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

% ***Reserved on: 05.11.2020***
Pronounced on: 17.11.2020

\+ **W.P.(C) 3114/2020 & CM 10817/2020**

SH. S.B. SINGH ..... Petitioner

Through: Ms. Purti Marwaha Gupta, Ms. Heena George and Ms. Twisha Issar, Advocates.

versus

NATIONAL TEXTILE CORPORATION ..... Respondent

Through: Ms. Nidhi Jain, Advocate.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

1. By way of the present petition, the Petitioner seeks a direction to the Respondent to release his retiral benefits amounting to approximately Rs. 98.98 Lakhs. Broadly classified the retiral benefits sought are under the following heads:-

a) Gratuity
b) Leave Encashment
c) Provident Fund

2. The facts of the case relevant to the adjudication of the writ petition are in a narrow compass. Petitioner was an employee of the Respondent and retired as Chief General Manager (Finance/MIS) on

31.01.2020, after 35 years of service, which according to the Petitioner was unblemished. On 01.02.2020, a day after his retirement, Petitioner was served with a scanned copy of a letter dated 31.01.2020 containing allegations amounting to misconduct regarding a Mega International event 'Textile India-2017', organized by Ministry of Textiles, wherein Respondent/NTC had participated. A detailed narrative of the file notings which preceded the issuance of Charge Memo has been given by the Petitioner but is unnecessary for the adjudication of the issues under consideration by this Court. Suffice would it be to note that the Charge Memo was issued under Rule 25 of the National Textile Corporation Limited Conduct, Discipline and Appeal Rules, 2009 (hereinafter referred to as 'Rules, 2009'). In a nutshell, the charges are with respect to the designing, construction and maintenance of NTC stalls at the Textile India in 2017 and the allegations against the Petitioner are that subsequent to the direction of the Director (Finance), Petitioner recommended to concur with the proposal for construction and maintenance of the stall, which led to higher cost of the tender and shortlisting of the party in a haphazard manner. The process which was based on a report of the Tender Evaluation Committee was, as per the allegations, not transparent.

3. As per the Petitioner he was provided 10 days to file a written Statement of Defence and the relevant file was provided to him on 07.02.2020. Petitioner filed a response to the Charge Memo denying the charges and on the same date i.e. 14.02.2020 he also moved an application before the Director (HR)/CNB, NTC Limited, seeking release

of his retiral benefits. On 19.02.2020 imputation of charges and the Annexures-II, III and IV were provided to the Petitioner and the Petitioner thereafter filed an additional reply on 28.02.2020, wherein he also requested for a copy of the complaint and the Report of the Chief Vigilance Officer, which according to the Petitioner is still awaited.

4. Vide e-mail dated 28.04.2020, Petitioner again requested the Respondent to release his retiral/terminal benefits, but to no avail. Aggrieved by the non-release of his dues, Petitioner approached this Court by filing the present petition.

5. Before proceeding further, it is necessary to note two developments which have taken place during the pendency of the present writ petition. Firstly, Respondent has released the Employee's share of the Employees Provident Fund to the Petitioner amounting to Rs. 42.89 Lakhs. Secondly, learned counsel for the Petitioner, on instructions, gave a statement that the Petitioner would not press the relief for release of Gratuity, at this stage, pending the Disciplinary proceedings, reserving, however, his right to claim Gratuity at the appropriate stage, in accordance with law. In view of this, the disputes between the parties have narrowed down only to release of the Leave Encashment and the Employer's share of Provident Fund to the Petitioner and on both these counts the Respondent has contested the petition.

6. Learned counsel for the Petitioner contends that the Petitioner has served the Respondent dedicatedly for a period of 35 years, without any blemish in his entire tenure and his Appraisal Record has been outstanding. The charges leveled against the Petitioner are false and baseless and the Disciplinary Proceedings deserve to be dropped. Without

prejudice, however, to the said contention, learned counsel argues that even if the Disciplinary Proceedings are pending, Respondent is not legally entitled to withhold Leave Encashment and the Employer's share of the Provident Fund. It is argued that the Supreme Court in ***State of Jharkhand v. Jitendra Kumar Srivastava*** **(2013) 12 SCC 210,** has held that terminal benefits are not bounties of the State and an employee is entitled to the benefits on account of rendering service with the employer and have been held to the property of an employee under Article 300(A) of the Constitution of India, which cannot be taken away without following the due process of law. Unless there exists a Statutory Rule which enables the employer to withhold the terminal benefits of an employee, the same cannot be withheld.

