

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

BEFORE

The Hon'ble Justice RAJA BASU CHOWDHURY

WPO/1881/2006

SAMAR BIJOY BHOWMICK
VERSUS
GARDEN REACH SHIP BUILDERS & ENGINEERING LIMITED & Ors.

For the Petitioner : Mr. Subir Sanyal, Advocate
Ms. Sumitra Das, Advocate

For the Respondents: Mr. Ranjay De, Advocate

Heard on : 26.09.2023

Judgment on : 26.09.2023

RAJA BASU CHOWDHURY, J.:

1. The petitioner claims to be an ex-employee of the respondent no.1. It is his case that he was appointed in the year 1974 as Assistant Medical Officer and was subsequently promoted to the post of Assistant Chief Medical Officer in the year 1997. While officiating in the said post, on the basis of a complaint lodged against the petitioner before the Superintendent of Police, ACB, Nizam Palace, Kolkata, an investigation was started by the Central Bureau of Investigation (in short, CBI) and a

charge sheet dated 16th November, 2001 was issued against the petitioner under Section 7 of the Prevention of Corruption Act, 1988.

2. In course of such investigation, the petitioner was apprehended by the investigating agency. Following his apprehension and arrest by letter dated 5th September, 2001, the petitioner was suspended in terms of rule 20(1)(b) of the Garden Reach Shipbuilders & Engineers Ltd., Conduct Discipline and Appeal Rules, 1977 (hereinafter referred to as the “said Rules”).
3. It is the petitioner’s case that the petitioner was enlarged on bail by an order dated 18th October, 2001. According to the petitioner, the respondents were obliged in terms of Rule 20(2) of the said rules to revoke the order of suspension, upon the petitioner being enlarged on bail. The respondents having not revoked such order of suspension, a writ application was filed before the Hon’ble Court challenging the said order of suspension. By an order dated 8th December, 2006, a Coordinate Bench of this Hon’ble Court while entertaining the writ application was, inter alia, pleased to direct exchange of affidavits.
4. During pendency of the writ application, since the petitioner was due to retire by a notice in writing dated 20th December, 2006, the respondents had notified the petitioner with regard to the imminent date of superannuation. By such notice, the petitioner was further informed that by reason of pendency of judicial/criminal proceeding against him, the

management had decided that the gratuity shall be paid to the petitioner on conclusion of the proceeding subject to decision of the appropriate Court/authority. By such notice it was, however, clarified that accumulated balance in provident fund and cash equivalent amount of earned leave standing in the credit of the petitioner as on the date of suspension would be disbursed in his favour on his retirement.

5. Subsequently, upon the petitioner reaching the age of superannuation on 31st August, 2007, by a communication dated 8th February, 2007, the respondents had intimated the petitioner that inasmuch as 'no dues certificate' had not been issued by the administrative department, by reason of failure to vacate the company's accommodation, the finance department could not be advised to release petitioner's terminal benefits at that stage as per the rules of the company. By such letter, the petitioner was, however, informed that accumulated balance in provident fund would be released in his favour subject to the petitioner contacting the provident fund section of the respondent no.1. In terms of the office order dated 8th February, 2007, the respondents had released a sum of Rs.15,27,442.03 in favour of the petitioner on account of provident fund dues vide cheque no.156373 dated 1st February, 2007.
6. In the interregnum, by a judgement and order dated 31st August, 2012 passed by the Special Judge CBI Court, Alipore, South 24 Parganas in case no.SPL 15 of 2001, the petitioner was acquitted, in view of Section

248(1) of Criminal Procedural Code, from the charges, for the offences punishable under Section 7 and 13(2) read with Section 13(1)(d) of the Prevention and Corruption Act, 1988 and was discharged from the bail bond and was set at liberty.

