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

% *Date of Decision: 28th November, 2024*

+ W.P.(C) 16488/2024

PROF SACHIDANAND SINHA .....Petitioner
Through: Mr. Abhik Chimni, Ms. Pranjal Abrol, Mr. Maaroof and Mr. Gurupal Singh, Advocates.

versus

JAWAHARLAL NEHRU UNIVERSITY .....Respondent
Through: Ms. Ginny J Rautray, Ms. Devika Thakur and Mr. Ranvijay Singh, Advocates.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

CM APPL. 69551/2024

1. Exemption allowed, subject to all just exceptions.

2. Application stands disposed of.

W.P.(C) 16488/2024

3. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India for a direction to the Respondent/ Jawaharlal Nehru University ('University') to release the Leave Encashment and Gratuity of the Petitioner along with interest @ 18% p.a.

4. Relevant facts as averred in the writ petition are that Petitioner was appointed on 20.01.1988 as Assistant Professor in the Centre for Study of

Regional Development of the University w.e.f. 04.04.1988. On 24.07.2018, JNUTA proposed to organise a protest on 31.07.2018. After the one day token protest was organised by some of the faculty members, University issued a show cause notice to the Petitioner on 20.09.2018 for allegedly participating in the same. Petitioner along with other similarly placed teachers approached this Court challenging the Charge Sheet and consequential inquiry proceedings in W.P. (C) No. 8686/2019 titled "*Surajit Mazumdar and Ors. v. Jawaharlal Nehru University*". By an interim order dated 14.08.2019, this Court stayed the inquiry proceedings and the Division Bench in LPA No.620/2019 did not interfere with the stay order. The stay order continues to operate till date and thus the inquiry has not proceeded.

5. It is averred that Petitioner retired on superannuation on 31.08.2022 but instead of releasing the superannuation benefits, University vide order dated 23.05.2023 only sanctioned the provisional pension. Petitioner made several representations for release of Gratuity and Leave Encashment and full pension but getting no relief, has approached this Court for release of Gratuity and Leave Encashment.

6. At the outset, Mr. Chimni, learned counsel for the Petitioner restricts the relief for payment of Leave Encashment with liberty to claim Gratuity once the writ petition being W.P. (C) No. 8686/2019 is decided *albeit* it is also submitted that at the highest, the Charge Sheet is for a protest march and there is no question of any damage or loss besides the fact that Petitioner has retired on superannuation and not terminated and therefore, the University cannot withhold Gratuity.

7. With respect to Leave Encashment, it is argued that the said benefit has been illegally withheld by the University as the CCS (CCA) Rules, 1965

or the CCS (Leave) Rules, 1972 ('Leave Rules') are inapplicable to the Petitioner. Assuming for the sake of argument that Leave Rules are applicable, withholding of Leave Encashment is in violation of Rule 39(3) of the Leave Rules which provides that the Competent Authority to grant Leave Encashment may withhold, whole or part, of the Leave Encashment, in case of a Government servant who retires on superannuation while under suspension or while disciplinary or criminal proceedings are pending against him, only if the Authority is of the view that there is a possibility of some money becoming recoverable from him on conclusion of the proceedings. In the present case, no order has been passed by the Competent Authority under Rule 39(3) withholding Leave Encashment on permissible grounds and quite clearly even assuming that the pending inquiry culminates into a finding of guilt, the allegation is at the highest of an alleged illegal strike for one day and there is no question of possibility of any money becoming recoverable from the Petitioner. Mr. Chimni submits that the case of the Petitioner is squarely covered by the order dated 29.10.2021 passed by this Court in CM APPL. 16769/2021 in W.P. (C) No.8532/2020 titled ***Professor Balbir Singh Butola v. Jawaharlal Nehru University, through its Registrar*** and order dated 30.03.2022 passed in CM APPL. 8790/2022 in W.P.(C) 3756/2020 titled ***Geetha B. Nambissan v. Jawaharlal Nehru University, Through Its Registrar***; CM APPL. 9003/2022 in W.P.(C) 3924/2021 titled ***Janakyi Nair v. Jawaharlal Nehru University Through Registrar***; and CM APPL. 13163/2022 in W.P.(C) 3396/2020 titled ***Professor Birender Nath Mallick v. Jawaharlal Nehru University***.

