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

\+ W.P.(C) 17589/2024

SURESH KUMAR UPADHYAY .....Petitioner

Through: Mr. Kuljeet Singh Sachdeva, Advocate.

versus

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

Through: Mr. Manish Mohan, Mr Vikramjit Saini and Mr. Jatin Teotia, Advocates for R-1 and R-3.

Counsel for R-2 (appearance not given).

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

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

% **20.12.2024**

<u>CM APPL. 74845/2024</u>

1. Allowed, subject to all just exceptions.

2. Application stands disposed of.

<u>W.P.(C) 17589/2024 & CM APPL. 74844/2024</u>

3. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India laying a challenger to legal notice dated 14.09.2023 sent on behalf of Respondent No.2/M/s International Centre for Automative Technology ('ICAT') with a direction to the said Respondent to release the retiral benefits of the Petitioner along with interest.

4. Issue notice.

5. Counsels, as above, accept notice on behalf of the respective Respondents.

6. Petitioner joined ICAT on 06.05.2009 and his CTC was revised on 14.07.2010. On 14.01.2011, Petitioner was informed that his designation was revised and re-mapped as Senior Technical Assistant w.e.f. 01.01.2011 while all other terms and conditions would remain the same. On 31.03.2016, Petitioner received a communication from ICAT regarding additional incentive of Rs.17,596/- for performance and Rs.10,721/- for Director's Kitty and this was followed by a letter dated 28.09.2016 informing about revision in CTC. Another incentive was received vide letter dated 31.03.2017 with revision in CTC in 2018.

7. It is averred that Petitioner was promoted as Engineer from 01.07.2019 with revised CTC and other allowances from 01.07.2019 and the process continued with a further revision under 7th CPC on 16.09.2022. Petitioner was relieved from ICAT on 31.07.2023, however, instead of releasing his retiral/terminal benefits, a legal notice dated 14.09.2023 seeking recovery of the incentives/variable pay, allegedly wrongly paid, compelling the Petitioner to approach this Court.

8. Grievance of the Petitioner is that his outstanding dues which include retiral benefits have been illegally withheld by ICAT predicating its case on a letter dated 04.07.2023, received from Comptroller and Auditor General of India ('CAG'), but neither the letter has been shared with the Petitioner nor its contents are known. Petitioner is thus unaware of the actual reason why the payments have been withheld, save and except, a vague reason stated in the legal notice that Petitioner has availed the benefits of incentives/variable pay 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 Petitioner were those which have been paid to the employees of ICAT

for several years and were a part of the terms of the contracts of employment of the Petitioner. 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 Petitioner is 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.***

9. Mr. Mohan, learned counsel appearing on advance copies of the writ petition submits that the dues of the Petitioner have been withheld on the basis of communication from CAG as the incentives paid to the Petitioner were without the approval of the Competent Authority and there is no legal infirmity in the said action.

10. From a reading of the writ petition and the documents appended thereto including communications from ICAT, all that can be discerned is that Petitioner's dues have been withheld on the ground that he received incentives which he was 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 notice sent by ICAT even remotely suggest as to why the incentives were wrongly disbursed to the Petitioner, assuming that they were. Petitioner, on the other hand, takes a plea that the incentives in question have been paid to all employees of ICAT 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 ICAT indicating the reasons for coming to a conclusion that incentives were wrongly paid to the Petitioner, in my view, it would be appropriate at this stage to dispose of the writ petition with a direction to ICAT to treat this writ petition as representations

and look into the grievances and legal issues raised by the Petitioner contesting the recovery of incentives and seeking his outstanding dues including retiral dues.

11. Accordingly, the writ petition is disposed of directing ICAT 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 Petitioner within one week from the date of the decision. Petitioner 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 Petitioner, no recoveries shall be effected by ICAT from the Petitioner.

12. Pending application also stands disposed of.

JYOTI SINGH, J

DECEMBER 20, 2024/shivam