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

+ W.P.(C) 17823/2024

VIRENDER KUMAR SAXENA

.....Petitioner

Through: Ms. Saahila Lamba, Advocate.

versus

PRINCIPAL DISTRICT & SESSIONS JUDGE (HQS) TIS HAZARI
COURTS, DELHI.

.....Respondent

Through: Mrs. Avnish Ahlawat, Standing
Counsel, GNCTD with Mr. Nitesh Kumar Singh,
Ms. Laavanya Kaushik, Ms. Aliza Alam and Mr.
Mohnish Sehrawat, Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

23.12.2024

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1. This writ petition is preferred on behalf of the Petitioner seeking a direction to the Respondent to forthwith release all retiral benefits of the Petitioner including his pension with interest at the rate of 12 per cent per annum from 01.08.2024.
2. Facts to the extent necessary are that Petitioner was appointed as a Peon with the Respondent on 16.09.1991 and in due course of time he was promoted to the post of Civil Nazir. Petitioner retired on 31.07.2024 upon attaining age of 60 years after rendering 33 years of service with the Respondent. On 29.07.2024, Respondent issued an order retiring the Petitioner w.e.f. 31.07.2024 and by the same order directed DDO/Assistant Accounts Officer, New Delhi District, Patiala House Court to withhold all retiral benefits of the Petitioner as per Rule, till the conclusion of fact finding inquiry.



3. It is averred that for the month of August, 2024, Respondent released the pension and also paid GPF but thereafter neither pension was paid nor gratuity was released, constraining the Petitioner to make a representation on 03.10.2024, seeking immediate release of the retiral benefits. Petitioner also made an application under the Right to Information Act, 2005, seeking status of the fact finding inquiry. On 16.10.2024, Petitioner received a response to his representation dated 03.10.2024 stating that Petitioner had not retired from the Central District and should contact the concerned District from where he had retired. In response to the RTI application, Petitioner was informed that a fact finding inquiry was initiated against him in 2019 vide order dated 24.04.2019 and was pending and that the retiral benefits were withheld due to the pendency of the inquiry. This led to filing of the present writ petition.

4. Learned counsel for the Petitioner submits that the withholding of the retiral benefits of the Petitioner is completely illegal and arbitrary and Petitioner is facing a financial crunch due to non-release of the benefits. It is urged that under Rule 8 of CCS (Pension) Rules, 2021 ('2021 Rules'), pension can be withheld only where departmental or judicial proceedings are initiated and the pensioner is found guilty of grave misconduct or negligence during his service. Even under the Payment of Gratuity Act, 1972, gratuity can be forfeited/withheld only where services of an employee have been terminated for an act, willful omission or negligence causing any damage or loss to or destruction of property of the employer, to the extent of loss or damage. None of the conditions exist in the present case and there is no provision of law which entitles the Respondent to withhold the pension and gratuity payable to the Petitioner on account of a pending fact finding



inquiry, which has not seen the light of the day since 2019.

5. Issue notice.

6. Mrs. Avnish Ahlawat, learned Standing Counsel accepts notice on behalf of the Respondent and justifies withholding of retiral benefits of the Petitioner on the ground of pendency of fact finding inquiry. It is fairly conceded that no charge sheet has been issued till date against the Petitioner.

7. Indisputably, Petitioner retired from the service of the Respondent w.e.f. 31.07.2024 from the post of Civil Nazir after rendering 33 years of service. All retiral benefits of the Petitioner have been withheld, save and except, GPF and pension for one month of August, 2024. The only reason forthcoming for withholding the benefits is the pendency of a fact finding inquiry initiated by the Respondent vide order dated 24.04.2019. It is a conceded case of the Respondent that neither before retirement of the Petitioner nor thereafter till date even a charge sheet has been issued. Even where a charge sheet is issued prior to retirement of an employee and proceedings continue, provisional pension is paid to the charge sheeted employee. Counsel for the Petitioner is right in her submission that under Rule 8 of 2021 Rules, right to withhold pension or gratuity or both, either in full or in part, can only be exercised if in any departmental or judicial proceedings, pensioner is found guilty of grave misconduct or negligence during the period of service. There is no provision and none has been cited before the Court which entitles the Respondent to withhold the pension or gratuity of the Petitioner basis a fact finding inquiry initiated in 2019. This is besides the fact that even the said inquiry has been pending for five years and the fate and the status of the same is not even disclosed to the Petitioner. It is a settled law that pension and gratuity are not the bounty of the State



and can only be withheld for justified reasons and in accordance with law.
[Ref.: D.S. Nakara and Others v. Union of India, (1983) 1 SCC 305 and D.D. Tewari (Dead) Through Legal Representatives v. Uttar Haryana Bijli Vitran Nigam Limited and Others, (2014) 8 SCC 894].

8. Accordingly, this writ petition is allowed with a direction to the Respondent to release the retiral benefits of the Petitioner as expeditiously as possible and not later than 6 weeks from the date of receipt of this order along with interest at 6 per cent per annum from 01.08.2024 upto the date of actual payment.

JYOTI SINGH, J

DECEMBER 23, 2024/YA/shivam