02. 24.06.2022
Ct.15
BD

RVW 90 of 2022
With
CAN 1 of 2022

National Textile Corporation Limited
-vs-
Sri Sanjay Sengupta & Ors.

Mr. Soumya Majumder
Mr. Partha Banerjee
... for the Applicant.

Mr. Ayan Banerjee
Mrs. Debasree Dhamali
... for the respondent 1/
writ petitioner.

The memorandum of review being RVW 90 of 2022 and the connected application being CAN 1 of 2022 are taken up for consideration in presence of the learned advocates representing the National Textile Corporation Limited (for short "NTC)"and the respondent no. 1 being the writ petitioner in the connected writ petition.

This Court after prolonged hearing passed an order on 20th April, 2022 disposing of the connected writ petition being WPA 19254 of 2017 by directing the NTC to release the leave encashment benefits to the petitioner within a particular time. The said order passed by this Court dated 20th April, 2022 has another part with regard to entitlement of the petitioner to get the benefit of 6th Pay Commission recommendation. However, in the present review application, the direction which was given by this Court in the order dated 20th April, 2022 relating to extending the benefit of 6th Pay Commission recommendation has not been questioned.

The bone of contention of the NTC being the review applicant is existence of amended Rule of 7.10 of National Textile Corporation (WBABO) Ltd. Leave Rules, 1977 which empowers the review applicant to withhold leave encashment benefits which was found by this Court to be payable to the respondent no. 1, in view of pendency of criminal appeal before the Patna High Court against the judgment of the trial court dated 23rd April, 2004. The ground of review as it emanates after hearing the learned advocate representing the NTC appears to be availability of said Rule 7.10 which is quoted below.

> *"7.10. The sanctioning authorities for encashment of leave will be those competent to sanction earned leave (Appendix-I)*
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> *"The authority competent to grant leave any withhold whole or part of case equivalent to earned leave in the case of any employees of this Corporation 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 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 Corporation's dues if any."

According to NTC in spite of best efforts the said Rule 7.10 could not be brought to the notice of this Court at the time of disposal of this writ petition which led to passing order dated 20th April, 2022 hence this review application has been instituted.

It has been argued that considering the provision under said Rule 7.10 the concerned authority of NTC is empowered to withhold benefit of leave encashment due to pendency of the criminal appeal before the Patna High Court and it has further been argued that in the event the said appeal fails straightway NTC would be entitled to make forfeiture of the entire leave encashment benefit of the petitioner against the alleged defalcated amount of Rs. 2 Crores.

According to Mr. Majumder, learned counsel representing the NTC no further recovery proceeding is required to be initiated for forfeiture of said leave encashment benefit. It has also been submitted that had this Rule 7.10 would have been considered by this Court at the time of disposal of this writ petition the fate of the writ petition would have been otherwise.

Mr. Ayan Banerjee, learned advocate, representing the respondent no. 1/writ petitioner has submitted that the National Textile Corporation (WBABO) Ltd. Leave Rules, 1977 is not statutory rather it is mere executive instruction which cannot withhold the retiral dues including leave encashment benefit of the respondent no.1.

It has also been submitted by drawing attention of this Court to un-amended Rule 7.10 that there was no such contemplation of recovery of leave encashment benefit due to pendency of criminal proceeding. However, it has been submitted that though reliance has been placed on amended Rule 7.10 but how such amendment has been made that has not been spelt out in the affidavit in opposition to the writ petition as well as in the review application.

In addition thereto, reliance has been placed on the judgment of the Apex Court reported in ***(2013) 12 SCC 210 (State of Jharkhand and Ors. –vs- Jitendra Kumar Srivastava & Anr.)*** paragraph 16; unreported judgment of Delhi High Court dated 17th November, 2020 on W.P. (C) 3114/2020 & CM 10817/2020 passed by the Hon'ble Single Bench (SH. S.B.Singh-vs- National Textile Corporation) and the judgment of the Division Bench of Delhi High Court reported in 2021 SCC Online Del 588 dated 5th January, 2021 whereby the judgment of the Hon'ble Single Bench of Delhi High Court dated 17th November, 2020 has been affirmed.