7. By incorporating the aforesaid development in a supplementary affidavit filed on behalf of the petitioner, the aforesaid fact were brought on record. Since then, the matter was taken up for consideration by this Court. Pursuant to the leave granted by this Court, the respondents have since, filed a supplementary affidavit. Dealing with the contents of the said supplementary affidavit, a rejoinder captioned affidavit-in-reply to the supplementary affidavit has been filed by the petitioner in Court today which is taken on record.
8. Mr. Subir Sanyal, learned Advocate representing the petitioner, by drawing attention of this Court to the notice of superannuation dated 20th December, 2006 submits that the respondents at that stage without any authority in law had purportedly hold out that they would withhold the gratuity payable to the petitioner by reasons of pendency of judicial/criminal proceedings. Subsequently, the respondents having realised their mistake, by letter dated 8th February, 2007 had specifically omitted the ground for withholding the gratuity, as is reflected in the notice dated 20th December, 2006. By drawing attention of this Court to the notice dated 8th February, 2007, it is submitted that the ground on

which the 'no dues certificate' was held back by the respondents is absolutely arbitrary, has no sanction of law. The petitioner having retired on 31st January, 2007 could not have been called upon to vacate the quarters prior thereto, in any event withholding of 'no dues certificate' by reason of the petitioner occupying the quarter is contrary to the settled legal principles. By referring to the provisions of the Conduct Disciplinary and Appeal Rules as applicable to the petitioner, it is submitted that the provisions contained in the said rules do not authorise the respondents to withhold the petitioner's terminal benefits, on account of pendency of any judicial/criminal proceedings. The said rules also cannot authorise the respondents hold back the terminal benefits, *inter alia*, on the guise of non-issuance of no dues certificate, especially when the petitioner had no role to play in issuance of such certificate. By placing reliance on the statements made in paragraph 3(g) of the said supplementary affidavit filed by the respondents, affirmed by Subardan Toppo on 8th May, 2023 (hereinafter referred to as the "said Supplementary Affidavit"), it is submitted that on the basis of the respondent's own showing, a sum of Rs.19,87,372/- is due and payable to the petitioner. Since, the respondents have no authority in law to hold back the same, necessary direction may be issued to forthwith release the aforesaid amount. By placing reliance on a judgment delivered by the Hon'ble Supreme Court in the case of ***R Kapur v. Director of Inspection (Paining and***

Publication) Income Tax and Another, reported in **(1994) 6 SCC 589**, it is submitted that the Hon'ble Supreme Court has repeatedly held that death-cum-retiral benefits cannot be withheld merely because an employee had not vacated the premises allotted to him during the course of his employment. It is still further submitted that the Hon'ble Supreme Court taking note of the failure of the employer to release the terminal benefits had granted interest at the rate of 18% per annum since, right to gratuity is not dependent upon the employee vacating the quarter. He has also relied on a judgment delivered by the Hon'ble Supreme Court in the case of **Gorakhpur University and Others v. Dr. Shitla Prasad Nagendra and Others**, reported in **(2001) 6 SCC 591**, which also takes a similar view. Having regard to the aforesaid, it is submitted that the respondents should forthwith be directed to release the terminal benefits as admitted by them in paragraph 3(g) of the said supplementary affidavit along with interest at the rate of 18% per annum.

9. *Per contra*, Mr. Ranjay Dey, learned Advocate representing the respondents, on the other hand, submits that the respondents always intended to clear the terminal benefits as were payable to the petitioner. The terminal benefits had been held back by reason of pendency of the criminal proceedings. He submits that the Central Bureau of Investigation, has since, preferred an appeal from the judgment and order dated 31st August, 2012 and this Hon'ble Court by an order dated

