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

+ **W.P.(C) 1932/2017**

UNION OF INDIA & ANR

..... Petitioners

Through: **Mr.Jasmeet Singh, CGSC for UOI**

versus

B.C. KILAY

..... Respondent

Through: **Mr.Devi Krishan Sharma, Advocate**

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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16.04.2018

W.P.(C) 1932/2017

1. The petitioner No.1/UOI and petitioner No.2/National Informatics Centre, Department of Electronics & Information Technology (in short 'NIC') are aggrieved by the order dated 03.06.2016, passed by the Central Administrative Tribunal, allowing OA No.1420/2015, filed by the respondent, seeking directions to implement the office order dated 02.01.2013 with all consequential benefits and interest.

2. A glance on the admitted facts of the case is considered necessary. The respondent had joined the NIC as a Scientist/Engineer Gr. SD (Scientist-C) on 10.02.1984. On 18.03.2005, the respondent was found guilty for the offences punishable under Section 120-B r/w Sections 420,

467, 468 and 471 IPC and 13(2) r/w 13(1)(d) of the PC Act by the Special Judge, Delhi in RC Case No.2(A)/92/CC No.59/01. Vide an order on sentence dated 21.03.2005, the respondent was sentenced to undergo rigorous imprisonment ranging from 1 to 3 years for difference offences along with fine. Vide order dated 20.02.2006, in exercise of the powers conferred under Rule 19(i) of CCS (Classification, Control and Appeal) Rules, 1965, the President of India had removed the respondent from Government service with immediate effect.

3. Aggrieved by the said order, the respondent submitted two review petitions. The second review petition dated 07.12.2011, was considered by the Competent Authority. Vide office order dated 02.01.2013, the petitioners conveyed to the respondent that the Competent Authority had sanctioned him payment of cash equivalent of the leave salary of ₹2,99,938/- for 235 days of earned leave upto 20.02.2006, the date of his removal from service. Within two weeks reckoned from the date of issuance of the office order dated 02.01.2013, the petitioners issued another order dated 15.01.2013, cancelling the earlier order dated 02.01.2013 by stating that the respondent was ineligible for payment of earned leave encashment in terms of Rule 9(1) of CCS Leave Rules. Thereafter, an order dated 06.03.2013 was passed by the petitioners granting the respondent compassionate allowance and gratuity to the extent of 50% of pension and gratuity with immediate effect.

4. Aggrieved by the aforesaid cancellation order dated 15.01.2013, the respondent preferred OA No.1420/2015 before the Tribunal, which was allowed by the impugned order dated 03.06.2016, by holding that in exercise of '*Equity Jurisdiction*', the order dated 15.01.2013 ought to be quashed.

Resultantly, the petitioners were directed to release leave encashment in favour of the respondent in terms of the earlier order dated 02.01.2013, within a period of three months of production of a certified copy of the said order.

5. Aggrieved by the aforesaid decision, the petitioners have filed the present petition.

6. Mr.Jasmeet Singh, learned counsel for the petitioners submits that while passing the impugned order, the learned Tribunal failed to appreciate the provisions of Rule 9(i) of CCS (Leave Rules) in the correct perspective and erroneously applied Rule 39(6)(a)(i) of the CCS (Leave Rules). He states that Rule 9(i) of the CCS (Leave Rules) contemplates the effect of dismissal, removal or resignation on the leave to the credit of a Government Servant by providing that any claim ceases from the date he is dismissed, removed or resigns from service. It is stated that in the present case, the respondent was removed from service in terms of the order dated 20.02.2006. Learned counsel submits that the Tribunal failed to appreciate that only if the grant/non-grant of benefit is arbitrary or whimsical, should the court interfere and in the present case, the office order dated 02.01.2013 was issued due to oversight and was rectified by issuing the order dated 15.01.2013, which was passed in terms of the extant rules.

7. In support of the submission that equity cannot have a role to play when the Statute occupies the field, learned counsel for the petitioners relies on the judgment of the Supreme Court in the case of Union of India and Others Vs. Dhanwanti Devi and Others reported as (1996) 6 SCC 44. He has also cited the decision of the Supreme Court in the case of Videsh Sanchar Nigal Ltd. and Another Vs. Ajit Kumar Kar and Others reported as (2008)

11 SCC 591 to contend that a *bona fide* mistake does not confer any right on the party and the error can be corrected.

8. Per contra, learned counsel for the respondent submits that the fact position of the present case is covered by the Rule 39(6)(a)(i) of the CCS (Leave Rules) and once the order dated 02.01.2013 had been issued by the petitioners, they were not empowered to withhold the cash equivalent to the leave salary of the respondent on the strength of the subsequent order dated 15.01.2013, to which a challenge had been laid by the respondent before the Tribunal.

9. We have heard the learned counsel for the parties and given careful consideration to the respective submissions made by them in the light of the pleadings on the record. The dispute in the present case lies in a narrow compass. The Tribunal was required to examine the plea of the respondent for claiming implementation of the order dated 02.01.2013, in accordance with extant Rules. Rule 9(i) of CCS (Leave Rules) provides as follows:-

“9. Effect of dismissal, removal or resignation on leave at credit:

(1) Except as provided in Rule 39 and this rule, any claim to leave to the credit of a Government servant, who is dismissed or removed or who resigns from Government service, ceases from the date of such dismissal or removal or resignation.”

10. It is clear from a perusal of the aforesaid Rule that once a Government servant is dismissed/removed from service or tenders his resignation, he cannot lay any claim to the leave lying to his credit. In the instant case, vide order dated 20.02.2006, the Competent Authority had removed the respondent from service with immediate effect. In such circumstances, the

respondent could not have invoked the provisions of Rule 39(6)(a)(i) of the CCS (Leave Rules) which is reproduced herein below for ready reference:-

“39. (6)(a)(i) where the services of a Government servant are terminated by notice or by payment of pay and allowances in lieu of notice or otherwise in accordance with the terms and conditions of his appointment, he may be granted, suo motu, by the authority competent to grant leave, cash equivalent in respect of both earned leave and half pay leave at his credit on the date on which he ceases to be in service subject to a maximum of 300 days and the cash equivalent payable shall be the same as in sub-rule (2) of rule 39.”

11. It is apparent from the aforesaid Rule that the same can be invoked where the services of the Government servant are terminated by giving notice or by payment in lieu of notice period in terms of service conditions of his appointment. In the instant case, the services of the respondent were admittedly not terminated by giving a notice or by payment in lieu of the notice period. In such circumstances, the question of his being granted cash equivalent to his earned leave does not arise.

12. Learned counsel for the petitioners has rightly argued that once the Statute occupies the field, then equity cannot be invoked to grant relief which is contrary to the provisions of the Statute. In the present case, Rule 9 (i) of the CCS (Leave Rules) is applicable.

13. In view of the above discussion, the petitioners succeed. The impugned order dated 03.06.2016 cannot be sustained and is accordingly quashed and set aside.

14. The present petition is allowed while leaving the parties to bear their own costs.

CM No.8579/2017 (stay)

Dismissed as infructuous.

HIMA KOHLI, J.

PRATIBHA RANI, J.

APRIL 16, 2018

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