8. Issue notice.

9. Ms. Ginny J. Rautray accepts notice on behalf of the University and

submits that the University is ready and willing to consider the case of the Petitioner in line with the judgments of this Court.

10. After hearing the learned counsels, this Court is of the view that there is merit in the contention of the counsel for the Petitioner that the Petitioner is entitled to Leave Encashment. Insofar as the contention that the Leave Rules are inapplicable to the employees of the University, the larger issue is pending consideration in W.P. (C) No. 8686/2019 and therefore, this Court is not adjudicating the same in this petition. Nevertheless, even if this issue is decided against the Petitioner in the said writ petition, at the highest the case of the University will be that grant of Leave Encashment is regulated by Rule 39(3) of the Leave Rules, which is extracted hereunder for ready reference:-

> *"39. Leave/Cash payment in lieu of leave beyond the date of retirement, compulsory retirement or quitting of service*
>
> *(1) xxx xxx xxx*
>
> *(2) xxx xxx xxx*
>
> *(3) The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him. On conclusion of the proceedings, he will become eligible to the amount so withheld after adjustment of Government dues, if any."*

11. A bare perusal of Rule 39(3) of the Leave Rules leaves no doubt that Leave Encashment can be withheld by the Competent Authority, wholly or partly, with respect to a Government servant who retires on superannuation, while under suspension or while undergoing disciplinary or criminal proceedings. However, the exercise of this power is clearly subject to a

caveat that the Competent Authority is of the view that there is possibility of some money becoming recoverable from the delinquent employee on conclusion of the proceedings against him. The Rule, therefore, envisages and contemplates a conscious decision by the Competent Authority to withhold the leave encashment for the reasons provided in the Rule itself.

12. Learned counsel for the Petitioner has categorically averred and argued that the Leave Encashment has been withheld only on account of the fact that the Charge Sheet with respect to one day token strike is pending consideration before this Court. In the absence of an order withholding Leave Encashment in terms of the provisions of Rule 39(3), this Court cannot concur with the stand of the University that pending the adjudication on the Charge Sheet, Leave Encashment can be withheld and Petitioner will be entitled only to provisional pension. Division Bench of this Court in ***Govt. Of NCT of Delhi Through Chief Secretary and Anr. v. Prem Nath Manchanda, 2018 SCC Online Del 13066,*** has held that in the absence of a specific order by the Competent Authority to withhold Leave Encashment for the reason that there is a possibility of money becoming recoverable on conclusion of disciplinary/criminal proceedings, Leave Encashment cannot be withheld under Rule 39(3) of the Leave Rules. Relevant paragraphs are as follows :-

> *"7. It is undisputed that the respondent retired from service on 31.08.2010 on attaining the age of superannuation and that at the time of his retirement, or immediately thereafter, leave encashment was not released to him. There is also no dispute on the proposition that leave encashment can be withheld under Rule 39(3) of CCS (Leave) Rules, 1972, if at the time of retirement, an employee is under suspension or disciplinary or criminal proceedings are pending against him. However, a reading of the said provision clearly shows that in order to withhold the leave encashment in whole or in part, the authority competent to grant leave has to pass an order specifically withholding the encashment, if in its view*

there is a possibility of some money becoming recoverable from the employee on conclusion of the proceedings against him. The extract of Rule 39(3) is reproduced here-in-under for ready reference:

> ***"Rule 39: Leave/Cash payment in lieu of leave beyond the date of retirement, compulsory retirement or quitting of service,***
>
> *(3) The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him,* ***<u>if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him.</u>*** *On conclusion of the proceedings, he will become eligible to the amount so withheld after adjustment of Government dues, if any."*

(emphasis supplied)