7. With respect the Provident Fund reliance is placed on the judgement of the Supreme Court in ***Gorakhpur University & Ors. vs. Dr. Shitla Prasad Nagendra & Ors.,*** **(2006) 6 SCC 591,** wherein the Court held that terminal benefits including Provident Fund cannot be withheld and the same are immune from attachment, deduction or adjustment even against any of the dues from the employee. To the same effect is the decision of the Division Bench of the Bombay High Court in ***Ramdas Govind Bakhle vs. Maharashtra State Financial Corporation*** **(2000) SCC OnLine Bom 9,** wherein the Court relying on ***Bhagirathijena vs. Board of Directors, Orissa State Financial Corporation & Ors.,*** **(1993) 3 SCC 666,** held that no amount from the Provident Fund of an employee can be deducted in the absence of service Regulations providing so and the Court directed the Respondent therein to release the Provident Fund of the Petitioner.

8. In so far as the relief of Leave Encashment is concerned, learned counsel submits that in ***Satya Prakash vs. Chairman Cum Managing Director, Bharat Sanchar Nigam Ltd. & Ors.,*** **(2019) SCC OnLine Del 8039** this Court has granted Leave Encashment to the Petitioner, along with interest, holding that there has to be a conscious decision to withhold the Leave Encashment of an employee, upon his retirement, on account of there being a possibility of some money becoming recoverable from him, on conclusion of the Disciplinary Proceedings. Reliance is also placed on a judgement of another Division Bench of this Court in ***Govt. of NCT of Delhi Through Chief Secretary and Anr. vs. Prem Nath Manchanda*** **(2018) SCC OnLine Del 13066** and in ***Ashok Kumar Ahluwalia vs. The Chairman & Managing Director National Fertilizers Limited*** **(2014) SCC OnLine Del 2712,** where the observations of the Court are to the same effect. Learned counsel also places reliance on a judgement of the Three Judge Bench of the Punjab and Haryana High Court in ***Punjab State Civil Supplies Corpn. Ltd. & Ors. vs. Pyare Lal,*** **(2014) SCC OnLine P&H 15012,** where, according to the counsel, Court has clearly held that withholding of retiral benefits can only be under the applicable Rules and in the absence of any such enabling Rule, the benefits including Leave Encashment cannot be withheld. The said judgement was followed in another case by the Punjab and Haryana High Court in ***Pawan Kumar vs. The Registrar, Punjab State Co-Operative Societies & Ors.*** **(2018) SCC OnLine P&H 1677**.

9. Per contra learned counsel for the Respondent contends that the Petitioner is neither entitled to release of Leave Encashment nor the Employer's share of the Provident Fund. It is argued that the Petitioner's

employment is governed by Rules, 2009 and Rule 25.13 of the National Textile Corporation Ltd. Conduct, Discipline and Appeal Rules, 2009 (herein after referred to as 'CDA Rules') specifically provides that an employee, against whom Disciplinary Proceedings are pending, shall not be entitled to payment of retiral benefits till the Proceedings are complete. While Rule 25.13.1 permits continuation of Disciplinary Proceedings if instituted when the employee is in service, Rule 25.13.3 enables the Respondent to initiate Disciplinary Proceedings against an employee even after his retirement, in respect of *prima facie* established lapses/misconduct while he was in service for a grave misconduct in respect of any event which took place not more than four years earlier. It is contended that in view of the provisions of the said Rules, Respondent thus has the right and power to withhold terminal benefits during the pendency of Disciplinary Proceedings.

