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

\+ **LPA 930/2015**

<u>Date of Decision: 18.04.2017</u>

BHANWAR SINGH ..... Appellant

Through: Mr.Sarfaraz Khan with Mr. Rahman and Md.Khairul Hussain, Advs.

versus

UNION OF INDIA & ANR ..... Respondents

Through: Mr.Archana Gaur, Adv. for R-1.
Ms.Tamali Wad and Ms.Nidhi Jacob, Adv. for R-2.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT (ORAL)

<u>GITA MITTAL, ACTING CHIEF JUSTICE</u>

1. The appellant challenges the impugned judgment dated 7th August, 2015 passed in W.P.(C) No. 4127/2014 whereby challenge was made to the Pension Payment Order dated 16th June, 2014 issued by the respondent No.2 whereby his pension has been reduced.

2. It was contended that the case was of loss having civil consequences, arbitrary and not sustainable in the eyes of law. The appellant was working as Registrar with the National School of Drama (Respondent No.2) and retired on 31st July, 2013. At the

time of his retirement, only GPF was released to him while other dues were withhold on account of audit objection raised in his case which, *inter alia,* included the following :

(i) The regular grant of benefit under ACP scheme.
(ii) The regular appointment of the petitioner as Registrar in NSD.
(iii) Wrong fixation and drawl of pay by the petitioner; and
(iv) Grant of advance increment to the petitioner raised by the Office of Directorate General of Audit (Central Revenue Expenditure).

3. Though the respondent No. 2 has contested the audit objections, however, the respondent No. 1 did not agree with the challenge.

4. One day before the date of appellant's superannuation, he tendered the following undertaking to his employer:

> *"I, Bhanwar Singh, Registrar, National School of Drama, New Delhi, resident of Flat No. 20A MIG, Gyankhand-IV, Indrapuram, Ghaziabad, UP-201010, hereby undertake as under:*
> *In the audit report's paras for the financial year 2009-2012 some audit objections have been identified to be made from certain officers of the School including me.*
> *I hereby give an unconditional undertaking that in the event of a final decision for recoveries I shall be liable to refund the amount which would be worked out by the School in accordance with the Rules. I further give an undertaking that in the event of any default on my part to make the payment, the School would have the right to with-hold my pension."*

5. The appellant has raised a contention that pursuant to the order passed by the respondents, Pension Payment Order was

prepared on 31st July, 2013 but was not issued. Representations made by the appellant for release of pension asserting that he is in need of money for his medical treatment and that after recovery of an amount of Rs.8,28,490/- from the leave encashment and commutation of pension as pensionary benefits, which was provided to the petitioner in the month of August, 2013, the sum of Rs.9,57,000/- and Rs.4,46,867/- were released in favour of the appellant.

6. A reduced Pension Payment Order was also prepared on 16th June, 2014 and issued. Aggrieved by the reduction in the pensionary benefits which was released to the appellant, Writ Petition Civil No. 4127/2014 was filed in this Court.

7. In the response filed by respondent No. 2, it was stated that the nature of the objections raised by the audit as well as the appelalnt's disagreement with it and his explanation to the respondent was given. Apart from this amount some amount was claimed as interest against the motor car advance paid by the respondent No. 2 to the appellant before the writ court, respondent No. 2 had also objected to the submission on behalf of the appellant that the Pension Payment Order dated 31.07.2013 had been issued to him. The challenge is also premised on the statement that the respondent could not have recovered amount without issuance of appropriate show cause notice to him. The appellant has categorically stated that he was not responsible in any manner for the benefits given to him which was a subject matter of the suit objections. It is also submitted that the appellant had

retired and no recoveries could have been affected from him. Reliance was placed on several pronouncements of Supreme Court in support of his contention.

8. Apart from the specific allegations, the respondent No. 2 has submitted that the appellant had not approached the Court with clean hands and that he had abused his position as the Registrar and taken advantage of the same in order to get a copy of the Pension Payment Order. It is categorically stated that though prepared it was never issued or served upon the appellant and that the appellant had made a false statement in this regard that the Pension Payment Order stood issued justifying dismissal of the writ petition. It has been pointed out by Ms. Tamali Wad, learned counsel for respondent No. 2 that furthermore the appellant does not lay a challenge to the audit objection made by the Directorate General of Audit (Central Revenue of Expenditure).

9. Our attention is also drawn to the undertaking furnished by the appellant which may usefully be extracted hereinabove. The order of the Learned Single Judge is also challenged on the ground that no opportunity was granted to the appellant to explain his actions and that the writ petition is wholly incompetent. Reliance is placed on the pronouncement of the Supreme Court reported as AIR 2015 SC 696, ***State of Punjab and Others vs. Rafiq Masih (White Washer) etc.*** as well as judgment in Civil Appeal No. 5262/2008 ***Sushil Kumar Singhal vs. Pramukh Sachiv Irrigation Department and Others.*** It is contended that the appellant having retired no recoveries could have been affected from him.

Ms.Tamali Wad, learned counsel for the respondent No. 2 has also urged that respondent No. 2 seeks dismissal of the writ petition on the ground that undue advantage has been taken by the appellant of his position as managed to get a copy of the Pension Payment Order which was prepared by his employer. Learned counsel would submit that the writ petition is liable to be rejected on this ground alone.

10. On consideration of the matter in its totality, we find that there is no substantive challenge to the merit of the appellant's case in the writ petition. The writ petition does not challenge the correctness of the audit objection raised by the Director General of Audit (Central Revenue of Expenditure). Furthermore, as noted by the Learned Single Judge also the appellant having already given an unconditional and unequivocal undertaking cannot now seek the recovery of the amounts deducted from the leave encashment/commutation of pension.

11. As regards the ground of failure of the principle of natural justice is concerned, it is contended that the appellant positioned as the Registrar of the organization was himself corresponding with the Ministry on the objection raised by the office of the Director General of Audit and had full knowledge of the objections and the action taken thereon. The undertaking is stated to be voluntary and given by the appellant without any kind of force, pressure, undue influence and coercion. It is also to be noted that this undertaking was never retracted by the appellant and as per the undertaking, the appellant himself had authorized the recovery of any amount which

may be found due and payable when a calculation addressing the audit objection were effective. Therefore, there is substance in the submission on behalf of the respondent to the effect that no show cause notice was warranted in as much as the appellant himself had dealt with the authority which makes the objection and despite full knowledge thereof had accepted the validity thereof.

12. The finding of the Learned Single Judge to this very effect cannot be faulted on any legal tenable ground.

13. We are informed by Ms. Tamali Wad learned counsel for respondent No. 2 which position is confirmed by learned counsel for the appellant, that in terms of the impugned order dated 7th August, 2015, the appellant has been paid the amount due and admissible to him after deduction of the amount objected to by the audit.

14. The record shows that the appellant had deposited the cost of Rs.50,000/-, which was imposed upon him by the Learned Single Judge.

15. For all these reasons, we find no merit in this appeal and application which are hereby dismissed.

ACTING CHIEF JUSTICE

ANU MALHOTRA, J

APRIL 18, 2017

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