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

\+ W.P.(C) 15603/2024 and CM APPL. 65500/2024

PAMELA TIKKU .....Petitioner

Through: Mr. Kuljeet Singh Sachdeva and Mr. Ankit Yadav, Advocates.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Manish Mohan, CGSC with Mr. Vikarm Saini, Mr. Jatin Teotia and Mr. Samarth Talesara, Advocates for R2 and R3.

Mr. Farman Ali, SPC with Mr. Hussain Adil Taqvi, Ms. Usha Jamnal and Mr. Krishan Kumar, Advocates.

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\+ W.P.(C) 15605/2024 and CM APPL. 65503/2024

JASDEEP SINGH PANESAR .....Petitioner

Through: Mr. Kuljeet Singh Sachdeva and Mr. Ankit Yadav, Advocates.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Ms. Ekta Choudhary, SPC with Mr. Sanjay Pal, GP for UOI.

Mr. Manish Mohan, CGSC with Mr. Vikarm Saini, Mr. Jatin Teotia, Mr. Abhinav Sharma and Mr. Samarth Talesara, Advocates for R2 and R3.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

O R D E R

% **08.11.2024**

CM APPL. 65501/2024 and 65504/2024

1. Exemptions allowed, subject to all just exceptions.

2. Applications stand disposed of.

W.P.(C) 15603/2024 and W.P.(C) 15605/2024

3. These writ petitions have been preferred on behalf of the Petitioners seeking a direction to Respondents No. 2 and 3 *inter alia* to release their full and final payments including retiral benefits such as gratuity, superannuation fund and leave encashment. Prayer is also made to quash legal notice dated 02.09.2023 issued on behalf of Respondent No. 2 for recovery of amounts paid to the Petitioners towards incentives, in view of alleged observations of C&AG.

4. Petitioner in W.P.(C) 15603/2024 was appointed as Assistant Director (Technical) with NATRIP w.e.f. 16.05.2006 and later transferred to Respondent No. 2 from April, 2010 with protection of her emoluments paid at NATRIP and her contract with Respondent No. 2 allegedly provided payment of incentives/Performance Linked Variable Pay ('PLOP'). Petitioner was appointed as Senior GM (Powertrain) w.e.f. February, 2011 with CTC based salary and performance pay and her provident fund, gratuity and accumulated leave were transferred from NATRIP. Petitioner resigned from Respondent No. 2 w.e.f. 05.06.2023 after following the due process and with the approval of the Competent Authority, vide letter dated 20.07.2023, however, the dues payable to her were not released despite several representations. By an e-mail dated 26.06.2024, Petitioner was informed that her payments were put on hold due to an alleged recovery on account of incentive paid to her and a legal notice dated 02.09.2023 seeking recovery was also received by the Petitioner wherein there is a reference to C&AG letter dated 04.07.2023 but till date Petitioner is unaware as to on what basis all her pending retiral dues etc. have been withheld as no further details or calculations have been furnished to her and even the said letter has

not been shared.

5. Petitioner in W.P.(C) 15605/2024 was appointed with Respondent No. 2 as Graduate Engineer Trainee and his services were confirmed w.e.f. 01.02.2014. The CTC offered to the Petitioner, as per the averments in the petition, comprised of performance based incentive payment as applicable to other employees of Respondent No. 2. Petitioner was appointed as Senior Engineer w.e.f. 01.07.2014 and his CTC was revised including revision in the incentive. Petitioner was further promoted as Assistant Manager from 01.07.2016 and from 28.09.2016, he was offered a revised CTC along with other allowances. The salary including the incentive was further revised on two occasions and based on the performance of the Petitioner, he was promoted as Deputy Manager from 01.07.2020 with consequent revision in salary and emoluments. Petitioner resigned on 24.06.2023 after the Competent Authority accepted the resignation, as per procedure. Despite several reminders, full and final payments of the Petitioner including retiral benefits have not been released and the only information sent to the Petitioner is that some amounts are to be recovered from him on account of alleged wrongful payment towards the incentive in question.

6. Common grievance of the Petitioners is that their outstanding dues which include retiral benefits have been illegally withheld by Respondents No. 2 and 3 predicating their case on a letter dated 04.07.2023, allegedly received from C&AG, but neither the letter has been shared with the Petitioners nor its contents are known. Petitioners are thus unaware of the actual reason why the payments have been withheld, save and except, a vague reason stated in the legal notice that Petitioners have availed the benefits of incentives without approval from the Competent Authority. It is

not disclosed till date as to on what basis this decision is taken since the incentives availed of by the Petitioners were those which have been paid to the employees of Respondent No. 2 for several years and were a part of the terms of the contracts of employment of the Petitioners. It is settled that Pension and Gratuity are no longer the bounty of the State and cannot be withheld, save and except, through procedure known to law and for justified reasons. Even otherwise, recovery of alleged excess payments for which Petitioners are not responsible cannot be done in view of the judgment of the Supreme Court in ***State of Punjab and Others v. Rafiq Masih (White Washer) and Others, (2015) 4 SCC 334.***

7. Issue notice.

8. Learned counsels, as above, accept notice on behalf of their respective Respondents.

9. During the course of hearing, learned counsel appearing on behalf of Respondents No. 2 and 3, on advance copy of the writ petitions, submits that the dues of the Petitioners claimed by them have been put on hold on the basis of a letter from C&AG and thus there is a justified reason to do so.

10. From a reading of the writ petitions and the documents appended thereto including communications from Respondents No. 2 and 3, all that can be discerned is that Petitioners have allegedly availed the benefits of incentives, which they were not entitled to and this allegation is based on a letter dated 04.07.2023 received from C&AG. None of the communications including the legal notice sent by Respondents No. 2 and 3 even remotely suggest as to why the incentives were wrongly disbursed to the Petitioners, assuming that they were. Petitioners, on the other hand, take a plea that the incentives in question have been paid to all employees of Respondent No. 2

and were a part of the terms and conditions of their appointments, incorporated in their contracts of employment. As there is no order passed by Respondent No. 2 indicating the reasons for coming to a conclusion that incentives were wrongly paid to the Petitioners, in my view, it would be appropriate at this stage to dispose of the writ petitions with a direction to Respondents No. 2 and 3 to treat these writ petitions as representations and look into the grievances and legal issues raised by the Petitioners contesting the recovery of incentives and seeking their outstanding dues including retiral dues.

11. Accordingly, the writ petitions are disposed of directing Respondents No. 2 and 3 to take a decision, as aforementioned, within a period of six weeks from the date of receipt of this order. A reasoned and speaking order shall be passed and the same shall be communicated to the Petitioners within one week from the date of the decision. It is further directed that till the decision is taken and for a further period of three weeks from the date of communication of the decision to the Petitioners, no recoveries shall be effected by Respondents No. 2 and 3 from the Petitioners.

12. Pending applications stand disposed of.

JYOTI SINGH, J

NOVEMBER 08, 2024
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