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

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+ W.P.(C) 8686/2019

SURAJIT MAZUMDAR AND ORS. Petitioners
Through Mr.Abhik Chimni, Mr.Lakhshay Garg
and Mr.Shashwat Mehra, Advocates.

versus

JAWAHARLAL NEHRU UNIVERSITY AND ORS..... Respondents
Through Mr. Pradeep Kumar Arya, Mr. Raj
Karan Sharma, Mr. Aditya Kumar
Yadav & Mr. Gaurav Chaudhary,
Advocates.

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+ W.P.(C) 3756/2020

GEETHA B. NAMBISSAN Petitioner
Through Mr.Abhik Chimni, Mr.Lakhshay Garg
and Mr.Shashwat Mehra, Advocates.

versus

**JAWAHARLAL NEHRU UNIVERSITY, THROUGH
ITS REGISTRAR** Respondent
Through Mr. Pradeep Kumar Arya, Advocate.

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+ W.P.(C) 8532/2020

PROFESSOR BALBIR SINGH BUTOLA Petitioner
Through Mr.Abhik Chimni, Mr.Lakhshay Garg
and Mr.Shashwat Mehra, Advocates.

versus

**JAWAHARLAL NEHRU UNIVERSITY, THROUGH
ITS REGISTRAR** Respondent
Through Mr. Pradeep Kumar Arya, Advocate.



**CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH**

ORDER
% **29.10.2021**

Hearing has been conducted through video conferencing.

CM APPL. 16769/2021 IN W.P.(C) 8532/2020 (For releasing monthly payment of pension for May, 2021 & Leave Encashment)

1. Present application has been filed by the Petitioner seeking release of provisional pension for the month of May, 2021 as well as Leave Encashment along with interest at the rate of 12% p.a. on the arrears of leave encashment.
2. Briefly and succinctly put, the narrative of facts to the extent relevant to this application is that the Petitioner was appointed to the post of Associate Professor in Geography (Human Geography) in the Centre for Study of Regional Development, School of Social Sciences with the Respondent/Jawaharlal Nehru University on 24.08.1998. Thereafter, he was confirmed on 29.12.1999 against the post of Associate Professor in CSR/D/SSS. Subsequently, Petitioner was promoted to the post of Professor on 19.01.2006 w.e.f. 27.02.2004.
3. An inquiry was initiated on 12.06.2019 against the Petitioner along with certain other teachers in JNU under Rule 14 of the CCS (CCA) Rules, 1965 for alleged violation of Rule 7 of the CCS (Conduct) Rules, 1972 for participation in a one day strike announced by JNUTA on 31.07.2018. The charge-sheet was challenged before this Court in a writ petition being W.P.(C) 8686/2019, titled *Surajit Mazumdar and Ors. v. Jawahar Lal Nehru & Ors.* The Court stayed further inquiry proceedings and in an appeal by the



Respondent herein in LPA No. 620/2019 titled *Jawaharlal Nehru University & Ors. v. Surjit Mazumdar & Ors.*, the Division Bench issued notice on 30.09.2019, but did not stay the interim order granted by the learned Single Judge.

4. During the pendency of the writ petition, Petitioner has admittedly superannuated on 31.05.2020 upon attaining the age of 65 years. Petitioner sent his retirement papers to the Respondent University and sought for his retiral benefits including pension, Leave Encashment, etc. By the impugned e-mail dated 08.06.2020, Respondent has declined to release the Leave Encashment and other pensionary benefits of the Petitioner, on the ground that the writ petition relating to disciplinary proceedings is pending before the Court and till the outcome, release of benefits is put on hold.

5. Petitioner thereafter filed the present writ petition, wherein several reliefs have been sought. The present application has been filed by the Petitioner seeking release of provisional pension for the month of May, 2021 as well as Leave Encashment which, according to the Petitioner, has been illegally withheld by the Respondent, along with a claim of interest at the rate of 12% per annum.

6. Mr. Abhik Chimni, learned counsel for the Petitioner strenuously contends that the Respondent has illegally withheld the Leave Encashment and the action is against the Rules applicable to the Respondent. Learned counsel firstly contends that the Central Civil Services Rules do not apply to the Respondent and, therefore, the CCS (CCA) Rules, CCS (Conduct) Rules and the CCS (Leave) Rules, 1972 (hereinafter referred to as 'Leave Rules'), are inapplicable to the Petitioner and the said issue is pending consideration in W.P.(C) 8686/2019. The second contention is that even assuming for the



sake of argument that the Leave Rules apply, withholding of Leave Encashment of the Petitioner is in violation of the provisions of Rule 39(3) of Leave Rules. Drawing the attention of this Court to Rule 39(3), it is argued 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. Mr. Chimni submits that a perusal of the impugned e-mail clearly indicates that no order has been passed by the Competent Authority under Rule 39(3) withholding Leave Encashment on the grounds permissible under the said provision and in any case, the charge-sheet is only with respect to an alleged illegal strike for a period of one day and there is no possibility of any money becoming recoverable or due from the Petitioner, assuming the best case in favour of the Respondent that the writ petition is dismissed. It is further submitted that the law on withholding of Leave Encashment is no longer *res integra* and Mr. Chimni relies on the following judgments in this regard:-

