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

\+ W.P.(C) 8223/2018

EAST DELHI MUNICIPAL CORPORATION AND ANR.

..... Petitioners

Through: Mr. Kumar Rajesh Singh, Advocate.

versus

KARAN SINGH ..... Respondent

Through: None.

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

<u>O R D E R</u>

% **07.08.2018**

<u>CM APPL. 31497/2018 (exemption)</u>

Allowed, subject to all just exceptions.

<u>W.P.(C) 8223/2018 and CM APPL. 31496/2018 (stay)</u>

1. The petitioners/EDMC have challenged an order dated 17.7.2017, passed by the Central Administrative Tribunal, Principal Bench, Delhi, partly allowing O.A. No. 2196/2011 filed by the respondent, who had retired from the services in the MCD, on the post of Principal/Head Master on 31.12.2008 and directing the petitioners/EDMC to grant him interest on the delayed payment of all the retirement benefits including the gratuity, leave encashment, commutation, GPF etc., at the prevailing GPF rates and bank interest, i.e., @ 8% p.a. for the delayed payment.

2. It is an admitted position that the petitioners had released all the pending retiral dues in favour of the respondent, relating to gratuity, commutation, leave encashment and payment of suspended period salary, between 13.10.2009 to 08.1.2016, totalling to a sum of Rs.20,00,845/-, as reflected at Annexure-'A' of the petition.

3. When the respondent approached the Tribunal claiming interest on the delayed payment of his retiral dues @ 18% per annum, the said Original Application was resisted by the petitioners on the ground that the retiral dues had already been released on various dates and no interest was payable to the respondent for the reasons that his retiral dues were withheld for valid reasons i.e., the pendency of the disciplinary proceedings against him.

4. After examining the submissions made by learned counsels for the parties, the Tribunal arrived at a conclusion that merely because the petitioners had withheld the retiral dues of the respondent and subsequently released the payment to him on dropping the charges and regularising his suspension period from 13.5.2008 to 29.12.2008, would not be a ground to deny him interest on the delayed payment. Accordingly, the Tribunal has granted simple interest @ 8% p.a., on the delayed payment, to the respondent.

5. Mr. Kumar Rajesh Singh, learned counsel for the petitioners submits that the reason for withholding the retiral dues of the respondent was that he had been served with a charge sheet on the date when he was to superannuate i.e. on 31.12.2008. The said charge sheet came to be served on the respondent on 06.01.2009. Thereafter, inquiry proceedings were initiated and an Inquiry Officer submitted a report stating *inter alia* that the charges levelled against the respondent were not proved. As a result, the order dated

27.4.2015 was passed by the petitioners dropping the charges against the respondent. In all this duration of almost seven years, i.e., from 31.12.2008 to 27.4.2015, due to the pendency of the inquiry proceedings, only provisional pension was sanctioned in favour of the respondent, whereas his regular pension and other retiral dues were withheld.

6. Learned counsel for the petitioners further submits that the Tribunal failed to appreciate that the charges levelled against the respondent was with regard to financial irregularity while working on the post of Principal/Head Master, which was a grave misconduct and the Department having initiated disciplinary proceedings against him, the retiral dues of the respondent were rightly withheld, till the conclusion of the said proceedings.

7. We are not persuaded to accept the submission made by learned counsel for the petitioners that once charges against the respondent were dropped on 27.4.2015 and his retiral dues were released in his favour after regularising the period of his suspension, he could not be held entitled to claim any interest.

8. It is an undisputed position that the respondent had rendered services in the petitioners/EDMC for over 30 years and was therefore entitled to all his retiral benefits on his superannuating on 31.12.2008. However, on the very date of his retirement, a charge sheet was issued by the petitioner stating *inter alia* that the respondent had failed to utilise a sum of Rs.50,000/- towards maintenance of the school, where he was posted as a Principal/Head Master during the year, 2006-2007 and further, that he had failed to disburse a certain amount to the teachers for improving teachers aids under the Teaching Material Funds. We may note that the respondent was placed under suspension vide order dated 13.5.2008 and the said

suspension order was revoked only on the eve of his superannuating, i.e., on 29.12.2008. Aggrieved by the issuance of the charge sheet, the respondent had filed O.A. No. 2595/2013 before the Central Administrative Tribunal, which was disposed of vide order dated 26.8.2014, with directions issued to the Disciplinary Authority to take a final decision on the disciplinary inquiry conducted against the respondent and pass an appropriate order within 90 days. It is also not disputed that after conducting the Departmental Inquiry, the charges levelled against the respondent were not found proved. Consequently, vide order dated 27.4.2015, the Competent Authority ordered that the said charges be dropped.