8. *Learned counsel for the respondent vehemently submitted that no such order was passed by the competent authority and the learned counsel for the petitioners was not able to rebut the said fact. Consequently, the petitioners herein could not have withheld the leave encashment and the money ought to have been released to the respondent soon after his retirement. We also do not agree with the submissions of the learned counsel for the petitioners that only because there is no Rule for grant of interest of leave encashment, the respondent would not be entitled to the same. Learned counsel has not been able to point out any rule to the contrary, which creates a bar for grant of interest in case due amount is released after a considerable delay. It has been clearly held by the Apex Court in several judgments including S.K. Dua v. State of Haryana, (2008) 3 SCC 44 that if there are Statutory Rules or Administrative Instructions occupying the field, an employee could claim payment of interest relying on such rule, but even in the absence of any Statutory Rules or Administrative Instructions or Guidelines, an employee can claim interest under Part-III of the Constitution relying on Articles 14, 19 and 21 of the Constitution of India. In this regard, we also rely on a decision passed by the Division Bench of this Court in Writ Petition (C) No. 1186/2012, titled as 'Government of NCT of Delhi v. S.K. Srivastava'. This judgment also supports our view that if no order is passed under Rule 39(3) of Leave Rules, the leave encashment cannot be withheld. The fact of the matter is that the petitioners are retaining the money of the respondent from the year 2010 to 2015 and the respondent is, thus, clearly entitled to interest on the delayed payment. Interest is awarded to compensate the recipient* *for the falling value of money due to inflation. In so far as, the plea of the petitioners that serious cases were pending against the respondent and, therefore, the leave encashment was not released is concerned, the same has no merit either. Although neither the petitioners nor the respondent have been able to throw any light on the status of the criminal and disciplinary proceedings as of today, however, if this was the reason for withholding the leave encashment then the same status continues perhaps even today. The reason given for releasing the leave encashment in 2015 is an order passed by the Public Grievances Commission. We fail to understand that if the petitioners were withholding the leave encashment due to pending proceedings then they had the remedy of not implementing the order of the Public Grievances Commission. However, having complied with that order and released the leave encashment, the petitioners cannot be heard to say that the leave encashment was withheld due to pending proceedings. Learned tribunal has, thus, rightly come to conclusion that the respondent deserves interest at the GPF rate for the delayed payment of leave encashment."*

13. Similar view was taken by another Division Bench of this Court in ***Satya Prakash v. Chairman Cum Managing Director, Bharat Sanchar Nigam Limited & Ors., 2019 SCC OnLine Del 8039,*** and the relevant paragraphs are as under :-

"9. *So far as the petitioner's claim for leave encashment is concerned, in our view that stands on a different footing. As noticed above, Rule 9 does not say that leave encashment can be withheld or withdrawn by the Government. Stoppage of leave encashment is also not prescribed as a penalty under Rule 14 of the CCS (CCA) Rules, 1965. On the other hand, leave encashment is covered by the CCS (Leave) Rules. Rule 39(3) of the said Rule is relevant and reads as follows:—*

> *"(3) The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him,* ***<u>if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him</u>****. On conclusion of the proceedings, he will become eligible to the amount so withheld after adjustment of Government dues, if any."*

(emphasis supplied)

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__10.__ The aforesaid Rule would show that the competent authority may wholly or partly, withhold leave encashment in respect of a Government servant who retires on attaining the age of superannuation, while under suspension or while undergoing disciplinary or criminal proceedings, provided the competent authority is of the view that there is a possibility of some money becoming recoverable from him on the conclusion of proceedings against him. In the present case, the respondents have not produced any order to show that a conscious decision has been taken by the Government to withhold the leave encashment due to the petitioner upon his retirement, on account of there being a possibility of some money becoming recoverable from him on the conclusion of proceedings against him. The nature of the charge levied against the petitioner also does not support the withholding of the leave encashment. We cannot agree with the submissions of learned counsel for the respondents that if the charge against the petitioner is proved, it could also have the effect of nullifying the examination process in which the petitioner is alleged to have manipulated the marks of some of the candidates. Pertinently, the said examination took place in the year 2010. It is not the respondent's case that any of the successful candidates have been put to notice in this regard. It is not claimed that the said examination process has been assailed by any unsuccessful candidate on account of the alleged misconduct of the petitioner, or that the same has been set aside, or the challenge is still pending. We are, therefore, of the view that withholding of leave encashment of the petitioner is not justified."

