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

+ **W.P.(C) 9342/2020**

MR BALVINDER SINGH NIGAHPetitioner

Through: Ms. Tamali Wad, Sr. Advocate
with Mr. Varyam Pandey and Ms.
Palak Garg, Advocates.

versus

HOTEL CORPORATION OF INDIA AND ORSRespondents

Through: Mr. A.P. Singh & Mr. Varnit
Vashistha, Advocates for R-1.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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23.04.2025

1. The petitioner was working as an Assistant Manager (Catering) with respondent No. 1 – Hotel Corporation of India Ltd. [“Corporation”]. The present writ petition concerns calculation of the petitioner’s salary and allowances, provident fund [“PF”], gratuity, and other terminal benefits in terms of an order of the Supreme Court dated 27.02.2020 in a litigation between the parties emanating out of disciplinary proceedings [Civil Appeal No(s). 6731/2010].
2. The disciplinary proceedings were commenced against the petitioner by a memorandum dated 09.05.2002. The charges were predicated upon criminal proceedings, which were instituted against him under Sections 4 and 5 of the Explosive Substances Act, 1908, read with Sections 3(1), 4, and 5 of the Terrorist and Disruptive Activities



(Prevention) Act, 1987. Although the petitioner had been acquitted in the criminal proceedings by the judgment of the Trial Court dated 04.02.2002, which went unchallenged, he was subjected to the penalty of dismissal by an order of the Disciplinary Authority dated 02.09.2005.

3. The petitioner's challenge to the disciplinary proceedings, which had been instituted at the stage of chargesheet, was dismissed by the judgment of learned Single Judge dated 27.07.2009 in W.P.(C) 6641/2002. The petitioner's appeal against said judgment [LPA 479/2009] was, however, allowed by the Division Bench *vide* judgment dated 22.10.2009. As the merits of those proceedings are no longer an issue, the operative directions of the Division Bench are reproduced below:

*"28. For all of the aforementioned reasons we find that the **impugned show cause notice/charge sheet dated 9th May 2002 and all proceedings consequent thereto including the order dated 2nd September 2005 of the disciplinary authority are wholly unsustainable in law.** They are accordingly quashed. In the circumstances, the impugned judgment of the learned Single Judge is hereby set aside. Since on account of the stay order of the High Court the order dated 2nd September 2005 of the disciplinary authority was not given effect to, and it has been set aside by this judgment, the **Appellant will be treated as having continued in service throughout with all consequential benefits. The arrears of wages, after accounting for the suspension allowance already paid to the Appellant, and other consequential dues will be paid to the Appellant by the HCIL within a period of four weeks from today.** In addition, the Respondent HCIL will also pay to the Appellant costs of Rs.30,000/- within four weeks."*

[Emphasis supplied.]

4. Against this judgment, the Corporation filed Civil Appeal No. 6731/2010 before the Supreme Court, which was disposed of by order dated 27.02.2020, with the following observations:

"The Respondent has retired on attaining the age of superannuation



on 31.3.2018. After hearing the learned counsel for the parties, we are of the opinion that the judgment of the High court needs no interference in view of the facts and circumstances of the case. Mr. Narender Hooda, learned senior counsel appearing for the Appellant submitted that according to the Corporation, the Respondent is entitled for payment of an amount of Rs. 49, 91, 366/- as per the judgment of the High Court.

We have heard learned the learned counsel for the Respondent who submitted that payment of 75% of the wages to which the Respondent was entitled from the date of the incident, i.e. 1.12.1991 till the date of the Respondent attaining the age of superannuation, i.e. 31.3.2018 is acceptable. That apart, the learned counsel for the Respondent submitted that the Respondent is entitled for gratuity and provident fund.

The Appellant is directed to pay 75% of the salary and other allowances from 1.12.1991 till 31.3.2018 to the Respondent after adjusting the amount already paid. In addition, the Respondent shall be paid the amount of gratuity and provident fund to which he is entitled to.

The appeal is disposed of accordingly.”

[Emphasis supplied.]

5. I have heard Ms. Tamali Wad, learned Senior Counsel for the petitioner, and Mr. A.P. Singh, learned counsel for the Corporation.
6. The dispute now surviving concerns the implementation of the directions of this Court, as modified by the Supreme Court. It is undisputed that a substantial part of the petitioner's dues has been paid, but some amount remains to be paid.
7. The only point of principle, upon which the parties still appear to be at variance, is whether the order of the Supreme Court, that the petitioner herein would be entitled to 75% of wages due to him from 01.12.1991 until the date of his superannuation, would also apply to his gratuity, PF and other terminal benefits. It is the contention of Ms. Wad that the proportion of 75% was payable in respect of wages and allowances, but not to the petitioner's other dues. Mr. Singh, on the other



hand, submits that gratuity, PF and other allowances, which are relatable to the last drawn salary of the employee, must be computed on the basis of the salary actually paid to him, i.e. 75% of the salary to which he was entitled.

