

18.06.2025
Item No.13
gd/ssd

MAT/827/2025
UNION OF INDIA AND ORS.
VS
DR ABHISHEK BISWAS
IA NO: CAN/1/2025

Mr. Ashok Kumar Chakraborti, Ld. ASGI
Mr. Shiddhartha Bhattacherya,
Mr. Priyankar Ganguly,
Mr. Piyas Chowdhry
..for the Appellants.

Ms. Saheli Sen,
Mr. Subham Chatterjee,
Mr. Rajib Mullick
..for the Respondent.

1. This intra court appeal has been filed by the Central Government and its authority challenging the order passed by the learned Single Bench in WPA 8996 of 2025 dated 2nd May, 2025.

2. The said writ petition was filed by the respondent praying for a direction upon the appellants to pay the leave encashment dues of the writ petitioner amounting to Rs.34,67,500/- in accordance with the Central Civil Service (Leave) Rules, 1972 together with interest. Direction was also sought for to consider the representation wherein the same relief has been prayed by the writ petitioner.

3. The undisputed facts are that the writ petitioner joined the National Institute for Locomotor Disabilities (Divyangjan), being the third appellant, in

the post of Assistant Professor on 2nd August, 1993. As he was to attain the age of superannuation on 31.12.2023, the pension papers were processed and a No Demand Certificate was issued by the Deputy Director (Administration) dated 9th November, 2023 certifying that there are no dues payable by the writ petitioner to the third appellant/Organisation. Subsequently an order was passed on 22nd December, 2023 sanctioning the gratuity and pension and the GPF ledger cut and pension payment order were handed over to the writ petitioner. The order of retirement was issued by the third appellant dated 29th December, 2023 and the writ petitioner retired attaining the age of superannuation on 31st December, 2023. Thereafter the writ petitioner had made several representations seeking leave encashment dues which were not considered which necessitated the writ petitioner to file the writ petition which has been disposed of by the impugned order.

4. The learned Additional Solicitor General submitted that the direction issued by the learned Single Bench is incorrect since the learned Single Bench has directed payment of the leave encashment benefit and simultaneously granted liberty to the appellants to proceed with the departmental proceedings and such direction could not have been issued.

5. We have heard the learned advocate appearing for the respondent/writ petitioner on the above submission.

6. The learned Single Bench has rightly noted that till the date of retirement of the writ petitioner i.e. on 31st December, 2023 no disciplinary proceedings has been initiated against the writ petitioner.

7. That apart, No Due Certificate was issued as early as on 9th November, 2023 and pension has been sanctioned and gratuity has also been paid and orders to the said effect have been passed on 22nd December, 2023.

8. As could be seen from the proceedings of the Director of the 3rd appellant dated 19.8.2024, the leave salary was withheld and order to be released subject to the report of the enquiry committee.

9. It is the submission of the learned advocate appearing for the respondent/writ petitioner that till date the enquiry committee has not been constituted.

10. Be that as it may, as on date no disciplinary proceedings have been initiated against the respondent/writ petitioner and, therefore, the appellants are not justified in withholding the leave encashment benefit payable to the writ petitioner.

11. Therefore, the direction issued by the learned Single Bench is perfectly justified.

12. That apart, the interest of the appellants has also been safeguarded by the learned Single Bench by observing that the order and direction issued on the writ petition shall not preclude the employer, namely, the appellants to proceed against the writ petitioner if they are entitled to do so in law and if ultimately in such proceedings the result comes in favour of the employer, then the employer shall be at liberty to proceed for realization on the earned leave benefit to be paid to the writ petitioner as directed in the said order in accordance with law.

13. Therefore, if the appellant/department is entitled to proceed as per law against the writ petitioner, they are at liberty to do so.

14. That apart, it was made clear that the order passed in the writ petition shall not create any right or equity in favour of the employer in any manner whatsoever for initiating any proceedings or recovery against the writ petitioner.

15. Therefore, we find that this interest of the appellant has been sufficiently safeguarded by the learned Single Bench while issuing the direction to disburse the earned leave benefit earned by the writ petitioner during his service.

16. Therefore, we find no grounds to interfere with the order passed by the learned Single Bench.

17. Accordingly, the appeal fails and dismissed.

18. The appellants are directed to comply with the direction issued by the learned Single Bench within a period of four weeks from the date of receipt of server copy of this judgment and order.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(CHAITALI CHATTERJEE (DAS), J.)