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

\+ **<u>W.P.(C) 17203/2024</u>**

OM PRAKASH .....Petitioner

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

versus

UNION OF INDIA AND ORS. .....Respondents

Through: Mr. Siddhartha Shankar Ray, CGSC with Mr. Shubham Sharma, Advocate for Respondents No.1 and 3.

135

\+ **<u>W.P.(C) 17216/2024</u>**

MAHENDAR PAL .....Petitioner

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

versus

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

Through: Mr. Siddhartha Shankar Ray, CGSC with Mr. Shubham Sharma, Advocate for Respondents No.1 and 3.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

<u>O R D E R</u>

% **13.12.2024**

<u>C.M. APPL. 73141/2024 and 73156/2024</u>

1. Exemptions allowed, subject to all just exceptions.

2. Applications stand disposed of.

<u>W.P.(C) 17203/2024 and CM APPL. 73140/2024</u>
<u>W.P.(C) 17216/2024 and CM APPL. 73155/2024</u>

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 the amounts paid to the Petitioners towards incentives, in view of alleged observations of Comptroller and Auditor General of India ('CAG').

4. Petitioner in W.P.(C) 17203/2024 was appointed as Senior Manager-Plant Engineering in International Centre for Automative Technology ('ICAT')/Respondent No.2 on 13.06.2013 and was promoted as AGM vide letter dated 01.07.2015 and thereafter as General Manager, on which post he served till his superannuation on 31.07.2022. Petitioner received the impugned legal notice dated 02.09.2023 on behalf of Respondent No.2 calling upon the Petitioner to pay a sum of Rs.1,14,65,004/- within 30 days failing which recovery proceedings were to be initiated. Basis for recovery was stated to be the incentive paid to the Petitioner during the period 2016-2017 to 2021-2022 allegedly without approval of the Competent Authority. Petitioner sent several e-mails to Respondent No.2 seeking release of his retiral dues, however, the dues were not released and it is averred that Petitioner cannot be held responsible for the payments made to him over several years, without any objection and moreover, incentives were a part of the terms and conditions of his service. Aggrieved by non-payment of the retiral dues, Petitioner has filed the present writ petition.

5. Petitioner in W.P.(C) 17216/2024 joined as Project Engineer with 'The Automative Research Association of India' pursuant to offer letter dated 28.05.2004 and on completion of probationary period his services

were confirmed w.e.f. 12.07.2005. Petitioner was later transferred to ICAT in the year 2007 and after many promotions, retired on 31.07.2023 as Assistant General Manager. Petitioner made several representations to Respondent No.2 seeking release of his retiral dues and other entitlements as per the terms of his employment. However, instead of receiving the payments, Petitioner received a legal notice dated 02.09.2023 alleging that a sum of Rs.74,42,362/- was due from him on account of incentives paid between 2016 and 2022 purportedly without approval of the Competent Authority and this was based on some observation by CAG in the letter dated 04.07.2023. On 27.11.2023, Petitioner again wrote to ICAT to release his retiral benefits, but no action was taken, compelling the Petitioner to approach this Court.

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, received from CAG, 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 notices 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. Mr. Siddhartha Shankar Ray, Central Government Standing Counsel, appearing on advance copies of the writ petitions, accepts notice on behalf of Respondents No.1 and 3 in both petitions and submits that the dues of the Petitioners have been withheld on the basis of communication from CAG as the incentives paid to the Petitioners were without the approval of the Competent Authority and there is no legal infirmity in the said action.

9. 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' dues have been withheld on the ground that they received incentives which they were not entitled to and this allegation is based on a letter dated 04.07.2023 received from CAG. None of the communications including the legal notices 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.

10. Accordingly, the writ petitions are disposed of directing Respondents No. 2 and 3 to take a decision, as aforementioned, within a period of eight 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. Petitioners shall be at liberty to take recourse to legal remedies in case of any surviving grievance(s), if so advised. 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.

11. Pending applications stand disposed of.

JYOTI SINGH, J

DECEMBER 13, 2024
B.S. Rohella