10. With regard to Leave Encashment, it is argued that Rule 7.7 of the NTC Leave Rules, 2015 entitles the Authority competent to grant leave, to withhold whole or part of the cash equivalent to Earned leave, in case of an employee, who retires from service on superannuation, if Disciplinary Proceedings are pending against him, in view of the possibility of some money becoming recoverable from him. Reliance is placed on the judgement of this Court in ***J.P. Mahajan vs. Governing Body Kirori Mal College Delhi and Ors.*** **2019 VII AD (Delhi) 611,** wherein all the three claims of the Petitioner therein i.e. Gratuity, Employer's Contribution to PF and Leave Encashment were rejected in view of the applicable service Rules. It is thus contended that since the Disciplinary Proceedings are pending the Petitioner is only entitled to

release of the Employee's share of the PF, which stands disbursed to the Petitioner and the Employer's share being a retiral benefits falling under Rule 25.13.2 of the CDA Rules cannot be released till the Disciplinary Proceedings culminate into exoneration of the Petitioner.

11. I have heard the learned counsels for the parties and examined their rival contentions.

12. The first issue that arises before the Court is with regard to the entitlement of the Petitioner to Leave Encashment. For considering the said issue it is important to examine the applicable service Rule. Rule 7.7 of the NTC Leave Rules, 2015 deals with the power of the Competent Authority to withhold whole or part of cash equivalent to Earned leave, in the circumstances mentioned in the Rule. Rule 7.7 is as follows:-

> *"The authority competent to grant encashment of leave may withhold whole or part of cash equivalent of earned leave in case of any employee who retires from service on attaining the age of superannuation while under suspension or while disciplinary or criminal proceedings are pending against him if in the view of such authority there is 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 withheld after adjustment of the Company's dues if any."*

13. A perusal of the provisions of Rule 7.7 makes it evident that before the Competent Authority can withhold the Leave Encashment of an employee, wholly or partly, a conscious decision must be taken to withhold the Leave Encashment due to the employee on account of there being a possibility of some money becoming recoverable from him, once the Disciplinary Proceedings conclude. A Division Bench of this Court in

Satya Prakash (supra) had the occasion to interpret Rule 39 (3) of the CCS (Leave) Rules, 1972 which is *pari materia* to Rule 7.7, governing the parties in the present case. For a ready reference Rule 39 (3) of the CCS (Leave) Rules, 1972 is extracted hereunder:-

> *"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."*

14. While interpreting the said Rule, the Division Bench held as follows:-

> *"10. The aforesaid Rule would show that the competent authority may wholly or partly, withhold leave encashment in respect of a Government servant who retires on attaining the age of superannuation, while under suspension or while undergoing disciplinary or criminal proceedings, provided the competent authority is of the view that there is a possibility of some money becoming recoverable from him on the conclusion of proceedings against him. In the present case, the respondents have not produced any order to show that a conscious decision has been taken by the Government to withhold the leave encashment due to the petitioner upon his retirement, on account of there being a possibility of some money becoming recoverable from him on the conclusion of proceedings against him. The nature of the charge levied against the petitioner also does not support the withholding of the leave encashment. We*

cannot agree with the submissions of learned counsel for the respondents that if the charge against the petitioner is proved, it could also have the effect of nullifying the examination process in which the petitioner is alleged to have manipulated the marks of some of the candidates. Pertinently, the said examination took place in the year 2010. It is not the respondent's case that any of the successful candidates have been put to notice in this regard. It is not claimed that the said examination process has been assailed by any unsuccessful candidate on account of the alleged misconduct of the petitioner, or that the same has been set aside, or the challenge is still pending. We are, therefore, of the view that withholding of leave encashment of the petitioner is not justified.

11. We, accordingly, allow the petition partially by directing the respondent to pay the petitioner his leave encashment dues along with interest at the rate of 8% per annum from the date the same became due, till payment."

15. Another Division Bench of this Court in ***Prem Nath (supra)*** dealing with a similar issue in the context of Rule 39 (3) of the CCS (Leave) Rules, 1972 held as under:-

"7. 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."

8. 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."

