respondent

Through

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE REKHA PALLI

O R D E R

% 15.12.2017

1. The petitioner/Directorate of Education, GNCTD is aggrieved by the order dated 20.09.2016, passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi in an Original Application filed by the respondent, praying *inter alia* for release of his regular pension along with other retiral benefits with interest at the rate of 18% p.a., w.e.f. the date of his superannuation i.e. 31.12.2011, till the date of actual payment.

2. The impugned order records that counsel for the GNCTD had stated before the Tribunal that during the pendency of the OA, the retiral benefits of the respondent had been released to him and his entire period of suspension had been treated as 'spent on duty', for all purposes and therefore, no further relief survived for adjudication. Thus, a prayer was made on behalf of the petitioner/GNCTD for dismissal of the OA, as infructuous.

3. However, learned counsel for the respondent herein (applicant before

the Tribunal) had stated that his client was entitled to payment of interest on the retiral benefits for the delayed period. The said submission was made on the ground that at the time of his superannuation on 31.12.2011, neither any disciplinary proceedings, nor any criminal proceedings had been initiated by the Competent Authority or were pending against the respondent and therefore, he was entitled to his entire retiral benefits on the very date of his retirement.

4. The submission made by the counsel for the respondent had weighed with the Tribunal and relying on the judgment of the Supreme Court in the case of ***Union of India vs. Jankiraman*** reported as ***JT 1991 (3) SCC 527***, the Tribunal held that since it was an admitted position that no charge-sheet in any criminal case or any disciplinary proceedings had been issued to the respondent on the date of his retirement, it could not be said that any criminal case or departmental proceedings were pending against him on the date of his retirement. As a result, the petitioner was held entitled to receive his retirement benefits w.e.f. the date of his retirement. In view of the above, the OA filed by the respondent was allowed and the petitioner/GNCTD was directed to pay him interest on the retiral benefits for the delayed period, at GPF rates within a period of 90 days from the date of passing of the order. Pertinently, the period of 90 days reckoned from 20.09.2016, would have expired on 19.12.2016, but it has taken a whole year for the petitioner/GNCTD to approach this Court to assail the impugned order.

5. The only ground taken by Mr.Chadda, learned counsel for the petitioner to assail the impugned judgment is that the Tribunal has failed to appreciate that Rule 68 of the CCS (Pension) Rules read with the

Government of India's decision dated 10.01.1983 states that interest can be allowed only on payment of gratuity. He submits that in such circumstances, the Tribunal could not have directed the petitioner/GNCTD to pay interest on the entire retiral dues.

6. We do not find any force in the aforesaid submission. It is a well settled law that whenever an amount is illegally withheld by a party, interest is payable thereon to the other side on the simple logic that the person entitled to receive the said amount has been wrongfully deprived thereof, to his detriment. In such circumstances, the party who wrongly withholds the money, must restitute the other party by paying interest on the principal sum due and payable (Refer: ***Prem Kumar vs. Indian Road Construction Company Ltd. & Anr.*** Reported as ***2007 (98) DRJ 546*** and ***Roshan Lal & Ors. vs. D.T.C.*** reported as ***140 (2007) DLT 49***).

7. There are several decisions of the Supreme Court on the aspect of evidence of delay in settlement of retiral benefits and in case of unreasonable delay, of directions to the employer to pay interest for the delayed payment. In the case of **Dr. Uma Agrawal vs. State of U.P. & Anr.** reported as ***(1999) 3 SCC 438***, the Apex court observed that "*grant of pension is not a bounty but a right of the government servant*" and that "*Delay in settlement of retiral benefits is frustrating and must be avoided at all costs*". The Court stated that "*The case before us is a clear example of department delay which is not excusable. The petitioner retired on 30.04.1993 and it was only after 12.2.1996 when an interim order was passed in this writ petition that the respondents woke up and started work by sending a special messenger to various places where the petitioner had worked. Such an exercise should have started two years before retirement*".

The Court went on to quantify and award an interest of Rs. 1 Lakh to the petitioner. Similarly, in the case of ***State of Kerala & Ors. vs. M. Padmanabhan Nair***, reported as ***(1985) 1 SCC 429***, the Supreme Court saddled the Government Of Kerala with the responsibility of paying interest @ 6% p.a. on the pension and gratuity due to the respondent by observing that "*a duty was cast on the Treasury Officer to grant to every retiring Government servant the last pay certificate which in this case had been delayed by the concerned officer for which neither any justification nor explanation had been given. The claim for interest was, therefore, rightly decreed in respondent's favor*".

8. In any case, merely because the Rules and Government of India's decision referred to by learned counsel for the petitioner as above, provide for payment of interest only on the gratuity, cannot be a ground to preclude the Tribunal or for that matter, this Court, to grant interest wherever an employee has been deprived of his rightful dues. Further, the existence of a specific rule providing for payment of interest on delayed payment of gratuity, cannot be interpreted to mean that no interest will be payable on the other retiral benefits, if not released on time.

9. For the aforesaid reasons, we find no merit in the present petition which is dismissed in *limine* along with the pending applications.

HIMA KOHLI, J

REKHA PALLI, J

DECEMBER 15, 2017/gm