

(2021) 03 DEL CK 0344

In the Delhi High Court

Case No : Letter Patent Appeal No. 4 Of 2021, Civil Miscellaneous Application
No. 126 Of 2021

National Textile Corporation Ltd

APPELLANT

Vs

S B Singh

RESPONDENT

Date of Decision : 18-03-2021

Acts Referred:

National Textile Corporation Limited Leave Rules, 201 — Rule 7, 7.7

Indian Contract Act, 1872 — Section 3, 4

Conduct, Discipline And Appeal Rules, 2009 — Rule 25.13, 25.13.1, 25.13.2, 25.13.3

Citation : (2021) 03 DEL CK 0344

Hon'ble Judges : Rajiv Sahai Endlaw, J; Amit Bansal, J

Bench : Division Bench

Advocate : Ajit Pudussery, Purti Gupta, Henna George, Henna George

Final Decision : Partly Allowed

Judgement

Amit Bansal, J

1. On 5th January, 2021, when this appeal first came up for consideration, the following order was passed:-

3. The appeal impugns the judgment dated 17th November, 2020 of the Single Judge in W.P.(C) No.3114/2020 instituted by the respondent, seeking a mandamus directing the appellant to release the retiral benefits comprising of gratuity, leave encashment and provident fund (PF) to the respondent. During the pendency of the petition, the respondent's share of PF was released to the respondent, with the appellant's share of PF amount only being retained/ withheld. Further, though the respondent, in the writ petition had sought release of gratuity also, but during the hearing before the Single Judge, gave up the relief of release of gratuity and agreed to the same being withheld by the appellant, till the culmination of the disciplinary proceedings initiated against the respondent. Thus, only the claim for release of leave encashment amount and the employer's share of PF amount remained for adjudication before the Single

Judge and the Single Judge, vide the impugned judgment has directed the appellant to release both the said amounts to the respondent. Aggrieved therefrom, this appeal has been preferred.

4. We have heard the counsel for the appellant as well as the counsel for the respondent, appearing on advance notice, at length.

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 thereof 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 Vs. Chairman Cum Managing Director, Bharat Sanchar Nigam Ltd.* 2019 SCC OnLine Del 8039 and *Govt. of NCT of Delhi Through Chief Secretary Vs. Prem Nath Manchanda* 2018 SCC OnLine 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.

6. The counsel for the appellant has not impugned the aforesaid reasoning. He has however drawn our attention to the Conduct, Discipline and Appeal Rules, 2009 of the appellant, Rule 25.13 titled "Continuation of Enquiry Beyond Superannuation" whereof inter alia provides, that (i) disciplinary proceedings, if instituted while the employee was in service, whether before his retirement or during his re-employment, shall, after the final retirement of the employee, be deemed to be subsisting and shall be continued and concluded by the authority by which it was commenced, in the same manner as if the employee had continued in service; and, (ii) in such cases, the employee will cease to be in service from the date of superannuation/retirement but will not be entitled to payment of retirement benefits till the proceedings are completed and final order is passed thereon, except his own contribution to Contributory Provident Fund.

7. The counsel for the appellant has contended that the impugned judgment does not consider that the word "instituted" used in the aforesaid Rule 25.13.1 and which word has been held to mean, the date when a decision to initiate disciplinary proceedings has been taken. He has contended that since in the present case, though Show Cause Notice dated 31st January, 2020 was served

on the respondent on 1st February, 2020 i.e. very next day of his superannuation on 31st January, 2020, but the disciplinary proceeding against the respondent is deemed to have been instituted on 31st January, 2020 i.e. during his employment with the appellant; it is stated that till 31st January, 2020 the respondent was in the employment of the appellant.

8. We have enquired from the counsel for the appellant, whether leave encashment can be considered as a retiral benefit.

9. The counsel for the appellant has referred us to Rule 7 aforesaid of the Leave Rules and on a reading whereof we are satisfied that the leave encashment, as per the said rule, is a retiral benefit.