16. It is thus clear that if no order is passed by the Competent Authority as envisaged in Rule 7.7 to consciously withhold the whole or part of cash equivalent to the Earned leave on there being a possibility of some recovery from the employee, Leave Encashment cannot be withheld. In the present case during the course of arguments on a pointed

query by the Court, learned counsel for the Respondent could not bring to the notice of the Court any such conscious decision by the Respondent to withhold the benefits and, thus, in my view, merely relying on the power available to the Competent Authority under Rule 7.7 cannot inure to the advantage of the Respondent. The Petitioner in my view is thus entitled to release of Leave Encashment benefits.

17. In so far as the claim of the Petitioner for the Employer's share of PF is concerned, Respondent has vehemently opposed the release of the same by placing reliance on Rule 25.13.2 of the CDA Rules. The argument is that the employer's share falls in the category of retirement benefits and therefore by virtue of the said Rule, once the employer has the power to initiate disciplinary proceedings after retirement, the benefits can be withheld. Reliance is also placed on the judgment of the Supreme Court in ***Chairman-Cum-Managing Director, Mahanadi Coalfields Limited vs. Rabindranath Choubey,*** **2020 SCC OnLine SC 470** as well as a judgment of the Coordinate Bench in ***J.P. Mahajan (supra)***. Learned counsel for the Petitioner on the other hand argues that the Employer's share of PF cannot be treated on the same pedestal as Gratuity or other retirement benefits as there is no provision under the CDA Rules to withhold the said benefit.

18. In my view there is no merit in this contention of the learned counsel for the Respondent. Rules 25.13.1 to Rule 25.13.3 are as under:

> ***"25.13 Continuation of inquiry beyond Superannuation:***
>
> *25.13.1 Disciplinary proceedings, if instituted while the employee was in service whether before his retirement or during his reemployment*

shall, after the final retirement of the employee, be deemed to be subsisting proceedings and shall be continued and concluded by the authority by which it was commenced in the same manner as if the employee had continued in service.

25.13.2 *In such cases, the employee will cease to be in the services of the Corporation from the date of superannuation/retirement and will not be eligible for salary or any other benefits from the date following the date of superannuation / retirement. He will also not be entitled to the payment of retirement benefits till the proceedings are completed and final order is passed thereon, except his own contribution to the Contributory Provided Fund."*

25.13.3 *"Initiation of Disciplinary Proceedings after Retirement:*
Disciplinary proceedings, if not initiated by the employee was in service shall be initiated against an employee in respect of prima facie established lapses/misconduct after retirement in respect of grave misconduct in respect of any event which took place more than 4 years earlier."

19. Rule 25.13.1 deals with the continuation of the disciplinary proceedings, if instituted while the employee was in service, whether before his retirement or during his re-employment. It prescribes that the said proceedings when instituted before the retirement shall be deemed to be subsisting and shall be continued and concluded as if the employee had continued in service. Rule 25.13.2 significantly begins with the words "in such cases" and stipulates that the employee will cease to be in

service from the date of superannuation and will not be eligible for salary or any other benefits after the said date. He will also not be entitled to retiral benefits till the completion of the proceedings and passing of the final order thereon except his own contribution to the Contributory Provident Fund. It is clear that the prohibition envisaged in Rule 25.13.2 for receiving the retiral benefits including the Employer's contribution to the PF, is clearly relatable to Rule 25.13.1. Rule 25.13.3, on the other hand deals with initiation of disciplinary proceedings after retirement of the employee and permits the initiation with respect to a lapse or a misconduct relating to an event which took place up to 4 years prior to the initiation of the proceedings. There is no rider or prohibition attached to Rule 25.13.3 unlike the one attached to Rule 25.13.1 and therefore, in the absence of any Rule prohibiting the entitlement of an employee to the Employer's share of PF, if the disciplinary proceedings are initiated after retirement, the employee cannot be deprived of the said benefit.

