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

% *Date of Decision: 27th September, 2024*

\+ W.P.(C) 7917/2023

SH G L GUPTA .....Petitioner

Through: Mr. Nawal Kishore Jha and Ms. Kalpana Jha, Advocates.

versus

DELHI URBAN SHELTER IMPROVEMENT BOARD .....Respondent

Through: Mr. Parvinder Chauhan, Mr. Ananat Vijay Singh, Advocates along with Mr. Vijay Kumar Maggo, (Law Officer), Mr. Pranav Sinoha and Mr. Himanshu (LA) and Mr. U.M.Rao (Deputy Director)

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

JYOTI SINGH, J. (ORAL)

1. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India seeking a direction to the Respondent *inter alia* to release to the Petitioner balance amounts payable towards subsistence allowance, gratuity, leave encashment etc. as well as to release pension deducted to the extent of 30% for a period of three years, after the judgment dated 13.02.2023 passed in LPA No. 944/2013.

2. Factual matrix to the extent necessary is that Petitioner was appointed in the erstwhile Slum and JJ Department of DDA as Lower Divisional Clerk ('LDC') on 23.10.1974 and was subsequently promoted as Accountant and

Deputy Chief Accountant and after repatriation of Sh. Om Prakash (DCA-II) from MCD to DDA on 01.06.2009, Petitioner was assigned the charge of DCA-II in addition to the above charge. By an order dated 29.09.2010, Petitioner was placed under suspension and during the suspension period, he retired on superannuation on 31.10.2011. Aggrieved by the order of suspension and denial of retiral benefits, Petitioner filed W.P.(C) 197/2012 in this Court challenging continuation of the suspension order after 90 days as also seeking release of terminal benefits, such as pension, gratuity, leave encashment with interest.

3. As the narrative in the writ petition goes, writ petition being W.P.(C) 197/2012 was disposed of vide order dated 17.09.2013 holding that the extension of suspension period beyond 90 days without recommendation of the Review Suspension Committee was illegal and declaring the order extending suspension dated 20.06.2011 as invalid. It was held that suspension of the Petitioner would expire w.e.f. 28.12.2010 and he would be entitled to all consequential benefits including monetary benefits with 5% interest per annum. With respect to the issue of entitlement of retiral benefits, Petitioner sought and was granted liberty to file a comprehensive representation to the Respondent.

4. Respondent challenged the order before the Division Bench in LPA No. 944/2013. During the pendency of the appeal, Petitioner made representations for release of his benefits. In the meantime, disciplinary proceedings initiated against the Petitioner vide charge memo dated 11.03.2013 continued and culminated into an order of penalty passed by the Disciplinary Authority on 14.11.2018, whereby 30% cut in the pension of the Petitioner was imposed for a period of three years in addition to

withholding of entire gratuity. On 13.02.2023, the Division Bench disposed of LPA 944/2013 upholding the order of the learned Single Judge to the extent the suspension was continued. During the hearing, Respondent handed over a chart of computation reflecting that an amount of Rs.2,46,269/- was payable to the Petitioner on account of difference between salary and subsistence allowance for the suspension period. Annexure 'B' to the computation indicated that interest amounting to Rs.1,42,614/- was payable upto February, 2023. Taking the calculations on record, the Division Bench directed the Respondent to pay the said amounts to the Petitioner within six weeks. This order was not challenged by the Petitioner.

5. Learned counsel for the Petitioner contends that he was wrongly suspended by the Respondent and the suspension was found to be illegal by this Court and therefore, he is entitled to complete salary for the suspension period which has not been paid till date. It is further submitted that the penalty was wrongly imposed on the Petitioner by the Disciplinary Authority directing 30% cut in the pension and forfeiting the entire gratuity after the Division Bench decided LPA No. 944/2013 on 13.02.2023 and therefore, Petitioner is entitled to full pension for the three years, for which 30% of his pension has been deducted pursuant to the penalty order. It is also argued that there is no provision by which the Respondent can withhold the leave encashment and the gratuity of the Petitioner and Petitioner is entitled to the said benefits with interest.

6. Learned counsel for the Respondent, relying on the counter-affidavit filed by the Respondent submits that it is not open to the Petitioner to challenge the suspension order dated 29.09.2010 as the same has attained finality in terms of the order dated 17.09.2013 passed in W.P.(C) 197/2012,

wherein the Petitioner had only challenged the continuation of suspension after 90 days as also the order of the Division Bench in LPA No. 944/2013 wherein the Division Bench upheld this part of the order of the learned Single Judge. In so far as benefit of the emoluments pertaining to the suspension period is concerned, Mr. Chauhan submits that during the hearing of the Appeal before the Division Bench, Respondent had placed a computation chart where in Annexure 'A' it had indicated that an amount of Rs. 2,46,269/- was due to the petitioner on account of the difference of pay and allowances during the suspension period. Annexure 'B' indicated the interest component of Rs.1,42,614/- payable upto February, 2023 including the grace period under the order of the learned Single Judge. Petitioner did not raise any objection to the amounts and the Division Bench accepting the amounts to be correct, directed the Respondent to release the payments within six weeks and therefore, Petitioner cannot once again agitate the issue that he has not been paid the difference of pay and allowances for the suspension period.

