
(2013) 09 DEL CK 0148

In the Delhi High Court

Case No : Writ Petition (C) No. 6633 of 2011

O.P. Nasa and Another

APPELLANT

Vs

Delhi Urban Shelter Improvement Board

RESPONDENT

Date of Decision : 09-09-2013

Acts Referred:

Citation : (2013) 09 DEL CK 0148

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Atul Kumar, for the Appellant; Parvinder Chauhan and Mr. Nishant Prateek, for the Respondent

Final Decision : Allowed

Judgement

Valmiki J Mehta, J.—By this writ petition, two relief's are claimed. The first relief is as regards the challenge to the suspension order dated 29.9.2010. The second relief pertains to claim of retirement benefits such as gratuity, pension, earned leave encashment etc. So far as the first prayer is concerned, counsel for the petitioner does not press the same.

2. So far as the second relief is concerned, the same is fully covered by the recent judgment of the 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. In the aforesaid judgment of Jitendra Kumar Srivastava (supra) Supreme Court has held as under:-

(i) Terminal benefits whether they be pension or gratuity or leave encashment are in the nature of "property".

(ii) Such terminal benefits etc can only be withheld and appropriated by the government after the decision of the departmental authorities or a judgment of a court of law i.e. during the pendency of departmental proceedings and court proceedings, the government cannot withhold and appropriate the terminal benefits etc which are payable to employees.

(iii) The only reason because of which government can withhold and appropriate terminal benefits etc is if there is a rule of the organization or a statutory rule which entitles the government during the pendency of proceedings not to pay the terminal benefits etc to the employee.

3. It is the common case of the parties that the respondent no. 1/employer is governed by CCS (Pension) Rules. As per Rule 9 of the said CCS(Pension) Rules, and which is similar to Rule 43(b) of the Bihar Pension Rules which the Supreme Court has dealt with in the case of Jitendra Kumar Srivastava (supra), the employer cannot withhold or appropriate terminal benefits etc. unless a final order is passed in the departmental proceedings or by the court before whom the complaint is pending.

4. Since in the present case the departmental proceedings are not concluded and no final Court order has been passed, the ratio of Jitendra Kumar Srivastava (supra) will be squarely applicable. In view of the above, the writ petition is allowed and the respondent is directed to pay terminal benefits, leave encashment amount and other amounts which would have become payable to the petitioner on his retirement. It is however clarified that in case a final order is passed in a departmental proceeding whereby it is held not to pay terminal benefits etc. to the employee then the respondent is entitled to recovery of any amounts from the petitioners, then in that case, the respondent can at that stage proceed in accordance with law to recover its dues.