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

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**Date of Decision: 06.02.2019**

+ **W.P.(C) 1244/2019**

UDAI SINGH YADAV

..... Petitioner

Through: Mr. Sanjjan K. Singh and Ms.Anjali  
Jain, Advocates.

versus

KENDRIYA VIDALAYA SANGTHAN & ANR ..... Respondents

Through: Mr. S. Rajappa, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE VIPIN SANGHI**

**HON'BLE MR. JUSTICE A.K.CHAWLA**

**J U D G M E N T**

**VIPIN SANGHI, J. (ORAL)**

**CM APPL. 5621/2019**

1. Exemption allowed, subject to all just exceptions.

**W.P.(C) 1244/2019**

2. Writ petitioner has preferred the present writ petition to assail the order dated 17.09.2018 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal') in OA No.4077/2016 whereby the petitioner's said Original Application has been dismissed.

3. The petitioner had preferred the said Original Application to seek a direction to the respondent to make payment of his earned leave encashment, to pay to him gratuity and interest on the PF account.

4. The petitioner was terminated from service on 24.10.2008 on account of his being found guilty of indulging in acts involving moral turpitude on a complaint of a girl student of the KVS School where he was serving. He was terminated by giving three months' salary in lieu of the notice of termination. His Original Application was rejected and his writ petition i.e. W.P.(C) 8440/2011 was also dismissed by this Court. The Special Leave Petition was dismissed by the Supreme Court. Thereafter, he preferred the aforesaid Original Application. The Tribunal dismissed the Original Application on the premise that the petitioner is not entitled to gratuity or pension in terms of Rule 24 of the CCS (Pension) Rules, which provides that dismissal or removal of a Government servant from service or post entails forfeiture of his past service.

5. The submission of learned counsel for the petitioner, firstly, is that the petitioner's case should be considered for grant of compassionate allowance under Rule 41 of the CCS (Pension) Rules.

6. A terminated or dismissed employee has no right to demand, as a matter of right, compassionate allowance under Rule 41 of the CCS (Pension) Rules. It depends on the facts of each case, whether the Government should exercise its discretion for grant of compassionate allowance. In a case which involves conduct of the kind of which the petitioner has been found guilty, namely, of indulging in conduct involving moral turpitude with the complainant-girl student, it certainly cannot be said

that such compassion should be shown by the Government, merely because the petitioner claims to have rendered about 28 years of service. There has to be zero tolerance for such serious misconduct and show of compassion would be highly misplaced and send a wrong message to the community. The next submission of learned counsel for the petitioner is that the petitioner was entitled to earned leave encashment and GIS amount etc. He has referred to the communication dated 20/21.06.2016 issued by the respondent-KVS wherein KVS has stated that release of other benefits, such as, earned leave encashment, GIS amount etc., need to be verified as per the records.

7. Mr. Rajappa, Advocate, who appears on behalf of the respondents on advance notice, states that the respondent-KVS shall examine and pay to the petitioner the amount, if any, payable to him under the law.

8. The petition is accordingly disposed of with a direction to the respondent to examine the amount payable to the petitioner, if any, namely towards his earned leave encashment, GIS etc. within the next four weeks.

**VIPIN SANGHI, J.**

**A.K. CHAWLA, J.**

**FEBRUARY 06, 2019**

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