20. It is to be noted that this distinction is also recognized by the Supreme Court in the case of ***Chairman-Cum-Managing Director, Mahanadi Coalfields Limited (supra)***, relied upon heavily by the Respondent. This is borne out from a reading of the following passages from the said judgment:

> *"26. Indisputably, the respondent was governed by the CDA Rules. Therefore, Rules 34.2 and 34.3 of the CDA Rules shall be applicable and the respondent-employee shall be governed by the said provisions. Rule 34 permits the management to withhold the gratuity during the pendency of the disciplinary proceedings. Rule 34.2 permits the disciplinary proceedings to be continued and concluded even after the employee has attained the age of superannuation, provided the disciplinary*

proceedings are instituted while the employee was in service. It also further provides that such disciplinary proceedings shall be deemed to be the proceedings and shall be continued and concluded by the authority by which it was commenced in the same manner as if the employee had continued in service. Therefore, as such, on a fair reading of Rule 34.2 of the CDA Rules, an employee shall be deemed to be continued in service, after he attains the age of superannuation/retired, for the limited purpose of continuing and concluding the disciplinary proceedings which were instituted while the employee was in service. Therefore, at the conclusion of such disciplinary proceedings any of the penalty provided under Rule 27 of the CDA Rules can be imposed by the authority including the order of dismissal. If the submission on behalf of the employee that after the employee has attained the age of superannuation and/or he has retired from service, despite Rule 34.2, no order of penalty of dismissal can be passed is accepted, in that case, it will be frustrating permitting the authority to continue and conclude the disciplinary proceedings after retirement. If the order of dismissal cannot be passed after the employee has retired and/or has attained the age of superannuation in the disciplinary proceedings which were instituted while the employee was in service, in that case, there shall not be any fruitful purpose to continue and conclude the disciplinary proceedings in the same manner as if the employee had continued in service.

27. It is true that while considering the very provisions of the CDA Rules, namely, Rule 34.2 and Rule 34.3 of the CDA Rules, this Court in the case of Jaswant Singh Gill (supra) has observed and held that once the employee is permitted to retire on attaining the age of superannuation, thereafter no order of dismissal can be passed. However, for the reasons stated hereinabove, we are not in agreement with the view taken by this Court in the case of Jaswant Singh Gill (supra). As observed hereinabove, if no major penalty is permissible after retirement, even in a case where the disciplinary proceedings were instituted while the employee was in service, in that case, Rule 34.2 would become otiose and shall be meaningless. On *the contrary, there is a decision of three Judge Bench of this Court in the case of Ram Lal Bhaskar (supra) taking just a contrary view. In the case of Ram Lal Bhaskar (supra), Rule 19(3) of the State Bank of India Officers Service Rules, 1992 came up for consideration which was pari materia with Rule 34.2 of the CDA Rules. The said Rule 19(3) of the State Bank of India Officers Service Rules, 1992 also permits the disciplinary proceedings to continue even after the retirement of an employee if those were instituted when the delinquent employee was in service. In that case, chargesheet was served upon the respondent before his retirement. The proceedings continued after his retirement and were conducted in accordance with the relevant rules where charges were proved. Punishment of dismissal was imposed. The High Court allowed the petition and quashed the order of dismissal. This Court reversed the said decision of the High Court. In the said decision, it was specifically observed by this Court while considering the pari material provisions that in case disciplinary proceedings under the relevant rules of service have been initiated against an officer before he ceased to be in the bank's service by the operation of, or by virtue of, any of the rules or the provisions of the Rules, the disciplinary proceedings may, at the discretion of the Managing Director, be continued and concluded by the authority by whom the proceedings were initiated in the manner provided for in the Rules as if the officer continues to be in service, so however, that he shall be deemed to be in service only for the purpose of the continuance and conclusion of such proceedings. In the said decision, this Court also took note of another decision of this Court in the case of Rajinder Lal Capoor (supra) and it is observed even in the said decision that the UCO Bank Officer Employees' Service Regulations, 1979 which were also pari materia to the SBI Rules as well as the CDA Rules, could be invoked only when the disciplinary proceedings had been initiated prior to the delinquent officer ceased to be in service. It is to be noted that Jaswant Singh Gill (supra) was a judgment delivered by a two Judge Bench and the judgment in the case of Ram Lal Bhaskar (supra) is a judgment delivered by a three Judge Bench. Under the circumstances and* *even otherwise for the reasons stated above and in view of Rule 34.2 of the CDA Rules, even a retired employee who was permitted to retire on attaining the age of superannuation can be subjected to major penalty, provided the disciplinary proceedings were initiated while the employee was in service.*