21st July, 2013, in CRM SPL No.31 of 2013, has, *inter alia*, granted special leave to appeal. Having regard to the aforesaid, it is submitted that the appeal is a continuation of a proceeding and, as such, there is no change in the circumstances for the petitioner to apply before this Hon'ble Court for release of and disbursal of the terminal benefits. By placing reliance on the office memo dated 16th December, 1999, it is submitted that the original decision to withhold the gratuity was taken, based on the aforesaid office memorandum dated 16th December, 1999. He, however, candidly submits that the office memorandum has not been incorporated in the said Rules. By placing reliance on office memorandum dated 20th July, 2007, he submitted that Rule 31(c) has, however, been incorporated in the Conduct, Discipline and Appeal Rules, 1977, by amending the same w.e.f. 11th January, 2007, so as to confer authority on the respondents to withhold gratuity in the event of certain eventuality as provided therein. It is further submitted that the petitioner despite being put on notice did not vacate the company's quarter and had retained such quarter at least upto the year 2018 when the respondents were able to obtain possession of such quarter through the intervention of the Hon'ble Court. Having regard to the aforesaid, it is submitted that in the event this Court considers directing disbursal of terminal benefits in favour of the petitioner, no interest ought to be granted in favour of the petitioner, at least until 8th June, 2022, when

the quarter could actually be repossessed by the respondents. The respondents in fact had to remove two number of locks and one steel almirah from the quarter which was in the occupation of the petitioner, for which a sum of Rs.2822/- had been incurred by the respondents. The respondents are entitled to set off the aforesaid amount from the petitioner's claim.

10. In reply, Mr. Sanyal submits that the office memorandum dated 20th April, 2007 cannot be made applicable in so far as the petitioner is concerned. Admittedly, the petitioner retired on 31st January, 2007 and as on the date of retirement of the petitioner, the said office memorandum had not been issued and the same had not seen the light of the day. In so far as the office memorandum dated 16th December, 1999 is concerned, by referring Conduct, Discipline and Appeal Rules, it is submitted that the said office memorandum had not been adopted by the respondents and for the reasons aforesaid, same does not appear in the Conduct, Discipline and Appeal Rules. Having regard to the same, the respondents should immediately be directed to release the terminal benefits to the petitioner.

11. Having heard learned Advocates appearing for the respective parties and considered the materials on record, I find that the petitioner was an employee of the respondent no.1. It is also an admitted position that an inquiry was initiated by the CBI, following the inquiry the petitioner was

taken into custody and in terms of Rule 20(1)(b) of the said Rules, the petitioner was suspended. Subsequently, the petitioner was enlarged on bail by an order dated 18th October, 2001. Since, the respondents despite being obliged in terms of Rule 20(2) of the said rules, having not revoked the order of suspension upon the petitioner being enlarged on bail, the petitioner was constrained to file a writ application before this Court, *inter alia*, questioning the authority of the respondents to continue with the suspension order.

12. Incidentally, during the pendency of the writ application, the petitioner was served with a notice of superannuation, as would appear from the office order dated 20th December, 2006. It appears that the respondents while issuing the notice of superannuation had categorically provided therein that since, judicial/criminal proceeding against the petitioner was in progress, the respondents had decided that gratuity should be paid to the petitioner on conclusion of the proceeding subject to the decision of the appropriate Court or authority.

13. Subsequently, however, after the petitioner having retired by an office order dated 8th February, 2007, the petitioner was, *inter alia*, informed as follows:-

“Since ‘No Dues’ certificate has not been issued by the Administrative Department due to your failure to vacate Company’s accommodation, Finance Department can not be

advised to release your terminal benefit at this stage as per the Company's Rules except accumulated balance in Provident Fund for which you are requested to contact PF Section of the Company."

14. In terms of the aforesaid order, the respondents had, however, disbursed the provident fund dues as payable to the petitioner on 1st February, 2007. Since then, the proceeding initiated against the petitioner under the provisions of Section 7 and Section 13(2) of the Prevention and Corruption Act, 1988 was finally decided by a judgment and order passed by the Special Judge, CBI Court, Alipore on 31st August, 2012, whereby the petitioner as an accused person was acquitted, in view of Section 248(1) Criminal Procedure Code from the charges, for the offences punishable under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention and Corruption Act, 1988. The writ application since then, has come up for consideration.

