



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

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Date of decision: October 04, 2023

+ W.P.(C) 7498/2023

DR DINESH PAUL

..... Petitioner

Through: Mr. Manav Gupta, Mr. Sahil Garg,
Mr. Abhinav Jain, Mr. Ankit Gupta
and Ms. Samiksha Jain, Advs.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Ms. Uma Prasanna, SPC with
Ms. Vidhi Gupta, Govt. Pleader for
R1.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

1. The challenge in this petition is to an order dated January 12, 2023, passed by the Central Administrative Tribunal Principal Bench, New Delhi, (hereinafter referred to as 'Tribunal') whereby the Tribunal has allowed the O.A. 54/2020 by stating in paragraphs 10 and 11 as under:-

"10. On perusal of the pleadings and records, I am of the view that delay in releasing the leave encashment to the applicant was on account of the administrative and policy issues under examination by the respondents with the concerned Ministries and, therefore, the delay in payment of leave encashment withheld against the NPA, was unavoidable and, hence, the claim of the interest on this delayed payment, as made by the applicant, is not tenable.



It was further submitted by learned counsel for the respondents that as per directions of Office Order No.89/2021 dated 12.08.2021, payment of leave encashment has already been made to the applicant.

11. The OA is accordingly disposed of, with direction to the respondents to ensure that the due amount of leave encashment, as conveyed through Office Order No. 89/2021 dated 12.08.2021, is paid in the applicant's account, if not already done, within a period of 6 weeks from the date of receipt of a copy of this order, failing which the same will attract interest@ 6% p.a. from the date of his superannuation. No order as to costs."

2. The submission of Mr. Manav Gupta, learned counsel for the petitioner is that the challenge of the petitioner before the Tribunal was primarily to the memoranda dated June 12, 2018 and June 22, 2018 withholding the leave encashment payable to the petitioner on the ground of recoveries, alleged to be due against the petitioner herein. According to him, the petitioner was recruited in the respondent organization National Institute of Public Cooperation & Child Development (hereinafter referred to as 'NIPCCD') on October 13, 1983. Subsequently, he was promoted as Additional Director.

3. He retired on September 30, 2016 on attaining the age of superannuation. On his retirement, he received all his retirement benefits except for leave encashment amounting to ₹19,12,500/-, which was withheld by the respondent No.2. According to him, the case of the respondents was primarily that the petitioner was wrongly paid Non Practicing Allowance (hereinafter referred to as 'NPA') by NIPCCD which is sought to be recovered on the directions of respondent No.1. He submits that the petitioner was being paid the NPA since the year



1984 and continued to be paid till the date of his retirement i.e., September 30, 2016. It was only in the year 2018, i.e., June 12, 2018, and on June 22, 2018, decision was taken not to release the leave encashment on the alleged ground of making recoveries. According to him, the Tribunal has overlooked the position of law in terms of the judgment of the Supreme Court in the case of *State of Punjab & Ors. v. Rafiq Masih (White Washer) etc in CA No. 11527 of 2014*, which lays down five situations when the recovery could not have been effected which includes (ii) when the Government Servant has retired or the recovery that is sought to be effected is within one year preceding the date of retirement. He submits, during the pendency of the petition, though leave encashment has been paid, the respondents have not paid the Gratuity amount which needs to be released in favour of the petitioner.

4. On the other hand, the case of the respondents before the Tribunal was that there has been irregular payment of NPA which is sought to be recovered by withholding the leave encashment. Similar are the submissions of the learned counsel for the respondents even before us, today.

5. It may be the case of the respondents that the petitioner was not entitled to the NPA but it is a fact and is not denied by the learned counsel for the respondents that NPA was being paid to the petitioner w.e.f., 1984 till his date of superannuation on September 30, 2016 and no attempt was made while he was in service to effectuate the stoppage of NPA. If the petitioner was not entitled to the same, surely, a benefit



which has been given for almost 32 years could not have been recovered on the alleged ground that the same was not payable, that too when the petitioner had retired.

6. Mr. Gupta is justified in relying upon the judgment in the case of **Rafiq Masih (supra)**, wherein, in paragraph 18 the Supreme Court has laid down the following situations when the recovery cannot be affected:

“(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

7. Further, it is not the case of the respondents that the petitioner has given an undertaking at the time of grant of NPA that if in the eventuality the NPA is not payable, the amount paid shall be recovered.



8. If that be so, the present petition is allowed. The office memorandum dated June 12, 2018 and June 22, 2018 are set aside. As the petitioner has already been paid the leave encashment and we have been informed that Gratuity has not been released, the same shall be released within a period of two months from today with interest to be paid @ 6% per annum from the date of entitlement till the release.

9. No costs.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

OCTOBER 04, 2023/ds