28. Once it is held that a major penalty which includes the dismissal from service can be imposed, even after the employee has attained the age of superannuation and/or was permitted to retire on attaining the age of superannuation, provided the disciplinary proceedings were initiated while the employee was in service, sub-section 6 of Section 4 of the Payment of Gratuity Act shall be attracted and the amount of gratuity can be withheld till the disciplinary proceedings are concluded.

29. Even otherwise, Rule 34.3 of the CDA Rules permits withholding of the gratuity amount during the pendency of the disciplinary proceedings, for ordering recovering from gratuity of the whole or part of any pecuniary loss caused to the company if have been guilty of offences/misconduct as mentioned in subsection 6 of Section 4 of the Payment of Gratuity Act, 1972 in the event of delayed payment in the case of an employee who is fully exonerated. Rule 34.3 of the CDA Rules is in consonance with subsection 6 of Section 4 of the Payment of Gratuity Act and there is no inconsistency between sub-section 6 of Section 4 of the Payment of Gratuity Act and Rule 34.3 of the CDA Rules. Therefore Section 14 of the Act which has been relied upon shall not be applicable as there is no inconsistency between the two provisions.

30. It is required to be noted that in the present case the disciplinary proceedings were initiated against the respondent-employee for very serious allegations of misconduct alleging dishonestly causing coal stock shortages amounting to Rs. 31.65 crores and thereby causing substantial loss to the employer. Therefore, if such a charge is proved and punishment of dismissal is given thereon, the provisions of sub- section 6 of Section 4 of the Payment of Gratuity Act would be attracted and it would be within the discretion of the appellant-employer to forfeit the gratuity payable to the respondent. Therefore, the *appellant-employer has a right to withhold the payment of gratuity during the pendency of the disciplinary proceedings."*

21. It is also evident from reading of the judgment that the Court had relied on specific Rule 34.3 of the CDA Rule which permitted withholding of the gratuity amount during the pendency of the disciplinary proceedings in view of Sub-Section (6) of Section 4 of the Payment of Gratuity Act, 1972. It is on account of the said Rule and the provisions of the Gratuity Act that the Court had declined to release the gratuity to the Respondent therein.

22. In the present case it is an undisputed fact that the Petitioner retired on superannuation on 31.01.2020 and till that time no charge sheet was issued to him. Post his retirement the Petitioner was served with the Memorandum of Charge on 01.02.2020. The two-fold reasons that weighed with the Supreme Court in ***Chairman-Cum-Managing Director, Mahanadi Coalfields Limited (supra)*** being (i) pending disciplinary proceedings at the time of retirement, and (ii) specific provision under the CDA Rules as well as payment of Gratuity Act, are conspicuously absent in the present case. Respondent has not been able to point out any Rule under the CDA Rules or any other Statutory Enactment which disentitles the Petitioner for grant of the Employer's share of PF. As already noted above, reliance on Rule 25.13.2 is misconceived in the facts of the present case. In so far as reliance by the Respondent in ***J.P. Mahajan (supra)*** is concerned, suffice would it be to note, that the Coordinate Bench has not specifically dealt with the issue of Employer's Provident Fund and therefore there is no finding or observation to support the case of the Respondent.

23. For all the aforesaid reasons the writ petition is partly allowed. Respondent is directed to release the amounts due to the Petitioner towards Leave Encashment and Employer's share of the Provident Fund within a period of four weeks from today. In so far as the claim of the Petitioner for Gratuity is concerned it is left open to be agitated on the conclusion of the disciplinary proceedings and subject to its outcome.

24. CM 10817/2020, seeking release of gratuity amount of Rs.20 lakhs, is also disposed of accordingly.

JYOTI SINGH, J

NOVEMBER 17th, 2020
yo, sr