10. The contention of the counsel for the appellant is that the Single Judge has not considered that besides the Leave Rules, the aforesaid Rule 25.13 of Conduct, Discipline and Appeal Rules would also apply.

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.

12. We however find merit in the contention of the counsel for the appellant, that the Single Judge has not considered that the disciplinary proceedings in the present case were instituted prior to retirement of the respondent. We have however enquired, whether the retirement / superannuation of the respondent was in the forenoon or afternoon of 31st January, 2020 and whether any such thing is mentioned/specified in the records, as is found in cases of certain other departments, particularly Armed Forces. If it is so, and the retirement/superannuation of the respondent were to be in the forenoon and the decision to initiate disciplinary proceeding was taken in the afternoon, then also, what is argued by the counsel for the appellant, will not follow inasmuch as the institution of the disciplinary proceeding would be after the superannuation of the respondent.

13. We have also enquired from the counsel for the appellant, whether not institution of a legal proceeding in a Court is different from institution of a disciplinary proceeding, because unlike a proceeding in the Court, which is deemed to be instituted on the date of filing in the Court, a disciplinary proceeding commences with the issuance of a show cause notice and which is a 'communication' within the meaning of Sections 3 & 4 of the Indian Contract Act, 1872 and if it is so, then even if a decision is taken to institute the proceedings,

unless the said decision is communicated to the employee, it cannot be said that the disciplinary proceedings were instituted prior to retirement/superannuation of the employee.

14. The Single Judge has held that the disciplinary proceedings in the present case were initiated after superannuation and in which case there is no power to withhold the retiral benefits.

15. Though we have heard the counsels for some time but it appears that decision on the said aspect requires consideration and preparation by the counsels.

16. Issue notice of the appeal qua the aforesaid aspect of payment of the appellant's share of PF to the respondent, during the pendency of disciplinary proceedings.

17. Notice is accepted by the counsel for the respondent.

18. List for hearing on 18th March, 2021.

19. Till further orders, the direction of the Single Judge in the impugned judgment, to the extent of directing the appellant to release appellant's share of PF to the respondent, shall remain stayed.

20. Pendency of this appeal to not come in the way of expeditious disposal of the disciplinary proceeding, which we are informed, under the Rules are required to be completed within four to five months. The appellant is directed to ensure timely conduct of the disciplinary proceeding, within the time stipulated in the Rules and the respondent is directed to cooperate in the same. The status of the disciplinary proceeding be also informed on the next date.

2. Our attention has been drawn by the counsel for the appellant to the Office Order dated 19th February, 2020, which states that the respondent, on attaining the age of superannuation, has been superannuated "on closing hours of 31st January, 2020". As per counsel for the appellant, "closing hours" would mean 06:00 PM on 31st January, 2020. Our attention is also drawn by the counsel for appellant to the note-sheet dated 31st January, 2020 in the files maintained by the appellant, wherein the following is noted:-

"In this regard it is informed that, vide note dated 31.01.2020 (sent to Sr. Manager (HR) from the Office of CVO NTC Ltd. In the forenoon), you have already been informed to issue Charge sheet to Sh. S.B. Singh, CGM (Fin/MIS) in the above said matter."

3. The counsel for the appellant has also placed reliance on another noting dated 31st January, 2020 handed over in the course of the hearing, wherein CMD of the appellant Corporation has signed the Memorandum of Charge to be served on the respondent on 31st January, 2020.

4. The counsel for appellant thus contends that the Single Judge, in the

impugned judgment, has wrongly concluded that the respondent superannuated on 31st January, 2020 and till that time no charge-sheet was issued to him.

5. The counsel for the appellant has placed reliance on the relevant provisions of the Rules, which are set out below:-

"25.13 Continuation of inquiry beyond Superannuation:

25.13.1. Disciplinary proceedings, if instituted while the employee was in service whether before his retirement or during his re-employment shall, after the final retirement of the employee, be deemed to be subsisting proceedings and shall be continued and concluded by the authority by which it was commenced in the same manner as if the employee had continued in service.

