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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision : 25.07.2022

+ W.P.(C) 8317/2022, CM APPL. 30190/2022 & CM APPL. 30191/2022

AJAY KUMAR PATNAIK

..... Petitioner

Through: Mr. Ankur Chibber, Adv. with
Mr. Nikunj Arora, Adv.

Versus

JAWAHAR LAL NEHRU UNIVERSITY Respondent

Through: Ms. Ginny J. Rautray and
Mr. Navdeep Singh, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The petitioner who has superannuated from the respondent University as a Professor of School of International Studies, has approached this Court seeking quashing of order dated 17.05.2022 issued by the respondent, whereby the petitioner has been informed that his terminal benefits are not being released due to non-submission of his travel documents in relation to the visits, abroad made by him during his tenure of service.

2. Learned counsel for the petitioner submits that the petitioner, having retired without any disciplinary action initiated against him at any stage, his terminal benefits could not have been withheld by the



respondent and that too on the ground of non-submission of his travel documents. He contends that no such direction to the petitioner to furnish his travel documents at this belated stage could be issued. In any event, in case, the respondent was of the view that the petitioner had not followed any guidelines or directions while in service, it was open for the respondent to initiate any action against the petitioner as per the applicable rules. Once it is an admitted position that the respondent has till date, not initiated any disciplinary action against the petitioner, it cannot be allowed to withhold his terminal benefits.

3. In support of his plea, he relies on decision dated 23.11.2020 of a Coordinate Bench of this Court in W.P.(C) 10619/2019, ***Kunal Chakrabarti vs. Jawahar Lal Nehru University***, wherein this Court had held that the right to withhold pension, arises only if a government servant is found guilty of grave misconduct or negligence during the period of his service. He therefore prays that the respondent be directed to forthwith release the terminal benefits of the petitioner alongwith interest @18% p.a.

4. On the other hand, Ms. Ginny J. Rautray, learned counsel for the respondent opposes the petition by contending that the petitioner has been repeatedly directed to furnish details of his visits abroad alongwith copies of the necessary travel documents, which he has failed to do so for the last three years and, therefore, the respondent is handicapped in taking a decision as to whether any disciplinary proceedings are warranted against the petitioner. She submits that till the petitioner furnishes details of his visits abroad, the respondent



cannot take a decision as to whether departmental proceedings should be initiated against the petitioner and, therefore, contends that at this stage, it would be premature to release the terminal benefits in favour of the petitioner till a final decision is taken on this aspect. She further submits that the petitioner be directed to submit details of his visits abroad along with copies of the necessary documents so as to enable the respondent to take a decision as to whether any disciplinary proceedings is warranted against him. She, therefore, prays that the writ petition be dismissed.

5. Having heard the learned counsel for the parties and perused the record, I find that the question raised in the present petition is fairly simple and does not really need any detailed deliberations. Once it is an admitted position that till date, the respondent has not initiated any action whatsoever against the petitioner and that too after one year of his superannuation, the respondent cannot continue to withhold his terminal benefits by contending that directions being issued to the petitioner since 2019 to submit the details of his travel abroad, are not being complied with. This Court is unable to appreciate as to why, the respondent has chosen not to take any action against the petitioner, if as claimed by it, that the petitioner was not responding to the requests of the respondent.

6. At this stage, it may be appropriate to note that learned counsel for the petitioner, while urging that the respondent cannot at this belated stage initiate any disciplinary proceedings against the petitioner, submits, that in order to bring a quietus to the issue, the petitioner has already given an undertaking as directed by the



respondent itself whereby he has explicitly undertaken that he will render himself available for action that the respondent might initiate in terms of the University's rules. A reference may, therefore, be made to the contents of the said undertaking, which reads as under:

"I, Dr. Ajay Kumar Patnaik of Centre for Russian & Central Asian Studies, School of International Studies, JNU, retired from the University services w.e.f 30.06.2021(A/N), do hereby undertake that I understand and agree to the dispensation of retirement benefits as per University Rules being sanctioned to me, subject to the specific conditions that "I will render myself available for action that University might initiate in this case, subsequent to sanction of retirement benefits in terms of relevant University Rules'". "

7. In light of the aforesaid, once the petitioner has given a clear undertaking that he will render himself liable for any action that University may initiate against him in accordance with rules, the respondent cannot be allowed to retain the terminal benefits of the petitioner merely because it is under a belief that it may, even at this belated stage, be entitled to initiate disciplinary proceedings against the petitioner in the future.

8. In this regard, reference may be made to the decision of a Co-ordinate Bench in **Kunal Chakrabarti (supra)** relied upon by the petitioner. The relevant extract thereof reads as under:-

"11. It is evident from a bare reading of Rule 9(1) that pension of an employee can be withheld in full or in part if in any departmental or judicial proceedings the employee is found guilty of grave misconduct or negligence during the period of service. The provisions of the Rule permit continuation of the disciplinary proceedings, if instituted



by the employer when the employee was in service and after retirement they would be deemed to be proceedings under Rule 9(1) and can be continued and concluded by the employer. Rule 9(2)(b) permits institution of disciplinary proceedings after retirement provided the event is not beyond four years before such institution. Rule 9(4) clearly prescribes that if the Government servant retires on superannuation or otherwise and the departmental proceedings are instituted or continued under Rule 9(2), Provisional Pension as provided in Rule 69 shall be sanctioned.

12. What emerges on a holistic reading of Sub-Rules-(1), (2) (b), (4) and (5) of Rule 9 is that the right to withhold pension, whole or in part, arises only if a Government Servant is found guilty of grave misconduct or negligence during the period of his service. This power can be invoked only when proceedings are concluded and a finding of guilt rendered. Further, even when the disciplinary proceedings are pending, the Government servant is entitled to provisional pension and the pension cannot be withheld. The corollary is that when no disciplinary proceedings are pending, the employee is entitled to release of full pensionary benefits."

9. In the present case, once no disciplinary proceedings have been initiated against the petitioner, the respondent cannot withhold his terminal benefits merely on a presumption that, in the disciplinary proceedings which may be initiated against the petitioner in the future, he will be found guilty of grave misconduct or negligence. The petitioner is, therefore, entitled to release of his full terminal benefits.

10. For the aforesaid reasons, the writ petition is allowed. The respondent is directed to release the terminal benefits of the



NEUTRAL CITATION NO: 2022/DHC/002785

petitioner with effect from 01.07.2021. The said payment will be released in favour of the petitioner within a period of six weeks from today failing which the same will bear interest @ 9% p.a. It is however made clear that the payment of terminal benefits to the petitioner in terms of this order will be governed by the undertaking already furnished by him. Needless to state, this Court has not expressed any opinion on the question as to whether the respondent will, at this stage, be entitled to initiate any disciplinary proceedings against the petitioner or not.

(REKHA PALLI)
JUDGE

JULY 25, 2022
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