

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

+ W.P.(C) No. 7302/2012

% **26th September, 2013**

P.K.KATARIA

.....Petitioner

Through: Ms. Anju Bhattacharya and Mr. Elgin
Matt John, Advocates.

VERSUS

THE CHAIRMAN AND MANAGING DIRECTOR NATIONAL
FERTILIZERS LTD. Respondents

Through: Mr.Ghanshyam Joshi and Mr. Gireish
Kandpal, Advocates.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition is filed by the petitioner who retired/superannuated from the respondent no.1/National Fertilizers Ltd. on 30.4.2011. Petitioner claims the relief of release of the gratuity and leave encashment amounts which have been withheld by the respondent. Petitioner also claims payment of interest on such amounts not paid.

2. The respondent places reliance upon Rule 35-A of the National Fertilizers Limited Employees' (Conduct, Discipline and Appeal)

Rules and the circular dated 10.9.1996 of the respondent to deny the claim of the petitioner. On the basis of Rule 35-A and the circular dated 10.9.1996, it is argued that respondent is entitled to withhold the gratuity and leave encashment on account of pendency of disciplinary proceedings pending against the petitioner.

3. To decide the issue in the present case, it will be necessary to interpret Rule 35-A and the circular dated 10.9.1996, and therefore the same are reproduced hereunder:-

Rule 35-A

“35A Withholding of Gratuity during the pendency of discipline proceedings

During the pendency of disciplinary proceedings, the disciplinary authority may withhold payment of gratuity, for ordering the recovery from gratuity of the whole or part of any pecuniary loss caused to the Company if the employee is found in a disciplinary proceedings or judicial proceeding to have been guilty of offences/misconduct as mentioned in sub-section (6) of section 4 of the Payment of Gratuity Act 1972 or to have caused pecuniary loss to the Company by misconduct or negligence, during his service including service rendered on deputation or on re-employment after retirement. However, the provisions of Section 7(3) and 7(3-A) of the Payment of Gratuity Act, 1972 should be kept in view in the event of the delayed payment, in case the employee is exonerated.”

Circular dated 10.9.1996

“No. NFL/Pere/1(93)/2358

September 10, 1996

Sub: Withholding of Leave Salary/Leave Encashment in respect of employees against disciplinary proceedings are pending/contemplated.

The Board of Directors in their 214th meeting held on 16.08.1996 have decided that the payment on account of leave salary/leave encashment due to an employee may be withheld if disciplinary proceedings for imposing major penalty are contemplated and/or pending against him/her on the charge of having caused loss/damage to the Company and from whom some amount will become recoverable if charges are proved.

The above decision will be effective from the date of Board's approval i.e 16.08.1996 and will be applicable to all employees of the Company.

You are requested to take necessary action and also circulate this among all employees at your Unit/Office.

(P.K.Bansal)

Manager (P&A)''

4. A reference to the aforesaid rule and circular shows that gratuity and leave encashment can be withheld if there is a charge against the employee of having caused pecuniary loss to the respondent or having caused loss/damage to the company. In terms of Rule 35-A, there is an additional entitlement to withhold gratuity amount in terms of Section 4(6) of the Payment of Gratuity Act, 1972.

5. When we refer to the chargesheet dated 19.3.2013 in the present case, and which has been issued during the pendency of the writ petition,

there are allegations against the petitioner of wrongly seeking to favour M/s Accor Radha Krishna Corporate Services Pvt. Ltd. (in short 'M/s Accor') for supply of meal vouchers at NFL, Panipat Unit. A reading of the statement of imputation accompanying the chargesheet shows that petitioner is stated to be guilty of violation of certain directions and circulars and for possible manipulations in the tender conditions to favour M/s Accor. A complaint, as per which the tender was examined, came from the competitor-bidder namely M/s Sodexo SVC India Pvt. Ltd. (in short 'Sodexo'). Ultimately, the Panipat unit issued NIT to both the parties namely M/s Accor and M/s Sodexo on 13.5.2009. The charge is that open tender should have been invited and not a limited tender to two parties. In the entire imputation of misconduct there is no charge against the petitioner for having caused pecuniary loss to the respondent-company or that the respondent-company has been caused loss or damage on account of any infraction by the petitioner. Therefore, on the plain language of Rule 35-A and the circular dated 10.9.1996 the gratuity and leave encashment amounts cannot be withheld because there is no charge against the petitioner of causing pecuniary loss or any other loss or damage to the respondent-company.

6. The only other aspect requiring examination is that whether respondent is entitled to withhold the gratuity and leave encashment amounts in view of Section 4(6) (b) (ii) of the Payment of Gratuity Act, 1972, and this provision reads as under:-

“4. Payment of Gratuity-

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(6)(b)(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.”

7. The requirement of this provision for withholding the payment of gratuity is that the chargesheeted officer is guilty of moral turpitude. Moral turpitude is not defined in the Payment of Gratuity Act, 1972 or in the relevant Rules of the respondent-organization. Surely every infraction or misconduct would not amount to moral turpitude. The expression ‘moral turpitude’ must be therefore interpreted as per its meaning commonly understood, and by which imputation is really on the moral character of a person, for example sexual harassment of a female employee or questionable acts of personal morals. Also, as per the aforesaid provision of Payment of Gratuity Act, it is necessary that findings of moral turpitude must be in the course of the employment of the employee with the employer. In my

opinion, when we see the chargesheet and the related imputation of misconduct as already stated above, there is only allegations of violations of rules in floating a tender or calling for limited parties pursuant to the tender and thus the charges are issues of misconduct of violating of directions, and thus not issues of moral turpitude. Therefore, in my opinion, present is not a case where on the ground of moral turpitude provided for in Section 4 (6) (b) (ii) there can be withholding of gratuity by the respondent.

8. In view of the above, it is clear that respondent has no legal entitlement to withhold the gratuity and leave encashment benefits of the petitioner. Supreme Court in the case of *State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava & Anr.* in Civil Appeal No. 6770/2013 decided on 14.8.2013 has held that terminal benefits are not bounties which are given to employees and terminal benefits are in fact payable on account of rendering service by the employee during the entire period of service of such employee with the employer. Such monetary benefits have been held by the Supreme Court as a property and which cannot be taken away without following the process of law as per Article 300A of the Constitution of India. Supreme Court has clarified that only where there exist a statutory rule or rule of the employer-organization, entitling withholding of terminal

benefits of an employee, only then the same can be withheld by the employer. I have held in the present case that there is no entitlement of the respondent-employer to withhold terminal benefits because the relevant rule and the circular which are relied upon do not apply because of the fact that there is no chargesheet whereby allegations are made against the petitioner of any loss or damage being caused to the respondent by the petitioner.

9. In view of the above, the writ petition is allowed and respondent is directed to release the gratuity and leave encashment amounts due to the petitioner on the date of his retirement. The amounts be paid within a period of three months from today alongwith interest at 6% per annum simple from the date of superannuation of the petitioner on 30.4.2011 and till the date of payment. In case the payment is not made to the petitioner within a period of three months, thereafter interest at 9% per annum simple will be payable. The writ petition is allowed and disposed of accordingly.

SEPTEMBER 26, 2013
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VALMIKI J. MEHTA, J.