

Item No. 09

In The High Court At Calcutta
Constitutional Writ Jurisdiction

11.09.19

WP No.14931 (W) of 2019
Biswa Prasad Chandra
v.
Union of India & Ors.

Mr. Prosenjit Mukherjee
Mr. Jahangir Hossain
... for the petitioner.

Mr. Prasun Mukherjee
Mr. Deepak Agarwal
... for FCI.

Mr. Debu Chowdhury
Ms. Sanjukta Sen
... for the respondent nos. 1 & 5.

The petitioner is a dismissed employee of the Food Corporation of India. His grievance is that all his terminal benefits except the leave encashment have been released in his favour.

The petitioner relies upon Appendix 5(8)(a) and 8(b) of the Food Corporation of India (Staff) Regulations, 1971.

Appendix 5(8)(a) specifically mentions that earned leave at credit will not be encashed if an employee is dismissed, terminated, removed from service under the disciplinary provisions of the Food Corporation of India (Staff) Regulations, 1971.

The petitioner submits that according to 8(b) of the said Regulations the cash payment of unutilized leave on retirement superannuation, resignation, etc. may be made strictly in accordance with the relevant provisions of the CCS (Leave) Rules, 1972 as amended from time to time.

The petitioner relies upon a judgement delivered by the Hon'ble Supreme Court in the matter of State of Jharkhand & Ors. v. Jitendra Kumar Srivastava & Anr., reported in (2013) 12

SCC 210 on the point that pension and gratuity are not bounty property and such earned benefit cannot be taken away without complying with due process of law.

The case here does not relate either to pension or to gratuity. The petitioner alleges non-payment of his leave encashment.

The petitioner admitted that he has received all his terminal benefits barring leave encashment. The decision of the Hon'ble Supreme Court as mentioned hereinabove has been passed taking into consideration the Bihar Pension Rules as applicable to the State of Jharkhand.

The petitioner being a dismissed employee is not entitled to the benefit as mentioned in clause 8(b) of Appendix-5.

In the instant case the petitioner is governed by the Food Corporation of India (Staff) Regulations, 1971. Appendix 5(8)(a) of the said Regulations bars the employer to disburse the leave encashment in case of dismissed employee.

In view of the aforesaid provision of law no relief can be granted to the petitioner in the instant case.

WP No. 14931(W) of 2019 stands dismissed accordingly.

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(Amrita Sinha, J.)