15. Although, it has been the contention of the respondents that by reasons of pendency of the judicial/criminal proceedings the terminal benefits are not payable in favour of the petitioner, I am of the view that the Conduct, Discipline and Appeal Rules do not support such contention as rightly pointed out by Mr. Sanyal. The office memorandum dated 16th December, 1999, which has been relied on by the respondents for withholding the terminal benefits has not been incorporated by the

respondents in the Conduct, Discipline and Appeal Rules. In absence of any provision authorising the respondents to withhold, the gratuity or the terminal benefits, I am of the view that the respondents in terms of provision of Payment of Gratuity Act, 1972 were obliged to make payment of the gratuity. Admittedly, Section 13 of the Payment of Gratuity Act, 1972 accords protection of gratuity while Section 14 gives an overriding effect to the provisions of Sections 13 of the Payment of Gratuity Act, 1972. Sections 13 and 14 of the Payment of Gratuity Act, 1972 are extracted below:-

“Section 13. Protection of gratuity.

No gratuity payable under this Act and no gratuity payable to an employee employed in any establishment, factory, mines, oilfield, plantation, port, railway company or shop exempted under section shall be liable to attachment in execution of any decree or order in any civil, revenue or criminal court.

Section 14. Act to override other enactments, etc.

The provisions of this Act or any rule made there under shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act.”

16. Having regard to the aforesaid, I am of the view that under no circumstances the respondents could have withheld gratuity payable in favour of the petitioner, in absence of any provision authorising the

same. It, however, appears from the notice dated 8th February, 2007 that the respondents have contended that by reasons of non-issuance of no dues certificate, the terminal benefits have been withheld. Admittedly, the petitioner had been superannuated on 31st January, 2007. Having regard to the same, I am of the view that respondents ought not to have held back the no dues certificate on the ground of the failure on the part of the petitioner to vacate the company's quarter, as the date of the superannuation was within a month from the date of issuance of such notice. In any even the Hon'ble Supreme Court in the case of **R. Kapur (Supra)** in paragraph 11 has been, *inter alia*, pleased to observe as follows:

“11. The Tribunal having come to the conclusion that DCRG cannot be withheld merely because the claim for damages for unauthorised occupation is pending, should in our considered opinion, have granted interest at the rate of 18% since right to gratuity is not dependent upon the appellant vacating the official accommodation. Having regard to these circumstances, we feel that it is a fit case in which the award of 18% is warranted and it is so ordered. The DCRG due to the appellant will carry interest at the rate of 18% per annum from 1-6-1986 till the date of payment. Of course this shall be without prejudice to the right of the respondent to recover damages under Fundamental Rule 48-A. Thus, the civil appeal is allowed. However, there shall be no order as to costs.”

17. The same view has been reiterated in the judgment delivered in the case of ***Gorakhpur University and Others (Supra)***.
18. Having regard to the aforesaid, I am of the view that on account of non-vacating of company's quarter, the respondents could not have withheld either the terminal benefits or gratuity payable to the petitioner. Although, Mr. De has submitted that no wrong can be attributed to the respondents for withholding the terminal benefits, I am unable to accept the same. It is well settled that the terminal benefits are computed well in advance. The Hon'ble Supreme Court has time and again deprecated, withholding of terminal benefits. In view thereof, there shall be an order directing the respondents to forthwith release the terminal benefits as admitted in paragraph 3(g) of the said supplementary affidavit in favour of the petitioner, preferably within a period of four weeks from the date of communication of this order along with interest at the rate of 12% p.a. from the date when the petitioner had reached the age of superannuation. While making payment, respondents shall deduct a sum of Rs.2822/-, which they had incurred for removing the lock and the almirah from the company quarter.
19. I, however, make it clear that the directions passed herein shall not stand in the way of the respondents, from realising their claim on account of occupational charges for the petitioner occupying the quarter

beyond the date of superannuation, upon the same being adjudicated by a competent Court of law.

20. The writ application is, accordingly, allowed.
21. There shall be no order as to costs.
22. Urgent photostat certified copy of this order, if applied for, be made available to the parties on priority basis upon compliance of all formalities.

(RAJA BASU CHOWDHURY, J.)

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