- a) ***Govt. Of NCT of Delhi Through Chief Secretary and Anr. v. Prem Nath Manchanda, 2018 SCC Online Del 13066***
- b) ***Satya Prakash vs. Chairman Cum Managing Director, Bharat Sanchar Nigam Limited & Ors., 2019 SCC OnLine Del 8039***
- c) ***National Textile Corporation Ltd. v. S.B. Singh, 2021 SCC OnLine Del 588***

7. *Per contra*, Mr. Pradeep Kumar Arya, learned counsel for the Respondent submits that a major penalty charge-sheet has been issued



against the Petitioner for joining in a one day strike announced by JNUTA on 31.07.2018. This, according to the learned counsel, is a serious misconduct under the CCS (Conduct) Rules and the writ petition challenging the same is pending. In view of the fact that the disciplinary proceedings are pending, Petitioner is not entitled to release of Leave Encashment.

8. It is next submitted by Mr. Arya that the University in the 243rd Meeting of the Executive Council held on 14.11.2011 has approved the adoption of Government of India Rules/Regulations/Instructions with regard to all service matters of JNU teaching and non-teaching employees including Rules relating to disciplinary proceedings, conduct and leave.

9. Insofar as Rule 39 of the Leave Rules is concerned, Mr. Arya submits that Rule 39(3) empowers the Competent Authority to withhold the Leave Encashment, in whole or in part, where the disciplinary proceedings are pending and there is a possibility of money becoming recoverable from the delinquent employee. In the present case, charge-sheet has been issued and while there is an interim order of stay against the disciplinary proceedings, Petitioner has not been exonerated and thus, there is every possibility of the Petitioner being found guilty and therefore not entitled to Leave Encashment.

10. I have heard learned counsels appearing on behalf of the parties.

11. Insofar as the relief of provisional pension for the month of May, 2021 is concerned, the same stands paid to the Petitioner, as clearly acknowledged by Mr. Chimni and the Respondent is continuing to release the provisional pension. Therefore, the grievance of the Petitioner to that extent in the present application stands redressed.



12. With respect to the release of Leave Encashment, two-fold contentions have been raised by the Petitioner. As far as the applicability of the Central Civil Service Rules to the Respondent is concerned, though the Respondent has taken a categorical stand that the Government of India Rules have been adopted by the Respondent, however, since the larger issue is pending consideration in another writ petition being W.P.(C) 8686/2019, this Court is not adjudicating the same in the present application. There is another reason why this Court need not detain itself in entering into the said controversy. Even taking the best case of the Respondent, the applicable Rule in the present case for withholding the Leave Encashment is Rule 39(3) of the Leave Rules. For the sake of ready reference, Rule 39(3) of the Leave Rules is extracted hereunder:-

“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.”

13. 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. At this stage, it is relevant to examine the impugned order dated 08.06.2020, whereby leave encashment of the Petitioner has been withheld and the order reads as follows:-

*“Till we know the outcome of the Hon’ble HC your pension and leave encashment may be kept on hold.
This has the approval of the Competent Authority.”*

14. A plain reading of the order shows that no conscious decision has been taken to withhold the Leave Encashment in terms of Rule 39(3) of the Leave Rules. Learned counsel for the Petitioner has categorically averred and argued that the Leave Encashment has been withheld only on account of the order dated 08.06.2020 and no separate order has been passed. There is no rebuttal to the said averment/argument by the Respondent. In the absence of an order withholding leave encashment in terms of the provisions of Rule 39(3), this Court cannot uphold the impugned order and the contention of the Respondent is rejected. It has been clearly held by a Division Bench of this Court in *Government of NCT of Delhi (supra)* 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 paras 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, 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.” (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.”

15. Similar view was taken by another Division Bench of this Court in *Satya Prakash (supra)* and the relevant paras 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, 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.”*

(emphasis supplied)

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.”



16. In this context, I may also usefully allude to the judgment of the Division Bench in *National Textile Corporation (supra)*, 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 paras 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.”

17. Petitioner has also sought interest on the arrears of Leave Encashment which have been withheld for the last eighteen months. In my view, the 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 eighteen months. In the 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 the Leave Encashment, relying on the judgment of the Supreme Court in ***S.K. Dua vs. 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.



18. 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.

19. Accordingly, the present application is allowed.

20. Respondent is directed to release the Leave Encashment of the Petitioner along with interest @ 9% per annum on the amount due, within a period of 6 weeks from today.

W.P.(C) 8686/2019 & CM APPL. 35942/2019

W.P.(C) 3756/2020 & CM APPL. 13445/2020

W.P.(C) 8532/2020 & CM APPL. 27507/2020, 28744/2020 & 28784/2020

List these petitions on 15.11.2021 before the Roster Bench, subject to orders of Hon'ble the Chief Justice.

JYOTI SINGH, J

OCTOBER 29, 2021
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