7. It is further argued that Major Penalty Charge Sheet was issued against the Petitioner on 11.03.2013, after obtaining approval of the Chairperson, DUSIB and the disciplinary proceedings culminated into a penalty order whereby the Disciplinary Authority imposed 30% cut in pension for three years and forfeited the entire gratuity. After the period of three years commencing from 14.11.2018 expired, pension has been restored on 14.11.2021 and there can be no grievance on this issue. Coming to leave encashment, Mr. Chauhan argues that the same has been withheld due to pendency of a Civil Suit for recovery filed by the Respondent in this Court, seeking recovery of Rs.19.44 Crores, allegedly embezzled by the Petitioner

and other officials as also on account of pendency of the criminal case initiated by the Anti-Corruption Branch wherein an FIR No. 12/2011 dated 13.12.2011 was registered under Section 13(1)(d) and 13(2) of Prevention of Corruption Act, 1988 read with Sections 409/420/471/120B. Reliance is placed on Rule 39 (3) of CCS Leave Rules ('Leave Rules') which enables the Competent Authority to withhold whole or part of cash equivalent of earned leave in 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 on conclusion of the proceedings. In so far as the gratuity is concerned, it is contended that gratuity of the Petitioner has been forfeited by the Disciplinary Authority as a penalty and the penalty order dated 14.11.2018 was never challenged by the Petitioner. Moreover, pending the criminal proceedings Respondent has a right to withhold gratuity even otherwise.

8. Heard learned counsels for the parties and examined their submissions.

9. From the narrative in the writ petition it is evident that Petitioner seeks multiple reliefs. Insofar as the payment of the alleged balance amount for the suspension period is concerned, there is no merit in the argument of the Petitioner. Petitioner was suspended by order dated 29.09.2010 on account of alleged embezzlement of funds and dereliction of duties pending investigation. Petitioner approached this Court in W.P.(C) 197/2012 after his superannuation on 31.10.2011. This writ petition was disposed of on 17.09.2013 and as the order records the only relief claimed by the Petitioner qua the suspension order was to quash the continuation of suspension after

90 days, which was decided in favour of the Petitioner and the Court held that the order dated 20.06.2011 continuing the suspension after 90 days, without a deliberation by the Suspension Review Committee was illegal. There was no challenge to the original suspension order dated 29.09.2010. Therefore, Petitioner cannot at this stage challenge the said order.

10. The claim of the Petitioner that he has not been paid the complete amount towards the difference between the salary and the subsistence allowance for the suspension period is also without any basis. As rightly pointed out by Mr. Chauhan, during the pendency of LPA No. 944/2013, Respondent had placed on record a computation sheet with two annexures. Annexure 'A' was with respect to the difference of pay and allowances and the subsistence allowance during the suspension period, as per which a sum of Rs.2,46,269/- was payable and Annexure 'B' indicated the interest component of Rs.1,42,614/-, which included the two months' grace period granted by the learned Single Judge. Petitioner did not object to the computation and accepted the calculations to be correct. In light of this, the Division Bench directed release of the amounts within six weeks. It is an undisputed position that Petitioner neither sought a review of this order nor filed any Appeal, so as to dispute the quantum of the amounts. Payments have been made by the Respondent in terms of the order of the Division Bench and this issue cannot be re-agitated by the Petitioner.

11. Coming to the issue of pension, it is a matter of record that disciplinary proceedings were initiated against the Petitioner pursuant to a Major Penalty Charge Sheet dated 11.03.2013, which culminated into a penalty of 30% cut in pension for a period of three years and forfeiture of entire gratuity. Petitioner has never assailed the disciplinary proceedings

and/or the penalty order, which has since attained finality. In consonance with the penalty imposed, Respondent has restored the pension on 14.11.2021 on completion of three years from 14.11.2018. In the absence of any challenge to the disciplinary proceedings and consequent penalty order, this Court cannot interfere with the penalty and/or direct the Respondent to restore the pension for the three year period for which there is a 30% cut in pension.

12. It is stated on an affidavit by the Respondent that criminal proceedings were initiated by the Anti-Corruption Branch which are pending, pertaining to alleged embezzlement of funds by the Petitioner and other officials and DUSIB has also filed a Civil Suit being CS(OS) 623/2016 for recovery of an alleged loss of Rs.19.44 Crores suffered by DUSIB. Relying on Rule 39(3) of Leave Rules, Respondent has withheld the leave encashment of the Petitioner. Rule 39(3) enables the authority competent to grant leave to withhold whole or part of the cash equivalent of earned leave if the Government servant retires on superannuation while under suspension or while disciplinary or criminal proceedings are pending in view of such authority and there is a possibility of some money becoming recoverable from the employee. However, it is seen that no such order has been passed till date by DUSIB and therefore as far as leave encashment is concerned, it is directed that a speaking order be passed by the Competent Authority under Rule 39(3) which shall be communicated to the Petitioner. There is no illegality in the decision of the Respondent in withholding the gratuity as the same stands forfeited as a penalty in the disciplinary proceedings, which is admittedly unassailed.

13. For all the aforesaid reasons, there is no merit in the writ petition and the same is dismissed, leaving it open to the Petitioner to take recourse to legal remedies with regard to leave encashment after the speaking order is communicated to the Petitioner.

JYOTI SINGH, J

SEPTEMBER 27, 2024
DU/jg