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

Date of Decision: 11.12.2018

\+ **W.P.(C) 9394/2017**

GOVT. OF NCT OF DELHI THROUGH CHIEF SECRETARY AND ANR. ..... Petitioners

Through: Mr.Sanjoy Ghose, ASC, GNCTD with Mr.Rishabh Jetley, Advocate.

versus

PREM NATH MANCHANDA ..... Respondent

Through: Ms.Sonika, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

1. The present writ petition was filed under Article 226/227 of the Constitution of India seeking quashing and setting aside the order dated 31.01.2017 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi, whereby the learned tribunal has allowed OA bearing No.3918/2015 filed by the respondent herein for grant of interest on delayed payment of leave encashment @ 12% per annum from the date of retirement till the date of payment, as well as quashing the order dated 22.09.2015 and 21.04.2015.

2. The facts relevant and necessary for adjudication of the present petition are as follows:-

(i) The respondent was appointed as Head Clerk on 06.06.1975 and was promoted thereafter to various posts. Between 26.06.1998 to 05.02.2001 he was posted as Assistant Registrar in the Cooperative Department of Government of National Capital Territory of Delhi (GNCTD).

(ii) In the year 2010, the Central Bureau of Investigation (CBI) registered cases regarding a scam pertaining to certain Cooperative Government Housing Societies, in which the name of respondent was also included amongst others. As a result, on 27.08.2010, a major penalty charge sheet under Rule-14 of the CCS (CCA) Rules, was issued to the respondent.

(iii) On 31.08.2010 the respondent retired on superannuation from the Department of Trade and Taxes, GNCT of Delhi. Since the departmental inquiry proceedings as well as criminal case was pending, the respondent was only given provisional pension on his superannuation.

(iv) Vide order dated 21.04.2015, the payment of leave encashment was released to the respondent on the directions of the Public Grievances Commission. Leave encashment payable was calculated to be a sum of Rs.4,78,940/- but no interest was paid.

(v) On 11.05.2015, the respondent submitted a representation to his department *viz* Commissioner, Trade and Taxes Department, seeking interest on the leave encashment due to delayed payment. On receiving no response, the respondent filed an

OA No.3422/2015 before the learned Tribunal. The Tribunal vide order dated 15.09.2015 directed the petitioners herein to consider the representation of the respondent and pass appropriate speaking and reasoned order within 90 days from the date of receipt of copy of the said order dated 15.09.2015.

(vi) A letter dated 22.09.2015 was sent by the petitioners to the respondent stating that the matter had been forwarded to Finance Department for their views.

(vii) Pursuant to the order of the Learned Tribunal and after taking the view of Finance Department, on 22.09.2015 the petitioners herein passed an order, considering the representation of the respondent and rejected his claim for interest on delayed payment of leave encashment on the ground that there is no provision under CCS (Leave) Rules, for payment of interest and for this reliance was placed on para 2 (f) of Government of India's Decision No.5 below Rule 68 of the CCS (Pension) Rules, 1972.

(viii) The respondent thereafter filed OA bearing No.3918/2015 impugning the orders dated 21.04.2015 and 22.09.2015 and seeking a direction to the respondent therein to grant interest on delayed payment of leave encashment from the date of retirement till actual payment @ 12% per annum.

(ix) Vide order dated 31.01.2017, the learned Tribunal allowed the OA and quashed the impugned orders, directing the respondent therein to pay interest at the GPF rates to the applicant for delayed payment of leave encashment, within three months from the date of receipt of copy of the order. Assailing this order, the present writ petition has been filed.

3. Learned counsel for the petitioners has argued that no interest is payable on the delayed payment of leave encashment and for this he has strongly relied upon para 2 (f) of the Government of India's Decision No.5 below Rule 68 of the CCS (Pension) Rules. The said provision is extracted here-in-under:

> "***2 (f)*** *In the matter of delayed payment of leave encashment, the Department of Personnel and Training in their note, dated 2-8-1999 has clarified that there is no provision under CCS (Leave) Rules for payment of interest or for fixing responsibility. Moreover, encashment of leave is a benefit granted under the leave rules and not a pensionary benefit."*

He has further submitted that the respondent was involved in a serious scam relating to a housing cooperative society, while he was posted as an Assistant Registrar and on account of the fact that both the criminal case and major penalty charge sheet were pending against him at the time of superannuation, the petitioners herein had rightly not released the leave encashment and, therefore, the respondent was not entitled to any interest when the same was released to him in the year 2015.

