



2024:DHC:1891



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

% Judgment delivered on: 04.03.2024

+ W.P.(C) 9082/2023 & CM APPL. 34570/2023

REKHA JAIN Petitioner

versus

DEPARTMENT OF HEALTH AND
FAMILY WELFARE & ANR Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Tushar Mahajan and Ms. Bhaavan Mahajan, Advocates

For the Respondent : Ms. Yeeshu Jain, ASC with Ms. Jyoti Tyagi, Mr. Hitanshu Mishra and Ms. Manisha, Advocates

CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. This is a writ petition under Article 226 of the Constitution of India *inter alia* seeking the following reliefs:-

“A. Issue a writ of mandamus or direction in the form of any other appropriate writ to the respondents seeking a direction to the respondents to immediately release the already sanctioned amount of "Earned Leave Encashment" legitimately due and payable to the



petitioner by the respondents as part of the petitioners' retiral benefits;

B. Issue a writ of mandamus or direction in the form of any other appropriate writ to the respondents seeking a direction to the respondents to give penal interest on the delayed payment or "Earned Leave Encashment" in accordance with the mandate or the Hon'ble Supreme Court laid down in State of Kerala vs. M. Padmanabha Nair, (1985) 1 SCC 429;

C. Any other relief as deemed fit by this Hon 'ble Court."

2. It is the case of the petitioner that the petitioner was appointed as a Staff Nurse in the respondent-GTB Hospital on 18.12.1990 and subsequently served in the capacity of a Senior Nursing Officer for over 32 years and finally superannuated on 28.02.2023.
3. It is not disputed that the petitioner had received all her retiral benefits on 10.03.2024 barring the Earned Leave encashment, which was accruable to her as on the date of her superannuation. Learned counsel for the petitioner submits that the petitioner kept corresponding with the respondent to release her Earned Leave encashment in the month of March.
4. On 21.03.2023, the petitioner claims to have received her General Provident Fund amount but the Earned Leave encashment was still not released to her. The petitioner filed an RTI application on 11.05.2023 inquiring about the amount payable to her as Earned Leave encashment. Petitioner submits that the reply to the aforesaid RTI application was given *vide* communication dated 21.06.2023 enclosing the sanctioned order of the competent authority dated 15.06.2023 disclosing to the



petitioner for the first time that she was entitled to leave encashment amounting to Rs.12,78,000/-. It is this amount that the petitioner seeks penal interest on.

5. Learned counsel appearing for the petitioner submits that issue regarding payment of penal interest beyond two months from the date of superannuation is no more *res integra* in view of the ratio laid down by the Supreme Court in ***State of Kerala and Ors vs. M. Padmanabhan Nair*** reported in (1985) 1 SCC 429. Learned counsel invites attention to para 2 of the said judgment to submit that the Supreme Court has not made any exception to the period of delay and has purely laid down the ratio that if there is any delay beyond two months after the date of superannuation, the delayed payment as such would attract penal interest.

6. That apart, learned counsel also relies upon the judgment of Supreme Court in ***DD Tiwari (Dead) Through Legal Representatives vs. Uttar Haryana Bijli Vitran Nigam*** reported in (2014) 8 SCC 894 to reiterate his submissions that the principle laid down by the Supreme Court in ***M. Padmanabhan Nair*** (supra) is still good law.

7. He submits that according to the calculations made by the petitioner, the petitioner is entitled to penal interest for delay of 75 days in payment of the Earned Leave encashment. However, learned counsel fairly submits that, in the rejoinder, the reiteration of the prayer for the delay is only in respect of 45 days and not 75 days.

8. *Per Contra*, Mr. Yeeshu Jain, learned ASC, GNCT of Delhi submits that the petitioner had retired on 28.02.2023 and all payments, excluding the Earned Leave encashment, was paid to the petitioner as on



10.03.2023. He submits that an amount of Rs.50 Lacs was paid as on 10.03.2023. He submits that the Dearness Allowance was revised in the month of January, 2023 and as such, the benefits accruable to the petitioner had to be reworked in that regard.

9. That apart, Mr. Jain also submits that the petitioner had availed the LTC during the period 22.08.2022 to 26.08.2022 for the block year 2018-2022 and as per the observation of PAO, EL encashment was issued on 19.12.2022. Subsequently, keeping in view the fact that there was a change in DA during the Financial Year 2022-23, the said amount had to be reworked and as such, slight unintentional delay occurred on that account. He submits that there is no willful or deliberate delay on the part of the respondent officials and as such, the issue of penal interest on the delayed payments would not arise at all in the present case.

10. This Court has heard learned counsel for the parties and perused the documents on record.

11. The only issue to be decided by this Court is to whether the petitioner is entitled to penal interest on the delayed payment of Earned Leave encashment for 45 days as asserted by the petitioner.

12. Undoubtedly, the petitioner had retired on 28.02.2023 and admittedly had received all the retiral benefits on 10.03.2023, which was within 15 days of her superannuation. The said amount was to the extent of Rs.50 Lacs, is also undisputed.

13. It is also not disputed that the petitioner was not paid the Earned Leave encashment, which was accruable to her as on 28.02.2023. The sanction order of Earned Leave encashment was passed only on



15.06.2023, which is definitely beyond the date of superannuation, which was 28.02.2023. It is only to be seen as to whether the said delay on the part of the Department was deliberate or willful so as to attract penal interest.

14. According to learned counsel for the petitioner, the two months' period from 28.02.2023 is the only period which could be within the condonable limits in accordance with the judgment of the Supreme Court in *M. Padmanabhan Nair* (supra) and thereafter, the delay beyond two months, whether intentional or not, would be of no relevance.

15. Though this Court is in agreement with the ratio laid down by the Supreme Court, however, the reasons given by the respondent in its counter affidavit, in detail, as to why and on what reasons, the Earned Leave encashment order was delayed, appears to be satisfactory to this Court. In that, the petitioner had availed of LTC during 22.08.2022 and 26.08.2022 for the block year 2018-2022. It is also placed on record that as per the observation of PAO, the Earned Leave encashment was issued on 19.12.2022, which was prior to her superannuation itself.

16. However, keeping in regard the fact that there was a change in the Dearness Allowance during the Financial Year 2022-23 in the month of January, 2023, corrigenda was issued on 25.03.2023 and 02.05.2023. It was only subsequent to the said corrigenda that her retirement benefit in respect of the Earned Leave encashment of 300 days was further processed on 02.05.2023. After processing the said corrigenda and her entitlement, finally on 15.06.2023, the Earned Leave encashment sanction order was passed by the respondent.



17. The aforesaid sequence, as explained by learned ASC for the respondent, appears to be on account of reworking of the benefits, which would have accrued to the petitioner on account of Earned Leave encashment does not appear to be deliberate and appears to be on account of revised Dearness Allowance. The said delay on that count, could not be considered to be delay which is deliberate or willful.

18. Moreover, this Court is of the considered opinion that the penal interest would be accruable to the petitioner only if there was a delay which was unreasonable and on the grounds which do not have any satisfactory explanation. No doubt that delay on administrative reasons may not be condonable, however, the facts arising in the present case and the explanations tendered by the respondent in its counter affidavit appear to be satisfactory to this Court.

19. In that view of the matter, this Court is of the considered opinion that no penal interest would be liable to be paid by the respondent department to the petitioner.

20. The petition alongwith pending application is dismissed as such, without any order as to costs.

TUSHAR RAO GEDELA, J.

MARCH 4, 2024

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