8. Upon a consideration of the judgments of the Division Bench and of the Supreme Court, I am of the view that Ms. Wad's contention, on this account, must prevail. The judgment of the Division Bench clearly directed that the petitioner herein would be treated as "*having continued in service throughout with all consequential benefits*", and directed payment of arrears of wages after accounting for the suspension allowance already paid to him. All consequential dues were also to be paid to him. The Supreme Court, in its order dated 27.02.2020, expressly observed that the judgment of this Court needed no interference in view of the facts and circumstances of the case. The last two paragraphs are based upon a concession of the learned counsel for the petitioner herein, which was accepted by the Supreme Court. The concession was to the effect that he would accept 75% of the wages, to which he was entitled, from the date of the incident, i.e. 01.12.1991, until the date of his retirement, i.e. 31.03.2018. The Court specifically noted the submission of learned counsel for the petitioner herein, that he is *additionally* entitled to gratuity and PF. The final direction of the Supreme Court is in the same terms. While limiting the payment of salary and allowances for the aforesaid period to 75%, no similar limitation is found while directing the Corporation to pay the gratuity and PF to which the petitioner is entitled.

9. Mr. Singh submits that when the Supreme Court said that he would be paid the amount of gratuity and PF "*to which he is entitled*", the



implication is that the amount of gratuity would be computed on the basis of his last drawn pay, which was 75% of the salary he was otherwise entitled to. On a holistic reading of the judgments of Supreme Court and the Division Bench of this Court, I find this interpretation unmerited. The order of this Court, as stated above, was for the entirety of his salary and all consequential benefits to be paid. The only concession made and accepted by the Supreme Court concerns the quantum of wages. Even while recording the concession, the Supreme Court noted that the wages would be paid at 75% of what the petitioner herein was entitled to. In my view, this implies that the petitioner's *entitlement* remained intact, but the *payment* was restricted by an order of this Court to 75% of his salary. Such an order, is really in the nature of moulding the relief, that too on a concession of the petitioner, and not an adjudication that he was entitled only to 75% of his wages, or that his salary stood reduced to 75%.

10. Having so held, the question is now one of computation. As far as this aspect is concerned, the Corporation, alongwith an affidavit dated 31.07.2023, has placed on record a "*revised calculation*" of the petitioner's dues. The summary of the calculation [available at Page No. 419 of the electronic file of the Court] reveals as follows:

- A. 75% of the gross salary payable to the petitioner for the period from 01.12.1991 to 31.03.2018 has been worked out at Rs. 50,95,820/-. This figure is undisputed.
- B. From this figure, the employee's share of PF has been deducted, which has been computed at Rs. 4,85,424/-. This figure will undergo some modification as a result of the order passed above.
- C. The figure of gratuity has been calculated at Rs. 6,49,788/-. The



computation of this amount is provided in a detailed calculation at Page No. 427 of the electronic file. As far as this aspect is concerned, the computation is based upon 75% of the petitioner's last drawn basic salary, and last drawn Dearness Allowance ["DA"]. It is thereafter calculated on the basis that his date of joining was 07.04.1983, and his date of retirement was 31.03.2018. The figures for his salary and DA require adjustment in terms of the aforesaid observations of this Court. Although a dispute was initially raised with regard to the petitioner's date of joining, Ms. Wad has made a clear submission, on instructions, as recorded in the order dated 22.04.2025, that the petitioner accepts that his retiral dues may be calculated on the basis that his date of joining was 07.04.1983, and his date of retirement was 31.03.2018.

D. The Corporation has adjusted the calculation of the amount due to the petitioner against the amount of subsistence allowance already paid [Rs. 7,98,679/-], the amount paid by cheque dated 27.05.2020 [Rs. 21,70,663/-], and an amount paid on 28.03.2023 [Rs. 14,12,934/-]. The quantum of these payments is undisputed.

11. The Corporation is directed to recompute the petitioner's dues, in terms of the above observations, within a period of four weeks from today, and to pay the said amount to the petitioner within the same period. The amount may be accepted without prejudice to any dispute on quantum, in which regard the petitioner's rights and remedies are reserved. If the amount is not paid within the aforesaid period, it will carry simple interest @ 12% p.a. from today.



12. As the petitioner's travails have been prolonged by the disciplinary proceedings instituted by the Corporation, which have ultimately been found unjustified, it is expected that the Corporation will adhere scrupulously to the above timeframe. The Company Secretary and the Chief Financial Officer of the Corporation are directed to ensure compliance with the aforesaid directions. Mr. Singh is requested to forward this order to the said officials within a period of four days from today.

13. Ms. Wad states that the petitioner will not be able to withdraw his PF dues in the absence of his employment certificate. The Corporation will ensure completion of any formalities required, to enable the petitioner to realise his PF dues, is also completed within the aforesaid timeframe.

14. The petition is disposed of in these terms.

PRATEEK JALAN, J

APRIL 23, 2025
SS/AD/