4. Per contra, the learned counsel for the respondent has contended that ground on which the interest has been rejected is untenable, as mere absence of a Rule, which enables the release of interest, cannot be a bar to the payment of interest once the benefit is due to an employee

and its payment has been unnecessary delayed. She has further submitted that no order has ever been passed under Leave Rules withholding leave encashment on the ground that there was any possibility of some money becoming recoverable from the respondent on the conclusion of the criminal or departmental proceedings. She, therefore, submits that there was no reason to withhold leave encashment for long five years and depriving the respondent of the said monetary benefit and thus, the learned Tribunal has rightly granted the interest.

5. We have heard the learned counsels for the parties.

6. It is undisputed that the respondent retired from service on 31.08.2010 on attaining the age of superannuation and that at the time of his retirement, or immediately thereafter, leave encashment was not released to him. There is also no dispute on the proposition that leave encashment can be withheld under Rule 39 (3) of CCS (Leave) Rules, 1972, if at the time of retirement, an employee is under suspension or disciplinary or criminal proceedings are pending against him. However, a reading of the said provision clearly shows that in order to withhold the leave encashment in whole or in part, the authority competent to grant leave has to pass an order specifically withholding the encashment, if in its view there is a possibility of some money becoming recoverable from the employee on conclusion of the proceedings against him. The extract of Rule 39 (3) is reproduced here-in-under for ready reference:

"***Rule 39: Leave/Cash payment in lieu of leave beyond the***

date of retirement, compulsory retirement or quitting of service
(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."*

(*emphasis supplied*)

7. Learned counsel for the respondent vehemently submitted that no such order was passed by the competent authority and the learned counsel for the petitioners was not able to rebut the said fact. Consequently, the petitioners herein could not have withheld the leave encashment and the money ought to have been released to the respondent soon after his retirement. We also do not agree with the submissions of the learned counsel for the petitioners that only because there is no Rule for grant of interest of leave encashment, the respondent would not be entitled to the same. Learned counsel has not been able to point out any rule to the contrary, which creates a bar for grant of interest in case due amount is released after a considerable delay. It has been clearly held by the Apex Court in several judgments including ***S.K.Dua vs. State of Haryana & Anr***., (2008) 3 SCC 44 that if there are Statutory Rules or Administrative Instructions occupying the field, an employee could claim payment of interest relying on such rule, but even in the absence of any Statutory Rules or

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 of India. In this regard, we also rely on a decision passed by the Division Bench of this Court in Writ Petition (C) No.1186/2012, titled as '*Government of NCT of Delhi vs. S.K.Srivastava'*. This judgment also supports our view that if no order is passed under Rule 39(3) of Leave Rules, the leave encashment cannot be withheld. The fact of the matter is that the petitioners are retaining the money of the respondent from the year 2010 to 2015 and the respondent is, thus, clearly entitled to interest on the delayed payment. Interest is awarded to compensate the recipient for the falling value of money due to inflation. In so far as, the plea of the petitioners that serious cases were pending against the respondent and, therefore, the leave encashment was not released is concerned, the same has no merit either. Although neither the petitioners nor the respondent have been able to throw any light on the status of the criminal and disciplinary proceedings as of today, however, if this was the reason for withholding the leave encashment then the same status continues perhaps even today. The reason given for releasing the leave encashment in 2015 is an order passed by the Public Grievances Commission. We fail to understand that if the petitioners were withholding the leave encashment due to pending proceedings then they had the remedy of not implementing the order of the Public Grievances Commission. However, having complied with that order and released the leave encashment, the petitioners cannot be heard to say that the leave encashment was withheld due to pending proceedings. Learned tribunal has, thus, rightly come to conclusion that the respondent deserves interest at the GPF rate for the delayed payment of leave encashment.

8. We find no reason to interfere with the judgment of the learned Tribunal. The writ petition is devoid of merits and, is accordingly, dismissed.

9. We direct the petitioners to calculate and release the interest on the leave encashment amount of Rs.4,78,940/- in favour of the respondent within three months from the date of this order. No order as to costs.

JYOTI SINGH, J.

VIPIN SANGHI, J.

DECEMBER 11, 2018
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