It has also been submitted on behalf of the respondent no. 1 that it was open to the NTC to take a decision on application of said amended Rule of 7.10 of National Textile Corporation

(WBABO) Ltd. Leave Rules, 1977 while dealing with entitlement of the respondent no. 1 to receive the benefit towards leave encashment. However, no such exercise has been performed by the NTC while denying such entitlement of the respondent no. 1. Therefore, the NTC is estopped from taking this point of availability of said Rule 7.10 after disposal of the connected writ petition whereby direction has been given to the NTC to release leave encashment benefits keeping in view of the fact that in the affidavit in opposition to the writ petition no point was taken based on such Rule 7.10 while disputing the claim of the petitioner for benefits of leave encashment.

This Court has heard the learned advocates representing the parties and perused the relevant materials available on record as well as the said Rule 7.10 of the Leave Rules of 1977.

Though reliance has been placed on amended Rule 7.10 of the Leave Rules of 1977 but the nature of such rule has not been explained before this Court and how this has become applicable so far as the respondent no. 1 is concerned. Furthermore, it appears that the original Rule 7.10 does not have the provision empowering the authority to withhold leave encashment benefit, it simply provides that sanctioning authorities for encashment of leave will be those competent to sanction earned leave. Though it has been submitted on behalf of the NTC that original Rule 7.10 has undergone change by way of an amendment but how this amendment was made has not been demonstrated before this

Court. Therefore this Court has doubt with regard to applicability of amended Rule 7.10 so far as the entitlement of respondent no. 1, to receive leave encashment benefit is concerned.

Be that as it may, if this Court proceeds that such Rule 7.10 does apply in case of the respondent no. 1 in the matter of releasing leave encashment benefit then again it appears that such empowerment conferred upon NTC is subject to caveat that if according to the NTC there is possibility of some money becoming recoverable from the employee on conclusion of the proceeding against such employee. This Court has doubt how in the event the appeal preferred by the respondent no. 1 against the conviction order dated 23rd April, 2004, even fails, the amount towards leave encashment benefit to be recovered. Though argument has been advanced on behalf of the NTC that automatically the amount lying under leave encashment benefit would be forfeited does not appear to this Court permissible.

Another aspect which does not escape notice of this Court that in the event this Rule 7.10 is applicable in the present case then why at the material point of time the concerned authority of NTC on the strength of Rule 7.10 did not take any decision against the entitlement of the respondent no. 1 to receive such leave encashment benefits. In this regard this Court finds it apt to rely upon the judgment of the Hon'ble Single Bench of the Delhi High Court dated 17th November, 2020 ***(SH. S.B.Singh (supra),*** Paragraph 16. Such judgement of the Hon'ble Single Bench of the Delhi High Court stood confirmed by the judgment of the Hon'ble Division Bench of the Delhi High Court dated 5th January, 2021 which is reported in 2021 SCC Online Del 588.

Reliance in this regard is also placed on paragraph 16 of **Jitendra Kumar Srivastava (supra);** paragraph 16 runs infra:

> *"16. The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognised as a right in "property". Article 300-A of the Constitution of India reads as under:*
>
> *"300-A. Persons not to be deprived of property save by authority of law.—No person shall be deprived of his property save by authority of law."*
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> *Once we proceed on that premise, the answer to the question posed by as in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the constitutional mandate enshrined in Article 300-A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provisions and under the umbrage of administrative instruction cannot be countenanced."*

In the present case the ratio of judgment of the Delhi High Court dated 17th November, 2020 is attracted in view of the fact that the concerned authority of NTC did not apply said Rule 7.10 of the Leave Rules while denying the right of the petitioner to receive the leave encashment benefit. Since the respondent no.1 had retired on 30th September, 2008 the NTC got enough opportunity to take necessary steps in terms of the said Rule 7.10 but no decision was taken based on such Rule. On the contrary in the affidavit in opposition used on behalf of the NTC in the connected writ petition it was not spelt out or averred that there is availability of Rule 7.10 by the dint of which the concerned authority of NTC is empowered to take steps regarding forfeiture of leave encashment benefit subject to outcome of the criminal proceeding. Therefore the NTC authority waived its right to deal with leave encashment benefits of the respondent no. 2 in terms of Rule 7.10.

In view of above conspectus this Court does not find any merit in the review and accordingly memorandum of review and connected application stand dismissed. However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)