9. In all this duration, spanning for over a period of six years and four months, the respondent remained deprived of his retiral dues. It is settled law that the retiral benefits cannot be treated as "Bounty" extended by an employer. Once it is established that the respondent was entitled to receive his retiral dues on his superannuation and the said amount was withheld by the petitioners on the ground that he was facing departmental proceedings, which were later on dropped, it has to be held that the respondent would be entitled to interest on the delayed payment to compensate him for depriving him of the use of the said amount.

10. On similar facts as noted in the instant case, in <u>S.K. Dua vs. State of Haryana & Ors.</u> reported as **(2008) 3 SCC 44**, the Supreme Court had observed as follows:-

> *"11. Having heard the learned counsel for the parties, in our opinion, the appeal deserves to be partly allowed. It is not in dispute by and between the parties that the appellant retired from service on June 30, 1998. It is also un-disputed that at the time of*

retirement from service, the appellant had completed more than three decades in Government Service. Obviously, therefore, he was entitled to retiral benefits in accordance with law. True it is that certain chargesheets/show cause notices were issued against him and the appellant was called upon to show cause why disciplinary proceedings should not be initiated against him. It is, however, the case of the appellant that all those actions had been taken at the instance of Mr. Quraishi against whom serious allegations of malpractices and mis-conduct had been levelled by the appellant which resulted in removal of Mr. Quraishi from the post of Secretary, Irrigation. The said Mr. Quraishi then became Principal Secretary to the Chief Minister. Immediately thereafter charge-sheets were issued to the appellant and proceedings were initiated against him. ***The fact remains that proceedings were finally dropped and all retiral benefits were extended to the appellant. But it also cannot be denied that those benefits were given to the appellant after four years. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well founded that he would be entitled to interest on such benefits.*** *If there are Statutory Rules occupying the field, the appellant could claim payment of interest relying on such Rules. If there are Administrative Instructions, Guidelines or Norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence Statutory Rules, Administrative Instructions or Guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution.* ***The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of 'bounty' is, in our opinion, well-founded and needs no authority in support thereof.*** *In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents."* (emphasis added)

11. Had it been a case where on the conclusion of the departmental inquiry, the respondent was indicted, it would have been a different matter. However, that is not the position here. The charges framed against the

respondent were dropped by the Disciplinary Authority. In this duration, only provisional pension was paid to him. As a result, the respondent remained deprived of the use of a substantial sum of Rs.20,00,845/-, for which he has been restituted by the Tribunal on imposition of simple interest @ 8% p.a. on the amounts payable.

12. In view of the aforesaid facts and circumstances, we do not see any infirmity in the impugned order dated 17.7.2017, which is upheld.

13. As the timeline granted to the petitioners under the impugned order for releasing the interest on the delayed payment in favour of the respondent @8% p.a., was three months reckoned from 17.7.2017 and the said period has long since expired, an opportunity of four weeks is granted to the petitioners to release the said amount to the respondent. Interest at the rate mentioned above shall be paid till the said amount is released. It is however made clear that if the aforesaid amount is not released in favour of the respondent within the extended timeline, as granted above, then the rate of interest, shall be increased to 10% p.a., due on expiry of three months reckoned from the date of passing the impugned order on 17.07.2017, i.e., from 16.10.2017, till the said amount is actually paid.

14. The petition is dismissed in *limine*, along with the pending application.

HIMA KOHLI, J

REKHA PALLI, J

AUGUST 07, 2018
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