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

\+ **W.P.(C) 8072/2017 and CM APPL. 33213/2017 (interim relief)**

GOVT. OF NCT OF DELHI ..... Petitioner

Through: Ms. Mini Pushkarna with Ms.Swargata Bhuyan, Ms.Shiva Pandey and Ms.Khushboo Nahar, Advocates.

versus

KISHAN LAL ..... Respondent

Through: None.

**CORAM:**
**JUSTICE S.MURALIDHAR**
**JUSTICE TALWANT SINGH**

**O R D E R**

% **17.10.2019**

1. The present petition is directed against an order dated 8th August, 2016 passed by the Central Administrative Tribunal ('CAT') in OA No.3155 of 2015. The grievance of the Petitioner has been encapsulated in an order dated 22nd September, 2017 passed by this Court, which reads as under:

> "Learned counsel for the petitioner states that the proxy counsel who appeared before the Tribunal when impugned order was passed on August, 2016, made a concession before the Tribunal without any instructions. He points out that in the petition before the Tribunal, the first preliminary objection taken by the petitioner was that the leave encashment and CGEGIS could not be paid to the respondent herein on time due to incomplete records left by him. He was the Head ofthe School and it was his obligation to complete the records. The stand taken by the

petitioner is that the records were completed after collecting information from the records of various Schools wherein he was posted and thereafter vide letter dated 3rd March, 2016, the amount was released to him on March, 2016.

Thus, according to the petitioner, there was no delay on the part of the petitioner on releasing the said amount. Let the petitioner produce its original record on the basis of which the aforesaid averments were made in the reply filed by the petitioner before the Tribunal.

List on October, 2017."

2. Subsequently, the Court recognized that the issue was really one of payment of interest on the amount released to the Petitioner towards leave encashment and this has been captured in its order dated 28th February, 2019, which reads as under:

> "Rule 39(3) of the CCS Leave Rules reads as follows:
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> "(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 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."
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> The respondent retired on 31.12.2014 while he was undergoing disciplinary proceedings. The proceedings against him were continuing under Rule 9 of the CCS Pension Rules. On 24.04.2015, the petitioner passed an order, inter alia, stating:
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> > "Now, therefore, it is directed that his retiral dues shall not be released under rule 9 of the CCS (Pension) Rules 1972 and Rule 39 of the CCS (Leave) Rules till clearance from the competent Authority as well as from the pairary

officer/ DEO Z-VI of the said OA No. 3656/2014.
However, he is entitled to draw provisional pension under rule 69 of CCS (Pension) Rules 1972 and the concerned HOS is directed to ensure release of his provisional pension timely."

Thus, an order in terms of Rule 39(3) came to be passed on 24.04.2015. On 05.03.2016, the leave encashment of the respondent was released to him. He was exonerated on 24.08.2017.

The submission of Ms. Pushkama is that there was no delay in the release of the leave encashment since the same became due only upon conclusion of the proceedings and, in the present case, the petitioner had released the leave encashment amount even prior to that, thus, no interest was payable to the respondent, for the period 01.01.2015 to 05.03.2016 - when the leave encashment amount was released.

Counsel for the respondent has placed reliance on Govt. of NCT of Delhi Through Chief Secretary and Anr. v. Prem Nath Manchanda, W.P. (C) No. 9394/2017, decided on 11.12.2018 by this Court, wherein no order had been passed relatable to Rule 39(3) of the Leave Rules.

In our prima facie view, it appears that this decision is distinguishable from the present case since, in the present case, an order was passed relatable to Rule 39(3) on 24.04.2015.

Counsel for the respondent seeks a short adjournment to make further submissions. At request, adjourned to 17.10.2019."

3. The Court is informed that the Petitioner superannuated nearly five years ago on 31st December, 2014. In the peculiar facts and circumstances of the case, since the amount has already been released to the Respondent, the Court considers it appropriate to direct that the impugned order of the CAT will not constitute a precedent for any future case. The question of law is,

therefore, left open for consideration in an appropriate case.

4. The petition is disposed of. The pending application is also disposed of.

**S. MURALIDHAR, J.**

**TALWANT SINGH, J.**

**OCTOBER 17, 2019**

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