14. In this context, I may also usefully allude to the judgment of the Division Bench in ***National Textile Corporation Ltd. v. S.B. Singh, 2021 SCC OnLine Del 588***, wherein the judgement of the learned Single Judge, relying on ***Satya Prakash (supra) and Government of NCT of Delhi (supra)*** was upheld by the Division Bench. Relevant paragraphs are as under:-

__"5.__ We will first deal with the impugned direction of the Single Judge, insofar as it concerns the release of the leave encashment amount. Leave encashment of the employees of the appellant is governed by the National Textile Corporation Limited Leave Rules, 2015 and Rule 7 whereof deals with Leave Encashment. Rule 7.7 inter alia permits the authority competent to grant encashment of leave, to withhold whole or part of cash equivalent of earned leave, in case of any employee who retires from service on attaining the age of superannuation, while under suspension or while disciplinary or criminal proceedings are pending against him, if in *the view of such authority there is possibility of some money becoming recoverable from him on conclusion of the proceedings against him. The Single Judge, in the impugned judgment has held that since there was no finding returned or opinion expressed in the order withholding the amount of leave encashment, of a possibility of some money becoming recoverable from the respondent on conclusion of the disciplinary proceedings initiated against him, the amount due towards leave encashment could not be withheld. Reliance was placed on Satya Prakash v. Chairman Cum Managing Director, Bharat Sanchar Nigam Ltd. 2019 SCC OnLine Del 8039 and Govt. of NCT of Delhi Through Chief Secretary v. Prem Nath Manchanda 2018 SCC OnLine Del 13066, laying down that for leave encashment amount to be withheld, there has to be an express opinion in the order withholding the leave encashment amount, of such possibility and which did not exist in the present case.*

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11. *We are unable to agree. Leave encashment, though a retiral benefit, having been dealt with separately, under the Leave Rules which lay down their own condition/s for withholding of leave encashment, we are of the view that no case of the appellant being entitled to withhold the leave encashment amount, also as a retiral benefit, under Rule 25.13, is made out. To withhold the amount of leave encashment, the provisions of the Conduct, Discipline and Appeal Rules, cannot be applied, without the Leave Rules, expressly providing so. No ground to interfere with the direction of the Single Judge, to the appellant, to release the leave encashment amount to the respondent, is thus made out and the appeal to that extent, is dismissed."*

15. In light of the provisions of Rule 39(3) and the judgments aforementioned including the orders referred to by Mr. Chimni, Petitioner is held entitled to Leave Encashment. Petitioner has also sought interest on the arrears of Leave Encashment which have been withheld from 31.08.2022 when the Petitioner retired on attaining the age of superannuation i.e. 65 years. In my view, Petitioner is entitled to grant of interest. Counsel for the Respondent has been unable to point out any Rule which bars the grant of interest in a case where the Leave Encashment, which is retiral benefit, has been withheld by the employer for 27 months. In case of ***Government of NCT of Delhi (supra)***, one of the issues for consideration before the

Division Bench was grant of interest on Leave Encashment and the Division Bench directed release of interest on Leave Encashment, relying on the judgment of the Supreme Court in ***S.K. Dua v. State of Haryana, (2008) 3 SCC 44,*** as well as Part III of the Constitution of India, which is repository of Articles 14, 19 and 21. Relevant passage of the judgment of the Division Bench has already been quoted in the earlier part of this judgment.

16. In view of the aforesaid, this Court holds that the Petitioner is entitled to interest on the arrears of Leave Encashment, withheld by the Respondent, without a just cause.

17. Writ petition is allowed with a direction to the Respondent to release the Leave Encashment of the Petitioner with interest @ 9% per annum from the date the amount became due till the date of actual payment, within a period of 6 weeks from today. Insofar as Gratuity is concerned, liberty is granted to the Petitioner to claim the same after the decision in W.P. (C) No. 8686/2019 and depending on its outcome.

18. Writ petition stands disposed of in the aforesaid terms.

JYOTI SINGH, J

NOVEMBER 28, 2024
B.S. Rohella

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