25.13.2. In such cases, the employee will cease to be in the services of the Corporation from the date of superannuation/retirement and will not be eligible for salary or any other benefits from the date following the date of superannuation/retirement. He will also not be entitled to the payment of retirement benefits till the proceedings are completed and final order is passed thereon, except his own contribution to Contributory Provident Fund."

25.13.3 Disciplinary proceedings, if not initiated while the employee was in service shall be initiated against an employee in respect of prima facie established lapses/misconduct after retirement in respect of grave misconduct in respect of any event which took place not more than four years earlier."

(emphasis supplied)

6. It is contended by the counsel for the appellant that in the present case, disciplinary proceedings were instituted while the employee was in service and before his retirement, in terms of Rule 25.13.1 and therefore in terms of Rule 25.13.2, the employee will not be entitled to payment of retirement benefits till the proceedings are completed and final order is passed thereon, except his own contribution to the contributory provident fund, which has already been released to the respondent. He further submits that Rule 25.13.3 will not be applicable in this case.

7. Per contra it is contended by the counsel for the respondent that since the Charge Memo was served on the respondent only on 1st February, 2020, it cannot be said that the disciplinary proceedings were instituted while the respondent was in service. As per the counsel, the relevant date when the disciplinary proceedings can be said to have been instituted would be the date when the Memorandum of Charge was served upon the respondent; admittedly, the Memorandum of Charge was served on the respondent on 1st February, 2020, whereas the respondent had retired on 31st January, 2020 and hence Rules 25.13.1 and 25.13.2 would have no application and Rule 25.13.3 would apply, which permits the disciplinary proceedings to be initiated against an employee after his retirement in respect of a grave misconduct in respect of an event which took place within four years of his retirement date; however, in this

scenario, the retirement benefits of the employee cannot be withheld, as Rule 25.13.2 would not apply. The counsel for the respondent has placed reliance on the following judgments:-

- (i) Union of India and Others Vs. K.V. Jankiraman and Others (1991) 4 SCC 109;
- (ii) UCO Bank and Another Vs. Rajinder Lal Capoor (2007) 6 SCC 694;
- (iii) Coal India Ltd. and Others Vs. Saroj Kumar Mishra (2007) 9 SCC 625.

8. Insofar as judgment of the Hon"ble Supreme Court in Jankiraman (supra) is concerned, it was held therein that sealed cover procedure is to be resorted to only after the Charge Memo has been issued to the employee.

The said dicta would have no application in the present case.

9. Insofar as the judgment of the Hon"ble Supreme Court in UCO Bank (supra) is concerned, relying upon the judgment of the Hon"ble Supreme Court in Coal India Ltd. (supra), it was held that date of application of mind on the allegations levelled against an officer by the Competent Authority as a result whereof a charge-sheet is issued, would be the date on which the disciplinary proceedings are stated to have been initiated and not prior thereto. The dicta of the said judgment supports the case of the appellant inasmuch as the appellant has shown that in the present case the application of mind to issue a Charge Memo to the respondent took place on 31st January, 2020 before the time the respondent superannuated. The file noting shown by the appellant clearly shows that the competent authority had applied its mind and decided to issue memorandum of charge to the respondent on 31.01.2020. The mere fact that memorandum of charge was served upon the respondent on 01.02.2020 would not be relevant for the purpose of Rule 25.13.1 and 25.13.2.

10. Therefore, the respondent"s case would be covered under Rule 25.13.1 as the disciplinary proceedings were instituted while the employee was in service, before his retirement. Accordingly, in terms of Rule 25.13.2, the respondent will not be entitled for payment of retiral benefits till the disciplinary proceedings are completed and a final order is passed thereon, except of his own contribution to the provident fund.

11. Accordingly, the present appeal is partly allowed and the judgment of the learned Single Judge is set aside to the extent it directs release of appellant"s share of contribution to the Provident Fund.